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

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 930

[Docket No. FV00–930–6 FIR]

Tart Cherries Grown in the States of Michigan, et al.; Suspension of Provisions Under the Federal Marketing Order for Tart Cherries

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: The Department of Agriculture (Department) is adopting, as a final rule, without change, the provisions of an interim final rule suspending indefinitely a portion of an order provision concerning the release of reserve cherries. The suspension continues to allow cherries held in inventory reserves to be released for exempt uses such as exports. The Cherry Industry Administrative Board (Board) recommended this action to allow reserve cherries to be used in outlets other than normal commercial outlets. The Board is responsible for local administration of the marketing order which regulates the handling of tart cherries grown in the production area.

EFFECTIVE DATE: May 30, 2001.

FOR FURTHER INFORMATION CONTACT: Patricia A. Petrella or Kenneth G. Johnson, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, Suite 2AO4, Unit 155, 4700 River Road, Riverdale, Maryland 20737, telephone: (301) 734–5243, Fax: (301) 734–5275 or George Kelhart, Technical Advisor, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, room 2525–S, P.O. Box 96456, Washington, DC 20090–6456; telephone: (202) 720–2491, Fax: (202) 720–5698.

Small businesses may request information on compliance with this regulation, or obtain a guide on complying with fruit, vegetable, and specialty crop marketing agreements and orders by contacting Jay Guerber, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, P.O. Box 96456, room 2525–S, Washington, DC 20090–6456; telephone (202) 720–2491; Fax: (202) 720–5698, or E-mail: Jay.Guerber@usda.gov.

SUPPLEMENTARY INFORMATION: This rule is issued under Marketing Agreement and Order No. 930, both as amended (7 CFR part 930), regulating the handling of tart cherries grown in the States of Michigan, New York, Pennsylvania, Oregon, Utah, Washington, and Wisconsin, hereinafter referred to as the ''order.'' The marketing agreement and order are effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the ''Act.''

The Department of Agriculture (Department) is issuing this rule in conformance with Executive Order 12866.

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

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

The order authorizes the use of volume regulation. In years when volume regulation is implemented to stabilize supplies, a certain percentage of the cherry crop is required to be set aside as restricted tonnage, and the balance may be marketed freely as free tonnage. The restricted tonnage is required to be maintained in handler-owned inventory reserve pools. Handlers in volume regulated States may fulfill their restricted tonnage requirements with diversion credits earned by diverting cherries or cherry products. Handlers are permitted to divert (at plant or with grower-diversion certificates from growers choosing not to deliver their crop) as much of their restricted percentage (reserve pool) requirements as they deem appropriate. Handlers also may divert cherries by using cherries or cherry products for exempt purposes, including the development of export markets. Presently, these markets do not include Canada and Mexico.

Section 930.62 of the order (Exemptions) provides that cherries which are diverted in accordance with § 930.59, which are used for new product and new market development, which are used for experimental purposes, or which are used for any other purposes designated by the Board, including cherries processed into products for markets for which less than 5 percent of the preceding 5-year average production of cherries was utilized, may be exempted from the assessment, quality control, volume regulation, and reserve provisions of the order.

Handlers can receive exemptions and diversion credits to offset their restricted percentage obligation during years of volume regulation. One of the exempt uses is the export of cherries to markets other than Canada and Mexico. Cherries used for exempt uses, including export, are exempt from assessments, and handlers pay growers less for such cherries than cherries for normal commercial outlets. This lowers handlers' costs and allows them to price export cherries competitively.

The Board held a teleconference meeting on June 1, 2000, and recommended that the word ''normal'' be suspended from § 930.54(a) of the order. That section of the order

provided that if the Board determined that the total available supplies for use in normal commercial outlets did not at least equal the amount needed to meet the demand in such outlets, the Board should recommend to the Secretary that all or a portion of the reserve be released for such uses. Normal commercial outlets, as that term is used in the order, means the primary market which is mainly the domestic market for tart cherries. Therefore, under § 930.54(a), reserve release could not have been used to fulfill exempt needs.

During the 1999–2000 crop year when no volume regulation was established, the Board found that the export market was not adequately supplied due to short supplies of tart cherries, but could not make reserve cherries from the previous season available to meet export needs because export markets were not considered normal commercial outlets. Because of this limitation, the industry was not able to maintain a presence in many export markets, or further develop others. Export sales are a function of many different factors, including the size of the crop in Europe, the size of the U.S. crop, and the strength of the U.S. dollar.

Exports need to be sustained each year, whether or not volume control is implemented. It is important for buyers of tart cherries to know that product will be available from year to year from sources in the United States. The Board believes that failure to properly supply these markets will result in lost market share. In years with no volume regulation, growers and handlers have little economic incentive to move tart cherries or tart cherry products to the lower return markets, like export. In such years, growers seek to maximize profits by selling in the higher return ''free'' domestic market. Consequently, market opportunities are lost in the short term and quite possibly the long term. Development of export markets is important to the long term viability of the tart cherry industry.

This rule continues to suspend indefinitely a portion of § 930.54 of the order to allow the release of reserve cherries for exempt uses such as exports. This will encourage handlers to purchase additional cherries from growers at lower prices in years of volume regulation for placement in the reserve during harvest for future export use, rather than having the grower divert them in the orchard. Thus, additional lower-priced cherries would be available in a year of no regulation to continuously supply the export market. This will enable the industry to maintain market share in these markets in volume and non-volume regulated seasons, which is important in developing and maintaining these markets.

In non-volume regulated years, when expected supplies and primary market needs are closely aligned, lower-priced supplies are not available for export. This action will provide the industry with a means of maintaining exports by allowing lower-priced reserves from a previous season or seasons to be used for this purpose.

The Regulatory Flexibility Act and Effects on Small Businesses

The Agricultural Marketing Service (AMS) has considered the economic impact of this action on small entities and has prepared this final regulatory flexibility analysis. The Regulatory Flexibility Act (RFA) allows AMS to certify that regulations do not have a significant economic impact on a substantial number of small entities.

However, as a matter of general policy, AMS' Fruit and Vegetable Programs (Programs) no longer opt for such certification, but rather performs regulatory flexibility analyses for any rulemaking that would generate the interest of a significant number of small entities. Performing such analyses shifts the Programs' efforts from determining whether regulatory flexibility analyses are required to the consideration of regulatory options and economic or regulatory impacts.

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

There are approximately 900 producers of tart cherries in the production area and approximately 40 handlers subject to regulation under the marketing order. Small agricultural producers have been defined by the Small Business Administration (13 CFR 121.201) as those having annual receipts less than $500,000, and small agricultural service firms are defined as those whose annual receipts are less than $5,000,000. The majority of tart cherry producers and handlers may be classified as small entities.

Data from the National Agricultural Statistics Service (NASS) states that for 1999, tart cherry utilization for juice, wine, or brined uses was 34.5 million pounds for all districts covered under the order. The total processed amount for 1999 was 252.3 million pounds. Juice, wine, and brined tart cherries represented about 14 percent of the total processed crop, and about 10 percent over the last three seasons (1997 through 1999).

This rule continues an interim final rule which allows markets that have been developed and sustained by the use of the exemption and diversion provisions of the order in years of volume regulation to be sustained in years with no volume regulation. In the long run, market growth for tart cherry products will be increased, grower returns will be improved, and less fruit will be abandoned in the orchard by growers. Handlers will have an incentive to put cherries in the reserve to supply the export market in years of no regulation, and therefore, not as many growers will have to in-orchard divert.

All businesses, whether large or small, will benefit from this suspension action through increased sales during years of no regulation because they will be able to continue to supply the export markets. In years of volume regulation, handlers tend to put more cherries in reserve instead of diverting them because they expect to use those cherries during periods of short supply to assure a continuous supply of cherries. Previously, those cherries could only be released for normal commercial outlets; i.e., the domestic market. This action allows the reserve cherries to be released for export, as well as the domestic market, when needed.

During the 1999–2000 crop year, when no volume regulation was established, the Board found that the export market was not adequately supplied, but could not make lower-valued reserve cherries from the previous season available to meet export needs because export markets were not considered normal commercial outlets. Export sales are a function of many different factors, including the size of the crop in Europe, the size of the U.S. crop and the strength of the U.S. dollar.

The industry recognizes, however, that exports need to be sustained each year, whether or not volume control is implemented. It is important for buyers of tart cherries to know that product will be available from year to year from sources in the United States. The Board believes that failure to properly supply these markets from year to year will result in lost market share, which is not conducive to further strengthening the industry.

This rule continues to suspend indefinitely a portion of § 930.54 of the order to allow the release of reserve

cherries for exempt uses such as exports. This will provide the industry with flexibility to meet market needs in domestic and export outlets from year to year which is in the interest of growers and handlers, whether small or large. Market development and expansion is important to the long-term strength of the industry.

One alternative to this action would be to continue the status quo. However, this would not be favorable to cherry growers and handlers and could delay the long-term development of export markets.

This action imposes no additional reporting or recordkeeping requirements on either small or large tart cherry handlers. As with all Federal marketing order programs, reports and forms are periodically reviewed to reduce information requirements and duplication by industry and public sector agencies. In addition, the Department has not identified any relevant Federal rules that duplicate, overlap, or conflict with this rule.

In compliance with Office of Management and Budget (OMB) regulations (5 CFR part 1320) which implement the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the information collection and recordkeeping requirements imposed by this order have been previously approved by OMB and assigned OMB Number 0581–0177.

The Board's telephone meeting was publicized and all Board members and alternate Board members, representing both large and small entities, were invited to attend the meeting and participate in Board deliberations. The Board itself is composed of 18 members, of which 17 members are growers and handlers and one represents the public. Also, the Board has a number of appointed committees to review certain issues and make recommendations.

Finally, interested persons were invited to submit information on the regulatory and informational impacts of this action on small businesses.

An interim final rule concerning this action was published in the **Federal Register** on January 3, 2001 (66 FR 229). Copies of the rule were mailed by the Board's staff to all Board members and handlers. In addition, this rule was made available through the Internet by the Office of the Federal Register. That rule provided for a 60-day comment period which ended March 5, 2001. No comments were received.

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

After consideration of all relevant material presented, including the Board's recommendation, and other information, it is found that the word ''normal'' in § 930.54(a) no longer tends to effectuate the declared policy of the Act and should be indefinitely suspended. Accordingly, this action finalizes the interim final rule, without change, as published in the **Federal Register** will tend to effectuate the declared policy of the Act.

List of Subjects in 7 CFR Part 930

Marketing agreements, Reporting and recordkeeping requirements, Tart cherries.

PART 930—TART CHERRIES GROWN IN THE STATES OF MICHIGAN, NEW YORK, PENNSYLVANIA, OREGON, UTAH, WASHINGTON, AND WISCONSIN

Accordingly, the interim final rule amending 7 CFR part 930 which was published at 66 FR 229 on January 3, 2001, is adopted as a final rule without change.

Dated: April 24, 2001.

Kenneth C. Clayton,

Acting Administrator, Agricultural Marketing Service.

[FR Doc. 01–10661 Filed 4–27–01; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 930

[Docket No. FV01–930–1 FIR]

Tart Cherries Grown in the States of Michigan, et al.; Decreased Assessment Rates

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: The Department of Agriculture (Department) is adopting, as a final rule, without change, an interim final rule which decreased the assessment rate for cherries that are utilized in the production of tart cherry products other than juice, juice concentrate, or puree from $0.0017 to $0.0012 per pound. It also decreased the assessment rate for cherries utilized for juice, juice concentrate, or puree from $0.00085 to $0.0006 per pound. Both assessment rates were recommended by the Cherry Industry Administrative Board (Board) under Marketing Order No. 930 for the 2000–2001 and subsequent fiscal periods. The Board is responsible for local administration of the marketing order which regulates the handling of tart cherries grown in the production area. Authorization to assess tart cherry handlers enables the Board to incur expenses that are reasonable and necessary to administer the program. The fiscal period began July 1 and ends June 30. The assessment rates continue to remain in effect indefinitely unless modified, suspended, or terminated.

EFFECTIVE DATE: May 30, 2001.

FOR FURTHER INFORMATION CONTACT: Patricia A. Petrella or Kenneth G. Johnson, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, Suite 2A04, Unit 155, 4700 River Road, Riverdale, MD 20737, telephone: (301) 734–5243, Fax: (301) 734–5275; or George Kelhart, Technical Advisor, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, room 2525–S, P.O. Box 96456, Washington, DC 20090–6456; telephone: (202) 720–2491, Fax: (202) 720–5698.

Small businesses may request information on complying with this regulation, or obtain a guide on complying with fruit, vegetable, and specialty crop marketing agreements and orders by contacting Jay Guerber, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, P.O. Box 96456, room 2525–S, Washington, DC 20090–6456; telephone (202) 720–2491, Fax: (202) 720–5698, or E-mail: Jay.Guerber@usda.gov.

SUPPLEMENTARY INFORMATION: This rule is issued under Marketing Agreement and Order No. 930 (7 CFR part 930), regulating the handling of tart cherries grown in the States of Michigan, New York, Pennsylvania, Oregon, Utah, Washington, and Wisconsin, hereinafter referred to as the ''order.'' The marketing agreement and order are effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the ''Act.''

The Department of Agriculture (Department) is issuing this rule in conformance with Executive Order 12866.

This rule has been reviewed under Executive Order 12988, Civil Justice Reform. Under the marketing order now in effect, tart cherry handlers are subject to assessments. Funds to administer the order are derived from such

assessments. It is intended that the assessment rates as issued herein will be applicable to all assessable tart cherries beginning July 1, 2000, and continue until amended, suspended, or terminated. This rule will not preempt any State or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule.

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

This rule continues the interim final rule which decreased the assessment rate established for the Board for the 2000–2001 and subsequent fiscal periods for cherries that are utilized in the production of tart cherry products other than juice, juice concentrate, or puree from $0.0017 to $0.0012 per pound of cherries. The assessment rate decrease for cherries utilized for juice, juice concentrate, or puree from $0.00085 to $0.0006 per pound also is continued.

The tart cherry marketing order provides authority for the Board, with the approval of the Department, to formulate an annual budget of expenses and collect assessments from handlers to administer the program. The members of the Board are producers and handlers of tart cherries. They are familiar with the Board's needs and with the costs for goods and services in their local area and are thus in a position to formulate an appropriate budget and assessment rates. The assessment rates are formulated and discussed in a public meeting. Thus, all directly affected persons have an opportunity to participate and provide input.

For the 2000–2001 fiscal period, the Board recommended, and the Department approved, assessment rates that would continue in effect from fiscal period to fiscal period unless modified, suspended, or terminated by the Secretary upon recommendation and information submitted by the Board or other information available to the Secretary.

The Board met on March 2, 2000, and unanimously recommended, and the Department approved, 2000–2001 expenditures of $455,000 and assessment rate decreases from $0.00225 to $0.0017 per pound for cherries that are utilized in the production of tart cherry products other than juice, juice concentrate, or puree and from $0.001125 to $0.00085 per pound for cherries utilized for juice, juice concentrate, or puree.

The Board met again on September 8, 2000, and unanimously recommended a further decrease in the assessment rates to $0.0012 per pound for cherries that are utilized in the production of tart cherry products other than juice, juice concentrate, or puree, and to $0.0006 per pound for cherries utilized for juice, juice concentrate, or puree. Further decreased assessment rates have been recommended by the Board because the cherry industry has experienced record high crops for the past two seasons and again this season. In addition, the Board wants to further reduce handler costs while maintaining a monetary reserve which is adequate to cover approximately six months' operational expenses (based on an annual operating budget of approximately $455,000). Section 930.42(a) of the order authorizes a reserve sufficient to cover one year's operating expenses. The decreased rates are expected to generate enough income to meet the Board's reduced operating expenses in 2000–2001.

The order provides that when an assessment rate based on the number of pounds of tart cherries handled is established, it should provide for differences in relative market values for various cherry products. The discussion of this provision in the order's promulgation record indicates that proponents testified that cherries utilized in high value products such as frozen, canned, or dried cherries should be assessed one rate while cherries used to make low value products such as juice concentrate or puree should be assessed at one-half that rate.

Data from the National Agricultural Statistics Service (NASS) states that for 1999, tart cherry utilization for juice, wine, or brined uses was 34.5 million pounds for all districts covered under the order. The total processed amount of tart cherries for 1999 was 252.3 million pounds. Juice, wine, and brined tart cherries represented less than 14 percent of the total processed crop, and about 10 percent over the last three seasons (1996 through 1998).

In deriving the recommended assessment rates, the Board determined assessable tart cherry production for the crop year at 280 million pounds. It further estimated that about 265 million pounds of the assessable poundage would be utilized in the production of high-valued products, like frozen, canned, or dried cherries, and that about 15 million pounds would be utilized in the production of low-valued products, like juice, juice concentrate, or puree. Potential assessment income from the high valued products would be approximately $318,000 (265 million pounds × $0.0012 per pound). The potential income from tart cherries utilized for juice, juice concentrate, or puree would be $9,000 (15 million pounds × $0.0006 per pound). Therefore, total assessment income for 2000–2001 is estimated at $327,000. This amount plus funds in the reserve and interest income will be adequate to cover budgeted expenses. Funds in the reserve (approximately $374,000) will be kept within the approximately six months' operating expenses as recommended by the Board which would be consistent with the order (7 CFR 930.42(a)).

The assessment rates will continue in effect indefinitely unless modified, suspended, or terminated by the Secretary upon recommendation and information submitted by the Board or other available information.

Although the assessment rates are effective for an indefinite period, the Board will continue to meet prior to or during each fiscal period to recommend a budget of expenses and consider recommendations for modification of the assessment rates. The dates and times of Board meetings are available from the Board or the Department. Board meetings are open to the public and interested persons may express their views at these meetings. The Department will evaluate Board recommendations and other available information to determine whether modifications of the assessment rates are needed. Further rulemaking will be undertaken as necessary. The Board's 2000–2001 budget and those for subsequent fiscal periods will be reviewed and, as appropriate, approved by the Department.

The Regulatory Flexibility Act and Effects on Small Businesses

The Agricultural Marketing Service (AMS) has considered the economic impact of this action on small entities and has prepared this final regulatory flexibility analysis. The Regulatory Flexibility Act (RFA) allows AMS to certify that regulations do not have a

significant economic impact on a substantial number of small entities. However, as a matter of general policy, AMS' Fruit and Vegetable Programs (Programs) no longer opts for such certification, but rather performs regulatory flexibility analyses for any rulemaking that would generate the interest of a significant number of small entities. Performing such analyses shifts the Programs' efforts from determining whether regulatory flexibility analyses are required to the consideration of regulatory options and economic or regulatory impacts.

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

There are approximately 40 handlers of tart cherries who are subject to regulation under the order and approximately 900 producers of tart cherries in the regulated area. Small agricultural service firms have been defined by the Small Business Administration (13 CFR 121.201) as those having annual receipts less than $5,000,000, and small agricultural producers are those whose annual receipts are less than $500,000. The majority of tart cherry handlers and producers may be classified as small entities.

The Board unanimously recommended, and the Department approved, 2000–2001 expenditures of $455,000 and assessment rate decreases from $0.00225 to $0.0017 per pound for cherries that are utilized in the production of tart cherry products other than juice, juice concentrate or puree and from $0.001125 to $0.0085 per pound for cherries utilized for juice, juice concentrate, or puree.

This rule continues the interim final rule which further decreased the assessment rate established for the Board and collected from handlers for the 2000–2001 and subsequent fiscal periods for cherries that are utilized in the production of tart cherry products other than juice, juice concentrate, or puree from $0.0017 to $0.0012 per pound, and the assessment rate for cherries utilized for juice, juice concentrate, or puree from $0.00125 to $0.0006 per pound. The Board unanimously recommended 2000–2001 expenditures of $455,000 and the further reduced assessment rates. The quantity of assessable tart cherries expected to be produced during the 2000–2001 crop year is estimated at 280 million pounds. Assessment income, based on this crop, along with interest income and reserves should be adequate to cover budgeted expenses.

The Executive Committee of the Board, after discussing the budget and assessment rates in executive session, recommended the continuation of the current rates. It concluded that it was prudent for the Board to have an operating reserve of approximately one year's operating expenses.

However, after considerable discussion, the Board concluded it should further reduce handlers' assessment costs and that the reserve should not exceed one-half year's budget amount. Also, the cherry industry has experienced record large crops for the past two seasons, and again this season. The Board discussed the alternative of continuing the existing assessment rates, but concluded that would cause the amount in the operating reserve to exceed what is actually needed.

After the discussion, the Board voted unanimously to further decrease the assessment rates. In deriving the recommended assessment rates, the Board estimated assessable tart cherry production for the crop year at 280 million pounds. It further estimated that about 265 million pounds of the assessable poundage would be utilized in the production of high-valued products, like frozen, canned, or dried cherries, and that about 15 million pounds would be utilized in the production of low-valued products, like juice, juice concentrate, or puree. Potential assessment income from the high valued products would be approximately $318,000 (265 million pounds × $0.0012 per pound). The potential income from the tart cherries utilized for juice, juice concentrate, or puree would be $9,000 (15 million pounds × $0.0006 per pound). Therefore, total assessment income for 2000–2001 is estimated at $327,000. This amount plus funds in the reserve and interest income should be adequate to cover budgeted expenses. Funds in the reserve (approximately $374,000) will be kept within the approximately six months' operational expenses as recommended by the Board which would be consistent with the order (7 CFR 930.42(a)).

This action continues the interim final rule which decreased the assessment obligation imposed on handlers. Assessments are applied uniformly on all handlers, and some of the costs may be passed on to producers. However, the assessment rate decreases reduce the burden on handlers, and may reduce the burden on producers. In addition, the Board's meeting was widely publicized throughout the tart cherry industry and all interested persons were invited to attend the meeting and participate in Board deliberations on all issues. Like all Board meetings, the September 8, 2000, meeting was a public meeting and all entities, both large and small, were able to express views on this issue. Finally, interested persons are invited to submit information on the regulatory and informational impacts of this action on small businesses.

This action imposes no additional reporting or recordkeeping requirements on either small or large tart cherry handlers. As with all Federal marketing order programs, reports and forms are periodically reviewed to reduce information requirements and duplication by industry and public sector agencies.

The Department has not identified any relevant Federal rules that duplicate, overlap, or conflict with this rule.

An interim final rule concerning this action was published in the **Federal Register** on January 3, 2001 (66 FR 232). Copies of the rule were mailed by the Board's staff to all Board members and handlers. In addition, this rule was made available through the Internet by the Office of the Federal Register. That rule provided for a 60-day comment period which ended March 5, 2001. No comments were received.

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

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

List of Subjects in 7 CFR Part 930

Marketing agreements, Reporting and recordkeeping requirements, Tart cherries.

PART 930—TART CHERRIES GROWN IN THE STATES OF MICHIGAN, NEW YORK, PENNSYLVANIA, OREGON, UTAH, WASHINGTON, AND WISCONSIN

Accordingly, the interim final rule amending 7 CFR part 930 which was published at 66 FR 232 on January 3, 2001, is adopted as a final rule without change.

Dated: April 24, 2001.

Kenneth C. Clayton,

Acting Administrator, Agricultural Marketing Service.

[FR Doc. 01–10663 Filed 4–27–01; 8:45 am]

BILLING CODE 3410–02–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2001–NM–45–AD; Amendment 39–12209; AD 2001–09–04]

RIN 2120–AA64

Airworthiness Directives; Dornier Model 328–300 Series Airplanes Equipped with Motive Flow Check Valves Having Part Number 106–0007–01

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule; request for comments.

SUMMARY: This amendment adopts a new airworthiness directive (AD) that is applicable to certain Dornier Model 328–300 series airplanes. This action requires repetitive inspections of motive flow check valves and adjacent parts for fuel leaks, and replacement of the valves, if leaks are detected. This action is necessary to prevent leakage of fuel from the motive flow check valves, which could result in fuel vapors coming into contact with fuel ignition sources. 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.

Comments for inclusion in the Rules Docket must be received on or before May 30, 2001.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 2001–NM–45–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–45–AD'' in the subject line and need not be submitted in triplicate. Comments sent via the Internet as attached electronic files must be formatted in Microsoft Word 97 for Windows or ASCII text.

The service information referenced in this AD may be obtained from Fairchild Dornier, Dornier Luftfahrt GmbH, P.O. Box 1103, D–82230 Wessling, Germany. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

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

SUPPLEMENTARY INFORMATION: The Luftfahrt-Bundesamt (LBA), which is the airworthiness authority for Germany, recently notified the FAA that an unsafe condition may exist on certain Dornier Model 328–300 series airplanes. The LBA advises that three incidents have been reported of cracks on the motive flow check valves, which have resulted in leakage of fuel. The cause of the cracking is not yet known. This condition, if not corrected, could result in fuel vapors coming into contact with fuel ignition sources.

Explanation of Relevant Service Information

Dornier has issued Alert Service Bulletin ASB 328J–28–007, dated September 20, 2000, which describes procedures for an initial general visual inspection of the lower inboard leading edge/pylon area and the pylon drain tube for signs of fuel droplets or fuel staining. The alert service bulletin also describes procedures for repetitive general visual inspections around the motive flow check valve for fuel leaks, and replacement of the valves with new valves, if leaks are detected. The LBA classified this service bulletin as mandatory and issued German airworthiness directive 2001–058, dated March 8, 2001, in order to assure the continued airworthiness of these airplanes in Germany.

FAA's Conclusions

This airplane model is manufactured in Germany and is type certificated for operation in the United States under the provisions of § 21.29 of the Federal Aviation Regulations (14 CFR 21.29) and the applicable bilateral airworthiness agreement. Pursuant to this bilateral airworthiness agreement, the LBA has kept the FAA informed of the situation described above. The FAA has examined the findings of the LBA, reviewed all available information, and determined that AD action is necessary for products of this type design that are certificated for operation in the United States.

Explanation of Requirements of Rule

Since an unsafe condition has been identified that is likely to exist or develop on other airplanes of the same type design registered in the United States, this AD is being issued to prevent leakage of fuel from the motive flow check valves, which could result in fuel vapors coming into contact with fuel ignition sources. This AD requires accomplishment of the actions specified in the service bulletin described previously.

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–45–AD.'' The postcard will be date stamped and returned to the commenter.

Regulatory Impact

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

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

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

2001–09–04 Dornier Luftfahrt GMBH: Amendment 39–12209. Docket 2001–NM–45–AD.

Applicability: Model 328–300 series airplanes, certificated in any category, equipped with a motive flow check valve which has part number (P/N) 106–0007–01.

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 leakage of fuel from the motive flow check valve, which could result in fuel vapors coming into contact with fuel ignition sources, accomplish the following:

Initial Inspection

(a) Prior to the accumulation of 800 total flight cycles on the motive flow check valve P/N 106–0007–01, or within 3 days after the effective date of this AD, whichever occurs later: Perform a general visual inspection of the lower inboard leading edge/pylon area and the pylon drain tube to detect fuel droplets or fuel staining, in accordance with paragraph 2.B of the Accomplishment Instructions of Dornier Alert Service Bulletin ASB 328J–28–007, dated September 20, 2000. If any fuel droplet or fuel staining is detected, prior to further flight, perform an additional inspection and operational test, in accordance with paragraphs 2.C and 2.D of the Accomplishment Instructions of Dornier Alert Service Bulletin ASB 328J–28–007, dated September 20, 2000.

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

Repetitive Inspections

(b) Within 15 days or 60 flight hours after the effective date of this AD, whichever occurs first: Perform a general visual inspection of the motive flow check valve to detect fuel leaks, in accordance with paragraph 2.C of the Accomplishment Instructions of Dornier Alert Service Bulletin ASB 328J–28–007, dated September 20, 2000.

(1) If no fuel leaks are detected, repeat the general visual inspection of the motive flow check valve at least every 15 days or 60 flight hours, whichever occurs first.

(2) If any fuel leak is detected, prior to further flight, replace the motive flow fuel valve with a new valve, in accordance with the alert service bulletin. After the new valve has accumulated 800 flight cycles, do the general visual inspection of the valve required by paragraph (b) of this AD, including the repetitive inspection, at least every 15 days or 60 flight hours, whichever occurs first.

(c) Within 400 flight hours after the effective date of this AD: Perform an engine operational test and a general visual inspection of the motive flow check valve to detect a fuel leak, in accordance with paragraphs 2.C and 2.D of the Accomplishment Instructions of Dornier Alert Service Bulletin ASB 328J–28–007, dated September 20, 2000.

(1) If no fuel leaks are detected, repeat the engine operational test and the general visual inspection of the motive flow check valve at least every 400 flight hours.

(2) If any fuel leak is detected, prior to further flight, replace the motive flow fuel valve with a new valve, in accordance with the alert service bulletin. After the new valve has accumulated 800 flight cycles, do the general visual inspection of the valve required by paragraph (c) of this AD, including the repetitive inspections, at least every 400 flight hours.

Alternative Methods of Compliance

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

Note 3: Information concerning the existence of approved alternative methods of

compliance with this AD, if any, may be obtained from the International Branch, ANM–116.

Incorporation by Reference

(e) The actions must be done in accordance with Dornier Alert Service Bulletin ASB 328J–28–007, dated September 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 Fairchild Dornier, Dornier Luftfahrt GmbH, P.O. Box 1103, D–82230 Wessling, Germany. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

Note 4: The subject of this AD is addressed in German airworthiness directive 2001–058, dated March 8, 2001.

Effective Date

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

Issued in Renton, Washington, on April 23, 2001.

Donald L. Riggin,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 01–10592 Filed 4–27–01; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2000–CE–75–AD; Amendment 39–12211; AD 2001–09–06]

RIN 2120–AA64

Airworthiness Directives; Cessna Aircraft Company Models 206H and T206H Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule; request for comments.

SUMMARY: This amendment adopts a new airworthiness directive (AD) that applies to certain Cessna Aircraft Company (Cessna) Models 206H and T206H airplanes. This AD requires you to visually inspect the horizontal stabilizer attachment reinforcement brackets for the existence of seam welds and replace any reinforcement bracket found without seam welds. This AD is the result of a report that these parts were manufactured without seam welds. The actions specified by this AD are intended to detect and replace structurally deficient horizontal stabilizer attachment brackets. Continued use of such brackets could result in structural failure of the horizontal stabilizer with reduced or loss of control of the airplane.

DATES: This AD becomes effective on May 18, 2001.

The Director of the Federal Register approved the incorporation by reference of certain publications listed in the regulation as of May 18, 2001.

The Federal Aviation Administration (FAA) must receive any comments on this rule on or before June 15, 2001.

ADDRESSES: Submit comments in triplicate to FAA, Central Region, Office of the Regional Counsel, Attention: Rules Docket No. 2000–CE–75–AD, 901 Locust, Room 506, Kansas City, Missouri 64106.

You may get the service information referenced in this AD from Cessna Aircraft Company, Product Support, P.O. Box 7706, Wichita, Kansas 67277; telephone: (316) 517–5800; facsimile: (316) 942–9006. You may examine this information at FAA, Central Region, Office of the Regional Counsel, Attention: Rules Docket No. 2000–CE–75–AD, 901 Locust, Room 506, Kansas City, Missouri 64106; or at the Office of the Federal Register, 800 North Capitol Street, NW, suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Eual Conditt, Aerospace Engineer, Wichita Aircraft Certification Office, FAA, 1801 Airport Road, Mid-Continent Airport, Wichita, Kansas 67209; telephone: (316) 946–4128; facsimile: (316) 946–4407.

SUPPLEMENTARY INFORMATION:

Discussion

What events have caused this AD? Cessna recently notified FAA of a defect in the manufacturing of the horizontal stabilizer attachment reinforcement brackets. Cessna manufactured certain reinforcement brackets without seam welds. The seam welds help provide the required structural integrity for the horizontal stabilizer attachment bracket.

What are the consequences if the condition is not corrected? This condition, if not corrected, could result in structural failure of the horizontal stabilizer with reduced or loss of control of the airplane.

Is there service information that applies to this subject? Cessna has issued Service Bulletin SB00–55–03, dated August 28, 2000. This service bulletin includes procedures for:

—visually inspecting the right and left horizontal stabilizer attachment reinforcement brackets for the existence of seam welds along the lower inboard and outboard wall/flange; and

—removing and replacing the horizontal stabilizer assemblies with new parts.

The FAA's Determination and an Explanation of the Provisions of This AD

What has FAA decided? The FAA has reviewed all available information, including the service information referenced above; and determined that:

—The unsafe condition referenced in this document likely exists on Cessna Models 206H and T206H airplanes within the listed serial number range;

—The actions specified in the previously-referenced service information (as specified in this AD) should be accomplished on the affected airplanes; and

—AD action should be taken in order to correct this unsafe condition.

What does this AD require? This AD requires you to accomplish the actions previously specified in accordance with Cessna Service Bulletin SB00–55–03, dated August 28, 2000.

Will I have the opportunity to comment prior to the issuance of the rule? Because the unsafe condition described in this document could result in structural failure of the horizontal stabilizer with possible reduced or loss of control of the airplane, FAA finds that notice and opportunity for public prior comment are impracticable. Therefore, good cause exists for making this amendment effective in less than 30 days.

Comments Invited

How do I comment on this AD? Although this action is in the form of a final rule and was not preceded by notice and opportunity for public comment, we invite your comments on the rule. You may submit whatever written data, views, or arguments you choose. You need to include the rule's docket number and submit your comments in triplicate to the address specified under the caption **ADDRESSES**. We will consider all comments received on or before the closing date specified above. We may amend this rule in light of comments received. Factual information that supports your ideas and suggestions is extremely helpful in evaluating the effectiveness of the AD action and determining whether we need to take additional rulemaking action.

Are there any specific portions of the AD I should pay attention to? The FAA specifically invites comments on the overall regulatory, economic, environmental, and energy aspects of the rule that might suggest a need to

modify the rule. You may examine all comments we receive before and after the closing date of the rule in the Rules Docket. We will file a report in the Rules Docket that summarizes each FAA contact with the public that concerns the substantive parts of this AD.

We are reviewing the writing style we currently use in regulatory documents, in response to the Presidential memorandum of June 1, 1998. That memorandum requires federal agencies to communicate more clearly with the public. We are interested in your comments on whether the style of this document is clear, and any other suggestions you might have to improve the clarity of FAA communications that affect you. You can get more information about the Presidential memorandum and the plain language initiative at *http://www.plainlanguage.gov.*

How can I be sure FAA receives my comment? If you want us to acknowledge the receipt of your comments, you must include a self-addressed, stamped postcard. On the postcard, write ''Comments to Docket No. 2000–CE–75–AD.'' We will date stamp and mail the postcard back to you.

Regulatory Impact

Does this AD impact various entities? These regulations 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, FAA has determined that this final rule does not have federalism implications under Executive Order 13132.

Does this AD involve a significant rule or regulatory action? The FAA has determined that this regulation is an emergency regulation that must be issued immediately to correct an unsafe condition in aircraft, and 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 (otherwise, an evaluation is not required). A copy of it, if filed, may be obtained from the Rules Docket.

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

Accordingly, under 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. FAA amends § 39.13 by adding a new airworthiness directive (AD) to read as follows:

2001–09–06 Cessna Aircraft Company: Amendment 39–12211; Docket No. 2000–CE–75–AD.

(a) *What airplanes are affected by this AD?* This AD applies to the following airplane models and serial numbers that are certificated in any category:

Model	Serial Numbers
206H	20608001 through 20608053, 20608055 through 20608086, 20608088 and 20608089.
T206H	T20608001 through T20608093, T20608095 through T20608145, T20608147, T20608149, T20608150, T20608152, T20608156, T20608157, and T20608160.

(b) *Who must comply with this AD?* Anyone who wishes to operate any of the above airplanes must comply with this AD.

(c) *What problem does this AD address?* The actions specified by this AD are intended to detect and replace structurally deficient horizontal stabilizer attachment brackets. Continued use of such brackets could result in structural failure of the horizontal stabilizer with reduced or loss of control of the airplane.

(d) *What must I do to address this problem?* To address this problem, you must accomplish the following actions:

Action	Compliance time	Procedures
(1) Visually inspect the right and left horizontal stabilizer attachment reinforcement brackets, part number (P/N) 1232624–1, for the existence of seam welds along both the lower inboard and outboard wall/flange..	Within the next 20 hours time-in-service (TIS) after May 18, 2001 (the effective date of this AD), unless already accomplished..	In accordance with the Accomplishment Instructions in Cessna Service Bulletin SB00–55–03, dated August 28, 2000, and the applicable maintenance manual.
(2) If no seam weld is found along both the lower inboard and outboard wall/flange on the right and left horizontal stabilizer attachment reinforcement bracket during the inspection required in paragraph (d)(1) of this AD, replace with a new or airworthy P/N 1232624–1 horizontal stabilizer attachment reinforcement bracket..	Accomplish any necessary replacements prior to further flight after the inspection required by this AD, unless already accomplished..	In accordance with the Accomplishment Instructions in Cessna Service Bulletin SB00–55–03, dated August 28, 2000, and the applicable maintenance manual.
(3) If the right and left horizontal stabilizer attachment reinforcement bracket has seam welds along both the lower inboard and outboard wall/flange, no further action is required..	Not applicable.	Not applicable.
(4) Do not install any P/N 1232624–1 horizontal stabilizer attachment reinforcement bracket (or FAA-approved equivalent part) unless the bracket: (i) is inspected as required in paragraph (d)(1) of this AD; and (ii) has seam welds along both the lower inboard and outboard wall/flange..	Not applicable	Not applicable.

(e) *Can I comply with this AD in any other way?* You may use an alternative method of compliance or adjust the compliance time if:

(1) Your alternative method of compliance provides an equivalent level of safety; and

(2) The Manager, Wichita Aircraft Certification Office (ACO), approves your alternative. Submit your request through an FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Wichita ACO.

Note: This AD applies to each airplane identified in paragraph (a) of this AD, 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 you have not eliminated the unsafe condition, specific actions you propose to address it.

(f) *Where can I get information about any already-approved alternative methods of compliance?* Contact Eual Conditt, Aerospace Engineer, Wichita Aircraft Certification Office, FAA, 1801 Airport Road, Mid-Continent Airport, Wichita, Kansas 67209; telephone: (316) 946–4128; facsimile: (316) 946–4407.

(g) *What if I need to fly the airplane to another location to comply with this AD?* The FAA can issue a special flight permit under §§ 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate your airplane to a location where you can accomplish the requirements of this AD.

(h) *Are any service bulletins incorporated into this AD by reference?* Actions required by this AD must be done in accordance with Cessna Service Bulletin SB00–55–03, dated August 28, 2000. The Director of the Federal Register approved this incorporation by reference under 5 U.S.C. 552(a) and 1 CFR part 51. You can get copies from Cessna Aircraft Company, Product Support, P.O. Box 7706, Wichita, Kansas 67277. You can look at copies at FAA, Central Region, Office of the Regional Counsel, 901 Locust, Room 506, Kansas City, Missouri, or at the Office of the Federal Register, 800 North Capitol Street, NW, suite 700, Washington, DC.

(i) *When does this amendment become effective?* This amendment becomes effective on May 18, 2001.

Issued in Kansas City, Missouri, on April 20, 2001.

Michael Gallagher,

Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 01–10590 Filed 4–27–01; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 00–AAL–20]

Revision of Class E Airspace; Bethel, AK

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action revises Class E airspace at Bethel, AK, in two ways: The FAA will cancel the Bethel Very High Frequency (VHF) Omnidirectional Range (VOR) instrument approach to runway (RWY) 36 at Bethel, AK, and simultaneously reduce the Class E (surface area extension) airspace at Bethel, AK; the FAA will correct an administrative error by revising the Class E (surface area) airspace with an exclusion area for Hanger Lake seaplane base operations. This rule will accomplish two actions: Allow for the Napakiak airport to be outside of the Bethel Class E (surface area extension) airspace and reduce the required controlled airspace for aircraft flying Instrument Flight Rules (IFR) operations at Bethel, AK; and fix an administrative oversight by adding the Hanger Lake exclusion area to the Class E airspace description at Bethel, AK.

EFFECTIVE DATE: 0901 UTC, July 12, 2001.

FOR FURTHER INFORMATION CONTACT: Robert Durand, Operations Branch, Federal Aviation Administration, 222 West 7th Avenue, Box 14, Anchorage, AK 99513–7587; telephone number (907) 271–5898; fax: (907) 271–2850; email: Bob.Durand@faa.gov. Internet address: http://www.alaska.faa.gov/at or at address http://162.58.28.41/at.

SUPPLEMENTARY INFORMATION:

History

On February 20, 2001, a proposal to amend part 71 of the Federal Aviation Regulations (14 CFR part 71) to revise the Class E airspace at Bethel, AK, was published in the **Federal Register** (66 FR 10861). This proposal was necessary to accomplish two actions: (1) Allow for the Napakiak airport to be outside of the Bethel Class E (surface area extension) airspace and reduce the required controlled airspace for aircraft flying Instrument Flight Rules (IFR) operations at Bethel, AK; and (2) fix an administrative oversight by adding the Hanger Lake exclusion area to the Class E airspace description at Bethel, AK.

On November 11, 2000, the FAA initiated Airspace Study Number 00–AAL–077NR, Notice of Proposed Revocation of the VOR RWY 36 Approach Procedure at Bethel, Alaska. Comments during several meetings over the last year with airspace users in the Bethel area indicated that they would like to have Napakiak Airport (WNA) excluded from the Class E (surface area extension) airspace at Bethel, AK. The Bethel Airport has four approaches to RWY 36: (1) Localizer (LOC)/Distance Measuring Equipment (DME) Back Course (BC) RWY 36, (2) VOR/DME RWY 36, (3) Global Positioning System (GPS) RWY 36, and (4) the VOR RWY 36. The Bethel VOR RWY 36 instrument approach, with a procedure turn at 1,600 feet, allows aircraft to descend to 700 feet after the procedure turn is completed. The FAA protects airspace from the point an aircraft may legally descend below 1,000 feet with Class E (surface area) airspace. For aircraft going to Bethel Airport, the Napakiak Airport, located 7.1 nautical miles on a 200° true bearing from Bethel VORTAC, is an alternate place to land and wait for weather to improve when the Bethel surface area is restricted due to weather.

The FAA received favorable comments from Craig Air Incorporated, US Coast Guard District 17, Kusko Aviation Incorporated, Alaska Airlines, and the US Fish and Wildlife Service—Bethel. With the adoption of this proposal, the FAA intends to simultaneously cancel the VOR RWY 36 instrument approach and shorten the Class E airspace to the southwest of Bethel. There would be three remaining instrument approaches to the Bethel RWY 36: (1) LOC/DME BC RWY 36, (2) VOR/DME RWY 36, and (3) GPS RWY 36. This proposal would allow Visual Flight Rules (VFR) operations to continue at Napakiak Airport during Special VFR operations at Bethel Airport, AK.

Additionally, this proposal would fix an administrative oversight by including an exclusion area for the Hanger Lake seaplane base operations to the Class E (surface area) airspace description. Changes to the Bethel airspace would incorporate an exclusion below 1,100 feet MSL between the 061° radial and the 081° radial from 2.9 nautical miles northeast of the Bethel VORTAC.

Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No public comments to the proposal were received, thus the rule is adopted as written.

The area will be depicted on aeronautical charts for pilot reference. The coordinates for this airspace docket are based on North American Datum 83.

The Class E airspace areas designated as surface areas are published in paragraph 6002 and the Class E airspace areas designated as an extension to a Class D or Class E surface area are published in paragraph 6004 in FAA Order 7400.9H, Airspace Designations and Reporting Points, dated September 1, 2000, and effective September 16, 2000, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designations listed in this document would be published subsequently in the Order.

The Rule

This amendment to 14 CFR part 71 revises the Class E airspace at Bethel, AK, in two ways: (1) Reduces the amount of controlled airspace required southwest of the Bethel airport; and (2) modifies the Class E (surface area) airspace description to exclude the Hanger Lake seaplane base operations. The area will be depicted on aeronautical charts for pilot reference. The intended effects of this rule are: (1) To reduce the controlled airspace for IFR operations at Bethel, AK, thus allowing for VFR operations at Napakiak Airport during Special VFR operations at Bethel Airport and (2) fix an administrative oversight by adding the Hanger Lake exclusion area to the Class E airspace description.

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

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

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

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

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

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

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of Federal Aviation Administration Order 7400.9H, *Airspace Designations and Reporting Points*, dated September 1, 2000, and effective September 16, 2000, is amended as follows:

* * * * *

Paragraph 6002 Class E airspace designated as surface areas.

* * * * *

AAL AK E2 Bethel, AK [REVISED]

Bethel Airport, AK
(Lat. 60°46′47″ N., long. 161°50′17″ W.)
Bethel VORTAC
(Lat. 60°47′05″ N., long. 161°49′27″ W.)

Within a 4.1-mile radius of the Bethel Airport, excluding that portion below 1,100 feet MSL between the 061° radial and the 081° radial from 2.9 miles northeast of the Bethel VORTAC. This Class E airspace area is effective during the specific dates and times established in advance by a Notice to Airmen. The effective date and time will thereafter be continuously published in the Airport/Facility Directory.

* * * * *

Paragraph 6004 Class E airspace designated as an Extension to a Class D or Class E surface area.

* * * * *

AAL AK E4 Bethel, AK [REVISED]

Bethel Airport, AK
(Lat. 60°46′47″ N., long. 161°50′17″ W.)
Bethel VORTAC
(Lat. 60°47′05″ N., long. 161°49′27″ W.)

That airspace extending upward from the surface within 3 miles each side of the 022° radial from the Bethel VORTAC, extending from the 4.1-mile radius of the Bethel Airport to 8.2 miles northeast of the airport, excluding that portion below 1,100 feet MSL between the 061° radial and the 081° radial from 2.9 miles northeast of the Bethel VORTAC, within 3.4 miles each side of the Bethel VORTAC 006° radial, extending from the 4.1-mile radius of the Bethel Airport to 11 miles north of the Bethel VORTAC and within 3.5 miles each side of the Bethel VORTAC 213° radial extending from the 4.1-mile radius of the Bethel Airport to 5 miles southwest of the airport.

* * * * *

Issued in Anchorage, AK, on April 23, 2001.

Trent S. Cummings,

Manager, Air Traffic Division, Alaskan Region.

[FR Doc. 01–10669 Filed 4–27–01; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 520

Oral Dosage Form New Animal Drugs; Oxytetracycline Hydrochloride Soluble Powder

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the animal drug regulations to reflect approval of a supplemental new animal drug application (NADA) filed by Alpharma, Inc. The NADA which provides for a revised withdrawal time for use of oxytetracycline hydrochloride soluble powder in the drinking water of turkeys and swine.

DATES: This rule is effective April 30, 2001.

FOR FURTHER INFORMATION CONTACT: Janis R. Messenheimer, Center for Veterinary Medicine (HFV–135), Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855, 301–827–7578.

SUPPLEMENTARY INFORMATION: Alpharma, Inc., One Executive Dr., P.O. Box 1399, Fort Lee, NJ 07024, filed a supplement to NADA 130–435 that provides for use of Oxytet (oxytetracycline HCl) Soluble for making medicated drinking water for the treatment of various bacterial diseases of livestock. The NADA provides for a zero-day slaughter withdrawal time after the use of the product in drinking water of turkeys and swine. The supplemental application is approved as of November 29, 2000, and the regulations are amended in 21 CFR 520.1660d to reflect the approval. The basis of approval is discussed in the freedom of information summary.

In accordance with the freedom of information provisions of 21 CFR part 20 and 514.11(e)(2)(ii), a summary of safety and effectiveness data and information submitted to support approval of this application may be seen in the Dockets Management Branch (HFA–305), Food and Drug

Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852, between 9 a.m. and 4 p.m., Monday through Friday.

The agency has determined under 21 CFR 25.24(a)(1) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

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

List of Subject in 21 CFR Part 520

Animal drugs.

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

PART 520—ORAL DOSAGE FORM NEW ANIMAL DRUGS

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

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

§ 520.1660d [Amended]

2. Section 520.1660d *Oxytetracycline hydrochloride soluble powder* is amended in the sixth sentence in paragraphs (d)(1)(ii)(A)(*3*), (d)(1)(ii)(B)(*3*), and (d)(1)(ii)(C)(*3*) by removing ''046573''; in the last sentence in paragraphs (d)(1)(ii)(A)(*3*), (d)(1)(ii)(B)(*3*), and (d)(1)(ii)(C)(*3*) by removing ''No. 053389'' and by adding in its place ''Nos. 046573 and 053389''; and in the fourth sentence in paragraph (d)(1)(iii)(C) by removing ''Nos. 046573 and 057561'' and by adding in its place ''No. 057561 and zero days those products sponsored by No. 046573.''

Dated: April 16, 2001.

Stephen F. Sundlof,

Director, Center for Veterinary Medicine.

[FR Doc. 01–10621 Filed 4–27–01; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Parts 520, 522, and 556

Animal Drugs, Feeds, and Related Products; Sarafloxacin for Poultry; Withdrawal of Approval of NADAs

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the animal drug regulations by removing the portions reflecting approval of two new animal drug applications (NADAs) for which the sponsor has requested withdrawal of approval. The NADAs provide for use of sarafloxacin to treat poultry. In a notice published elsewhere in this issue of the **Federal Register**, FDA is withdrawing approval of two NADAs sponsored by Abbott Laboratories.

DATES: This rule is effective April 30, 2001.

FOR FURTHER INFORMATION CONTACT: Mohammad I. Sharar, Center for Veterinary Medicine (HFV–216), Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855, 301–827–0159.

SUPPLEMENTARY INFORMATION: In a notice published elsewhere in this issue of the **Federal Register**, FDA is withdrawing approval of two NADAs held by Abbott Laboratories, North Chicago, IL 60064. The NADAs provide for use of sarafloxacin to treat poultry. NADA 141–017 provides for the use of SaraFlox® (sarafloxacin hydrochloride) WSP and is under § 520.2095 (21 CFR 520.2095) and NADA 141–018 provides for the use of SaraFlox® (sarafloxacin hydrochloride) Injection and is under § 522.2095 (21 CFR 522.2095). Relevant information concerning tolerances for residues of sarafloxacin in edible tissues of poultry is under § 556.594 (21 CFR 556.594).

Abbott Laboratories requested withdrawal of approval in response to safety questions raised by FDA regarding the products.

No other NADAs for use of sarafloxacin have been approved. Therefore, in accordance with the notice of withdrawal of approvals, FDA is amending the regulations to remove §§ 520.2095, 522.2095, and 556.594 effective April 30, 2001.

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

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

List of Subjects

21 CFR Parts 520 and 522

Animal drugs.

21 CFR Part 556

Animal drugs, Foods.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Food and Drug Administration and redelegated to the Center for Veterinary Medicine, 21 CFR parts 520, 522, and 556 are amended as follows:

PART 520—ORAL DOSAGE FORM NEW ANIMAL DRUGS

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

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

§ 520.2095 [Removed]

2. Section 520.2095 *Sarafloxacin soluble powder* is removed.

PART 522—IMPLANTATION OR INJECTABLE DOSAGE FORM NEW ANIMAL DRUGS

3. The authority citation for 21 CFR part 522 continues to read as follows:

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

§ 522.2095 [Removed]

4. Section 522.2095 *Sarafloxacin solution for injection* is removed.

PART 556—TOLERANCES FOR RESIDUES OF NEW ANIMAL DRUGS IN FOOD

5. The authority citation for 21 CFR part 556 continues to read as follows:

Authority: 21 U.S.C. 342, 360b, 371.

§ 556.594 [Removed]

6. Section 556.594 *Sarafloxacin* is removed.

Dated: April 17, 2001.

Stephen F. Sundlof,

Director, Center for Veterinary Medicine.

[FR Doc. 01–10069 Filed 4–27–01; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 522

Implantation or Injectable Dosage Form New Animal Drugs; Ceftiofur Sterile Powder for Injection

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the animal drug regulations to reflect approval of a supplemental new animal drug application (NADA) filed by Pharmacia and Upjohn Co. The supplemental NADA provides for intramuscular injection of a solution of reconstituted ceftiofur sodium powder for treatment of caprine respiratory disease (goat pneumonia).

DATES: This rule is effective April 30, 2001.

FOR FURTHER INFORMATION CONTACT: Naba K. Das, Center for Veterinary Medicine (HFV–130), Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855, 301–827–7569.

SUPPLEMENTARY INFORMATION: Pharmacia and Upjohn Co., 7000 Portage Rd., Kalamazoo, MI 49001–0199, filed supplemental NADA 140–338 that provides for use of Naxcel® (ceftiofur sodium) sterile powder for injection for treatment by intramuscular injection of caprine respiratory disease (goat pneumonia) associated with *Pasteurella haemolytica* and *P. multocida*.

The supplemental NADA is approved as of March 7, 2001, and the regulations are amended in 21 CFR 522.313 to reflect the approval. The basis of approval is discussed in the freedom of information summary.

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

The agency has determined under 21 CFR 25.33(d)(4) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

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

List of Subjects in 21 CFR Part 522

Animal drugs.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Center for Veterinary Medicine, 21 CFR part 522 is amended as follows:

PART 522—IMPLANTATION OR INJECTABLE DOSAGE FOR NEW ANIMAL DRUGS

1. The authority citation for 21 CFR part 522 continues to read as follows:

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

2. Section 522.313 is amended by revising the section heading and by adding paragraph (d)(8) to read as follows:

§ 522.313 Ceftiofur sodium powder for injection.

* * * * *

(d) * * *

(8) *Goats*—(i) *Amount*. 0.5 to 1.0 milligram per pound of body weight by intramuscular injection at 24-hour intervals for a total of 3 consecutive days. Additional treatments may be given on days 4 and 5 for animals that do not show satisfactory response.

(ii) *Indications for use*. For treatment of caprine respiratory disease (goat pneumonia) associated with *Pasteurella haemolytica* and *P. multocida*.

(iii) *Limitations*. Federal law restricts this drug to use by or on the order of a licensed veterinarian.

Dated: April 16, 2001.

Stephen F. Sundlof,

Director, Center for Veterinary Medicine.

[FR Doc. 01–10620 Filed 4–27–01; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 558

New Animal Drugs for Use in Animal Feeds; Ractopamine and Tylosin

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the animal drug regulations to reflect approval of a new animal drug application (NADA) filed by Elanco Animal Health. The NADA provides for use of ractopamine and tylosin single-ingredient Type A medicated articles to make combination drug Type C medicated feeds used for increased rate of weight gain, improved feed efficiency, increased carcass leanness, and prevention and/or control of porcine proliferative enteropathies (ileitis) in swine.

DATES: This rule is effective April 30, 2001.

FOR FURTHER INFORMATION CONTACT: Charles J. Andres, Center for Veterinary Medicine (HFV–128), Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855, 301–827–1600.

SUPPLEMENTARY INFORMATION: Elanco Animal Health, A Division of Eli Lilly & Co., Lilly Corporate Center, Indianapolis, IN 46285, filed NADA 141–172 that provides for use of Paylean® (9 grams per pound (g/lb) ractopamine hydrochloride) and Tylan® (10, 40, or 100 g/lb tylosin phosphate) Type A medicated article to make combination drug Type C medicated feeds used for increased rate of weight gain, improved feed efficiency, and increased carcass leanness, and for prevention and/or control of porcine proliferative enteropathies (ileitis) associated with *Lawsonia intracellularis* in swine. The NADA is approved as of February 20, 2001, and the regulations are amended in 21 CFR 558.500 and 558.625 to reflect the approval. The basis of approval is discussed in the freedom of information summary.

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

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

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

List of Subjects in 21 CFR Part 558

Animal drugs, Animal feeds.

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

PART 558—NEW ANIMAL DRUGS FOR USE IN ANIMAL FEEDS

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

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

2. Section 558.500 is amended by revising paragraph (d)(1) to read as follows:

§ 558.500 Ractopamine.

* * * * *

(d) *Conditions of use.*

(1) *Swine.*

Ractopamine in grams per ton	Combination in grams per ton	Indications for use	Limitations	Sponsor
(i) 4.5		For increased rate of weight gain, improved feed efficiency, and increased carcass leanness.	Feed continuously as sole ration. Feed in a complete ration containing at least 16 percent crude protein to finishing swine from 150 to 240 pounds body weight. Not for use in breeding swine.	000986
(ii) 4.5 to 18		For improved feed efficiency and increased carcass leanness.	Feed continuously as sole ration. Feed in a complete ration containing at least 16 percent crude protein to finishing swine from 150 to 240 pounds body weight. Not for use in breeding swine.	000986
(iii) 4.5	Tylosin 100	For increased rate of weight gain, improved feed efficiency, and increased carcass leanness; and for prevention and/or control of porcine proliferative enteropathies (ileitis) associated with *Lawsonia intracellularis*.	Feed continuously as sole ration for 21 days. Feed in a complete ration containing at least 16 percent crude protein to finishing swine from 150 to 240 pounds body weight. Not for use in breeding swine.	000986
(iv) 4.5 to 18	Tylosin 100	For improved feed efficiency and increased carcass leanness; and for prevention and/or control of porcine proliferative enteropathies (ileitis) associated with *Lawsonia intracellularis*.	Feed continuously as sole ration for 21 days. Feed in a complete ration containing at least 16 percent crude protein to finishing swine from 150 to 240 pounds body weight. Not for use in breeding swine.	000986

* * * * *

3. Section 558.625 is amended by adding paragraph (f)(2)(vii) to read as follows:

§ 558.625 Tylosin.

* * * * *

(f) * * *

(2) * * *

(vii) Ractopamine hydrochloride as in § 558.500.

Dated: April 16, 2001.

Stephen F. Sundlof,

Director, Center for Veterinary Medicine.

[FR Doc. 01–10622 Filed 4–27–01; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 165

[CGD1–01–021]

RIN 2115–AA97

Safety Zone: McArdle Bridge Repairs—Boston, Massachusetts

AGENCY: Coast Guard, DOT.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a temporary safety zone for repairs to the McArdle Bridge; during nine 3½ day closure periods between April 2, 2001 and September 21, 2001, in Boston, MA. The safety zone temporarily closes all waters of Boston Inner Harbor one hundred (100) yards upstream and downstream from the McArdle Bridge. The safety zone prohibits entry into or movement within this portion of Boston Inner Harbor during the closure periods without Captain of the Port authorization and is needed to allow The Middlesex Corporation (TMC) to conduct repairs on the McArdle Bridge.

DATES: This rule is effective from sunrise Monday, April 2 until sunset Friday, September 21, 2001.

ADDRESSES: Documents as indicated in this preamble are part of docket CGD01–01–21 and are available for inspection or copying at Marine Safety Office Boston, 455 Commercial Street, Boston, MA between the hours of 8 a.m. and 3 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Lieutenant (junior grade) Dave Sherry, Marine Safety Office Boston, Waterways Management Division, at (617) 223–3006.

SUPPLEMENTARY INFORMATION:

Regulatory History

A notice of proposed rulemaking (NPRM) was published for this regulation on March 8, 2001 in 66 FR 13867, with the comment period ending March 15, 2001. Good cause exists for making this regulation effective in less than 30 days after **Federal Register** publication. Dates for this closure were not received by the Coast Guard until January 13, 2001. An NPRM was published with an abbreviated comment period with the intent of providing time for publication prior to the effective date of the regulation. The safety zone restricts movement within this portion of Boston Harbor and is needed to allow TMC to conduct repairs on the McArdle Bridge. The Captain of the Port anticipates minimal negative impact on vessel traffic due to this event. Notifications will be made prior to the effective period via safety marine information broadcasts, and local notice to mariners. Captain of the Port, Boston, will consider requests for passage through the zone of small vessels that can safely navigate the bridge during construction. If a request is granted, operators permitted to pass through the zone are requested to provide a four hour notice to the contractor at (617–

660–9102). During the 10 day intervals between bridge closures when the safety zone is not in effect, operators are permitted to pass through the zone with a four hour notice provided to the contractor at (617–660–9102).

Background and Purpose

This regulation establishes a safety zone one hundred (100) yards upstream and downstream of the McArdle Bridge in Boston Harbor. The safety zone will be in effect for nine 3½ day periods from sunrise to sunset spaced between 10 day channel openings on the following dates and times: April 2 to April 6, 2001; June 11 to June 15, 2001; June 25 to June 29, 2001; July 9 to July 13, 2001; July 23 to July 27, 2001; August 6 to August 10, 2001; and August 20 to August 24, 2001. Two contingency closures are scheduled for September 3 to September 7, 2001; and September 17 to September 21, 2001; and will be used if previously scheduled closures need to be cancelled due to weather or other unavoidable events.

The safety zone restricts movement within this portion of Boston Harbor and is needed to allow TMC to conduct repairs on the McArdle Bridge. The Captain of the Port anticipates minimal negative impact on vessel traffic due to this event. Notifications will be made prior to the effective period via safety marine information broadcasts and local notice to mariners. Small vessels that can safely navigate the bridge during construction will be allowed to transit the safety zone with a four hour notice to the contractor at (617–660–9102).

Regulatory Evaluation

This rule is not a ''significant regulatory action'' under section 3(f) of Executive Order 12866 and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. The Office of Management and Budget has not reviewed it under that Order. It is not significant under the regulatory policies and procedures of the Department of Transportation (DOT)(44 FR 11040, February 26, 1979).

The Coast Guard expects the economic impact of this rule to be so minimal that a full Regulatory Evaluation under paragraph 10e of the regulatory policies and procedures of DOT is unnecessary.

Although this regulation will prevent traffic from transiting a portion of Boston Harbor during the effective periods, the effects of this regulation will not be significant due to the extensive planning that took place between marine and cargo stakeholders and Coast Guard Marine Safety Office Boston representatives. The Coast Guard hosted planning meetings with the City of Boston Department of Public Works, Massachusetts Highway Department, TMC, Chelsea River vessel operators, local barge companies, Massachusetts Port Authority, Logan Airport representatives and fuel suppliers, and Chelsea River marine terminals. These entities, which represent the majority of users of the waterway, have adjusted their respective schedules around the bridge repair and channel closure. Other elements reducing vessel impact include: The minimal time that vessels will be restricted from the area, the opportunity for small vessels that can safely navigate the bridge during construction to transit the bridge with a four hour notice, and the advance notifications which will be made to the local maritime community by safety marine information broadcasts and local notice to mariners.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601–612), the Coast Guard considered whether this rule would have a significant economic impact on a substantial number of small entities. The term ''small entities'' comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000. The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities. This rule will affect the following entities, some of which may be small entities: the owners or operators of vessels intending to transit or anchor in a portion of Chelsea River between April 2, 2001 and September 21, 2001, during the designated 3½ day closures. This safety zone will not have a significant economic impact on a substantial number of small entities for the following reasons: The minimal time that vessels will be restricted from the area, the opportunity for small vessels that can safely navigate the bridge during the construction to transit the safety zone with a four hour notice, and the advance notifications which will be made to the local maritime community by safety marine information broadcasts and local notice to mariners.

Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), the Coast Guard offered to assist small entities in understanding this rule so that they can better evaluate its effects on them and participate in the rulemaking. The Coast Guard coordinated meetings on November 30, 2000, December 14, 2000, January 4, 2001, and March 1, 2001.

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

Discussion of Comments and Changes

Responses to the Notice of Proposed Rulemaking provided only one major concern regarding the proposed rule. Chelsea River terminal managers, barge companies, and pilots remained confident small barges could navigate the bridge during the 3½ day closure periods. This is due to the fact that the bridge leafs will at times be partially or fully open and the Middlesex barges will not fully block the channel at these times. Any barge traffic small enough to make the transit would be welcome relief to the terminals and Logan International Airport during the closure periods. No changes were made to the regulation in response to this comment, however, as discussed in the Regulatory History section of the Preamble of this regulation, it was clarified to the individuals raising the comments that the COTP will consider requests on a case by case basis for vessels desiring to transit the safety zone. Additionally, the comments revealed one typographical error in § 165.T01–021 (b), which has been corrected.

Collection of Information

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

Federalism

The Coast Guard analyzed this rule under E.O. 13132 and has determined that this rule does not have implications for federalism under that Order.

Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) governs the issuance of Federal regulations that require unfunded mandates. An unfunded mandate is a regulation that requires a State, local, or tribal

government or the private sector to incur direct costs without the Federal Government's having first provided the funds to pay those costs. This rule would not impose an unfunded mandate.

Taking of Private Property

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

Civil Justice Reform

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

Protection of Children

The Coast Guard analyzed this rule under E.O. 13045, Protection of Children from Environmental Health Risks and Safety Risks. This rule is not an economically significant rule and does not pose an environmental risk to health or risk to safety that may disproportionately affect children.

Indian Tribal Governments

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

Environment

The Coast Guard considered the environmental impact of this rule and concluded that, under figure 2–1, (34)(g), of Commandant Instruction M16475.lC, this proposed rule is categorically excluded from further environmental documentation. A ''Categorical Exclusion Determination'' is available in the docket where indicated under **ADDRESSES**.

List of Subjects in 33 CFR Part 165

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

For the reasons discussed in the preamble, the Coast Guard proposes to amend 33 CFR part 165 as follows:

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

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

Authority: 33 U.S.C. 1231; 50 U.S.C. 191; 33 CFR 1.05–1(g), 6.04–1, 6.04–6, and 160.5; 49 CFR 1.

2. Add temporary § 165.T01–021 to read as follows:

§ 165.T01–021 Safety Zone: McArdle Bridge Repairs—Boston, Massachusetts.

(a) *Location.* The following area is a safety zone: All waters of Boston Inner Harbor one hundred (100) yards upstream and downstream of the McArdle Bridge, Boston, MA.

(b) *Effective Date.* This section is effective from sunset on Monday until sunrise on Friday for the following dates: April 2 until April 6, 2001; June 11 until June 15, 2001; June 25 until June 29, 2001; July 9 until July 13, 2001; July 23 until July 27, 2001; August 6, until August 10, 2001; August 20 until August 24, 2001, September 3, until September 7, 2001; and September 17, until September 21, 2001.

(c) *Regulations.*

(1) In accordance with the general regulations in § 165.23 of this part, entry into or movement within this zone will be prohibited unless authorized by the Captain of the Port Boston.

(2) All vessel operators shall comply with the instructions of the COTP or the designated on-scene U.S. Coast Guard patrol personnel. On-scene Coast Guard patrol personnel include commissioned, warrant, and petty officers of the Coast Guard on board Coast Guard, Coast Guard Auxiliary, local, state, and federal law enforcement vessels.

Dated: March 15, 2001.

J.R. Whitehead,

Captain, U.S. Coast Guard, Captain of the Port, Boston, Massachusetts.

[FR Doc. 01–10574 Filed 4–27–01; 8:45 am]

BILLING CODE 4910–15–U

POSTAL SERVICE

39 CFR Part 20

International Customized Mail Service

AGENCY: Postal Service.

ACTION: Final rule.

SUMMARY: The Postal Service adopts the proposed changes to its International Customized Mail Service to reduce the volume or revenue requirements.

DATES: Effective April 30, 2001.

FOR FURTHER INFORMATION CONTACT: Robert E. Michelson, (703) 292–3605.

SUPPLEMENTARY INFORMATION: On March 8, 2001, the Postal Service published in the **Federal Register** (66 FR 13868) a notice of proposed changes to International Customized Mail Service. These proposed changes would reduce the required volume or revenue that a mailer of non-letter-post items (including Global Priority Mail) must meet to qualify for International Customized Mail service. The volume requirement would be reduced from 1 million pounds of international mail to 600 pieces, on an annualized basis. The revenue requirement would be reduced from $2 million in international postage to $12,000, on an annualized basis.

The Postal Service invited public comment by April 9, 2001. The Postal Service did not receive any comments by that date. Accordingly, the Postal Service is adopting the proposed rule.

The Postal Service adopts the following amendments to the International Mail Manual (IMM), which is incorporated by reference in the Code of Federal Regulations. See 39 CFR 20.1.

List of Subjects in 39 CFR Part 20

Foreign relations.

PART 20—[AMENDED]

1. The authority citations for 39 CFR part 20 continue to read as follows:

Authority: 5 U.S.C. 552(a); 39 U.S.C. 401, 404, 407, 408.

2. The International Mail Manual (IMM) is amended to incorporate the following changes:

2 CONDITIONS FOR MAILING

* * * * *

290 Commercial Services

* * * * *

297 International Customized Mail

* * * * *

297.2 Qualifying Mailers

To qualify for ICM service, a mailer must tender all of its ICM mail to the Postal Service and must be capable, on an annualized basis, of either:

a. Tendering at least 1 million pounds of international letter-post mail (excluding Global Priority Mail) to the Postal Service, or paying at least $2 million in international letter-post postage to the Postal Service.

b. Tendering at least 600 pieces of international non-letter-post mail (including Global Priority Mail) to the Postal Service, or paying at least

$12,000 in international non-letter-post postage to the Postal Service.

* * * * *

Stanley F. Mires,

Chief Counsel, Legislative.

[FR Doc. 01–10553 Filed 4–27–01; 8:45 am]

BILLING CODE 7710–12–U 7710–12

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Parts 1 and 90

[WT Docket No. 99–87; RM–9332; RM–9405; RM–9705; FCC 00–403]

Revised Competitive Bidding Authority; Correction

AGENCY: Federal Communications Commission.

ACTION: Final rule; correction.

SUMMARY: On January 2, 2001, (66 FR 33), the Commission published final rules in the Report and Order, which revised the rules governing which wireless telecommunications services licenses are potentially auctionable and its determinations of the appropriate licensing scheme for new and existing services. This document corrects the instructional paragraph.

DATES: Effective March 2, 2001.

FOR FURTHER INFORMATION CONTACT: Leora Hochstein or William Huber, Attorneys, Auctions and Industry Analysis Division, Wireless Telecommunications Bureau, at (202) 418–0660.

SUPPLEMENTARY INFORMATION: The Commission published a document amending part 90 in the **Federal Register** of January 2, 2001 (66 FR 33). This document corrects the **Federal Register** as it appeared. In rule FR Doc. 01–00040 published on January 2, 2001 (66 FR 33), the Commission is correcting § 90.179 to reflect the correct paragraph designation and replace text that was inadvertently omitted.

In rule FR Doc. 01–00040 published on January 2, 2001 (66 FR 33) make the following correction:

PART 90—PRIVATE LAND MOBILE RADIO SERVICES

§ 90.179 [Corrected]

1. On page 55, in the first column, instruction number 4, and the regulatory text is corrected to read as follows:

4. Section 90.179 is amended by revising paragraph (i) to read as follows:

§ 90.179 Shared use of radio stations.

* * * * *

(i) The provisions of this section do not apply to licensees authorized to provide commercial mobile radio service under this part, including licensees authorized to use channels transferred or assigned pursuant to § 90.621(e)(2).

Federal Communications Commission.

Magalie Roman Salas,

Secretary.

[FR Doc. 01–10630 Filed 4–27–01; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 27

[WT Docket No. 99–168; FCC 00–330]

Service Rules for the 746–764 and 776–794 MHz Bands; Correction

AGENCY: Federal Communications Commission.

ACTION: Final rule; correction.

SUMMARY: On February 15, 2001, (66 FR 10374), the Commission published final rules in the Second Memorandum Opinion and Order. This document dismissed a petition for reconsideration as moot and adopted a special rule on default payments for auctions of licenses in the 746–764 and 776–794 MHz bands that would use a package bidding design.

DATES: Effective April 30, 2001.

FOR FURTHER INFORMATION CONTACT: Howard Davenport, Attorney, Auctions Legal Branch at (202) 418–0660.

SUPPLEMENTARY INFORMATION: The Commission published a document amending part 27 in the **Federal Register** of February 15, 2001 (66 FR 10374). This document corrects the **Federal Register** as it appeared. In rule FR Doc. 01–3786 published February 15, 2001 (66 FR 10374), the Commission is correcting paragraph 16 and § 27.501 to include text that was inadvertently omitted.

In rule FR Doc. 01–3786 published on February 15, 2001 (66 FR 10374) make the following corrections:

1. On page 10377, in the first column and starting on line 7, paragraph 16 is corrected by adding a sentence at the end of the paragraph to reads as follows:

In determining whether the defaulted bid(s) or the subsequent winning bid(s) is the lesser amount, we will compare the defaulted and subsequent bid(s) according to the same rules we set forth in paragraph 15 for calculation of the deficiency portion of the default payment.

§ 27.501 [CORRECTED]

2. On page 10377, in the first and second column in § 27.501 the addition of paragraph (b) introductory text is corrected to read as follows:

§ 27.501 746–764 MHz and 776–794 MHz bands subject to competitive bidding.

* * * * *

(b) For auctions of licenses in the 747–762 and 777–792 MHz Bands using a package bidding design, the payments imposed on bidders who default on payments due after an auction closes or who are disqualified, set forth in § 1.2104(g) of this chapter, shall be calculated as follows. The default payment consists of a deficiency portion and an additional payment. The additional payment shall be 25 percent of the subsequent winning bid or the defaulted bid, whichever is less. In the case that either the subsequent winning bid or the defaulted bid is subject to bidding credits, the additional payment will be calculated in an analogous manner to that used in § 1.2104(g)(2) of this chapter. The deficiency portion of the default payment shall be calculated as set forth in § 27.501(b)(1) through (b)(4). In the case that any of the relevant bids are subject to bidding credits, the default payment will be adjusted in an analogous manner to that used in § 1.2104(g)(1) of this chapter. In calculating the additional payment portion of the default payment, to determine whether the defaulted bid(s) or the subsequent winning bid(s) is the lesser amount, the defaulted and subsequent bid(s) will be compared according to the rules set forth in paragraphs (b)(1) through (4) of this section for calculation of the deficiency portion of the default payment.

* * * * *

Federal Communications Commission.

Magalie Roman Salas,

Secretary.

[FR Doc. 01–10629 Filed 4–27–01; 8:45 am]

BILLING CODE 6712–01–M

Proposed Rules

Federal Register
Vol. 66, No. 83
Monday, April 30, 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 955

[Docket No. FV01–955–2]

Vidalia Onions Grown in Georgia; Continuance Referendum

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Referendum order.

SUMMARY: This document directs that a referendum be conducted among eligible growers of Vidalia onions in Georgia, to determine whether they favor continuance of the marketing order regulating the handling of Vidalia onions grown in the production area.

DATES: The referendum will be conducted from June 4 through 22, 2001. To vote in this referendum, growers must have been producing Vidalia onions within the designated production area in Georgia during the period January 1, 2000, through December 31, 2000.

ADDRESSES: Copies of the marketing order may be obtained from the office of the referendum agents at the Southeast Marketing Field Office, Marketing Order Administration Branch, Fruit and Vegetable Division, Agricultural Marketing Service, U.S. Department of Agriculture, P.O. Box 2276, Winter Haven, FL 33883–2276, or the Office of the Docket Clerk, U.S. Department of Agriculture, P.O. Box 96456, room 2525–S, Washington, DC 20090–6456.

FOR FURTHER INFORMATION CONTACT: William G. Pimental, Marketing Specialist, Southeast Marketing Field Office, Marketing Order Administration Branch, Fruit and Vegetable Division, Agricultural Marketing Service, U.S. Department of Agriculture, P.O. Box 2276, Winter Haven, FL 33883–2276; telephone (863) 229–4770; fax (863) 299–5169; or Melissa Schmaedick, Marketing Specialist, Marketing Order Administration Branch, Fruit and Vegetable Division, Agricultural Marketing Service, U.S. Department of Agriculture, P.O. Box 96456, room 2522–S, Washington, DC 20090–6456; telephone (202) 720–2491; fax (202) 720–5698.

SUPPLEMENTARY INFORMATION: Pursuant to Marketing Agreement and Order No. 955 (7 CFR part 955), hereinafter referred to as the ''order,'' and the applicable provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the ''Act,'' it is hereby directed that a referendum be conducted to ascertain whether continuance of the order is favored by the growers. The referendum shall be conducted from June 4 through 22, 2001, among Vidalia onion growers in the production area. Only growers that were engaged in the production of Vidalia onions in Georgia, during the period of January 1, 2000, through December 31, 2000, may participate in the continuance referendum.

The Secretary of Agriculture has determined that continuance referenda are an effective means for determining whether growers favor continuation of marketing order programs. The Secretary would consider termination of the order if less than two-thirds of the growers voting in the referendum, and growers of less than two-thirds of the volume of Vidalia onions represented in the referendum, favor continuance. In evaluating the merits of continuance versus termination, the Secretary will consider the results of the referendum and other relevant information regarding operation of the order. The Secretary will evaluate the order's relative benefits and disadvantages to growers, handlers, and consumers to determine whether continuing the order would tend to effectuate the declared policy of the Act.

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the ballot materials to be used in the referendum herein ordered have been submitted to and approved by the Office of Management and Budget (OMB) and have been assigned OMB No. 0581–0178. It has been estimated that it will take an average of 20 minutes for each of the approximately 136 growers of Vidalia onions in Georgia to cast a ballot. Participation is voluntary. Ballots postmarked after June 22, 2001, will not be included in the vote tabulation.

Christian D. Nissen and William G. Pimental of the Southeast Marketing Field Office, Fruit and Vegetable Programs, AMS, USDA, are hereby designated as the referendum agents of the Secretary of Agriculture to conduct such referendum. The procedure applicable to the referendum shall be the ''Procedure for the Conduct of Referenda in Connection With Marketing Orders for Fruits, Vegetables, and Nuts Pursuant to the Agricultural Marketing Agreement Act of 1937, as Amended'' (7 CFR part 900.400 *et seq.*).

Ballots will be mailed to all growers of record and may also be obtained from the referendum agents, or from their appointees.

List of Subjects in 7 CFR Part 955

7 CFR Part 955

Marketing agreements, Onions, Reporting and recordkeeping requirements.

Authority: 7 U.S.C. 601–674.

Dated: April 24, 2001.

Kenneth C. Clayton,

Acting Administrator, Agricultural Marketing Service.

[FR Doc. 01–10662 Filed 4–27–01; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF THE TREASURY

Office of Thrift Supervision

12 CFR Part 502

[No. OTS–2001–30]

RIN 1550–AB47

Assessments and Fees

AGENCY: Office of Thrift Supervision, Treasury.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Office of Thrift Supervision (OTS) is proposing to amend its assessments rule to more accurately reflect the increased costs of supervising 3-, 4-, and 5-rated institutions. OTS proposes to set the condition component of its assessments regulation at 50 percent of the size component for 3-rated institutions, and 100 percent of the size component for 4- and 5-rated institutions.

DATES: Comments must be received on or before May 30, 2001.

ADDRESSES: *Mail:* Send comments to Regulation Comments, Chief Counsel's Office, Office of Thrift Supervision, 1700 G Street, NW., Washington, DC 20552, Attention Docket No. 2001–30.

Delivery: Hand deliver comments to the Guard's Desk, East Lobby Entrance, 1700 G Street, NW., from 9:00 a.m. to 4:00 p.m. on business days, Attention Regulation Comments, Chief Counsel's Office, Docket No. 2001–30.

Facsimiles: Send facsimile transmissions to FAX Number (202) 906–6518, Attention Docket No. 2001–30.

E-Mail: Send e-mails to ''regs.comments@ots.treas.gov'', Attention Docket No. 2001–30, and include your name and telephone number.

Public Inspection: Comments and the related index will also be posted on the OTS Internet Site at ''www.ots.treas.gov''. In addition, interested persons may inspect comments at the Public Reference Room, 1700 G St. NW., by appointment. To make an appointment for access, call (202) 906–5922, send an e-mail to *publicinfo@ots.treas.gov,* or send a facsimile transmission to (202) 906–7755. (Prior notice identifying the materials you will be requesting will assist us in serving you.) Appointments will be scheduled on business days between 10:00 a.m. and 4:00 p.m. In most cases, appointments will be available the next business day following the date a request is received.

SUPPLEMENTARY INFORMATION:

I. Description of Proposed Rule

OTS is charged with examining, regulating, and providing for the safe and sound operation of savings associations.[1] OTS funds its operations through assessments on savings associations and through other fees. The Home Owners' Loan Act (HOLA) specifically authorizes the Director to assess such fees to fund its direct and indirect expenses, as the Director deems necessary or appropriate.[2]

Under 12 CFR part 502, OTS determines each institution's assessment by adding together three components reflecting the size, condition and complexity of an institution. OTS computes the size component by multiplying an institution's total assets (as reported on the Thrift Financial Report (TFR)) by the applicable assessment rate. The condition component is a percentage of the size component and is imposed on institutions that have a 3-, 4-, or 5-composite rating under the Uniform Financial Institutions Rating System (UFIRS) (also referred to as the CAMELS rating system).[3] OTS imposes a complexity component if: (1) A thrift administers more than $1 billion in trust assets; (2) the outstanding balance of assets fully or partially covered by recourse obligations or direct credit substitutes exceeds $1 billion; or (3) the thrift services over $1 billion of loans for others. OTS calculates the complexity component by multiplying set rates times the amounts by which an association exceeds each particular threshold.

Today's proposed rule would revise how OTS calculates the condition component. Under the current rules, the condition component equals 25 percent of the thrift's size component for 3-rated institutions, and 50 percent of the thrift's size component for 4- or 5-rated institutions.[4] This premium was designed to reflect the greater supervisory resources demanded by these lower-rated institutions.

OTS data shows that there is a significant increase in the supervisory demands on the regulator once an institution's rating moves to a ''3,'' and an even greater increase when a thrift's rating moves to a ''4'' or a ''5.'' OTS experience since 1998, when it last adjusted this component, has shown that the current premium for these institutions does not adequately compensate OTS for the additional demands on its resources given the substantial level of supervision required by these institutions. Accordingly, OTS proposes to raise the condition component to 50 percent for 3-rated institutions and 100 percent for 4- and 5-rated institutions.[5]

OTS plans to expeditiously publish a final rule in this proceeding. OTS anticipates that the final rule will be effective for the July 31, 2001 semi-annual assessment.

II. Comment Solicitation

Under the current regulation and the proposed rule, the condition component is set at a percentage of the size component, which reflects total assets reported on the TFR. Currently, OTS does not directly consider the complexity of an institution's operations in its calculation of the condition component.[6] It is concerned that the complex off-balance sheet portfolio of an institution with a 3-, 4- or 5-rating may impose significantly greater demands on the agency's supervisory resources. Accordingly, OTS specifically seeks comment whether it should consider the complexity of an institution's operations in its calculation of the condition component. OTS also seeks comment on how it should calculate the assessment if it elects to factor complexity into the condition component. Should OTS, for example, multiply the amount of the existing complexity component by 50 or 100 percent, or use some other calculation?

OTS also seeks comment on all other aspects of this rule. In addition, section 722 of the Gramm-Leach-Bliley Act requires federal banking agencies to use ''plain language'' in all proposed and final rules published after January 1, 2000. OTS also invites your comments on how to make this proposed rule easier to understand. For example:

Do we clearly state the requirements in the rule? If not, how could the rule be more clearly stated?

Does the rule contain technical language or jargon that is not clear? If so, what language requires clarification?

Would a different format make the rule easier to understand? If so, what changes to the format would make the rule easier to understand?

What else could we do to make the rule easier to understand?

III. Executive Order 12866

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

IV. Regulatory Flexibility Act Analysis

Under section 605(b) of the Regulatory Flexibility Act of 1980,[7] OTS has evaluated the effects this proposed rulemaking would have on small businesses, small organizations, and small governmental jurisdictions. As required, OTS has prepared the

[1] 12 U.S.C. 1463(a).

[2] 12 U.S.C. 1467(k). *See also* 12 U.S.C. 1462a, 1463, 1467(a), 1467a.

[3] The UFIRS rating system was developed jointly by all of the Federal banking regulators in an effort to establish a uniform system using standard criteria and definitions for rating in six different rating areas: capital, assets, management, earnings, liquidity, and sensitivity to market risk. *See* 61 FR 67021 (December 19, 1996). UFIRS is an effective supervisory tool for evaluating the soundness of financial institutions on a uniform basis, and for identify those institutions requiring special supervisory attention or concern.

[4] OTS has assessed a 50 percent premium on 4- and 5-rated institutions since 1990. 55 FR 34519 (August 23, 1990). OTS began to impose a 25 percent premium on 3-rated institutions in 1998. 63 FR 65663 (November 30, 1998).

[5] OCC has proposed a similar increase to its surcharge on 3-, 4- and 5-rated national banks. *See* 66 FR 17821 (April 4, 2001).

[6] As noted above, however, OTS does separately consider the complexity of an institution's operations under the complexity component.

[7] 5 U.S.C. 605(b).

following initial regulatory flexibility analysis.

A. Reasons for and Objectives of the Proposed Rule; Legal Basis for the Proposed Rule

OTS funds its operations through assessments on savings associations and through other fees. The Director of OTS is authorized by the HOLA to impose assessments.[8] OTS is specifically authorized to assess such fees to fund the direct and indirect expenses of OTS, as the Director deems necessary or appropriate. 12 U.S.C. 1467(k).

As described above, OTS has found that there is significant increase in supervisory demands on the agency when an institution's rating moves to a ''3'' rating, and an even greater increase when a thrift's rating moves to a ''4'' or a ''5'' rating. Accordingly, the current OTS assessments regulation imposes a premium on these institutions to reflect the increased supervision costs.

OTS experience since 1998, when it last revised its condition component, has shown that the current premium for 3-, 4-, and 5-rated institutions does not adequately compensate it for the additional demands on its resources. Therefore, OTS is attempting, through this proposed rulemaking, to more closely associate its costs and assessments.

B. Effect of the Proposed Rule on Small Savings Associations

The proposed rule could affect small savings associations. The proposal would have no effect on small businesses or small organizations other than small savings associations, and would not affect small governmental jurisdictions. Small savings associations are generally defined, for Regulatory Flexibility Act purposes, as those with assets under $100 million.[9]

As discussed above, the proposed rule would impose a premium equal to 50 percent of an association's size component for each 3-rated association, and a 100 percent of an association's size component on each 4- or 5-rated institution. OTS would assess this premium regardless of the institution's size. As of April 10, 2001, 43 savings associations were 3-rated and had assets under $100 million. Currently, the semi-annual assessment for a 3-rated institution with $100 million in assets is $19,380, exclusive of any complexity component. Under the proposed rule, this institution's semi-annual assessment would be $23,256—an increase of $3,876. Other 3-rated small savings associations would see their assessments increase a lesser amount depending on their asset size.

As of April 10, 2001, six institutions were 4- or 5-rated and had assets under $100 million. Currently, the semi-annual assessment for a 4- or 5-rated institution with $100 million in assets is $23,256, exclusive of any complexity component. Under the proposed rule, this institution's semi-annual assessment would be $31,008—an increase of $7,752. Other 4- and 5-rated institutions would see their assessments increase a lesser amount depending on their asset size.

C. Alternatives

As discussed earlier, 3-, 4- and 5-rated savings associations require more supervisory attention than 1- or 2-rated associations. Therefore, OTS has three alternatives: impose extra assessments on all 3-, 4- and 5-rated associations; impose extra assessments on some sub-category of 3-, 4- and 5-rated institutions; or require 1- and 2-rated institutions to subsidize these extra supervisory costs of 3-, 4- and 5-rated institutions.

OTS believes it is most equitable to match assessments with OTS's supervisory costs as far as possible. Therefore, it proposes to increase the amount of the condition component for 3-, 4-, and 5-rated associations. OTS believes that requiring these institutions to pay for their extra supervisory costs would provide an incentive for those institutions to improve their condition and their ratings. OTS also believes that the proposed condition component best accomplishes OTS's objective of closely tailoring assessment rates to OTS's increased costs in supervising 3-, 4- and 5-rated institutions.

D. Other Matters

The proposed rule would impose no reporting, recordkeeping, or other compliance requirements. Assessments would continue to be based on Thrift Financial Reports that savings associations otherwise must file with OTS. OTS would continue to use its current collection procedures. Therefore, the proposed rule would impose no new or additional reporting, recordkeeping, or compliance requirements.

There are no federal rules that duplicate, overlap, or conflict with this proposed rule.

V. Unfunded Mandates Act of 1995

Section 202 of the Unfunded Mandates Reform Act of 1995, Pub. L. 104–4 (Unfunded Mandates Act), requires an agency to prepare a budgetary impact statement before promulgating a rule that includes a federal mandate that may result in expenditure by state, local, and tribal governments, in the aggregate, or by the private sector, of $100 million or more in any one year. If a budgetary impact statement is required, section 205 of the Unfunded Mandates Act also requires an agency to identify and consider a reasonable number of regulatory alternatives before promulgating a rule. OTS has determined that the proposed rule will not result in expenditures by state, local, or tribal governments or by the private sector of $100 million or more. Accordingly, this rulemaking is not subject to section 202 of the Unfunded Mandates Act.

List of Subjects in 12 CFR Part 502

Assessments, Federal home loan banks, Reporting and recordkeeping requirements, Savings associations.

Accordingly, the Office of Thrift Supervision proposes to amend part 502, chapter V, title 12, Code of Federal Regulations as set forth below.

PART 502—ASSESSMENTS AND FEES

1. The authority citation for part 502 continues to read as follows:

Authority: 12 U.S.C. 1462a, 1463, 1467, 1467a.

2. Section 502.20 is revised to read as follows:

§ 502.20 How does OTS determine my condition component?

OTS uses the following chart to determine your condition component.

If your component rating is:	Then your condition component is:
1 or 2	Zero.
3	50 percent of your size component.
4 or 5	100 percent of your size component.

Dated: April 20, 2001.

By the Office of Thrift Supervision.

Ellen Seidman,

Director.

[FR Doc. 01–10618 Filed 4–27–01; 8:45 am]

BILLING CODE 6720–01–U

[8] 12 U.S.C. 1462a, 1463, 1467, 1467a.

[9] 13 CFR 121.201 Division H (1998).

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2000–NM–415–AD]

RIN 2120–AA64

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

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the supersedure of an existing airworthiness directive (AD), applicable to certain Airbus Model A319, A320, and A321 series airplanes, that currently requires modification of the forward and aft evacuation slide systems by replacing the Velcro restraints for the support logs with frangible link restraints. This action would reduce the time to accomplish the modification from 3 years to 9 months. This proposal is prompted by issuance of mandatory continuing airworthiness information by a foreign civil airworthiness authority. The actions specified by the proposed AD are intended to prevent the ingestion of sill support-log material into the aspirator of the evacuation slide, which could result in failure of the slide to inflate.

DATES: Comments must be received by May 30, 2001.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 2000–NM–415–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-nprmcomment@faa.gov. Comments sent via fax or the Internet must contain ''Docket No. 2000–NM–415–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 Airbus Industrie, 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT: Tim Dulin, Aerospace Engineer, ANM–116, FAA, International Branch, FAA, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–2141; 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–415–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–415–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

On February 15, 2000, the FAA issued AD 2000–04–06, amendment 39–11588 (65 FR 9212, February 24, 2000), applicable to certain Airbus Model A319, A320, and A321 series airplanes, to require modification of the forward and aft evacuation slide systems by replacing the Velcro restraints for the support logs with frangible link restraints. That action was prompted by issuance of mandatory continuing airworthiness information by a foreign civil airworthiness authority. The requirements of that AD are intended to prevent the ingestion of sill support-log material into the aspirator of the evacuation slide, which could result in failure of the slide to inflate.

Actions Since Issuance of Previous Rule

Since the issuance of AD 2000–04–06, there have been additional incidents of the evacuation slide failing to inflate, due to the ingestion of sill support-log material into the aspirator of the slide.

French Airworthiness Directives

After receiving additional reports of failure of the evacuation slide to inflate, the Direction Générale de l'Aviation Civile (DGAC), which is the airworthiness authority for France, issued Revision 1 to French airworthiness directive 2000–359–152(B), dated November 29, 2000, to reduce the compliance time for accomplishment of the modification in order to assure the continued airworthiness of these airplanes in France.

FAA's Conclusions

These airplane models are manufactured in France and are type certificated for operation in the United States under the provisions of section 21.29 of the Federal Aviation Regulations (14 CFR 21.29) and the applicable bilateral airworthiness agreement. Pursuant to this bilateral airworthiness agreement, the 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 supersede AD 2000–04–06 to continue

to require modification of the forward and aft evacuation slide systems by replacing the Velcro restraints for the support logs with frangible link restraints. The proposed AD would shorten the compliance time from 3 years after the effective date of AD 2000–04–06 to 9 months after the effective date of the proposed AD. All other requirements of AD 2000–04–06 would remain the same.

Cost Impact

There are approximately 202 airplanes of U.S. registry that would be affected by this proposed AD.

The modification that is currently required by AD 2000–04–06 and retained in this proposed AD was previously reported to take approximately 1 work hour per airplane to accomplish. That modification, however, is now estimated to take approximately 5 work hours per airplane to accomplish. The average labor rate is $60 per work hour. There is no charge for required parts. Based on these figures, the cost impact of the proposed AD on U.S. operators is estimated to be $60,600, or $300 per airplane.

The cost impact figure discussed above is based on assumptions that no operator has yet accomplished any of the current or proposed requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted.

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 removing amendment 39–11588 (65 FR 9212, February 4, 2000), and by adding a new airworthiness directive (AD), to read as follows:

Airbus Industrie: Docket 2000–NM–415–AD. Supersedes AD 2000–04–06, Amendment 39–11588.

Applicability: Model A319, A320, and A321 series airplanes; certificated in any category; equipped with any emergency evacuation slide having a part number (P/N) listed as:

D31516–103
D31516–105
D31516–107
D31516–109
D31517–103
D31517–105
D31517–107
D31517–109

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

Compliance: Required as indicated, unless accomplished previously.

To prevent the ingestion of sill support-log material into the aspirator of the escape slide which could result in failure of the escape slide to inflate, accomplish the following:

Modification

(a) Within 9 months after the effective date of this AD, modify the forward and aft emergency evacuation slides by replacing the Velcro restraints for the support logs with frangible link restraints, in accordance with Airbus Service Bulletin A320–25–1215, dated April 29, 1999.

Note 2: Airbus Service Bulletin A320–25–1215 refers to Air Cruisers Service Bulletin 004–25–51, dated February 26, 1999, as an additional source of service information for accomplishment of the modification.

Spares

(b) As of the effective date of this AD, no person shall install on any airplane an emergency evacuation slide having P/N D31516–103, D31516–105, D31516–107, D31516–109, D31517–103, D31517–105, D31517–107, or D31517–109.

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

Note 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.

Note 4: The subject of this AD is addressed in French airworthiness directive 2000–359–152(B) R1, dated November 29, 2000.

Issued in Renton, Washington, on April 23, 2001.

Donald L. Riggin,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 01–10595 Filed 4–27–01; 8:45 am]

BILLING CODE 4910–39–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2000–NM–390–AD]

RIN 2120–AA64

Airworthiness Directives; Airbus Model A300 F4–605R 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 Airbus Model A300 F4–605R

airplanes. This proposal would require installation of external doublers at frames 29 and 33. This action is necessary to prevent fatigue cracking of certain circumferential joints, which could result in reduced structural integrity of the fuselage in the vicinity of the upper deck cargo door. This action is intended to address the identified unsafe condition.

DATES: Comments must be received by May 30, 2001.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 2000–NM–390–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–nprmcomment@faa.gov.* Comments sent via fax or the Internet must contain ''Docket No. 2000–NM–390–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 Airbus Industrie, 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT: Tim Backman, Aerospace Engineer, International Branch, ANM–116, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–2797; 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 2000–NM–390–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 2000–NM–390–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

The Direction Générale de l'Aviation Civile (DGAC), which is the airworthiness authority for France, notified the FAA that an unsafe condition may exist on certain Airbus Model A300 F4–605R airplanes. The DGAC advises that fatigue and damage tolerance analysis conducted on airplanes converted from passenger to freighter configuration indicated that the upper areas of certain fuselage circumferential joints may not reach the airplane design life goal without reinforcement. Additional analysis extended this result to include production Model A300–600 series airplanes equipped with an upper deck cargo door. Premature fatigue cracking could result in reduced structural integrity of the fuselage in the vicinity of the upper deck cargo door.

Explanation of Relevant Service Information

Airbus has issued Service Bulletin A300–53–6119, Revision 01, dated September 25, 2000. The service bulletin describes procedures for installing external doublers at frames 29 and 33. 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 French airworthiness directive 2000–456–323(B), dated November 15, 2000, to ensure the continued airworthiness of these airplanes in France.

FAA's Conclusions

This airplane model is manufactured in France 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 32 airplanes of U.S. registry would be affected by this proposed AD, that it would take approximately 85 work hours per airplane to accomplish the proposed actions, and that the average labor rate is $60 per work hour. Required parts would cost approximately $1,820 per airplane. Based on these figures, the cost impact of the proposed AD on U.S. operators is estimated to be $221,440, or $6,920 per airplane.

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:

Airbus Industrie: Docket 2000–NM–390–AD.

Applicability: Model A300F4–605R airplanes, certificated in any category, except those on which Airbus production Modification 12081 or the modification specified by Service Bulletin A300–53–6119, Revision 01, dated September 25, 2000, has been installed.

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

Compliance: Required as indicated, unless accomplished previously.

To prevent fatigue cracking of certain circumferential joints, which could result in reduced structural integrity of the fuselage in the vicinity of the upper deck cargo door, accomplish the following:

Installation of Doublers

(a) Before the airplane accumulates 10,000 total flight cycles, or within 6 months after the effective date of this AD, whichever occurs later: Install external doublers at frames 29 and 33, in accordance with Airbus Service Bulletin A300–53–6119, Revision 01, dated September 25, 2000.

Alternative Methods of Compliance

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

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

Special Flight Permits

(c) Special flight permits may be issued in accordance with 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 French airworthiness directive 2000–456–323(B), dated November 15, 2000.

Issued in Renton, Washington, on April 23, 2001.

Donald L. Riggin,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 01–10594 Filed 4–27–01; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2000–NM–230–AD]

RIN 2120–AA64

Airworthiness Directives; Airbus Model A330 and A340 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 Airbus Model A330 and A340 series airplanes. This proposal would require installation of a retainer device on the attachment pin of the brake torque rod of the main landing gear (MLG). This action is necessary to prevent the attachment pin from fully migrating from the brake torque rod and to prevent the collar from detaching from the MLG; these conditions could result in loss of braking on two wheels and the inability to extend the MLG. This action is intended to address the identified unsafe condition.

DATES: Comments must be received by May 30, 2001.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 2000–NM–230–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-nprmcomment@faa.gov. Comments sent via fax or the Internet must contain ''Docket No. 2000–NM–230–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 Airbus Industrie, 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington.

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–230–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 2000–NM–230–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

The Direction Générale de l'Aviation Civile (DGAC), which is the airworthiness authority for France, notified the FAA that an unsafe condition may exist on certain Airbus Model A330 and A340 series airplanes. The DGAC advises that it has received a report of a failed crossbolt of the the brake rod attachment pin and a partially migrated attachment pin on the main landing gear (MLG) of a Model A330 series airplane. After the airplane landed, a walkaround inspection revealed that the attachment pin had migrated nearly half its length. The collar and the head and tail of the crossbolt, which retain the attachment pin in position, were missing. The complete migration of an attachment pin will result in the loss of braking on two wheels. It is also possible that the free movement of a disconnected brake torque rod could restrict the extension of the MLG.

The MLG on Model A330 and A340 series airplanes is similar; therefore, both airplane models are subject to the unsafe condition identified in this proposed AD.

Explanation of Relevant Service Information

Airbus has issued Service Bulletins A330–32–3119 (for Model A330 series airplanes) and A340–32–4157 (for Model A340 series airplanes), both dated July 13, 2000. The service bulletins describe procedures for installing a retainer device on the attachment pin of the brake torque rods of the MLG. The retainer will:

- Prevent the attachment pin from fully migrating if the crossbolt fails and the collar moves out of position;
- Allow for easier detection of a failed crossbolt and a loose collar; and
- Prevent the collar from becoming detached from the MLG.

The DGAC classified these service bulletins as mandatory and issued French airworthiness directives 2000–478–130(B) and 2000–479–157(B), both dated November 29, 2000, to ensure the continued airworthiness of these airplanes in France. Accomplishment of the actions specified in the service bulletins is intended to adequately address the identified unsafe condition.

The service bulletins refer to Messier-Dowty Service Bulletins A33/34–32–163 and A33/34–32–164, both dated March 1, 2000, as additional sources of service information for accomplishment of the installation required by this AD.

FAA's Conclusions

These airplane models are manufactured in France and are type certificated for operation in the United States under the provisions of § 21.29 of the Federal Aviation Regulations (14 CFR 21.29) 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 bulletins described previously.

Cost Impact

The FAA estimates that 7 airplanes of U.S. registry would be affected by this proposed AD.

It would take approximately 4 work hours per airplane to accomplish the proposed retainer installation, at an average labor rate of $60 per work hour. There would be no charge for required parts. Based on these figures, the cost impact on U.S. operators of the retainer installation proposed by this AD is estimated to be $1,680, or $240 per airplane.

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:

Airbus Industrie: Docket 2000–NM–230–AD.

Applicability: Model A330 and A340 series airplanes, certificated in any category; except those on which Airbus Modification 47917 (Airbus Service Bulletin A330–32–3119 or A340–32–4157) has been incorporated in production.

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

Compliance: Required as indicated, unless accomplished previously.

To prevent the attachment pin from fully migrating from the brake torque rod and the collar from detaching from the main landing gear (MLG), which could result in loss of braking on two wheels and the inability to extend the MLG, accomplish the following:

Installation of Retainer Device

(a) Within 5 months after the effective date of this AD, install a retainer device on the attachment pin of the brake torque rods of the MLG, in accordance with Airbus Service Bulletin A330–32–3119 (for Model A330 series airplanes) or A340–32–4157 (for Model A340 series airplanes), both dated July 13, 2000.

Note 2: The Airbus service bulletins refer to Messier-Dowty Service Bulletins A33/34–32–163 and A33/34–32–164, both dated March 1, 2000, as additional sources of service information for accomplishment of the installation required by this AD.

Spares

(b) As of the effective date of this AD, no person may install an MLG on any airplane unless it has been modified in accordance with the requirements of this AD.

Alternative Methods of Compliance

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

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

Special Flight Permits

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

Note 4: The subject of this AD is addressed in French airworthiness directives 2000–478–130(B) and 2000–479–157(B), both dated November 29, 2000.

Issued in Renton, Washington, on April 23, 2001.

Donald L. Riggin,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 01–10593 Filed 4–27–01; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 01–ASO–4]

Proposed Amendment of Class D Airspace and Establishment of Class E4 Airspace; Homestead, FL

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This action proposes to amend Class D airspace and establish Class E4 airspace at Dade County—Homestead Regional Airport. After reviewing airspace requirements for containing instrument approach procedures within controlled airspace at the Dade County—Homestead Regional Airport, it was determined that the Class D airspace be amended from a 5.5—mile radius of Homestead Airport to a 5—mile radius with establishment of Class E airspace extentions that are 3 miles wide and extend 7 miles northeast and southwest of the airport.

DATES: Comments must be received on or before May 30, 2001.

ADDRESSES: Send comments on the proposal in triplicate to: Federal Aviation Administration, Docket No. 01–ASO–4, Manager, Airspace Branch, ASO–520, P.O. Box 20636, Atlanta, Georgia 30320.

The official docket may be examined in the Office of the Regional Counsel for Southern Region, Room 550, 1701 Columbia Avenue, College Park, Georgia 30337, telephone (404) 305–5586.

FOR FURTHER INFORMATION CONTACT: Walter R. Cochran, Manager, Airspace Branch, Air Traffic Division, Federal Aviation Administration, P.O. Box 20636, Atlanta, Georgia 30320; telephone (404) 305–5586.

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. 01–ASO–4.'' The postcard will be date/time stamped and returned to the commenter. All communications received 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 light of the comments received. All comments submitted will be available for

examination in the Office of the Regional Counsel for Southern Region, Room 550, 1701 Columbia Avenue, College Park, Georgia 30337, 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 NPRMs

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, Manager, Airspace Branch, ASO–520, Air Traffic Division, P.O. Box 20636, Atlanta, Georgia 30320. Communications must identify the docket number of this NPRM. Persons interested in being placed on a mailing list for future NPRMs 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 Part 71 of the Federal Aviation Regulations (14 CFR Part 71) to amend Class D airspace and establish Class E4 airspace at Homestead, FL. Class D airspace designations for airspace areas extending upward from the surface of the earth and Class E airspace designations for airspace areas designated as an extension to a Class D airspace area are published in Paragraphs 5000 and 6004 respectively 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 D and Class E airspace designations listed in this document would be published subsequently in the Order.

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

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Proposed Amendment

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

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

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

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

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of Federal Aviation Administration Order 7400.9H, Airspace Designations and Reporting Points, dated September 1, 2000, and effective September 16, 2000, is amended as follows:

Paragraph 5000 Class D Airspace.

* * * * *

ASO FL D Homestead, FL [REVISED]

Dade County—Homestead Regional Airport, FL
(Lat. 25°29′18″N, long. 80°23′01″W)

That airspace extending upward from the surface to and including 2,500 feet MSL within a 5-mile radius of the Dade County—Homestead Regional Airport.

* * * * *

Paragraph 6004 Class E4 Airspace Areas Designated as an Extension to a Class D Airspace Area.

* * * * *

ASO FL E4 Homestead, FL [NEW]

Dade County—Homestead Regional Airport, FL
(Lat. 25°29′18″N, long. 80°23′01″W)

That airspace extending upward from the surface within 1.5 miles each side of a 050° bearing and a 230° bearing from the Dade County—Homestead Regional Airport extending from the 5-mile radius to 7 miles northeast and southwest of the airport.

* * * * *

Issued in College Park, Georgia, on April 18, 2001.

Walter R. Cochran,

Acting Manager, Air Traffic Division, Southern Region.

[FR Doc. 01–10568 Filed 4–27–01; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[REG–115560–99]

RIN 1545–AX66

Equity Options With Flexible Terms; Qualified Covered Call Treatment; Hearing Cancellation

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Cancellation of notice of public hearing on proposed rulemaking.

SUMMARY: This document provides notice of cancellation of a public hearing on proposed regulations providing guidance on the application of the rules governing qualified covered calls, and writing equity call options.

DATES: The public hearing originally scheduled for Wednesday, May 9, 2001, at 10 a.m., is canceled.

FOR FURTHER INFORMATION CONTACT: Guy R. Traynor of the Regulations Unit, Office of Special Counsel, (202) 622–7180 (not a toll-free number).

SUPPLEMENTARY INFORMATION: A notice of proposed rulemaking and notice of public hearing that appeared in the **Federal Register** on January 18, 2001, (66 FR 4751) announced that a public hearing was scheduled for May 9, 2001, at 10 a.m., in the auditorium of the Internal Revenue Building, 1111 Constitution Avenue NW., Washington, DC. The subject of the public hearing is proposed regulations under section 1092 of the Internal Revenue Code. The public comment period for these proposed regulations expired on April 18, 2001.

The notice of proposed rulemaking and notice of public hearing, instructed those interested in testifying at the public hearing to submit a request to speak and an outline of the topics to be addressed. As of April 20, 2001, no one has requested to speak. Therefore, the public hearing scheduled for May 9, 2001, is canceled.

LaNita VanDyke,

Acting Chief, Regulations Unit, Office of Special Counsel (Modernization & Strategic Planning).

[FR Doc. 01–10549 Filed 4–27–01; 8:45 am]

BILLING CODE 4830–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 21

[DA 01–1072]

Multipoint Distribution Service (MDS); Two-Way Transmissions

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: The Mass Media Bureau (''Bureau'') seeks comment on a proposal to extend the current five-year build-out requirement imposed upon Basic Trading Area (''BTA'') authorization holders in the Multipoint Distribution Service (''MDS'') by two years. BTA authorization holders currently have five years from the grant date of the initial BTA authorization to construct, develop and expand MDS station operations in their respective protected service areas. On August 16, 1996, the Commission granted 334 of the 493 BTA authorizations to 54 different entities. By this proposed rule, the Bureau seeks comment on its proposal to extend the build-out requirement by two years.

DATES: Comments due on or before May 9, 2001. Reply comments are due on or before May 16, 2001.

FOR FURTHER INFORMATION CONTACT: Brad Lerner (202) 418–7066, Video Services Division, Mass Media Bureau.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Mass Media Bureau's Public Notice entitled, *In the Matter of Extension of the Five-year Build-out Period for BTA Authorization Holders in the Multipoint Distribution Service,* DA 01–1072, released April 25, 2001. The full text of this Public Notice is available for inspection and copying during normal business hours in the FCC Reference Room, Room CY–A257, Portals II, 445 12th Street, SW., Washington, DC, and also may be purchased from the Commission's copy contractor, International Transcription Services, Inc. (''ITS''), Portals II, 445 12th Street, SW. Room CY–B402, Washington, DC 20554.

Synopsis of Public Notice

Traditionally, MDS spectrum has been used to deliver multichannel video programming services similar to cable television. As noted above, the Commission auctioned 493 BTAs for the provision of these wireless cable services. Since the 1996 auction, the MDS industry has been rapidly evolving. In October 1996, the Commission allowed MDS operators to use their spectrum for high-speed digital data applications, including Internet access. In March 1997, the Wireless Cable Association International, Inc., along with over 100 participants, petitioned the Commission to grant the industry the right to use MDS and Instructional Television Fixed Service (''ITFS'') spectrum for two-way services. Two-way authorization would effectively enable voice, video, and data over the spectrum. In 1998, the Commission approved the use of two-way transmissions on MDS and ITFS frequencies.

In the initial filing window for two-way service, which was held August 14–18, 2000, MDS and ITFS licensees filed approximately 2,267 applications. On April 6, 2001, the Bureau released its first Public Notice announcing the grant of 1,024 of these applications. The Bureau will continue to grant additional two-way applications and on April 16, 2001, the Bureau began the transition to the rolling one-day filing window procedure. Section 21.930(c)(1) of the Commission's rules provides that within five years of the grant of a BTA authorization, the authorization holder must construct MDS stations to provide signals pursuant to section 21.907, 47 CFR 21.907, that are capable of reaching at least two-thirds of the population of the applicable service area, excluding the populations within protected service areas of incumbent stations. The build-out benchmarks were originally established in order to ensure that BTA authorization holders would promptly deliver their anticipated video programming service to the public.

The Bureau proposes to extend the five-year build-out requirement as set forth in § 21.930(a)(1) of the Commission's rules, 47 CFR 21.930(a)(1), by two years. In light of the service rule changes, the timing of the initial filing window, the recent two-way application grants allowing BTA authorization holders to provide broadband service, the forthcoming grants of other pending two-way applications, and the upcoming August 16, 2001 build-out deadline for many BTAs, we tentatively conclude that extension of the five-year build-out requirement by two years for all BTAs will promote the maximization of efficient and effective use of this service. The Bureau believes that it would be inequitable to require authorization holders to follow build-out criteria applicable to rules governing wireless cable operations since many of them are now providing high-speed broadband services.

Federal Communications Commission.

Barbara A. Kreisman,

Chief, Video Services Division, Mass Media Bureau.

[FR Doc. 01–10768 Filed 4–27–01; 8:45 am]

BILLING CODE 6712–01–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 20

RIN 1018–AH79

Migratory Bird Hunting; Proposed 2001–02 Migratory Game Bird Hunting Regulations (Preliminary) With Requests for Indian Tribal Proposals

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule.

SUMMARY: The U.S. Fish and Wildlife Service (hereinafter Service or we) proposes to establish annual hunting regulations for certain migratory game birds for the 2001–02 hunting season. We annually prescribe outside limits (frameworks) within which States may select hunting seasons. We also request proposals from Indian tribes that wish to establish special migratory bird hunting regulations on Federal Indian reservations and ceded lands. Migratory game bird hunting seasons provide hunting opportunities for recreation and sustenance; aid Federal, State, and tribal governments in the management of migratory game birds; and permit harvests at levels compatible with migratory bird population status and habitat conditions.

DATES: You must submit comments for proposed early-season frameworks by July 30, 2001, and for proposed late-season frameworks by September 7, 2001. Tribes should submit proposals and related comments by June 1, 2001.

ADDRESSES: Send your comments on the proposals to the Chief, Division of Migratory Bird Management, U.S. Fish and Wildlife Service, Department of the Interior, ms 634-ARLSQ, 1849 C Street, NW, Washington, DC 20240. All comments received, including names and addresses, will become part of the public record. You may inspect comments during normal business hours in room 634, Arlington Square Building, 4401 North Fairfax Drive, Arlington, Virginia.

FOR FURTHER INFORMATION CONTACT: Ron W. Kokel at: Division of Migratory Bird Management, U.S. Fish and Wildlife Service, Department of the Interior, ms 634-ARLSQ, 1849 C Street, NW, Washington, DC 20240, (703) 358–1714.

SUPPLEMENTARY INFORMATION:

Background and Overview

Migratory game birds are those bird species so designated in conventions between the United States and several foreign nations for the protection and management of these birds. Under the Migratory Bird Treaty Act (16 U.S.C. 703–712), the Secretary of the Interior is authorized to determine when ''hunting, taking, capture, killing, possession, sale, purchase, shipment, transportation, carriage, or export of any * * * bird, or any part, nest or egg'' of migratory game birds can take place and to adopt regulations for this purpose. These regulations must be written based on ''the zones of temperature and the distribution, abundance, economic value, breeding habits, and times and lines of migratory flight of such birds'' and must be updated annually. This responsibility has been delegated to the Fish and Wildlife Service (Service) of the Department of the Interior as the lead Federal agency for managing and conserving migratory birds in the United States.

The Service develops migratory bird hunting regulations by establishing the frameworks, or outside limits, for season lengths, bag limits, and areas for migratory game bird hunting. Acknowledging regional differences in hunting conditions, the Service has administratively divided the nation into four Flyways for the primary purpose of managing waterfowl and obtaining assistance in the formulation of these regulations. Each Flyway (Atlantic, Mississippi, Central, and Pacific) has a Flyway Council, a formal organization generally composed of one member from each State and Province in that Flyway. The Flyway Councils also assist in researching and providing management techniques for Federal, State, and Provincial Governments, as well as private conservation agencies and the general public.

The migratory bird hunting regulations, located at 50 CFR 20, are constrained by three primary factors. Legal and administrative considerations dictate how long the rulemaking process will last. Most importantly though, the biological cycle of migratory birds controls the timing of data-gathering activities and thus the date on which results are available for consideration. The process includes two separate regulations-development schedules, based on early-and late-hunting season regulations. Early seasons pertain to all migratory game bird species in Alaska, Hawaii, Puerto Rico, and the Virgin Islands, migratory game birds other than waterfowl (i.e., dove, woodcock, etc.) and special early waterfowl seasons, such as teal or resident Canada geese. The early season generally begins prior to October 1. Late seasons generally start on or after October 1 and include most waterfowl seasons not already established.

There are basically no differences in the processes for establishing either early- or late-hunting seasons. For each cycle, Service biologists gather, analyze, and interpret survey data and provide this information to all those involved in the process through a series of published status reports and presentations to Flyway Councils and other interested parties. Because the Service is required to take abundance of migratory birds and other factors into consideration, the Service undertakes a number of surveys throughout the year in conjunction with Service Regional Offices, the Canadian Wildlife Service, and State and Provincial wildlife-management agencies. Factors such as population size and trend, geographical distribution, annual breeding effort, the condition of breeding, wintering habitat, the number of hunters, and the anticipated harvest are considered to determine the appropriate frameworks for each species.

After frameworks, or outside limits, are established for season lengths, bag limits, and areas for migratory game bird hunting, migratory game bird management becomes a cooperative effort of State and Federal governments. The Service works together with the States by allowing them certain authority to regulate hunting of migratory birds. After Service establishment of final frameworks for hunting seasons, the States may select season dates, bag limits, and other regulatory options for the hunting seasons. States may be more conservative in their selections than the Federal frameworks but never more liberal.

Consolidation of Notices

For administrative purposes, this document consolidates the notice of intent to establish open migratory bird hunting seasons and the request for tribal proposals with the preliminary proposals for the annual hunting regulations-development process. We will publish the remaining proposed and final rulemaking documents separately. For inquiries on tribal guidelines and proposals, tribes should contact the following personnel:

Region 1—Brad Bortner, U.S. Fish and Wildlife Service, 911 N.E. 11th Avenue, Portland, Oregon 97232–4181; (503) 231–6164

Region 2—Jeff Haskins, U.S. Fish and Wildlife Service, P.O. Box 1306, Albuquerque, New Mexico 87103; (505) 248–7885

Region 3—Steve Wilds, U.S. Fish and Wildlife Service, Federal Building, One Federal Drive, Fort Snelling, Minnesota 55111–4056; (612) 713–5432

Region 4—Frank Bowers, U.S. Fish and Wildlife Service, 1875 Century Boulevard, Room 324, Atlanta, Georgia 30345; (404) 679–4000

Region 5—George Haas, U.S. Fish and Wildlife Service, 300 Westgate Center Drive, Hadley, Massachusetts 01035–9589; (413) 253–8576

Region 6—John Cornely, U.S. Fish and Wildlife Service, P.O. Box 25486, Denver Federal Building, Denver, Colorado 80225; (303) 236–8145

Region 7—Robert Leedy, U.S. Fish and Wildlife Service, 1011 East Tudor Road, Anchorage, Alaska 99503; (907) 786–3423

Notice of Intent To Establish Open Seasons

This notice announces our intent to establish open hunting seasons and daily bag and possession limits for certain designated groups or species of migratory game birds for 2001–02 in the contiguous United States, Alaska, Hawaii, Puerto Rico, and the Virgin Islands, under §§ 20.101 through 20.107, 20.109, and 20.110 of subpart K of 50 CFR part 20.

For the 2001–02 migratory game bird hunting season, we will propose regulations for certain designated members of the avian families Anatidae (ducks, geese, and swans); Columbidae (doves and pigeons); Gruidae (cranes); Rallidae (rails, coots, moorhens, and gallinules); and Scolopacidae (woodcock and snipe). We describe these proposals under Proposed 2001–02 Migratory Game Bird Hunting Regulations (Preliminary) in this document. We published definitions of waterfowl flyways and mourning dove management units, as well as a description of the data used in and the factors affecting the regulatory process, in the March 14, 1990, **Federal Register** (55 FR 9618).

Regulatory Schedule for 2001–02

This document is the first in a series of proposed, supplemental, and final rulemaking documents for migratory game bird hunting regulations. In supplemental proposed rulemakings, we will make proposals relating to the harvest of migratory game birds initiated after this publication is available for public review. Also, we will publish additional supplemental proposals for public comment in the **Federal Register** as population, habitat, harvest, and other information become available.

Because of the late dates when certain portions of these data become available, we anticipate abbreviated comment periods on some proposals. Special circumstances limit the amount of time we can allow for public comment on these regulations. Specifically, two considerations compress the time for the rulemaking process: The need, on one hand, to establish final rules early enough in the summer to allow resource agencies to select and publish season dates and bag limits prior to the beginning of hunting seasons and, on the other hand, the lack of current status data on most migratory game birds until later in the summer. Because the regulatory process is strongly influenced by the times when information is available for consideration, we divide the regulatory process into two segments: early seasons and late seasons.

Major steps in the 2001–02 regulatory cycle relating to open public meetings and **Federal Register** notifications are illustrated in the diagram at the end of this proposed rule. All publication dates of **Federal Register** documents are target dates.

All sections of this and subsequent documents outlining hunting frameworks and guidelines are organized under numbered headings. These headings are:

1. Ducks
2. Sea Ducks
3. Mergansers
4. Canada Geese
5. White-fronted Geese
6. Brant
7. Snow and Ross's (Light) Geese
8. Swans
9. Sandhill Cranes
10. Coots
11. Moorhens and Gallinules
12. Rails
13. Snipe
14. Woodcock
15. Band-tailed Pigeons
16. Mourning Doves
17. White-winged and White-tipped Doves
18. Alaska
19. Hawaii
20. Puerto Rico
21. Virgin Islands
22. Falconry
23. Other

Later sections of this and subsequent documents will refer only to numbered items requiring your attention. Therefore, it is important to note that we will omit those items requiring no attention and remaining numbered items will be discontinuous and appear incomplete.

Requests for Tribal Proposals

Background

Beginning with the 1985–86 hunting season, we have employed guidelines described in the June 4, 1985, **Federal Register** (50 FR 23467) to establish special migratory bird hunting regulations on Federal Indian reservations (including off-reservation trust lands) and ceded lands. We developed these guidelines in response to tribal requests for our recognition of their reserved hunting rights, and for some tribes, recognition of their authority to regulate hunting by both tribal and nontribal members throughout their reservations. The guidelines include possibilities for:

(1) On-reservation hunting by both tribal and nontribal members, with hunting by nontribal members on some reservations to take place within Federal frameworks, but on dates different from those selected by the surrounding State(s);

(2) On-reservation hunting by tribal members only, outside of usual Federal frameworks for season dates and length, and for daily bag and possession limits; and

(3) Off-reservation hunting by tribal members on ceded lands, outside of usual framework dates and season length, with some added flexibility in daily bag and possession limits.

In all cases, tribal regulations established under the guidelines must be consistent with the annual March 10 to September 1 closed season mandated by the 1916 Convention Between the United States and Great Britain (for Canada) for the Protection of Migratory Birds (Convention). The guidelines are capable of application to those tribes that have reserved hunting rights on Federal Indian reservations (including off-reservation trust lands) and ceded lands. They also are capable of application to the establishment of migratory bird hunting regulations for nontribal members on all lands within the exterior boundaries of reservations where tribes have full wildlife management authority over such hunting, or where the tribes and affected States otherwise have reached agreement over hunting by nontribal members on non-Indian lands.

Tribes usually have the authority to regulate migratory game bird hunting by nonmembers on Indian-owned reservation lands, subject to our approval. The question of jurisdiction is more complex on reservations that include lands owned by non-Indians, especially when the surrounding States have established or intend to establish regulations governing migratory bird hunting by non-Indians on these lands. In such cases, we encourage the tribes and States to reach agreement on regulations that would apply throughout the reservations. When appropriate, we will consult with a tribe and State with the aim of facilitating an accord. We also will consult jointly with tribal and State officials in the affected States where tribes may wish to establish special hunting regulations for tribal members on ceded lands. As explained in previous rulemaking documents, it is incumbent upon the tribe and/or the State to request consultation as a result of the proposal being published in the **Federal Register**. We will not presume to make a determination, without being advised by either a tribe or a State, that any issue is or is not worthy of formal consultation.

One of the guidelines provides for the continuation of tribal members' harvest of migratory game birds on reservations where such harvest is a customary practice. We do not oppose this harvest, provided it does not take place during the closed season required by the Convention, and it is not so large as to adversely affect the status of the migratory bird resource. For several years, we have reached annual agreement with tribes for migratory bird hunting by tribal members on their lands or on lands where they have reserved hunting rights. We will continue to consult with tribes that wish to reach a mutual agreement on hunting regulations for on-reservation hunting by tribal members.

Tribes should not view the guidelines as inflexible. Nevertheless, we believe that they provide appropriate opportunity to accommodate the reserved hunting rights and management authority of Indian tribes while ensuring that the migratory bird resource receives necessary protection. The conservation of this important international resource is paramount. Use of the guidelines is not required if a tribe wishes to observe the hunting regulations established by the State(s) in which the reservation is located.

Details Needed in Tribal Proposals

Tribes that wish to use the guidelines to establish special hunting regulations for the 2001–02 hunting season should submit a proposal that includes:

(1) The requested hunting season dates and other details regarding regulations;

(2) Harvest anticipated under the requested regulations;

(3) Methods that will be employed to measure or monitor harvest (mail-questionnaire survey, bag checks, etc.);

(4) Steps that will be taken to limit level of harvest, where it could be shown that failure to limit such harvest would seriously impact the migratory bird resource; and

(5) Tribal capabilities to establish and enforce migratory bird hunting regulations.

A tribe that desires the earliest possible opening of the waterfowl season should specify this request in their proposal, rather than request a date that might not be within the final Federal frameworks. Similarly, unless a tribe wishes to set more restrictive regulations than Federal regulations will permit, the proposal should request the same daily bag and possession limits and season length for ducks and geese that Federal regulations are likely to permit the States in the Flyway in which the reservation is located.

Tribal Proposal Procedures

We will publish details of tribal proposals for public review in later **Federal Register** documents. Because of the time required for our and public review, Indian tribes that desire special migratory bird hunting regulations for the 2001–02 hunting season should submit their proposals as soon as possible, but no later than June 1, 2001. Tribes should direct inquiries regarding the guidelines and proposals to the appropriate Service Regional Office listed under the caption **SUPPLEMENTARY INFORMATION.** Tribes that request special migratory game bird hunting regulations for tribal members on ceded lands should send a courtesy copy of the proposal to officials in the affected State(s).

Public Comments Solicited

The Department of the Interior's policy is, whenever practicable, to afford the public an opportunity to participate in the rulemaking process. Accordingly, we invite interested persons to submit written comments, suggestions, or recommendations regarding the proposed regulations. Before promulgation of final migratory game bird hunting regulations, we will take into consideration all comments received. Such comments, and any additional information received, may lead to final regulations that differ from these proposals. We invite interested persons to participate in this rulemaking by submitting written comments to the address indicated under the caption **ADDRESSES.**

You may inspect comments received on the proposed annual regulations during normal business hours at the Service's office in room 634, 4401 North Fairfax Drive, Arlington, Virginia. For each series of proposed rulemakings, we will establish specific comment periods. We will consider, but possibly may not respond in detail to, each comment. As in the past, we will summarize all comments received during the comment period and respond to them after the closing date in any final rules.

NEPA Consideration

NEPA considerations are covered by the programmatic document, ''Final Supplemental Environmental Impact Statement: Issuance of Annual Regulations Permitting the Sport Hunting of Migratory Birds (FSES 88–14),'' filed with the Environmental Protection Agency on June 9, 1988. We published Notice of Availability in the **Federal Register** on June 16, 1988 (53 FR 22582). We published our Record of Decision on August 18, 1988 (53 FR 31341). In addition, an August 1985 environmental assessment entitled ''Guidelines for Migratory Bird Hunting Regulations on Federal Indian Reservations and Ceded Lands'' is available from the address indicated under the caption **ADDRESSES.**

Endangered Species Act Consideration

Prior to issuance of the 2001–02 migratory game bird hunting regulations, we will consider provisions of the Endangered Species Act of 1973, as amended, (16 U.S.C. 1531–1543; hereinafter the Act) to ensure that hunting is not likely to jeopardize the continued existence of any species designated as endangered or threatened or modify or destroy its critical habitat and is consistent with conservation programs for those species. Consultations under Section 7 of this Act may cause us to change proposals in this and future supplemental proposed rulemaking documents.

Executive Order (E.O.) 12866

This rule is economically significant and was reviewed by the Office of Management and Budget (OMB) under E.O. 12866. E.O. 12866 requires each agency to write regulations that are easy to understand. We invite comments on how to make this rule easier to understand, including answers to questions such as the following:

(1) Are the requirements in the rule clearly stated?

(2) Does the rule contain technical language or jargon that interferes with its clarity?

(3) Does the format of the rule (grouping and order of sections, use of headings, paragraphing, etc.) aid or reduce its clarity?

(4) Would the rule be easier to understand if it were divided into more (but shorter) sections?

(5) Is the description of the rule in the **SUPPLEMENTARY INFORMATION** section of the preamble helpful in understanding the rule?

(6) What else could we do to make the rule easier to understand?

Regulatory Flexibility Act

These regulations have a significant economic impact on substantial numbers of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). We analyzed the economic impacts of the annual hunting regulations on small business entities in detail, and the Service issued a Small Entity Flexibility Analysis (Analysis) in 1998. The Analysis documented the significant beneficial economic effect on a substantial number of small entities. The primary source of information about hunter expenditures for migratory game bird hunting is the National Hunting and Fishing Survey, which is conducted at 5-year intervals. The Analysis utilized the 1996 National Hunting and Fishing Survey and the U.S. Department of Commerce's County Business Patterns from which it was estimated that migratory bird hunters would spend between $429 million and $1,084 million at small businesses in 1998. Copies of the Analysis are available upon request from the Division of Migratory Bird Management.

Small Business Regulatory Enforcement Fairness Act

This rule is a major rule under 5 U.S.C. 804(2), the Small Business Regulatory Enforcement Fairness Act. For the reasons outlined above, this rule has an annual effect on the economy of $100 million or more. However, because this rule establishes hunting seasons, we do not plan to defer the effective date under the exemption contained in 5 U.S.C. 808(1).

Paperwork Reduction Act

We examined these regulations under the Paperwork Reduction Act of 1995. The various recordkeeping and reporting requirements imposed under regulations established in 50 CFR part 20, Subpart K, are utilized in the formulation of migratory game bird hunting regulations. Specifically, OMB has approved the information collection requirements of the Migratory Bird Harvest Information Program and assigned clearance number 1018–0015 (expires 09/30/2001). This information is used to provide a sampling frame for voluntary national surveys to improve our harvest estimates for all migratory game birds in order to better manage these populations. OMB has also approved the information collection requirements of the Sandhill Crane Harvest Questionnaire and assigned clearance number 1018–0023 (expires 07/30/2003). The information from this survey is used to estimate the magnitude and the geographical and

temporal distribution of the harvest, and the portion it constitutes of the total population.

A Federal 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.

Unfunded Mandates Reform Act

We have determined and certify, in compliance with the requirements of the Unfunded Mandates Reform Act, 2 U.S.C. 1502 *et seq.*, that this rulemaking will not impose a cost of $100 million or more in any given year on local or State government or private entities.

Civil Justice Reform—Executive Order 12988

The Department, in promulgating this proposed rule, has determined that these regulations meet the applicable standards found in Sections 3(a) and 3(b)(2) of Executive Order 12988.

Takings Implication Assessment

In accordance with Executive Order 12630, this proposed rule, authorized by the Migratory Bird Treaty Act, does not have significant takings implications and does not affect any constitutionally protected property rights. This rule will not result in the physical occupancy of property, the physical invasion of property, or the regulatory taking of any property. In fact, these rules allow hunters to exercise otherwise unavailable privileges and, therefore, reduce restrictions on the use of private and public property.

Federalism Effects

Due to the migratory nature of certain species of birds, the Federal Government has been given responsibility over these species by the Migratory Bird Treaty Act. We annually prescribe frameworks from which the States make selections and employ guidelines to establish special regulations on Federal Indian reservations and ceded lands. This process preserves the ability of the States and tribes to determine which seasons meet their individual needs. Any State or tribe may be more restrictive than the Federal frameworks at any time. The frameworks are developed in a cooperative process with the States and the Flyway Councils. This process allows States to participate in the development of frameworks from which they will make selections, thereby having an influence on their own regulations. These rules do not have a substantial direct effect on fiscal capacity, change the roles or responsibilities of Federal or State governments, or intrude on State policy or administration. Therefore, in accordance with Executive Order 13132, these regulations do not have significant federalism effects and do not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

List of Subjects in 50 CFR Part 20

Exports, Hunting, Imports, Reporting and recordkeeping requirements, Transportation, Wildlife.

The rules that eventually will be promulgated for the 2001–02 hunting season are authorized under 16 U.S.C. 703–711, 16 U.S.C. 712, and 16 U.S.C. 742a–j.

Dated: April 19, 2001.

Joseph E. Doddridge,

Acting Assistant Secretary for Fish and Wildlife and Parks.

Proposed 2001–02 Migratory Game Bird Hunting Regulations (Preliminary)

Pending current information on populations, harvest, and habitat conditions, and receipt of recommendations from the four Flyway Councils, we may defer specific framework proposals (including opening and closing dates, season lengths, and bag limits). Unless otherwise specified, we are proposing no change from the final 2000–01 frameworks of August 23 and September 27, 2000 (65 FR 51496 and 58152). Specific preliminary proposals that vary from the 2000–01 frameworks and issues requiring early discussion, action, or the attention of the States or tribes are contained below:

1. Ducks

Categories used to discuss issues related to duck harvest management are: (A) General Harvest Strategy, (B) Regulatory Alternatives, (C) Zones and Split Seasons, and (D) Special Seasons/Species Management. The categories correspond to previously published issues/discussion, and only those containing substantial recommendations are discussed below.

A. General Harvest Strategy

All of our success in duck-harvest management notwithstanding, we continue to be faced with uncertainty about the biological and sociological impacts of hunting regulations. In 1995, we embarked on a regulatory approach known as adaptive harvest management (AHM), which is intended to help address that uncertainty. The AHM approach recognizes that we cannot predict the consequences of hunting regulations with certainty, and provides a means for making objective decisions despite this uncertainty. In addition, a tightly integrated cycle of monitoring, assessment, and decision-making is required under AHM to better understand the relationships among hunting regulations, harvests, and waterfowl abundance. More detailed information about AHM can be found on the Internet at: http://www.fws.gov/r9mbmo/homepg.html.

Since 1995, AHM regulatory strategies have been based on the status of midcontinent mallards, which are defined as those breeding from South Dakota to Alaska (Federal survey strata 1–18, 20–50, and 75–77), and in Minnesota, Wisconsin, and Michigan. An optimal regulatory alternative for midcontinent mallards is based on breeding population size and water conditions in the Canadian prairies, and on empirical weights assigned to four competing models of population dynamics. The same regulatory alternative is applied in all four Flyways, although season lengths and bag limits are Flyway-specific.

The first application of the AHM process involved midcontinent mallards because of their ubiquitous distribution, their importance in the harvest, and because the data and understanding associated with mallards surpassed that of all other species. In the last few years, however, we have begun to examine other populations of mallards, as well as other species, in a search for an appropriate AHM approach to these stocks.

A growing concern relates to how all these stock-specific applications ultimately will fit together in a coherent approach to duck harvest management. For example:

- How much biological variation among duck stocks should we account for in the design of regulatory strategies?
- Should the traditional Flyway-based approach to duck harvest management be modified to take advantage of new information and capabilities?
- What monitoring and assessment capabilities will be needed to support these refinements?
- What are realistic expectations of our ability to reduce uncertainty through the experience of management?
- Even more fundamentally, should sustainable harvest be the sole or even principal currency by which we measure success?

These questions and others suggest that the time has arrived to contemplate the basic goals and overall framework of duck harvest management, and how we might use the AHM process to help us steer an appropriate course. Moreover, the last Supplemental Environmental Impact Statement (SEIS) on migratory bird hunting was issued in 1988, and

our approach to duck harvest management has evolved beyond the preferred alternative identified at that time. Therefore, it is our intent to begin the process of preparing a new EIS that will describe new alternatives brought to light by our experience with AHM.

In beginning the dialogue, we suggest the need to focus on three key themes:

(1) Goal setting—AHM can produce optimal regulatory decisions in the face of uncertainty, but, if and only if, there is agreement about the goals and objectives of harvest management. Clearly, the goals of duck harvest management extend well beyond simple measures of hunter success and population size, and many of the difficulties in duck harvest management today probably relate more to ambiguity in objectives, rather than to uncertainty about biological impacts. Tacit disagreement over management objectives poses a serious threat to the long-term viability of AHM.

(2) Limits to system control—There are both theoretical and practical limits to our ability to predict, control, and measure the size of waterfowl populations and harvests and, as a consequence, operational constraints on short-term hunting opportunity and on the learning needed to increase long-term performance. The waterfowl management community needs to better explore, understand, and acknowledge these limits, and to develop regulatory alternatives and strategies that avoid the most undesirable consequences of those limits, while meeting reasonable demands for hunting opportunity.

(3) Management scale—The history of duck harvest management has been characterized by efforts to account for increasingly more spatial, temporal, and organizational variability in waterfowl demographics. We have begun to question the wisdom of this approach, given the inevitable tradeoff between harvest benefits and the direct and indirect costs of managing at progressively finer scales. It remains to be seen what level of resolution ultimately will be most appropriate in the AHM process, but we are increasingly concerned about what we see as unrealistic expectations for accommodating small-scale variation in waterfowl population dynamics.

We look forward to exploring these and other duck-harvest management issues with the Flyway Councils and other stakeholders in the coming year. We hope these discussions will culminate in the issuance of a new EIS for migratory bird hunting sometime in 2004.

AHM for Eastern Mallards

For the purposes of harvest regulation, eastern mallards are defined as those breeding in southern Ontario and Quebec (Federal survey strata 51–54 and 56), and in New Hampshire, Vermont, Massachusetts, Connecticut, Rhode Island, New York, Pennsylvania, New Jersey, Delaware, Maryland, and Virginia. In 2000, with assistance from the Atlantic Flyway Council, we proposed mechanisms by which the status of eastern mallards could be considered in the development of a regulatory strategy for the Atlantic Flyway. However, the Service has not made a final decision about whether the Atlantic Flyway regulatory strategy also should be solely based on the status of eastern mallards. This decision was deferred pending further analyses of the implications of this decision for midcontinent mallards and other species. We also have concerns about the timing of this decision in the face of previous comments about the future of duck harvest management. Therefore, we consider the approach used last year to consider only eastern mallard status in the selection of Atlantic Flyway regulations as provisional. It is our recommendation, however, to continue this approach for the 2001–02 hunting season.

C. Zones and Split Seasons

In 1990, because of concerns about the proliferation of zones and split seasons for duck hunting, a cooperative review and evaluation of the historical use of zone/split options was conducted. This review did not show that the proliferation of these options had increased harvest pressure; however, the ability to detect the impact of zone/split configurations was poor because of unreliable response variables, the lack of statistical tests to differentiate between real and perceived changes, and the absence of adequate experimental controls. Consequently, guidelines were established to provide a framework for controlling the proliferation of changes in zone/split options. The guidelines identified a limited number of zone/split configurations that could be used for duck hunting and restricted the frequency of changes in these configurations to 5-year intervals. In 1996, the guidelines were revised to provide States greater flexibility in using their zone/split arrangements. Open seasons for changes occurred in 1991 for the 1991–1995 period and in 1996 for 1996–2000. The third open season will occur this year when zone/split configurations will be established for the 2001–2005 period.

In response to recommendations from the Flyway Councils, we considered changes to the current zone/split guidelines during last year's late-season regulations cycle. We believe that the guidelines implemented in 1996 (61 FR 38000) have achieved their intended objectives while allowing States sufficient flexibility to address differences in physiography, climate, and other factors. Accordingly, as announced in last year's **Federal Register** (65 FR 51176), we made no changes in the 1996 guidelines. A copy of the guidelines is included herein for information and use in selecting zone/split configuration for 2001–2005.

As indicated in the guidelines, States that made changes during the last open season should provide us a review of pertinent data (e.g., estimates of harvest, hunter numbers, hunter success, etc.) by April 15, 2001. However, it would be in the interest of each affected State to complete this report as soon as possible for internal consideration of any changes they might wish to make for the next 5-year period. We reiterate that this review does not have to be the result of a rigorous experimental design, but nonetheless should assist us in ascertaining whether major changes in harvest or hunter activity occurred as a result of zone/split regulations.

We also request that by April 15, 2001, States notify us whether or not they plan to change their zone/split configurations for the next 5-year period (2001–2005). Those States wishing to change their configuration should submit a proposal for the change by this date.

Guidelines for Duck Zones and Split Seasons, 2001–2005

The following zone/split-season guidelines apply only for the *regular* duck season:

1. A zone is a geographic area or portion of a State, with a contiguous boundary, for which independent dates may be selected for the regular duck season.

2. Consideration of changes for management-unit boundaries is not subject to the guidelines and provisions governing the use of zones and split seasons for ducks.

3. Only minor (less than a county in size) boundary changes will be allowed for any grandfather arrangement, and changes are limited to the open season.

4. Once a zone/split option is selected during an open season, it must remain in place for the following 5 years.

For the 2001–2005 period, any State may continue the configuration used in

1996–2000. If changes are made, the zone/split-season configuration must conform to one of the following options:

1. Three zones with no splits,
2. Split seasons (no more than 3 segments) with no zones, or
3. Two zones with the option for 2-way split seasons in one or both zones.

At the end of 5 years after any changes in splits or zones, States will be required to provide the Service with a review of pertinent data (e.g., estimates of harvest, hunter numbers, hunter success, etc.). This review does not have to be the result of a rigorous experimental design, but nonetheless should assist the Service in ascertaining whether major undesirable changes in harvest or hunter activity occurred as a result of split and zone regulations. The next open season for changes in zone/split configurations will be in 2006.

Grandfathered Zone/Split Arrangements

When the zone/split guidelines were first implemented in 1991, several States had completed experiments with zone/split arrangements different from Options 1–3 above. Those States were offered a one-time opportunity to continue those arrangements, with the stipulation that only minor changes could be made to zone boundaries; and if they ever wished to change their zone/split arrangement, the new arrangement would have to conform to one of the 3 options identified above. If a grandfathered State changed its zoning arrangement, it could not go back to the grandfathered arrangement it previously had. Current grandfathered arrangements are:

Atlantic Flyway:
- Massachusetts, New Jersey—3 zones with 2-segment splits in each zone
- New York—5 zones with 2-segment splits in each zone
- Pennsylvania—4 zones with 2-segment splits in each zone

Mississippi Flyway:
- Michigan, Indiana, Ohio—3 zones with 2-segment splits in each zone

Central Flyway:
- Nebraska—5 zones with 2-segment splits in each zone
- South Dakota—4 zones with 2-segment splits in each zone

Pacific Flyway:
- Alaska—5 zones with 2-segment splits in 1 zone
- California—5 zones with 2-segment splits in each zone

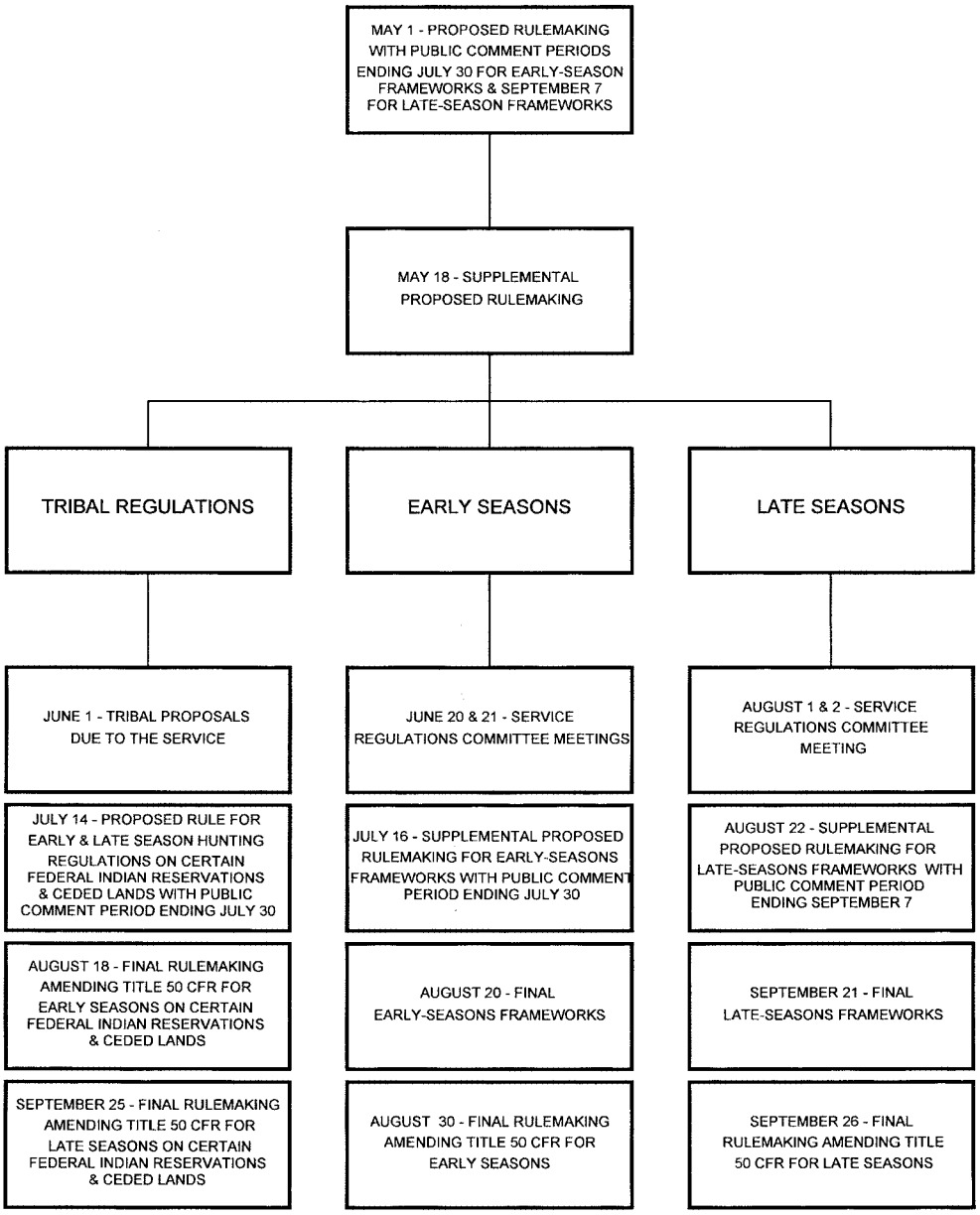
D. Special Seasons/Species Management

iii. September Teal/Wood Duck Seasons

The Wood Duck Population Monitoring Initiative showed that current wood duck monitoring efforts resulted in information that was capable of being used to manage wood ducks at no finer resolution than the Flyway level. Current databases do not allow proper evaluation of special September wood duck seasons on a State-by-State basis. In 1998, we stated that, after September 2000, the special wood duck seasons in Florida, Kentucky, and Tennessee would be discontinued (August 28, 1998; 63 FR 46126); the year 2000 was the last permitted for these seasons. The Service, in cooperation with the Atlantic and Mississippi Flyway Councils, is in the process of developing wood duck population models that will guide regular-season harvest management in the future. These models, and the accompanying evaluations of potential Flyway-wide expansions in harvest opportunity, will be developed prior to Spring 2001.

BILLING CODE 4310–55–P

2001 SCHEDULE OF REGULATIONS MEETINGS AND FEDERAL REGISTER PUBLICATIONS



DATES SHOWN RELATIVE TO PUBLICATION OF FEDERAL REGISTER DOCUMENTS ARE TARGET DATES

[FR Doc. 01–10696 Filed 4–27–01; 8:45 am]
BILLING CODE 4310–55–C

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 600

[I.D. 041801B]

Magnuson-Stevens Act Provisions; General Provisions for Domestic Fisheries; Applications 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: NMFS announces that the Administrator, Northeast Region, NMFS (Regional Administrator), has received a proposal to conduct experimental fishing and has made a preliminary determination that the subject EFP application contains all the required information and warrants further consideration. A preliminary determination has also been made that the activities authorized under the EFP will be consistent with the goals and objectives of the Northeast Multispecies Fishery Management Plan (FMP) and within the scope of earlier analyses of impacts. However, further review and consultation may be necessary before a final determination is made to issue an EFP. Therefore, NMFS announces that the Regional Administrator is considering whether to issue an EFP that would allow a single vessel to conduct fishing operations otherwise restricted by regulations governing the fisheries of the Northeastern United States. The University of Massachusetts at Dartmouth and Manomet Center for Conservation Sciences (Manomet) have submitted an application for an EFP to allow them to target multispecies in order to investigate the selectivity of various shapes and sizes of knotless trawl mesh, and the selectivity of finfish excluder grates with two different bar-spacings and configurations.

DATES: Comments must be received by May 15, 2001.

ADDRESSES: Comments should be sent to Patricia Kurkul, Regional Administrator, NMFS, Northeast Regional Office, One Blackburn Drive, Gloucester, MA 01930. Mark on the outside of the envelope ''Comments on Proposed Experimental Fishery.''

FOR FURTHER INFORMATION CONTACT: Tom Warren, Fishery Management Specialist, 978–281–9347.

SUPPLEMENTARY INFORMATION: The regulations that govern exempted experimental fishing, at 50 CFR 600.745, allow the Regional Administrator to authorize for certain purposes the targeting or incidental harvest of managed species that would otherwise be prohibited. An EFP to authorize such activity may be issued, provided there is adequate opportunity for the public to comment on the EFP application, and the conservation goals and objectives of the FMP are not compromised.

The University of Massachusetts at Dartmouth and Manomet, submitted to NMFS on April 5, 2001, an application for an EFP to conduct research in the multispecies fishery on Georges Bank. The research would target multispecies in the Georges Bank Seasonal Closure area, with the objective of investigating the selectivity of various shapes and sizes of knotless trawl mesh, and the selectivity of finfish excluder grates with two different bar-spacings and configurations. Specifically, the research would utilize a standard 6.0–inch (15.3–cm) diamond mesh as control, and compare its selectivity to 6.5–inch (16.5–cm) hexagon, 6.5-inch (16.5-cm) square, and 6.0–inch (15.3-cm) hexagon, knotless mesh. The two configurations of finfish excluder grates to be tested on separate tows would be horizontal bars spaced at 3 inches (7.6–cm) and vertical bars spaced at 4 inches (10.2–cm). A double cod-end trawl design will be utilized on both the mesh and excluder grate trials. The goal of the research is to develop trawl gear designed to target flatfish that allows greater escapement of gadoids (e.g., cod and haddock), than the flatfish trawls that are currently utilized by the industry.

A single vessel would be issued an EFP to allow a total of 42 tows. EFPs would be required to exempt the vessel from the Days-at-Sea, closed area, and mesh restrictions of the FMP. The proposed timing and location of the research, and the applicant's justification for requesting an exemption to the Georges Bank Seasonal Closure Area is that the relatively high numbers of flatfish and gadoids that are available in that area would allow conclusive results to be obtained in a cost-effective manner. The applicant estimates that the research will take 6 to 8 days to complete.

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

Dated: April 24, 2001.

Bruce C. Morehead,

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

[FR Doc. 01–10653 Filed 4–27–01; 8:45 am]
BILLING CODE 3510–22–S

Notices

Federal Register

Vol. 66, No. 83

Monday, April 30, 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

Agricultural Research Service

Notice of Federal Invention Available for Licensing and Intent To Grant Exclusive License

AGENCY: Agricultural Research Service, USDA.

ACTION: Notice of availability and intent.

SUMMARY: Notice is hereby given that the table grape variety designated ''Princess'' is available for licensing and that the U.S. Department of Agriculture, Agricultural Research Service, intends to grant to the California Table Grape Commission of Fresno, California, an exclusive license to this variety in selected countries outside the United States where breeder's rights are available.

DATES: Comments must be received on or before July 30, 2001.

ADDRESSES: Send comments to: USDA, ARS, Office of Technology Transfer, 5601 Sunnyside Avenue, Rm. 4–1158, Beltsville, Maryland 20705–5131.

FOR FURTHER INFORMATION CONTACT: June Blalock of the Office of Technology Transfer at the Beltsville address given above; telephone: 301–504–5257.

SUPPLEMENTARY INFORMATION: The Federal Government's intellectual property rights to this invention are assigned to the United States of America, as represented by the Secretary of Agriculture. It is in the public interest to so license this invention as the California Table Grape Commission has submitted a complete and sufficient application for a license. The prospective exclusive license will be royalty-bearing and will comply with the terms and conditions of 35 U.S.C. 209 and 37 CFR 404.7. The prospective exclusive license may be granted unless, within ninety (90) days from the date of this published Notice, the Agricultural Research Service receives written evidence and argument which establishes that the grant of the license would not be consistent with the requirements of 35 U.S.C. 209 and 37 CFR 404.7.

Michael D. Ruff,

Assistant Administrator.

[FR Doc. 01–10605 Filed 4–27–01; 8:45 am]

BILLING CODE 3410–03–P

DEPARTMENT OF AGRICULTURE

Agricultural Research Service

Notice of Intent To Grant Exclusive License

AGENCY: Agricultural Research Service, USDA.

ACTION: Notice of intent.

SUMMARY: Notice is hereby given that the U.S. Department of Agriculture, Agricultural Research Service, intends to grant to Circle One Global, Inc., of Cuthbert, Georgia, an exclusive license to the inventions disclosed in U.S. Patent No. 5,292,661 issued on March 8, 1994, entitled ''Non-Aflatoxigenic Aspergillus Parasiticus Strains and Their Use in Controlling Aflatoxin Contamination;'' U.S. Patent No. 6,027,724 issued on February 22, 2000, entitled ''Biological Control of Aflatoxin and Cyclopiazonic Acid Contamination of Crops Using a Nontoxigenic Strain of Aspergillus Flavus;'' and U.S. Patent Application Serial No. 09/621,466 filed on July 21, 2000, entitled ''Biological Control Formulations Containing Spores of Non-Toxigenic Strains of Fungi for Toxin Control of Foods.'' Notice of Availability for U.S. Patent No. 5,292,661 was published in the **Federal Register** on December 17, 1991, Notice of Availability for U.S. Patent No. 6,027,724 was published in the **Federal Register** on November 3, 1999, and Notice of Availability for U.S. Patent Application Serial No. 09/621,466 was published in the **Federal Register** on March 13, 2001.

DATES: Comments must be received on or before June 29, 2001.

ADDRESSES: Send comments to: USDA, ARS, Office of Technology Transfer, 5601 Sunnyside Avenue, Rm. 4–1158, Beltsville, Maryland 20705–5131.

FOR FURTHER INFORMATION CONTACT: June Blalock of the Office of Technology Transfer at the Beltsville address given above; telephone: 301–504–5989.

SUPPLEMENTARY INFORMATION: The Federal Government's patent rights in this invention are assigned to the United States of America, as represented by the Secretary of Agriculture. It is in the public interest to so license the U.S. Government's rights in this invention as Circle One Global, Inc., has submitted a complete and sufficient application for a license. The prospective exclusive license will be royalty-bearing and will comply with the terms and conditions of 35 U.S.C. 209 and 37 CFR 404.7. The prospective exclusive license may be granted unless, within sixty (60) days from the date of this published Notice, the Agricultural Research Service receives written evidence and argument which establishes that the grant of the license would not be consistent with the requirements of 35 U.S.C. 209 and 37 CFR 404.7.

Michael D. Ruff,

Assistant Administrator.

[FR Doc. 01–10603 Filed 4–27–01; 8:45 am]

BILLING CODE 3410–03–P

DEPARTMENT OF AGRICULTURE

Agricultural Research Service

Notice of Federal Invention Available for Licensing and Intent To Grant Coexclusive Licenses

AGENCY: Agricultural Research Service, USDA.

ACTION: Notice of availability and intent.

SUMMARY: Notice is hereby given that U.S. Patent No. 6,061,875 entitled ''Powered Roll Gin Stand,'' issued May 16, 2000, is available for licensing and that the U.S. Department of Agriculture, Agricultural Research Service, intends to grant to J&F Saw and Gin Machinery, Inc. and to Scott Gin Machinery, Inc., both of Lubbock, Texas, coexclusive licenses to this invention.

DATES: Comments must be received on or before July 30, 2001.

ADDRESSES: Send comments to: USDA, ARS, Office of Technology Transfer, 5601 Sunnyside Avenue, Rm. 4–1158, Beltsville, Maryland 20705–5131.

FOR FURTHER INFORMATION CONTACT: June Blalock of the Office of Technology Transfer at the Beltsville address given above; telephone: 301–504–5257.

SUPPLEMENTARY INFORMATION: The Federal Government's patent rights to this invention are assigned to the United States of America, as represented by the Secretary of Agriculture. It is in the public interest to so license this invention as J&F Saw and Gin Machinery, Inc. and Scott Gin Machinery, Inc. have submitted complete and sufficient applications for a license. The prospective coexclusive licenses will be royalty-bearing and will comply with the terms and conditions of 35 U.S.C. 209 and 37 CFR 404.7. The prospective coexclusive license may be granted unless, within ninety (90) days from the date of this published Notice, the Agricultural Research Service receives written evidence and argument which establishes that the grant of the license would not be consistent with the requirements of 35 U.S.C. 209 and 37 CFR 404.7.

Michael D. Ruff,

Assistant Administrator.

[FR Doc. 01–10604 Filed 4–27–01; 8:45 am]

BILLING CODE 3410–03–P

DEPARTMENT OF AGRICULTURE

Food and Nutrition Service

Commodity Supplemental Food Program: Elderly Income Guidelines

AGENCY: Food and Nutrition Service, USDA.

ACTION: Notice.

SUMMARY: This notice announces the adjusted income guidelines to be used by State agencies in determining the eligibility of elderly persons applying to participate in the Commodity Supplemental Food Program. These guidelines are to be used in conjunction with the regulations found at 7 CFR part 247.

EFFECTIVE DATE: April 30, 2001.

FOR FURTHER INFORMATION CONTACT: Lillie F. Ragan, Assistant Branch Chief, Household Programs Branch, U.S. Department of Agriculture, 3101 Park Center Drive, Alexandria, Virginia 22302–1594, or telephone (703) 305–2662.

SUPPLEMENTARY INFORMATION:

Regulatory Flexibility Act

This action is not a rule as defined by the Regulatory Flexibility Act (5 U.S.C. 601–612) and thus is exempt from the provisions of that Act.

Paperwork Reduction Act

This notice does not contain reporting or recordkeeping requirements subject to approval by the Office of Management and Budget in accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3507).

Executive Order 12372

This program is listed in the Catalog of Federal Domestic Assistance Programs under No. 10.565 and is subject to the provisions of Executive Order 12372, which requires intergovernmental consultation with State and local officials (7 CFR part 3015, subpart V, 48 FR 29112).

Description

The Food Security Act of 1985 (Pub. L. 99–198) amended section 5 of the Agriculture and Consumer Protection Act of 1973 (7 U.S.C. 612c note) to require that the Secretary permit agencies administering the Commodity Supplemental Food Program (CSFP) to serve low-income elderly persons if such service can be provided without reducing service levels for women, infants, and children. The law also mandates establishment of income eligibility requirements for elderly participation. Prior to enactment of Pub. L. 99–198, elderly participation was restricted by law to three designated pilot projects which served the elderly in accordance with agreements with the Department.

To implement the CSFP mandates of Pub. L. 99–198, the Department published an interim rule on September 17, 1986 at 51 FR 32895 and a final rule on February 18, 1988, at 53 FR 4831. These regulations defined ''elderly persons'' as persons who are 60 years of age or older (7 CFR 247.2). The final rule further stipulates that elderly persons certified on or after September 17, 1986 must have ''household income at or below 130 percent of the Federal Poverty Income Guidelines published annually by the Department of Health and Human Services.'' (7 CFR 247.7(a)(3)).

The Federal Poverty Income Guidelines are revised annually to reflect changes in the Consumer Price Index. The revision for 2001 was published by the Department of Health and Human Services in the **Federal Register** on February 16, 2001 at 66 FR 10695. To establish income limits of 130 percent, the guidelines were multiplied by 1.30 and the results rounded up to the next whole dollar.

At this time, the Department is publishing the income limits of 130 percent of the poverty income guidelines. The table in this notice contains the income limits by household size to be used for elderly certification in the CSFP. These income guidelines will be effective on the date that they are published in the **Federal Register** and will remain in effect until notification of revised guidelines in 2002.

FNS INCOME ELIGIBILITY GUIDELINES FOR THE ELDERLY IN CSFP (130 PERCENT OF POVERTY INCOME GUIDELINES)

[Effective April 30, 2001]

Family size	Annual	Month	Week
1	11,167	931	215
2	15,093	1,258	291
3	19,019	1,585	366
4	22,945	1,913	442
5	26,871	2,240	517
6	30,797	2,567	593
7	34,723	2,894	668
8	38,649	3,221	744
For each additional family member add	+3,926	+328	+76

Authority: Pub. L. 93–86 (7 U.S.C. 612c note)

Dated: April 24, 2001.

George A. Braley,

Acting Administrator, Food and Nutrition Service.

[FR Doc. 01–10627 Filed 4–27–01; 8:45 am]

BILLING CODE 3410–30–P

DEPARTMENT OF AGRICULTURE

Forest Service

Stimson Access Project, Idaho Panhandle National Forests, Pend Oreille County, WA

AGENCY: Forest Service, USDA.

ACTION: Notice of intent to prepare an environmental impact statement.

SUMMARY: The USDA Forest Service will prepare an environmental impact statement (EIS) to disclose the potential environmental effects of authorizing an easement across National Forest System lands to private property owned by Stimson Lumber Company. The project is located on the Priest Lake Ranger District, Idaho Panhandle National Forests, Pend Oreille County, Washington.

The proposed action includes issuing an easement for the purpose of road building to access the private inholding. Specific activities would include removal of road right-of-way timber, surfacing of the road, installation of drainage structures, seeding, noxious weed treatment and installation of a barrier to limit access. These management activities will be administered by the Priest Lake Ranger

District of the Idaho Panhandle National Forests in Bonner County, Idaho. This EIS will tier to the Idaho Panhandle National Forests Forest Plan (September 1987).

DATES: On February 28, 2001, the Forest Service produced an Environmental Assessment (EA) and provided a 30-day comment period. Instead of providing another comment period following the publication of this notice, we will incorporate the comments we received on the EA into the Draft EIS. There will be a 45-day review and comment period on the Draft EIS prior to the completion of a Final EIS.

ADDRESSES: Submit written comments and suggestions on the proposed management activities or request to be placed on the project mailing list to Stimson Access Project, c/o David Asleson, Priest Lake Ranger District, 32203 Highway 57, Priest River, Idaho 83856.

FOR FURTHER INFORMATION CONTACT: Debbie Butler, Project Team Leader, Priest Lake Ranger District, 32203 Highway 57, Priest River, ID 83856; send e-mail to dabutler@fs.fed.us.

SUPPLEMENTARY INFORMATION: Based on policy established in the Final Rule for the Forest Transportation System (36 CFR part 212), it was determined that an EIS should be prepared.

The project includes approximately 4 acres on National Forest System land. The area is situated totally within Pend Oreille County, Washington, approximately 12 miles northwest of the Priest Lake Ranger District. The legal description for the project is as follows: Sections 8; Township 36 North; Range 45 East and Sections 4; Township 36 North, Range 45 East.

As Deciding Officer, I will decide what action will occur on National Forest lands. I also will decide specific project mitigation measures, as necessary, to achieve Forest Plan objectives and standards for affected resources.

Public participation plays an important role in the environmental analysis process. The initial public participation process for this analysis began April 7, 1998. An environmental assessment was produced in February 2001. The decision to prepare an EIS occurred on April 12, 2001. The mailing list for public scoping will include those individuals who have previously expressed interest in this project as well as those responding to the Idaho Pandhandle National Forests Quarterly Schedule of Proposed Actions. In addition, the public is encouraged to visit with Forest Service officials during the analysis and prior to the decision. The Forest Service will also be seeking information, comments, and assistance from Federal, State, and local agencies and other individuals or organizations that may be interested in or affected by the proposed actions.

Comments from the public and other agencies will be used in preparation of the Draft EIS. Some public concerns have already been expressed through earlier scoping and the following significant issues have been identified: threatened and endangered wildlife habitat, inventoried roadless area values, watershed concerns, and fisheries concerns. This list will be verified, expanded, or modified based on public scoping and interdisciplinary review for this proposal.

The draft environmental impact statement is expected to be filed with the Environmental Protection Agency (EPA) and available for public review June 1, 2001. The final environmental impact statement is expected to be completed in July 2001. The comment period on the draft environmental impact will be 45 days from the date the Environmental Protection Agency publishes the notice of availability in the **Federal Register**.

The Forest Service believes, at this early state, it is important to give reviewers notice of several court rulings related to public participation in the environmental review process. First, reviewers of draft environmental impact statements must structure their participation in the environmental review of the proposal so that it is meaningful and alerts an agency to the reviewer's position and contentions. *Vermont Yankee Nuclear Power Corp.* v. *NRDC,* 435 U.S. 519, 553 (1978). Also, environmental objections that could be raised at the draft environmental statement stage but that are not raised until after completion of the final environmental statement may be waived or dismissed by the courts. *City of Angoon* v. *Hodel,* 803 F 2d 1016, 1022 (9th Cir. 1986) and *Wisconsin Heritages, Inc.* v. *Harris,* 490 F. Supp. 1334, 1338 (E.D. Wis. 1980). Because of these court rulings, it is very important that those interested in this proposed action participate by the close of the 45-day comment period so that substantive comments and objections are made available to the Forest Service at a time when it can meaningfully consider them and respond to them in the final environmental impact statement.

To assist the Forest Service in identifying and considering issues and concern on the proposed action, comments on the draft environmental impact statement should be as specific as possible. It is also helpful if comments refer to specific pages or chapters of the draft statement. Comments may also address the adequacy of the draft environmental impact statement or the merits of the alternatives formulated and discussed in the statement. Reviews may wish to refer to the Council on Environmental Quality Regulations for implementing the procedural provisions of the National Environmental Policy Act at 40 CFR 1503.3 in addressing these points.

The United States Department of Agriculture (USDA) prohibits discrimination in its programs on the basis of race, color, national origin, sex, religion, age, disability, political beliefs, and marital or familial status. (Not all prohibited bases apply to all programs.) Persons with disabilities who require alternative means of communication of program information (Braille, large print, audiotape, etc.) should contact USDA's TARGET Center ad (202) 720–2600 (voice and TDD).

To file a complaint, write the Secretary of Agriculture, U.S. Department of Agriculture, Washington, DC 20250, or call 1–800–245–6340 (voice) or 202–720–1127 (TDD). USDA is an equal employment opportunity employer.

Dated: April 16, 2001.

Dale N. Bosworth,

Regional Forester, Northern Region.

[FR Doc. 01–10537 Filed 4–27–01; 8:45 am]

BILLING CODE 3410–11–M

COMMISSION ON CIVIL RIGHTS

Sunshine Act Meeting

AGENCY: U.S. Commission on Civil Rights.

DATE AND TIME: Friday, May 4, 2001, 9:30 a.m.

PLACE: U.S. Commission on Civil Rights, 624 Ninth Street, NW., Room 540, Washington, DC 20425.

STATUS:

Agenda

I. Approval of Agenda
II. Approval of Minutes of April 13, 2001 Meeting
III. Announcements
IV. Staff Director's Report
V. State Advisory Committee Report
- Race Relations and Des Moines' New Immigrants (Iowa)
- Equal Educational Opportunity for Native American Students in Montana Public Schools (Montana)

VI. Future Agenda Items

CONTACT PERSON FOR FURTHER INFORMATION: David Aronson, Press and Communications (202) 376–8312.

Edward A. Hailes, Jr.,

General Counsel.

[FR Doc. 01–10753 Filed 4–25–01; 4:57 pm]

BILLING CODE 6335–01–M

DEPARTMENT OF COMMERCE

[I.D. 042401B]

Submission for OMB Review; Comment Request

The Department of Commerce has submitted to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Agency: National Oceanic and Atmospheric Administration (NOAA).

Title: Northeast Red Crab Authorization and Notification.

Form Number(s): None.

OMB Approval Number: None.

Type of Request: Emergency submission.

Burden Hours: 1.

Number of Respondents: 10.

Average Hours Per Response: 5 minutes for a request for a Letter of Authorization, 2 minutes for a trip notification.

Needs and Uses: Fishermen must obtain a Letter of Authorization in order to fish for, catch, possess, transport, land, or process at sea more than 100 pounds of red crab from the U.S. Exclusive Economic Zone of the western Atlantic Ocean. A person holding such a Letter of Authorization may be required to call NOAA prior to fishing trips to arrange for the deployment of observers on their vessels. These requirements are needed to manage the fishery.

Affected Public: Business or other for-profit organizations, individuals or households.

Frequency: Weekly for IVR report, monthly for a Vessel Trip Report.

Respondent's Obligation: Mandatory.

OMB Desk Officer: David Rostker, (202) 395–3897.

Copies of the above information collection proposal can be obtained by calling or writing Madeleine Clayton, Departmental Paperwork Clearance Officer, (202) 482–3129, Department of Commerce, Room 6086, 14th and Constitution Avenue, NW, Washington, DC 20230 (or via the Internet at MClayton@doc.gov).

Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to David Rostker, OMB Desk Officer, Room 10202, New Executive Office Building, Washington, DC 20503.

Dated: April 24, 2001.

Madeleine Clayton,

Departmental Paperwork Clearance Officer, Office of the Chief Information Officer.

[FR Doc. 01–10654 Filed 4–27–01; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

[I.D. 042401C]

Submission for OMB Review; Comment Request

The Department of Commerce has submitted to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Agency: National Oceanic and Atmospheric Administration (NOAA).

Title: Northeast Red Crab Vessel Trip and IVR Reports.

Form Number(s): None.

OMB Approval Number: None.

Type of Request: Emergency submission.

Burden Hours: 26.

Number of Respondents: 10.

Average Hours Per Response: 5 minutes for a Vessel Trip Report, 4 minutes for a Interactive Voice Response Report.

Needs and Uses: Fishermen who have obtained a Letter of Authorization in order to fish for, catch, possess, transport, land, or process at sea more than 100 pounds of red crab from the U.S. Exclusive Economic Zone of the western Atlantic Ocean must submit Vessel Trip Reports (logbooks) on their fishing catch and effort and Interactive Voice Response (IVR) system reports on their catch. IVR reports are made weekly to allow closer monitoring of catch than is possible through the monthly submission of the Vessel Trip Reports. These requirements are needed to manage the fishery and prevent overfishing.

Affected Public: Business or other for-profit organizations, individuals or households.

Frequency: Weekly for IVR report, monthly for a Vessel Trip Report.

Respondent's Obligation: Mandatory.

OMB Desk Officer: David Rostker, (202) 395–3897.

Copies of the above information collection proposal can be obtained by calling or writing Madeleine Clayton, Departmental Paperwork Clearance Officer, (202) 482–3129, Department of Commerce, Room 6086, 14th and Constitution Avenue, NW, Washington, DC 20230 (or via the Internet at MClayton@doc.gov).

Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to David Rostker, OMB Desk Officer, Room 10202, New Executive Office Building, Washington, DC 20503.

Dated: April 24, 2001.

Madeleine Clayton,

Departmental Paperwork Clearance Officer, Office of the Chief Information Officer.

[FR Doc. 01–10655 Filed 4–27–01; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

International Trade Administration

Initiation of Antidumping and Countervailing Duty Administrative Reviews

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of initiation of antidumping and countervailing duty administrative reviews.

SUMMARY: The Department of Commerce (the Department) has received requests to conduct administrative reviews of various antidumping and countervailing duty orders and findings with March anniversary dates. In accordance with the Department's regulations, we are initiating those administrative reviews.

EFFECTIVE DATE: April 30, 2001.

FOR FURTHER INFORMATION CONTACT: Holly A. Kuga, Office of AD/CVD Enforcement, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230, telephone: (202) 482–4737.

SUPPLEMENTARY INFORMATION:

Background

The Department has received timely requests, in accordance with 19 CFR 351.213(b)(2000), for administrative reviews of various antidumping and countervailing duty orders and findings with March anniversary dates.

Initiation of Reviews

In accordance with 19 CFR 351.221(c)(1)(i), we are initiating administrative reviews of the following antidumping and countervailing duty orders and findings. We intend to issue

the final results of these reviews not later than March 31, 2002.

	Period to be reviewed
Antidumping Duty Proceedings	
Canada: Iron Construction Castings, A–122–503	3/1/00–2/28/01
Canada Pipe Company, Ltd.	
India: Certain Forged Stainless Steel Flanges, A–533–809	2/1/00–1/31/01
Snowdrop Trading Pvt. Ltd.*.	
Countervailing Duty Proceedings	
Pakistan: Shop Towels, C–535–001	1/1/00–12/31/00
Aqil Textile Industries	
Bita Textile Corporation	
Fine Fabrics	
Iftikhar Corporation	
Ishaq Towel Factory	
Jawad Brothers	
Jawad Industries	
Mehtabi Towel Mills (Pvt.) Ltd.	
Pakistan Textile Corporation (Pvt) Ltd.	
Quality Linen Supply Corporation	
R.I. Weaving/ Ranjha Linen	
Salimah International	
Shaheen Textiles	
Shahi Textiles	
Silver Textile Factory	
Sultex Industries	
United Towel Exporters	
Universal Linen	
Nisar (Textiles) Corporation	
Khaksar Impex (Pvt) Ltd.	
Saasoh Textile Corporation	
Faisalabad Cotton Product (Pvt) Ltd.	
Shaheen International	
Ranjha Linen	
Suspension Agreements	
None.	

* Inadvertently omitted from previous initiation notice.

During any administrative review covering all or part of a period falling between the first and second or third and fourth anniversary of the publication of an antidumping duty order under § 351.211 or a determination under § 351.218(f)(4) to continue an order or suspended investigation (after sunset review), the Secretary, if requested by a domestic interested party within 30 days of the date of publication of the notice of initiation of the review, will determine whether antidumping duties have been absorbed by an exporter or producer subject to the review if the subject merchandise is sold in the United States through an importer that is affiliated with such exporter or producer. The request must include the name(s) of the exporter or producer for which the inquiry is requested.

Interested parties must submit applications for disclosure under administrative protective orders in accordance with 19 CFR 351.305.

These initiations and this notice are in accordance with section 751(a) of the Tariff Act of 1930, as amended (19 U.S.C. 1675(a)), and 19 CFR 351.221(c)(1)(i).

Dated: April 24, 2001.

Holly A. Kuga,

Acting Deputy Assistant Secretary, Group II for Import Administration.

[FR Doc. 01–10689 Filed 4–27–01; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration A–201–805

Circular Welded Non-Alloy Steel Pipe From Mexico: Final Results of Antidumping Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of final results of antidumping duty administrative review of circular welded non-alloy steel pipe from Mexico.

SUMMARY: On December 12, 2000, the Department of Commerce (''Department'') published the preliminary results of the administrative review of the antidumping duty order on circular welded non-alloy steel pipe from Mexico. *See Circular Welded Non-Alloy Steel Pipe From Mexico: Preliminary Results and Partial Recission of Antidumping Duty Administrative Review,* 65 FR 77560 (December 12, 2000) (''Preliminary Results''). This review covers one manufacturer/exporter of the subject merchandise, Tuberia Nacional S.A. de C.V. (''TUNA''). The period of review (''POR'') is November 1, 1998 through October 31, 1999.

We gave interested parties an opportunity to comment on the preliminary results. Based upon our verification of the data and analysis of the comments received, we have made changes in the margin calculation. Therefore, the final results differ from the preliminary results of this review. The final weighted-average dumping margin is listed below in the section titled ''Final Results of the Review.''

EFFECTIVE DATE: April 30, 2001.

FOR FURTHER INFORMATION CONTACT: John Drury or Steve Bezirganian, Enforcement Group III, Office 8, Import Administration, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue, NW., Washington, DC 20230, at telephone 202–482–0195 or 202–482–1131, respectively.

SUPPLEMENTARY INFORMATION:

Applicable Statute

Unless otherwise indicated, all citations to the Tariff Act of 1930 (''Act'') are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Act by the Uruguay Round Agreements Act (''URAA''). In addition, unless otherwise indicated, all citations to the Department's regulations are to the regulations at 19 CFR part 351 (1999).

Background

The Department published an antidumping duty order on circular welded non-alloy steel pipe and tube from Mexico on November 2, 1992 (57 FR 49453). The Department published a notice of ''Opportunity to Request an Administrative Review'' of the antidumping duty order for the 1998/99 review period on November 16, 1999 (64 FR 62167). Respondents TUNA and Hylsa S.A. de C.V. (''Hylsa''), as well as petitioners, requested that the Department conduct an administrative review of the antidumping duty order on circular welded non-alloy steel pipe and tube from Mexico. We initiated this review on December 21, 1999. *See* 64 FR 72644 (December 28, 1998).

The Department received a timely request for withdrawal from the administrative review from the respondent Hylsa on March 15, 2000. On March 22, 2000, petitioners also withdrew their request for a review of Hylsa. In accordance with 19 CFR 351.213(d)(1), the Department terminated this review for respondent Hylsa. *See* Preliminary Results.

Under section 751(a)(3)(A) of the Act, the Department may extend the deadline for issuing a preliminary determination in an administrative review if it determines that it is not practicable to complete the preliminary review within the statutory time limit of 245 days. On August 11, 2000, the Department published a notice of extension of the time limit for the preliminary results in this case to November 29, 2000. *See* Extension of Time Limit: Circular Welded Non-Alloy Pipe From Mexico; Antidumping Administrative Review, 65 FR 49223 (August 11, 2000).

We gave interested parties an opportunity to comment on our Preliminary Results. TUNA and petitioners filed briefs on January 11 and January 12, 2001. On January 16, 2001, TUNA and petitioners filed rebuttal briefs. No hearing was requested or held.

Period of Review

The review covers the period November 1, 1998 through October 31, 1999. The Department is conducting this review in accordance with section 751 of the Act.

Scope of the Review

The products covered by these orders are circular welded non-alloy steel pipes and tubes, of circular cross-section, not more than 406.4 millimeters (16 inches) in outside diameter, regardless of wall thickness, surface finish (black, galvanized, or painted), or end finish (plain end, beveled end, threaded, or threaded and coupled). These pipes and tubes are generally known as standard pipes and tubes and are intended for the low pressure conveyance of water, steam, natural gas, and other liquids and gases in plumbing and heating systems, air conditioning units, automatic sprinkler systems, and other related uses, and generally meet ASTM A–53 specifications. Standard pipe may also be used for light load-bearing applications, such as for fence tubing, and as structural pipe tubing used for framing and support members for reconstruction or load-bearing purposes in the construction, shipbuilding, trucking, farm equipment, and related industries. Unfinished conduit pipe is also included in these orders. All carbon steel pipes and tubes within the physical description outlined above are included within the scope of these orders, except line pipe, oil country tubular goods, boiler tubing, mechanical tubing, pipe and tube hollows for redraws, finished scaffolding, and finished conduit. Standard pipe that is dual or triple certified/stenciled that enters the United States as line pipe of a kind used for oil or gas pipelines is also not included in these orders.

Imports of the products covered by these orders are currently classifiable under the following Harmonized Tariff Schedule (HTS) subheadings: 7306.30.10.00, 7306.30.50.25, 7306.30.50.32, 7306.30.50.40, 7306.30.50.55, 7306.30.50.85, and 7306.30.50.90. Although the HTS subheadings are provided for convenience and customs purposes, our written description of the scope of these proceedings is dispositive.

Analysis of Comments Received

All issues raised in the case briefs, as well as the Department's findings, in this administrative review are addressed in the Issues and Decision Memorandum for the Administrative Review of Circular Welded Non-Alloy Steel Pipe From Mexico: November 1, 1998, through October 31, 1999 (''Decision Memorandum''), from Joseph A. Spetrini, Deputy Assistant Secretary, Import Administration, to Bernard T. Carreau, Deputy Assistant Secretary, Import Administration (April 11, 2001), which is hereby adopted by this notice. A list of the issues raised and to which we have responded, all of which are in the Decision Memorandum, and a list of our changes, is attached to this notice as an Appendix. Parties can find a complete discussion of all issues raised in this review and the corresponding recommendations in this public memorandum which is on file at the U.S. Department of Commerce, in the Central Records Unit, in room B–099. In addition, a complete version of the Decision Memorandum can be accessed directly on the Web at http://ia.ita.doc.gov. The paper copy and electronic version of the public version of the Decision Memorandum are identical in content.

Sales Below Cost in the Home Market

As discussed in more detail in the Preliminary Results, the Department disregarded home market below-cost sales that failed the cost test in the final results of review.

Changes Since the Preliminary Results

Based on our verification and analysis of the comments received, we have made certain changes in the margin calculation, as discussed in the Decision Memorandum. We have corrected our calculation of U.S. indirect selling expenses (''DINDIRSU''), made changes to our level of trade analysis, adjusted our cost calculations with respect to the B10 inflation adjustment, and consolidated the reported G&A expenses for TUNA.

Final Results of the Review

We determine that the following percentage weighted-average margin exists for the period November 1, 1998 through October 31, 1999:

CIRCULAR WELDED NON-ALLOY STEEL PIPE

Producer/manufacturer/exporter	Weighted-average margin (percent)
TUNA	3.48

The Department shall determine, and the U.S. Customs Service (''Customs'') shall assess, antidumping duties on all appropriate entries. In accordance with 19 CFR 351.212(b), we have calculated exporter/importer-specific assessment rates by dividing the total dumping margins calculated for the U.S. sales to the importer by the total entered value of these sales. This rate will be used for the assessment of antidumping duties on all entries of the subject merchandise by that importer during the POR. The Department's decision applies to all entries of subject merchandise produced and exported by TUNA, entered, or withdrawn from warehouse, for consumption on or after November 1, 1998 and on or before October 31, 1999.

Cash Deposit Requirements

The following deposit requirements will be effective upon publication of this notice of final results of administrative review for all shipments of circular welded non-alloy steel pipe entered, or withdrawn from warehouse, for consumption on or after the date of publication, as provided by section 751(a)(1) of the Act: (1) The cash deposit rate for TUNA will be the rate shown above; (2) for previously reviewed or investigated companies not listed above, the cash deposit rate will continue to be the company-specific rate published for the most recent period; (3) if the exporter is not a firm covered in this review, a prior review, or the original 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 these or any previous reviews conducted by the Department, the cash deposit rate will be the ''all others'' rate, which is 36.62 percent.

These deposit requirements shall remain in effect until publication of the final results of the next administrative review.

This notice also serves as the only reminder to parties subject to administrative protective orders (''APO'') of their responsibility concerning the return or destruction of proprietary information disclosed under APO in accordance with 19 CFR 351.305 or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and terms of an APO is a violation which is subject to sanction. We are issuing and publishing this determination and notice in accordance with sections 751(a)(1) and 777(i) of the Act.

Dated: April 11, 2001.

Timothy J. Hauser,

Acting Under Secretary for International Trade.

Appendix—Issues in Decision Memorandum

(1) Level of Trade/CEP Offset
  A. Methodology
  B. Fact pattern of the case—
  C. Overstatement of indirect selling expenses
(2) G&A Ratio
(3) Inflation Adjustments in the Mexican Market
(4) CEP Ratio

[FR Doc. 01–10683 Filed 4–27–01; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–862]

Notice of Postponement of Final Determination of Antidumping Duty Investigation: Foundry Coke From the People's Republic of China

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of postponement of final determination of antidumping duty investigation.

EFFECTIVE DATE: April 30, 2001.

FOR FURTHER INFORMATION CONTACT: Doreen Chen or James Doyle, Office IX, DAS Group III, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230; telephone (202) 482–0408 and (202) 482–0159, respectively.

The Applicable Statute and Regulations

Unless otherwise indicated, all citations to the statute are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Tariff Act of 1930 (the Act) by the Uruguay Round Agreements Act (URAA). In addition, unless otherwise indicated, all citations to Department of Commerce (the Department) regulations refer to the regulations codified at 19 CFR part 351 (2000).

Background

This investigation was initiated on October 10, 2000. *See Initiation of Antidumping Duty Investigation: Foundry Coke Products From the People's Republic of China*, 65 FR 61303 (October 17, 2000). The period of investigation (POI) is January 1, 2000 through June 30, 2000. On March 8, 2001, the Department published the notice of preliminary determination. *See Notice of Preliminary Determination of Sales at Less Than Fair Value: Foundry Coke From the People's Republic of China*, 66 FR 8338 (March 8, 2001).

Postponement of Final Determination and Extension of Provisional Measures

Section 735(a)(2) of the Act provides that a final determination may be postponed until not later than 135 days after the date of the publication of the preliminary determination if, in the event of an affirmative determination, a request for such postponement is made by exporters who account for a significant proportion of exports of the subject merchandise, or in the event of a negative preliminary determination, a request for such postponement is made by petitioner. The Department's regulations, at 19 CFR 351.210(e)(2), require that requests by respondents for postponement of a final determination be accompanied by a request for extension of provisional measures from a four-month period to not more than six months.

In a March 12, 2001 request which was thereafter amended on April 10, 2001, Shanxi Grand Coalchem Industrial Company, Ltd., Sinochem International, CITIC Trading Company Ltd. and Minmetals Development Co. Ltd. (''respondents''), requested that the Department postpone its final determination until not later than 135 days after the date of the publication of the preliminary determination in the **Federal Register** and requested an extension of the provisional measures. *See Notice of the Preliminary Determination of Sales at Less Than Fair Value*, 66 FR 13855 (March 8, 2001). In accordance with 19 CFR 351.210(b), because (1) our preliminary determination is affirmative, (2) respondents requesting the postponement account for a significant proportion of exports of the subject merchandise, and (3) no compelling reasons for denial exist, we are granting the respondent's request and are postponing the final determination until no later than 135 days after the publication of preliminary determination in the **Federal Register**.

Suspension of liquidation will be extended accordingly.

This notice is published in accordance with section 735(a)(2) of the Act. Effective January 20, 2001, Bernard T. Carreau is fulfilling the duties of Assistant Secretary for Import Administration.

Dated: April 23, 2001.

Bernard T. Carreau,

Deputy Assistant Secretary, Import Administration.

[FR Doc. 01–10690 Filed 4–27–01; 8:45 am]

BILLING CODE 3510–DS–M

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–864]

Notice of Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination: Pure Magnesium in Granular Form From the People's Republic of China

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

EFFECTIVE DATE: April 30, 2001.

FOR FURTHER INFORMATION CONTACT: James Nunno or Christopher Priddy, AD/CVD Enforcement Group I, Office 2, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone: (202) 482–0783 or (202) 482–1130, 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 to 19 CFR part 351 (2000).

Preliminary Determination

We preliminarily determine that pure magnesium in granular form (granular pure magnesium) from the People's Republic of China (PRC) is being, or is likely to be, sold in the United States at less than fair value (LTFV), as provided in section 733 of the Act. The estimated margins of sales at LTFV are shown in the ''Suspension of Liquidation'' section of this notice.

Case History

Since the initiation of this investigation (*Initiation of Antidumping Duty Investigations: Pure Magnesium from Israel, the Russian Federation, and the People's Republic of China,* 65 FR 68121 (Nov. 14, 2000)) (*Notice of Initiation*), the following events have occurred:

On December 1, 2000, the United States International Trade Commission (ITC) issued an affirmative preliminary injury determination in this case (*see* ITC Investigation No. 731–TA–895–897).

Also on December 1, 2000, the petitioners in this case (*i.e.,* the Magnesium Corporation of America (Magcorp) and the United Steel Workers of America, Locals 482 and 8319) requested that the Department modify the scope of this investigation to exclude certain magnesium products that are prepared solely for use as a desulfurizer in steel-making from the scope of the investigation. On December 4, 2000, we received comments on the scope of the investigation from ESM Group, Inc. (ESM), a U.S. manufacturer of magnesium powder and desulfurizing reagents. In its submission, ESM requested that the Department exclude from the scope: (1) Magnesium-based reagents, in accordance with the petitioners' intention not to capture such products; and (2) pure magnesium in granular form, because it is a separate class or kind of merchandise from magnesium ingots. For further discussion, see the ''Scope of Investigation'' and ''Comments on Scope'' sections of the notice, below.

On December 11, 2000, the Department issued an antidumping questionnaire to the Ministry of Foreign Trade and Economic Cooperation (MOFTEC) and requested that MOFTEC forward the questionnaire to all companies which manufactured and/or exported the subject merchandise during the period of investigation (POI). We also sent courtesy copies of the antidumping duty questionnaire to the China Chamber of Commerce of Metals, Minerals, and Chemicals Importers and Exporters, and to each of the companies identified in the petition as possible exporters/producers of the subject merchandise during the POI. The letters provided to MOFTEC and those companies identified in the petition as producers and/or exporters of pure magnesium provided deadlines for responses to the different sections of the questionnaire.

On January 9, 2001, the Department received a section A questionnaire response from Minmetals Precious & Rare Minerals Import and Export (Minmetals/CNNMIT).[1] On January 23, 2001, the Department received section C and D questionnaire responses from Minmetals/CNNMIT and its suppliers, Taiyuan Shi Geng Yang Enterprise Company, Ltd. (Taiyuan) and Wealth (HEBI) Co., Ltd. (HEBI). We issued supplemental questionnaires to Minmetals/CNNMIT, Taiyuan, and HEBI and received responses to these supplemental questionnaires in February and March 2001.

On January 19, 2001, the Department invited interested parties to comment on surrogate country selection and to provide publicly available information for valuing the factors of production. We received responses from both the petitioners and Minmetals/CNNMIT on February 13, 2001. The petitioners and Minmetals/CNNMIT filed rebuttal comments on surrogate values in February and March 2001.

On March 1, 2001, pursuant to 19 CFR 351.205(e), the petitioners made a timely request to postpone the preliminary determination. We granted this request and, on March 6, 2001, postponed the preliminary determination until no later than April 23, 2001. *See Notice of Postponement of Preliminary Determinations of Sales at Less Than Fair Value: Pure Magnesium From Israel, the Russian Federation, and the People's Republic of China and Alignment of Final Countervailing Duty Determination With Final Antidumping Duty Determinations: Pure Magnesium From Israel,* 66 FR 14546, 14547 (Mar. 13, 2001).

Postponement of the Final Determination

Section 735(a)(2) of the Act provides that a final determination may be postponed until not later than 135 days after the date of the publication of the preliminary determination if, in the event of an affirmative preliminary determination, a request for such postponement is made by exporters who account for a significant proportion of exports of the subject merchandise, or in the event of a negative preliminary determination, a request for such postponement is made by the petitioner. The Department's regulations, at 19 CFR 351.210(e)(2), require that requests by respondents for postponement of a final determination be accompanied by a request for extension of provisional measures from a four-month period to not more than six months.

On April 12, 2001, Minmetals/CNNMIT requested that, in the event of

[1] As of February 15, 2001, Minerals Precious & Rare Minerals Import and Export changed the name of its company to China National Nonferrous Metals Industry Trading Group Corp.

an affirmative preliminary determination in this investigation, the Department postpone its final determination until 135 days after the publication of the preliminary determination. Minmetals/CNNMIT also included a request to extend the provisional measures to not more than six months. Accordingly, since we have made an affirmative preliminary determination, we have postponed the final determination until not later than 135 days after the date of the publication of the preliminary determination.

Scope of Investigation

There is an existing antidumping duty order on pure magnesium from the PRC. *See Notice of Antidumping Duty Orders: Pure Magnesium From the People's Republic of China, the Russian Federation and Ukraine; Notice of Amended Final Determination of Sales at Less Than Fair Value: Antidumping Duty Investigation of Pure Magnesium From the Russian Federation,* 60 FR 25691 (May 12, 1995). The scope of this investigation excludes pure magnesium that is already covered by the existing order, and classifiable under 8104.11.00 and 8104.19.00 of the Harmonized Tariff Schedule of the United States (HTSUS).

The scope of this investigation includes imports of pure magnesium products, regardless of chemistry, including, without limitation, raspings, granules, turnings, chips, powder, and briquettes, except as noted above.

Pure magnesium includes: (1) Products that contain at least 99.95 percent primary magnesium, by weight (generally referred to as ''ultra-pure'' magnesium); (2) products that contain less than 99.95 percent but not less than 99.8 percent pure magnesium, by weight (generally referred to as ''pure'' magnesium); (3) chemical combinations of pure magnesium and other material(s) in which the pure magnesium content is 50 percent or greater, but less than 99.8 percent, by weight, and that do not conform to an ''ASTM Specification for Magnesium Alloy'' [2] (generally referred to as ''off-specification pure'' magnesium); and (4) physical mixtures of pure magnesium and other material(s) in which the pure magnesium content is 50 percent or greater, but less than 99.8 percent, by weight, except that mixtures containing 90 percent or less pure magnesium, by weight, when mixed with lime, calcium metal, calcium silicon, calcium carbide, calcium carbonate, carbon slag coagulants, and/or fluorspar, are excluded.

The merchandise subject to this investigation is classifiable under 8104.30.00 of the HTSUS. Although the HTSUS subheading is provided for convenience and customs purposes, the written description of the merchandise under investigation is dispositive.

Comments on Scope

In accordance with our regulations, we set aside a period of time for parties to raise issues regarding product coverage and encouraged all parties to submit such comments within 20 calendar days of publication of the *Notice of Initiation. See Notice of Initiation,* 65 FR at 68123. On December 1, 2000, the petitioners requested that the Department clarify that the scope of this investigation excludes finished mixtures containing pure magnesium and/or off-specification pure magnesium prepared solely for use as a desulfurizer in steel-making, unless such mixtures contain only minimal amounts of non-magnesium materials in order to circumvent an antidumping order. On December 4, 2000, ESM submitted a letter supporting the petitioners' position that magnesium-based reagents should not be included in the scope of the Department's investigation. On January 30, 2001, the petitioners submitted proposed language to further clarify their intent with respect to the scope of this investigation. Based on this submission, we have revised the scope to exclude reagent magnesium.

In its December 4 submission, ESM also argued that pure magnesium ingot and granular magnesium constitute separate classes or kinds of merchandise and that the Department should exclude granular magnesium from the scope of the investigation. However, we note that the scope of the investigation includes only granular magnesium. As a consequence, ESM's comments provide no basis for altering the scope.

On April 10, 2001, Rossborough Manufacturing Co., L.P., requested that the Department amend the scope of this investigation to exclude certain additional reagent mixtures and imports of granular magnesium used for making reagent mixtures. Rossborough's submission was filed too late to be given proper consideration for purposes of the preliminary determination, but we will consider these issues for the final determination.

Period of Investigation

Pursuant to 19 CFR 351.204(b)(1), the POI for an investigation involving merchandise from a non-market economy is the two most recent fiscal quarters prior to the month of the filing of the petition (*i.e.,* October 2000). Therefore, in this case, the POI is April 1, 2000, through September 30, 2000.

Nonmarket Economy Country Status

The Department has treated the PRC as a nonmarket economy (NME) country in all past antidumping investigations. *See, e.g., Final Determination of Sales at Less Than Fair Value: Certain Preserved Mushrooms from the People's Republic of China,* 63 FR 72255, 72256 (Dec. 31, 1998) (Mushrooms). A designation as a NME remains in effect until it is revoked by the Department. *See* section 771(18)(C) of the Act.

When the Department is investigating imports from a NME country, section 773(c)(1) of the Act directs us to base normal value (NV) on the NME producer's factors of production, valued in a comparable market economy that is a significant producer of comparable merchandise. The sources of individual factor prices are discussed under the ''Normal Value'' section of the notice, below.

No party in this investigation has requested a revocation of the PRC's NME status. We have, therefore, preliminarily continued to treat the PRC as a NME.

Separate Rates

Minmetals/CNNMIT is owned by ''the whole people'' and has provided the separate rates information in its section A response. Minmetals/CNNMIT has stated that there is no element of government ownership or control and has requested a separate company-specific rate.

As stated in *Notice of Final Determination of Sales at Less Than Fair Value: Silicon Carbide from the People's Republic of China,* 59 FR 22585, 25586 (May 2, 1994) (*Silicon Carbide*) and *Notice of Final Determination of Sales at Less Than Fair Value: Furfuryl Alcohol from the People's Republic of China,* 60 FR 22544, 25545 (May 8, 1995) (*Furfuryl Alcohol*), ownership of the company by ''all the people'' does not require the application of a single rate. Accordingly, Minmetals/CNNMIT is eligible for consideration of a separate rate.

The Department's separate rate test is not concerned, in general, with macroeconomic/border-type controls (*e.g.,* export licenses, quotas, and minimum export prices), particularly if these controls are imposed to prevent dumping. The test focuses, rather, on controls over the investment, pricing, and output decision-making process at the individual firm level. *See Certain*

[2] The meaning of this term is the same as that used by the American Society for Testing and Materials in its *Annual Book of ASTM Standards: Volume 01.02 Aluminum and Magnesium Alloys.*

Cut-to-Length Carbon Steel Plate from Ukraine: Final Determination of Sales at Less than Fair Value, 62 FR 61754, 61757 (Nov. 19, 1997); *Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, from the People's Republic of China: Final Results of Antidumping Duty Administrative Review,* 62 FR 61276, 61279 (Nov. 17, 1997); and *Honey from the People's Republic of China: Preliminary Determination of Sales at Less than Fair Value,* 60 FR 14725, 14726 (Mar. 20, 1995).

To establish whether a firm is sufficiently independent from government control to be entitled to a separate rate, the Department analyzes each exporting entity under a test arising out of the *Final Determination of Sales at Less Than Fair Value: Sparklers from the People's Republic of China,* 56 FR 20588, 20589 (May 6, 1991), as modified by *Silicon Carbide.* Under the separate rates criteria, the Department assigns separate rates in NME cases only if the respondents can demonstrate the absence of both *de jure* and *de facto* governmental control over export activities. *See Silicon Carbide* and *Furfuryl Alcohol.*

1. Absence of De Jure Control

The Department considers the following de jure criteria in determining whether an individual company may be granted a separate rate: (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.

Minmetals/CNNMIT has placed on the record a number of documents to demonstrate absence of de jure control, including the ''Law of the People's Republic of China on Industrial Enterprises Owned By the Whole People,'' and the 1992 regulations that supplemented it, ''Provisions on Changing the Systems of Business Operations for State Owned Enterprises.''

In prior cases, the Department has analyzed these laws and found that they establish an absence of de jure control. *See, e.g., Notice of Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination: Certain Partial-Extension Steel Drawer Slides With Rollers From the People's Republic of China*, 60 FR 29571, 29573 (June 5, 1995); [3] *Notice of Final Determination of Sales at Less Than Fair Value: Manganese Metal From the People's Republic of China*, 60 FR 56045, 56046 (Nov. 6, 1995). We have no new information in this proceeding which would cause us to reconsider this determination. For the purposes of this investigation and in prior cases, the Department has also analyzed the ''Industrial Enterprises Law'' and found that this law establishes mechanisms for private control of companies which indicate an absence of de jure control. *See Pure Magnesium from the People's Republic of China: Final Results of New Shipper Review*, 63 FR 3085, 3086 (Jan. 21, 1998).

According to Minmetals/CNNMIT, pure magnesium exports are not affected by export licensing provisions or export quotas. Minmetals/CNNMIT claims to have autonomy in setting the contract prices for sales of granular pure magnesium through independent price negotiations with its foreign customers without interference from the PRC government. Based on the assertions of Minmetals/CNNMIT, we preliminarily determine that there is an absence of de jure government control over the pricing and marketing decisions of Minmetals/CNNMIT with respect to its granular pure magnesium export sales.

2. Absence of De Facto Control

As stated in previous cases, there is some evidence that certain enactments of the PRC central government have not been implemented uniformly among different sectors and/or jurisdictions in the PRC. *See Mushrooms*, 63 FR at 72257. Therefore, the Department has determined that an analysis of de facto control is critical in determining whether respondents are, in fact, subject to a degree of governmental control which would preclude the Department from assigning separate rates.

The Department typically considers four factors in evaluating whether each respondent is subject to de facto governmental control of its export functions: (1) Whether the export prices are set by, or subject to, the approval of a governmental authority; (2) whether the respondent has authority to negotiate and sign contracts, and other agreements; (3) whether the respondent has autonomy from the government in making decisions regarding the selection of its management; and (4) whether the respondent retains the proceeds of its export sales and makes independent decisions regarding disposition of profits or financing of losses. *See Id.*

Minmetals/CNNMIT has asserted the following: (1) It establishes its own export prices; (2) it negotiates contracts without guidance from any governmental entities or organizations; (3) it makes its own personnel decisions; and (4) it retains the proceeds of its export sales, uses profits according to its business needs, and has the authority to sell its assets and to obtain loans. Additionally, Minmetals/CNNMIT's questionnaire responses indicate that it does not coordinate with other exporters in setting prices or in determining which companies will sell to which markets. This information supports a preliminary finding that there is an absence of de facto governmental control of the export functions of these companies. Consequently, we preliminarily determine that Minmetals/CNNMIT has met the criteria for the application of separate rates.

PRC-Wide Rate and Use of Facts Otherwise Available

As in all NME cases, the Department implements a policy whereby there is a rebuttable presumption that all exporters or producers located in the NME comprise a single exporter under common government control, the ''NME entity.'' The Department assigns a single NME rate to the NME entity unless an exporter can demonstrate eligibility for a separate rate.

Information on the record of this investigation indicates that there are numerous producers/exporters of the subject merchandise in the PRC. As noted in the ''Case History'' section above, all exporters were given the opportunity to respond to the Department's questionnaire. Based upon our knowledge of PRC exporters and the fact that U.S. import statistics show that responding companies did not account for all imports into the United States from the PRC, we have preliminarily determined that PRC exporters of granular pure magnesium failed to respond to our questionnaire.

Section 776(a)(2) of the Act provides that if an interested party or any other person (A) withholds information that has been requested by the administering authority; (B) fails to provide such information by the deadlines for the submission of the information or in the form and manner requested, subject to subsections (c)(1) and (e) of section 782 of the Act; (C) significantly impedes a proceeding under this title; or (D) provides such information but the information cannot be verified as provided in section 782(i) of the Act, the

[3] This was unchanged in the final determination. *See Notice of Final Determination of Sales at Less Than Fair Value: Certain Partial-Extension Steel Drawer Slides with Rollers from the People's Republic of China*, 60 FR 54472, 54474 (Oct. 24, 1995)

administering authority shall, subject to section 782(d) of the Act, use the facts otherwise available in reaching the applicable determination under this title.

Section 776(b) of the Act further provides that adverse inferences may be used when a party has failed to cooperate by not acting to the best of its ability to comply with a request for information. The producers/exporters that decided not to respond to the Department's questionnaire failed to act to the best of their ability in this investigation. Absent a response, we must presume government control of these companies. *See, e.g., Notice of Final Determination of Sales at Less Than Fair Value: Bicycles from the People's Republic of China*, 61 FR 19026, 19028 (Apr. 30, 1996); *Notice of Final Determination of Sales at Less Than Fair Value: Certain Cold-Rolled Flat-Rolled Carbon-Quality Steel Products From the Russian Federation*, 65 FR 5510, 5518 (Feb. 4, 2000). Moreover, the Department has determined that, in selecting from among the facts otherwise available, an adverse inference is warranted.

In accordance with our standard practice, as adverse facts available, we are assigning as the PRC-wide rate the higher of: (1) The highest margin stated in the notice of initiation; or (2) the highest margin calculated for any respondent in this investigation. *See, e.g., Notice of Final Determination of Sales at Less Than Fair Value: Certain Cold-Rolled Carbon Quality Steel Products from the People's Republic of China,* 64 FR 34660 (May 31, 2000) and accompanying decision memorandum at *Comment 1.* In this case, the preliminary adverse facts available margin is 305.56 percent, which is the highest margin stated in the notice of initiation. *See Notice of Initiation,* 65 FR at 68124.

Section 776(b) of the Act states that an adverse inference may include reliance on information derived from the petition. *See* also SAA at 870. Section 776(c) of the Act provides that, when the Department relies on secondary information (such as the petition) in using the facts otherwise available, it must, to the extent practicable, corroborate that information from independent sources that are reasonably at its disposal.

The SAA clarifies that ''corroborate'' means that the Department will satisfy itself that the secondary information to be used has probative value. *See* SAA at 870. The SAA also states that independent sources used to corroborate such evidence may include, for example, published price lists, official import statistics, and customs data, and information obtained from interested parties during the particular investigation. *See* SAA at 870.

In order to determine the probative value of the margins in the petition for use as adverse facts available for purposes of this determination, we examined evidence supporting the calculations in the petition. In accordance with section 776(c) of the Act, to the extent practicable, we examined the key elements of the export price (EP) and NV calculations on which the margins in the petitions were based.

In order to corroborate the petition's EP calculations, we compared the prices in the petition for granular pure magnesium to the prices submitted by Minmetals/CNNMIT. In order to corroborate the petitioners' NV calculation, we compared the petitioners' factor consumption and surrogate value data for granular pure magnesium to the data reported by Taiyuan and HEBI for the most significant factors—material inputs, energy, labor, factory overhead, and selling, general, and administrative (SG&A) expenses, and profit—and to the values selected for the preliminary determination, as discussed below.

As discussed in the April 23, 2001, memorandum from the team to the file entitled ''Corroboration of Data Contained in the Petition for Assigning an Adverse Facts Available Rate,'' we found that the U.S. price and factors of production information in the petition to be reasonable and of probative value. As a number of the surrogate values selected for the preliminary determination differed from those used in the petition, notably the values for ferrosilicon, dolomite, electricity, and coal, we compared the petition margin calculations to the calculations based on the selected surrogate values wherever possible and found they were reasonably close. Therefore, we preliminarily determine that the petition information continues to have probative value. Accordingly, we find that the highest margin stated in the notice of initiation, 305.56 percent, is corroborated within the meaning of section 776(c) of the Act.

Fair Value Comparisons

To determine whether sales of the subject merchandise by Minmetals/CNNMIT for export to or within the United States were made at LTFV, we compared the EP to the NV, as described in the ''Export Price,'' and ''Normal Value'' sections of this notice, below. In accordance with section 777A(d)(1)(A)(i) of the Act, we compared POI-wide weighted-average EPs to the NV.

Export Price

For Minmetals/CNNMIT, we used EP methodology in accordance with section 772(a) of the Act because the subject merchandise was sold directly to unaffiliated customers in the United States prior to importation and constructed export price methodology was not otherwise appropriate. We calculated EP based on packed CIF prices to the first unaffiliated purchaser in the United States. Where appropriate, we made deductions from the starting price for foreign inland freight from the plant to the port of export, foreign brokerage and handling, marine insurance, and ocean freight. As certain of these movement services were provided by NME suppliers, we valued them using Indian rates. For further discussion of our use of surrogate data in an NME proceeding, as well as selection of India as the appropriate surrogate country, see the ''Normal Value'' section of this notice, below.

For foreign inland freight we used price quotes obtained by the Department from Indian truck freight companies in November 1999. These price quotes were recently used in the administrative review of persulfates from the PRC, and were also used in the investigation of bulk aspirin from the PRC. *See Persulfates from the People's Republic of China: Preliminary Results of Antidumping Duty Administrative Review, and Partial Rescission of Administrative Review,* 66 FR 18439, 18441 (Apr. 9, 2001) *(Persulfates 1999–2000 Preliminary Results); Notice of Preliminary Determination of Sales at Less Than Fair Value: Bulk Aspirin From the People's Republic of China,* 65 FR 116, 118 (Jan. 3, 2000).

With respect to foreign brokerage and handling, marine insurance and ocean freight, Minmetals/CNNMIT asserted that it used market-economy suppliers for its shipments of granular pure magnesium. However, based on the submitted information, we could not establish that the brokerage and handling and marine insurance expenses Minmetals/CNNMIT paid reflect prices set by market-economy carriers. Specifically, we found that Minmetals/CNNMIT was unable to demonstrate that its brokerage and handling expenses were invoiced in a market-economy currency. Furthermore, marine insurance was paid to a PRC company, not a market-economy supplier. Regarding ocean freight, while Minmetals/CNNMIT did provide an invoice from a market-economy supplier in a market-economy currency, it was

unable to demonstrate that it paid for this expense in such currency.[4] For further discussion, see the April 23, 2001, concurrence memorandum from the team. Therefore, in accordance with our practice, we based these charges on surrogate values. *See, e.g., Notice of Final Determination of Sales at Less Than Fair Value: Certain Non-Frozen Apple Juice Concentrate from the People's Republic of China,* 65 FR 19873 (Apr. 13, 2000) and accompanying decision memorandum at *Comment 3;* and *Sebacic Acid From the People's Republic of China: Final Results of Antidumping Duty Administrative Review,* 65 FR 49537 (Aug. 14, 2000) (*Sebacic Acid 1998–1999 Final Results*) and accompanying decision memorandum at *Comment 8.*

Accordingly, we valued foreign brokerage and handling expenses using public information reported in the new shipper review of stainless steel wire rod from India. *See Certain Stainless Steel Wire Rod From India; Preliminary Results of Antidumping Duty Administrative and New Shipper Reviews,* 63 FR 48184, 48185 (Sept. 9, 1998); *see also* the ''Preliminary Determination Factors Valuation Memorandum from the Team to the File,'' dated April 23, 2001, at page 6 (*Factors Memorandum*). For marine insurance we used the June 1998 marine insurance data used in *Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, From the People's Republic of China; Preliminary Results of 1998–1999 Administrative Review, Partial Rescission of Review, and Notice of Intent To Revoke Order in Part,* 65 FR 41944, 41948 (July 7, 2000).[5] For ocean freight we used the freight expense reported by the respondent as a surrogate value, for the reasons noted above. Where appropriate, we adjusted the values to reflect inflation up to the POI using the wholesale price indices (WPI) or producer price indices (PPI) published by the International Monetary Fund (IMF).

Normal Value

A. Surrogate Country

Section 773(c)(4) of the Act requires the Department to value the NME producer's factors of production, to the extent possible, in one or more market economy countries that: (1) Are at a level of economic development comparable to that of the NME country, and (2) are significant producers of comparable merchandise. The Department has determined that India, Pakistan, Indonesia, Sri Lanka, and the Philippines are countries comparable to the PRC in terms of overall economic development. *See* Memorandum from Jeffrey May to Louis Apple, dated January 18, 2001.

According to the available information on the record, we have determined that both India and Indonesia meet the statutory requirements for an appropriate surrogate country for the PRC. For purposes of the preliminary determination, we have selected India as the surrogate country, based on the quality and contemporaneity of the currently available data. Accordingly, we have calculated NV using Indian values for the PRC producers' factors of production. We have obtained and relied upon publicly available information wherever possible.

B. Factors of Production

In accordance with section 773(c) of the Act, we calculated NV based on factors of production reported by Minmetals/CNNMIT for the POI. To calculate NV, the reported per-unit factor quantities were multiplied by publicly available Indian surrogate values.

For purposes of calculating NV, we valued PRC factors of production, in accordance with section 773(c)(1) of the Act. Factors of production include, but are not limited to: (1) Hours of labor required; (2) quantities of raw materials employed; (3) amounts of energy and other utilities consumed; and (4) representative capital cost, including depreciation. In examining surrogate values, we selected, where possible, the publicly available value which was: (1) An average non-export value; (2) representative of a range of prices within the POI or most contemporaneous with the POI; (3) product-specific; and (4) tax-exclusive. For a more detailed explanation of the methodology used in calculating various surrogate values, see the *Factors Memorandum.* In accordance with this methodology, we valued the factors of production as follows:

In selecting the surrogate values, we considered the quality, specificity, and contemporaneity of the data. As appropriate, we adjusted input prices by including freight costs to make them delivered prices. We added to Indian surrogate values surrogate freight costs using the shorter of the reported distance from the domestic supplier to the factory or the distance from the nearest seaport to the factory. This adjustment is in accordance with the Court of Appeals for the Federal Circuit's decision in *Sigma Corporation* v. *United States,* 117 F. 3d 1401, 1407–08 (Fed. Cir. 1997). For foreign inland freight on inputs we used price quotes obtained by the Department from Indian truck freight companies in November 1999. As noted above, these price quotes were used in *Persulfates 1999–2000 Preliminary Results,* and were also used in the investigation of bulk aspirin from the PRC. With regard to rail freight, we based our calculation on information from the *Indian Railway Conference Association.* Where appropriate, we adjusted the values to reflect inflation up to the POI using the WPI published by the IMF.

We valued fluorite powder using 1998 Indian import statistics as published by the United Nations. We valued ferrosilicon and dolomite using price quotes obtained by Minmetals/CNNMIT from Tata International Limited, an Indian producer of ferro-alloys. Where appropriate, we adjusted the values to reflect inflation up to the POI using the WPI published by the IMF.

We valued labor based on a regression-based wage rate, in accordance with 19 CFR 351.408(c)(3).

To value coal, we relied on import prices contained in the March 1999 issue of *Monthly Statistics of the Foreign Trade of India.* These data were used in the antidumping duty administrative review of persulfates from the PRC. *See Persulfates 1999–2000 Preliminary Results,* 66 FR at 18442. We adjusted the values to reflect inflation up to the POI using the WPI published by the IMF. For electricity, we derived a surrogate value based on 1998/1999 electricity price data published by Tata Energy Research Institute. These data were used in the antidumping duty administrative review of manganese metal from the PRC. *See Notice of Final Results of Antidumping Duty Administrative Review of Manganese Metal from the People's Republic of China,* 66 FR 15076 (Mar. 15, 2001) and accompanying decision memorandum at *Comment 10. See also Persulfates 1999–2000 Preliminary Results,* 66 FR at 18442. We adjusted the electricity values to reflect inflation up

[4] Nonetheless, we have used this information as a surrogate value because it is a price set by a market-economy supplier in U.S. dollars for transporting the subject merchandise during the POI. As such, we find that it represents a better surrogate value than the other surrogate information on the record of this case (*i.e.,* the 1996 data obtained from the Federal Maritime Commission found in the IA website and used in the petition).

[5] This was unchanged in the final results. *See Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, From the People's Republic of China; Final Results of 1998–1999 Administrative Review, Partial Rescission of Review, and Determination Not To Revoke Order in Part,* 66 FR 1953 (Jan. 10, 2001) (*TRBs 1998–1999 Final Results*).

to the POI using the electricity-specific price index published by the Reserve Bank of India.

We valued grinding services provided by a subcontractor using the factors of production reported for this company, because we were unable to obtain a surrogate value for its services. Specifically, we valued the labor and electricity factors of production using the same sources noted above. In addition, we added amounts for factory overhead, depreciation, SG&A expenses, and interest expenses derived from the financial statements of Southern Magnesium and Chemicals Ltd., an Indian magnesium metal producer. This information was supplied by the petitioners in the petition. Because these financial statements showed a loss, we calculated a profit ratio using the 1998/1999 financial aggregates and ratios data published by the Economic Intelligence Service and the Centre for Monitoring Indian Economy. This information was supplied by Minmetals/CNNMIT in its February 13, 2001, surrogate value submission. For further discussion, see the April 23, 2001, concurrence memorandum from the team.

To value plastic bags, plastic wrapper, and wooden pallets (*i.e.,* the packing materials reported by the respondent), we used import values from the *Monthly Statistics*.

To determine factory overhead, depreciation, SG&A expenses, and interest expenses, and profit for the finished product, we relied on rates derived from the financial statements noted above.

Verification

As provided in section 782(i) of the Act, we intend to verify all information relied upon in making our final determination.

Suspension of Liquidation

In accordance with section 733(d)(2) of the Act, we are directing the Customs Service to suspend liquidation of any entries of pure magnesium from PRC entered, or withdrawn from warehouse, for consumption on or after the date on which this notice is published in the **Federal Register**. We will instruct the Customs Service to require a cash deposit or the posting of a bond equal to the weighted-average amount by which the NV exceeds the EP, as indicated in the chart below. These suspension of liquidation instructions will remain in effect until further notice.

Manufacturer/exporter	Percent margin
Minmetals Precious & Rare Minerals Import and Export/China National Nonferrous Metals Industry Trading Group Corp	8.76
PRC-wide	305.56

The PRC-wide rate applies to all entries of the subject merchandise except for entries from exporters/producers that are identified individually above.

ITC Notification

In accordance with section 733(f) of the Act, we have notified the ITC of our determination. If our final determination is affirmative, the ITC will determine before the later of 120 days after the date of this preliminary determination or 45 days after our final determination whether these imports are materially injuring, or threaten material injury to, the U.S. industry.

Disclosure

We will disclose the calculations used in our analysis to parties in this proceeding within five days of the publication of this notice. *See* 19 CFR 351.224(b).

Public Comment

Case briefs for this investigation must be submitted no later than one week after the issuance of the verification reports. Rebuttal briefs must be filed within five days after the deadline for submission of case briefs. A list of authorities used, a table of contents, and an executive summary of issues should accompany any briefs submitted to the Department. Executive summaries should be limited to five pages total, including footnotes.

Section 774 of the Act provides that the Department will hold a hearing to afford interested parties an opportunity to comment on arguments raised in case or rebuttal briefs, provided that such a hearing is requested by any interested party. If a request for a hearing is made in an investigation, the hearing will tentatively be held two days after the deadline for submission of the rebuttal briefs at the U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230. Parties should confirm by telephone the time, date, and place of the hearing 48 hours before the scheduled time.

Interested parties who wish to request a hearing, or to participate if one is requested, must submit a written request to the Assistant Secretary for Import Administration, U.S. Department of Commerce, Room 1870, within 30 days of the publication of this notice. Requests should contain: (1) The party's name, address, and telephone number; (2) the number of participants; and (3) a list of the issues to be discussed. Oral presentations will be limited to issues raised in the briefs. If this investigation proceeds normally, we will make our final determination by 135 days after the publication of this notice in the **Federal Register**.

This determination is issued and published in accordance with sections 733(f) 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.

Bernard T. Carreau,

Deputy Assistant Secretary, Import Administration.

[FR Doc. 01–10684 Filed 4–27–01; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–821–813]

Notice of Preliminary Determination of Sales at Not Less Than Fair Value: Pure Magnesium From the Russian Federation

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

EFFECTIVE DATE: April 30, 2001.

FOR FURTHER INFORMATION CONTACT: James Nunno or Christopher Priddy, AD/CVD Enforcement Group I, Office 2, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230; telephone: (202) 482–0783 or (202) 482–1130, 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 to 19 CFR part 351 (2000).

Preliminary Determination

We preliminarily determine that pure magnesium from the Russian Federation (Russia) is not being, nor is likely to be, sold in the United States at less than fair value (LTFV), as provided in section 733(b) of the Act.

Case History

Since the initiation of this investigation (*Initiation of Antidumping Duty Investigations: Pure Magnesium from Israel, the Russian Federation, and the People's Republic of China*, 65 FR 68121 (Nov. 14, 2000) (*Notice of Initiation*)), the following events have occurred:

On December 1, 2000, the United States International Trade Commission (ITC) issued an affirmative preliminary injury determination in this case. *See* ITC Investigation No. 731–TA–895–897 (December 2000).

Also on December 1, 2000, the petitioners in this case (*i.e.,* the Magnesium Corporation of America (Magcorp) and the United Steel Workers of America, Locals 482 and 8319) requested that the Department modify the scope of this investigation to exclude certain magnesium products that are prepared solely for use as a desulfurizer in steel-making from the scope of the investigation. On December 4, 2000, we received comments on the scope of the investigation from ESM Group, Inc. (ESM), a U.S. manufacturer of magnesium powder and desulfurizing reagents. In its submission, ESM requested that the Department should exclude from the scope: (1) Magnesium-based reagents, in accordance with the petitioners' intention not to capture such products; and (2) pure magnesium in granular form, because it is a separate class or kind of merchandise from magnesium ingots. For further discussion, see the ''Scope of Investigation'' and ''Comments on Scope'' sections of the notice, below.

On December 11, 2000, we issued an antidumping questionnaire to the Trade Representative of the Russian Federation in the United States and requested that the Trade Representative forward the questionnaire to all companies which manufactured and/or exported the subject merchandise during the period of investigation (POI). We also sent courtesy copies of the questionnaire to all companies which were identified in the petition as possible exporters/producers of the subject merchandise during the POI. The letters provided to the Trade Representative and those companies identified in the petition as producers and/or exporters of pure magnesium set out the deadlines for responses to the different sections of the questionnaire.

In January 2001, the Department received responses from two U.S. trading companies which are exporters of Russian magnesium (*i.e.,* Greenwich Metals Inc. (Greenwich) and Interlink Metals, Inc. (Interlink)), and two Russian producers/exporters of magnesium (*i.e.,* Avisma Titanium Magnesium Works (Avisma) and Solikamsk Magnesium Works (SMW)). In January, February, and March 2001, we issued supplemental questionnaires to Avisma, Greenwich, and SMW and received responses to these supplemental questionnaires during January, February, and March 2001.

Also in January 2001, the Department requested that Interlink provide additional information concerning the proper date of sale for its U.S. sales. On January 24, 2001, we received a response to this supplemental questionnaire. In addition, we received comments from the petitioners and SMW regarding the appropriate date of sale in this case. Based on this information, we concluded that Interlink had no sales of subject merchandise during the POI. Consequently, we have not analyzed Interlink's response for purposes of this investigation. *See* the ''Period of Investigation'' section of the notice, below, for further discussion.

On January 19, 2001, the Department invited interested parties to comment on surrogate country selection and to provide publicly available information for valuing the factors of production. We received responses to this letter from the petitioners, Avisma, and Interlink on February 9, 2001. Each of these parties filed rebuttal comments on surrogate country and surrogate value information on February 20, 2001.

On March 1, 2001, pursuant to 19 CFR 351.205(e), the petitioners made a timely request to postpone the preliminary determination. We granted this request and, on March 6, 2001, postponed the preliminary determination until no later than April 23, 2001. *See Notice of Postponement of Preliminary Determinations of Sales at Less Than Fair Value: Pure Magnesium From Israel, the Russian Federation, and the People's Republic of China and Alignment of Final Countervailing Duty Determination With Final Antidumping Duty Determinations: Pure Magnesium From Israel,* 66 FR 14546 (Mar. 13, 2001).

Scope of Investigation

The scope of this investigation includes imports of pure magnesium products, regardless of chemistry, form, or size, including, without limitation, ingots, raspings, granules, turnings, chips, powder, and briquettes.

The scope of this investigation includes: (1) Products that contain at least 99.95 percent primary magnesium, by weight (generally referred to as ''ultra-pure'' magnesium); (2) products that contain less than 99.95 percent but not less than 99.8 percent pure magnesium, by weight (generally referred to as ''pure'' magnesium); (3) chemical combinations of pure magnesium and other material(s) in which the pure magnesium content is 50 percent or greater, but less than 99.8 percent, by weight, that do not conform to an ''ASTM Specification for Magnesium Alloy''[1] (generally referred to as ''off-specification pure'' magnesium); and (4) physical mixtures of pure magnesium and other material(s) in which the pure magnesium content is 50 percent or greater, but less than 99.8 percent, by weight, except that mixtures containing 90 percent or less pure magnesium, by weight, when mixed with lime, calcium metal, calcium silicon, calcium carbide, calcium carbonate, carbon slag coagulants, and/or fluorspar, are excluded.

The merchandise subject to this investigation is classifiable under 8104.11.00, 8104.19.00, and 8104.30.00 of the Harmonized Tariff Schedule of the United States (HTSUS). Although the HTSUS subheading is provided for convenience and customs purposes, the written description of the merchandise under investigation is dispositive.

Comments on Scope

In accordance with our regulations, we set aside a period of time for parties to raise issues regarding product coverage and encouraged all parties to submit such comments within 20 calendar days of publication of the *Notice of Initiation*. *See Notice of Initiation*, 65 FR at 68123. On December 1, 2000, the petitioners requested that the Department clarify that the scope of this investigation excludes finished mixtures containing pure magnesium and/or off-specification pure magnesium prepared solely for use as a desulfurizer in steel-making, unless such mixtures contain only minimal amounts of non-magnesium materials in order to circumvent an antidumping order. On December 4, 2000, ESM submitted a letter supporting the petitioners' position that magnesium-based reagents should not be included in the scope of the Department's investigation. On January 30, 2001, the petitioners submitted proposed language to further clarify their intent with respect to the scope of this investigation. Based on this submission, we have revised the scope to exclude reagent magnesium.

[1] The meaning of this term is the same as that used by the American Society for Testing and Materials in its *Annual Book of ASTM Standards: Volume 01.02 Aluminum and Magnesium Alloys.*

In its December 4 submission, ESM also argued that pure magnesium ingot and granular magnesium constitute separate classes or kinds of merchandise and that the Department should exclude granular magnesium from the scope of the investigation. However, because (1) the respondents only sold pure magnesium ingot during the POI, and (2) we have made a preliminary finding of no sales at less than fair value, we have not addressed this issue for purposes of the preliminary determination. In the event that we make an affirmative final determination, we will consider this issue then.

On April 10, 2001, Rossborough Manufacturing Co., L.P., requested that the Department amend the scope of this investigation to exclude certain additional reagent mixtures and imports of granular magnesium used for making reagent mixtures. Rossborough's submission was filed too late to be given proper consideration for purposes of the preliminary determination, but we will consider these issues for the final determination.

Period of Investigation

Pursuant to 19 CFR 351.204(b)(1), the POI for an investigation involving merchandise from a non market economy is the two most recent fiscal quarters prior to the month of the filing of the petition (*i.e.,* October 2000). Therefore, in this case, the POI is April 1, 2000, through September 30, 2000.

Both Interlink and SMW requested that the Department extend the POI to cover shipments of pure magnesium made pursuant to long-term contracts signed in the fourth quarter of 1999 and the first quarter of 2000. Pursuant to 19 CFR 351.204(b)(1), the Department may examine merchandise sold during any additional or alternate period that the Department concludes is appropriate. However, based on the arguments and evidence presented on this issue, the Department does not believe it is appropriate to extend the POI in this investigation. Thus, we have continued to use the six-month period defined by 19 CFR 351.204(b)(1). For further discussion, see the March 23, 2001, memorandum from Christopher Priddy to Richard W. Moreland entitled ''Date of Sale for Long-Term Contracts and Period of Investigation.''

Nonmarket Economy Country Status for Russia

The Department has treated Russia as a nonmarket economy (NME) country in all past antidumping duty investigations and administrative reviews. *See, e.g., Notice of Final Determination of Sales at Less Than Fair Value: Hot-Rolled Flat-Rolled Carbon-Quality Steel Products from the Russian Federation*, 64 FR 38626 (July 19, 1999); *Titanium Sponge from the Russian Federation: Final Results of Antidumping Administrative Review*, 64 FR 1599 (Jan. 11, 1999); *Notice of Final Determination of Sales at Less Than Fair Value: Certain Cut-to-Length Carbon Steel Plate from the Russian Federation*, 62 FR 61787 (Nov. 19, 1997); *Notice of Final Determination of Sale at Less Than Fair Value: Pure Magnesium and Alloy Magnesium from the Russian Federation*, 60 FR 16440 (Mar. 30, 1995) (*Magnesium from Russia Original Investigation Final Determination*). A designation as a NME remains in effect until it is revoked by the Department. *See* section 771(18)(C) of the Act.

When the Department is investigating imports from a NME country, section 773(c)(1) of the Act directs us to base normal value (NV) on the NME producer's factors of production, valued in a comparable market economy that is a significant producer of comparable merchandise. The sources of individual factor prices are discussed under the ''Normal Value'' section, below.

No party in this investigation has requested a revocation of Russia's NME status. We have, therefore, preliminarily continued to treat Russia as a NME.

Separate Rates

It is the Department's policy to assign all exporters of subject merchandise in an NME country a single rate, unless an exporter can demonstrate that it is sufficiently independent so as to be entitled to a separate rate. Avisma and SMW have submitted separate rates information in their section A responses, have stated that there is no element of government ownership or control, and have requested a separate, company-specific rate.

Regarding Greenwich, this exporter is located in a market-economy country and is not affiliated with a Russian producer or exporter. Consequently, we do not need to perform a separate rates test for Greenwich, and we are calculating a separate rate for it in accordance with our practice. *See Notice of Final Determination of Sales at Less Than Fair Value: Bicycles From the People's Republic of China*, 61 FR 19026, 19027 (Apr. 30, 1996).

The Department's separate rate test is unconcerned, in general, with macroeconomic/ border-type controls (*e.g.,* export licenses, quotas, and minimum export prices), particularly if these controls are imposed to prevent dumping. The test focuses, rather, on controls over the investment, pricing, and output decision-making process at the individual firm level. *See Certain Cut-to-Length Carbon Steel Plate from Ukraine: Final Determination of Sales at Less than Fair Value,* 62 FR 61754, 61757 (Nov. 19, 1997); *Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, from the People's Republic of China: Final Results of Antidumping Duty Administrative Review,* 62 FR 61276, 61279 (Nov. 17, 1997); and *Honey from the People's Republic of China: Preliminary Determination of Sales at Less than Fair Value,* 60 FR 14725, 14726 (Mar. 20, 1995).

To establish whether a firm is sufficiently independent from government control to be entitled to a separate rate, the Department analyzes each exporting entity under a test arising out of the *Final Determination of Sales at Less Than Fair Value: Sparklers From the People's Republic of China,* 56 FR 20588 (May 6, 1991), as modified 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) (*Silicon Carbide*). Under the separate rates criteria, the Department assigns separate rates in NME cases only if the NME respondents can demonstrate the absence of both de jure and de facto governmental control over export activities. *See Silicon Carbide* and *Final Determination of Sales at Less Than Fair Value: Furfuryl Alcohol From the People's Republic of China,* 60 FR 22545 (May 8, 1998).

1. Absence of De Jure Control

The Department considers the following de jure criteria in determining whether an individual company may be granted a separate rate: (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.

Regarding Avisma and SMW, these companies have placed on the record a number of documents to demonstrate absence of de jure control, including: (1) The Federal Law on Joint Stock Companies (Nov. 24, 1995); (2) the Russian Federation Federal Act on State Regulation of Foreign Trade Activity (July 7, 1995) (amended as Federal Law No. 32-FZ (Feb. 10, 1999)); (3) the President of the Russian Federation's Decree No. 721 (July 1, 1992); and (4) the Russian Federation Civil Code (Oct. 21, 1994) at Articles 49 and 50.

In prior cases, the Department has analyzed these laws and found that they establish an absence of de jure control. *See, e.g., Notice of Preliminary*

Determination of Sales at Less Than Fair Value: Cold-Rolled Flat-Rolled Carbon-Quality Steel Products From the Russian Federation, 64 FR 61261, 61268 (Nov. 10, 1999); *see* also *Notice of Preliminary Determination of Sales at Less Than Fair Value: Solid Fertilizer Grade Ammonium Nitrate From the Russian Federation,* 65 FR 1139, 1142 (Jan. 7, 2000).[2] We have no new information in this proceeding Federation, 65 FR 1139, 1142 (Jan. 7, 2000).[3] We have no new information in this proceeding which would cause us to reconsider this determination.

According to Avisma and SMW, pure magnesium exports are not affected by export licensing provisions or export quotas. Avisma and SMW claim to have autonomy in setting the contract prices for sales of pure magnesium through independent price negotiations with their foreign customers without interference from the Russian government. Based on the assertions of Avisma and SMW, we preliminarily determine that there is an absence of de jure government control over the pricing and marketing decisions of Avisma and SMW with respect to these companies' pure magnesium export sales.

2. Absence of De Facto Control

The Department typically considers four factors in evaluating whether each respondent is subject to de facto governmental control of its export functions: (1) Whether the export prices are set by, or subject to, the approval of a governmental authority; (2) whether the respondent has authority to negotiate and sign contracts, and other agreements; (3) whether the respondent has autonomy from the government in making decisions regarding the selection of its management; and (4) whether the respondent retains the proceeds of its export sales and makes independent decisions regarding disposition of profits or financing of losses.

Avisma and SMW have asserted the following: (1) Each company establishes its own export prices; (2) each company negotiates contracts without guidance from any governmental entities or organizations; (3) each company makes its own personnel decisions; and (4) each company retains the proceeds of its export sales and uses profits according to its business needs. Additionally, Avisma's and SMW's questionnaire responses indicate that company-specific pricing during the POI does not suggest coordination among exporters. This information supports a preliminary finding that there is an absence of de facto governmental control of the export functions of these companies. Consequently, we preliminarily determine that Avisma and SMW have met the criteria for the application of separate rates.

Russia-Wide Rate

As in all NME cases, the Department implements a policy whereby there is a rebuttable presumption that all exporters or producers located in the NME comprise a single exporter under common government control, the ''NME entity.'' The Department assigns a single NME rate to the NME entity unless an exporter can demonstrate eligibility for a separate rate.

Information on the record of this investigation indicates that Avisma and SMW were the only Russian producers and/or exporters of the subject merchandise with sales or shipments to the United States during the POI. Based upon our examination and clarification of Customs data, we have determined that there are no other Russian producers and/or exporters of the subject merchandise and consequently none which were required to respond to the Department's questionnaire. *See* the memorandum from Christopher Priddy to the file entitled ''Examination of Customs Data for Pure Magnesium Russian Imports During the Period of Investigation'' dated April 23, 2001. For this reason, we have not assigned a Russia-wide rate in this investigation.

Fair Value Comparisons

To determine whether sales of the subject merchandise by Avisma, Greenwich, and SMW to or within the United States were made at LTFV, we compared the export price (EP) or the constructed export price (CEP), as appropriate, to NV based on an NME analysis, as described below. In accordance with section 777A(d)(1)(A)(i) of the Act, we compared POI-wide weighted-average EPs and CEPs to the NVs.

Export Price and Constructed Export Price

A. Avisma

For Avisma, we used EP methodology in accordance with section 772(a) of the Act because the subject merchandise was sold directly to unaffiliated customers in the United States prior to importation and CEP methodology was not otherwise appropriate. We made no deduction from the starting price to account for either export taxes paid by Avisma to the Russian government or export procedure fees because (a) the actual amounts paid are an internal expense within an NME country and (b) there is no quantifiable good or service factor for which a surrogate value can be determined. *See Notice of Preliminary Determinations of Sales at Less Than Fair Value and Postponement of Final Determinations: Pure and Alloy Magnesium From the Russian Federation,* 59 FR 55427, 55430 (Nov. 7, 1994) (*Pure and Alloy Magnesium from Russia*).[4]

We calculated EP based on packed CFR[5] prices to the first unaffiliated purchaser in the United States. Where appropriate, we made deductions from the starting price for inland freight from the factory to the port of export, foreign brokerage and handling, third-country freight, third-country warehousing, ocean freight, and marine insurance, in accordance with section 772(c)(2)(A) of the Act. We valued Avisma's movement provided by NME suppliers using South African freight rates; for those freight services provided by market-economy companies, we used the actual prices which Avisma paid to the freight supplier in our EP calculation. For further discussion of our use of surrogate data in an NME proceeding, as well as selection of South Africa as the appropriate surrogate country, see the ''Normal Value'' section of this notice, below.

B. Greenwich

For Greenwich, we used CEP methodology in accordance with section 772(b) of the Act, because sales to the first unaffiliated purchaser in the United States took place after importation. In accordance with our practice, we excluded trial shipments from our

[2] The Department's findings in the preliminary determinations of these proceedings were unchanged in the final determinations. *See Notice of Final Determination of Sales at Less Than Fair Value: Certain Cold-Rolled Flat-Rolled Carbon-Quality Steel Products From the Russian Federation,* 65 FR 5510, 5518 (Feb. 4, 2000) (*Russian Cold-Rolled Final Determination*) and *Notice of Final Determination of Sales at Less Than Fair Value; Solid Fertilizer Grade Ammonium Nitrate From the Russian Federation,* 65 FR 42669, 42671 (July 11, 20000).

[3] The Department's findings in the preliminary determinations of these proceedings were unchanged in the final determinations. *See Notice of Final Determination of Sales at Less Than Fair Value: Certain Cold-Rolled Flat-Rolled Carbon-Quality Steel Products From the Russian Federation,* 65 FR 5510, 5518 (Feb. 4, 2000) (*Russian Cold-Rolled Final Determination*) and *Notice of Final Determination of Sales at Less Than Fair Value; Solid Fertilizer Grade Ammonium Nitrate From the Russian Federation,* 65 fr 42669, 42671 (July 11, 2000).

[4] This was unchanged in the final determination. *See Magnesium from Russia Original Investigation Final Determination,* 60 FR 16442.

[5] ''CFR,'' an official INCO Term for international trade and shipping, denotes that the seller is responsible for the cost of the freight expenses to the named port of destination but is not responsible for insurance expenses.

analysis for purposes of the preliminary determination because they were made in small quantities. *See, e.g., Notice of Preliminary Determination of Sales at Less Than Fair Value: Hot-Rolled Flat-Rolled Carbon-Quality Steel Products from Japan,* 64 FR 8291, 8295 (Feb. 19, 1999). For further discussion, see ''Preliminary Determination of Antidumping Duty Investigation of Pure Magnesium from the Russian Federation Concurrence Memorandum'' (*Concurrence Memorandum*) dated April 23, 2001.

We calculated CEP based on ex-dock, ex-warehouse, CIF, or delivered prices to unaffiliated purchasers in the United States. We deducted from the starting price amounts for foreign inland freight from the Russian plant to the reseller's warehouse, foreign inland freight in the country of exportation, foreign brokerage and handling, ocean freight, marine insurance, U.S. inland freight, U.S. warehousing, U.S. inland insurance, U.S. terminal charges, and U.S. customs brokerage fees and duties in accordance with section 772(c)(2)(A) of the Act. We valued Greenwich's movement expenses provided by NME suppliers using South African freight rates; for those freight services provided by market-economy companies, we used the actual prices which Greenwich paid to the freight supplier in our CEP calculation.

We made additional deductions from CEP for credit expenses, and U.S. indirect selling expenses, including U.S. inventory carrying costs and other indirect selling expenses, in accordance with section 772(d)(1) of the Act. We recalculated credit expenses for one sale for which Greenwich had not received payment as of the date of its last questionnaire response. As the date of payment for this sale, we used the date of the preliminary determination.

Pursuant to section 772(d)(3) of the Act, we further reduced the starting price by an amount for profit to arrive at CEP. We calculated the CEP profit ratio for Greenwich based on the financial data reported in its income statement for the year ended June 30, 2000.

C. SMW

For SMW, we used CEP methodology in accordance with section 772(b) of the Act, because sales to the first unaffiliated purchaser in the United States took place after importation. We made no deduction from the starting price to account for either export taxes paid by SMW to the Russian government or export procedure fees because (a) the actual amounts paid are an internal expense within an NME country and (b) there is no quantifiable good or service factor for which a surrogate value can be determined. *See Pure and Alloy Magnesium from Russia,* 59 FR at 55430. We calculated CEP based on ex-dock, ex-warehouse, CIF or delivered prices to unaffiliated purchasers in the United States. Where appropriate, we adjusted the starting price for billing adjustments. We also deducted from the starting price amounts for foreign inland freight, foreign brokerage and handling, foreign inland insurance, ocean freight, marine insurance, U.S. inland freight, U.S. warehousing, U.S. terminal charges, U.S. customs brokerage fees and duties, and U.S. warehousing, in accordance with section 772(c)(2)(A) of the Act. We valued SMW's movement provided by NME suppliers using South African freight rates; for those freight services provided by market-economy companies, we used the actual prices which SMW paid to the freight supplier in our CEP calculation. With respect to ocean freight and marine insurance, we note that SMW used a freight forwarder located in Russia to ship certain of its products. Because SMW was unable to establish that the expenses incurred for these transactions were set by a market-economy supplier in a market-economy currency, we have not used them for purposes of the preliminary determination. Rather, we have based the amount of these expenses on the amounts incurred by SMW on its other transactions arranged by freight forwarders located in a market-economy. For further discussion, see *Concurrence Memorandum.*

We made additional deductions for credit expenses and U.S. indirect selling expenses, including U.S. inventory carrying costs and other indirect selling expenses, in accordance with section 772(d)(1) of the Act. We based the amount for indirect selling expenses incurred by SMW's U.S. affiliate on facts available because SMW did not report these expenses on a POI-basis, despite requests in two supplemental questionnaires that it do so. As facts available, we used the total indirect selling expense amount reported by SMW, which represents all indirect expenses incurred during 2000. For further discussion, see *Concurrence Memorandum.*

Pursuant to section 772(d)(3) of the Act, we further reduced the starting price by an amount for profit to arrive at CEP. We calculated the CEP profit ratio using the financial data reflected on the income statement of a South African producer of zinc. For further discussion of the financial statements of this surrogate producer, see the ''Normal Value'' section of this notice, below.

Normal Value

A. Surrogate Country

Section 773(c)(4) of the Act requires the Department to value the NME producer's factors of production, to the extent possible, in one or more market-economy countries that: (1) are at a level of economic development comparable to that of the NME country, and (2) are significant producers of comparable merchandise. The Department has determined that Poland, Venezuela, South Africa, Turkey, Colombia, and Tunisia are countries comparable to Russia in terms of overall economic development. *See* the January 12, 2001, memorandum from Jeffrey May to Louis Apple.

According to the available information on the record, we have determined that South Africa meets the statutory requirements for an appropriate surrogate country for Russia. For purposes of the preliminary determination, we have selected South Africa as the surrogate country, based on the quality and contemporaneity of the currently available data. Accordingly, we have calculated NV using South African values for Russian producers' factors of production except, as noted below, in certain instances where an input was sourced from a market economy country and purchased with a market-economy currency. We have obtained and relied upon publicly available information wherever possible.

B. Factors of Production

In accordance with section 773(c) of the Act, we calculated NV based on factors of production reported by Avisma and SMW for the POI. To calculate NV, the reported per-unit factor quantities were multiplied by publicly available South African surrogate values.

For purposes of calculating NV, we valued Russian factors of production, in accordance with section 773(c)(1) of the Act. Factors of production include, but are not limited to: (1) Hours of labor required; (2) quantities of raw materials employed; (3) amounts of energy and other utilities consumed; and (4) representative capital cost, including depreciation. In examining surrogate values, we selected, where possible, the publicly available value which was: (1) An average non-export value; (2) representative of a range of prices within the POI or most contemporaneous with the POI; (3) product-specific; and (4) tax-exclusive.

For a more detailed explanation of the methodology used in calculating various surrogate values, see the ''Preliminary Determination Factors Valuation Memorandum from the Team to the File,'' dated April 23, 2001. In accordance with this methodology, we valued the factors of production as follows:

In selecting the surrogate values, we considered the availability, quality, specificity, and contemporaneity of the data. As appropriate, we adjusted input prices by including freight costs to make them delivered prices. We added to South African surrogate values a surrogate freight cost using the shorter of the reported distance from the domestic supplier to the factory or the distance from the nearest seaport to the factory. This adjustment is in accordance with the Court of Appeals for the Federal Circuit's decision in *Sigma Corporation* v. *United States,* 117 F. 3d 1401, 1407–08 (Fed. Cir. 1997). Where a producer did not report the distance between the material supplier and the factory, we used as facts available the longest distance reported (*i.e.,* the distance between the Russian seaport and the producer's location). To value rail freight rates, we used a rate for aluminum slabs or ingots provided by Spoornet, a South African rail company. As we were unable to identify a surrogate value for freight by truck, we valued trucking freight expenses using the surrogate value for rail freight. For those values not contemporaneous with the POI, we adjusted for inflation using producer price indices or wholesale price indices published in the International Monetary Fund's International Financial Statistics.

We valued the following inputs using United Nation's Harmonized System import data for South Africa: sodium chloride, magnesium chloride, calcium flouric (flourspar), barium chloride, potassium chloride, potash, and shaped timber/sawn wood.

We valued technical salt, sulphur, and slag using data from the World Trade Atlas of the South African Revenue Service. We valued carnallite concentrate using a price quote provided by a South African raw dolomite producer, and we multiplied the dolomite price quote by a factor of 20 as an estimated value for dehydrated carnallite. We valued sulfuric acid using United Nations commodity trade statistics for imports. The surrogate value for petroleum coke was based on an average of data obtained from the World Trade Atlas of the South African Revenue Service and United Nations commodity trade statistics. We valued magnesium scrap using Customs Union trade import statistics for aluminum scrap. We valued boric acid using data from the U.S. Geological Survey.

We valued both natural gas and heavy oil using data from the International Energy Agency. We valued electricity using the 1999 average electricity rate charged to industrial users by Eskom, a South African electric utility company.

We valued the following packing materials using data from the World Trade Atlas of the South African Revenue Service: nails, tape, labels, wire, thermo-shrinking bags, and silica gel. The surrogate value for steel strips/metal straps was based on United Nations Commodity Trade Statistics. We used the Monthly Abstract of Trade Statistics from the Republic of South Africa in order to value polyethylene film/plastic.

We valued labor based on a regression-based wage rate in accordance with 19 CFR 351.408(c)(3).

To determine factory overhead, SG&A expenses, and profit, we relied on rates derived from the 1998 financial statements of Zinc Corporation of South Africa, a South African producer of comparable merchandise.

Based on the information submitted by Avisma and SMW, we have determined that chlorine gas and potassium chloride flux are by-products. Because they are by-products, we subtracted the sales revenue of chlorine gas and potassium chloride flux from the estimated production costs of pure magnesium. This treatment of by-products is consistent with generally accepted accounting principles. *See Cost Accounting: A Managerial Emphasis (1991)* at pages 539–544. We used a South African price quote to value chlorine and United Nation's Harmonized System data to value potassium chloride.

Currency Conversions

We made currency conversions, in accordance with section 773A(a) of the Act, based on the official exchange rates in effect on the dates of the U.S. sales as certified by the Federal Reserve Bank of New York.

Verification

As provided in section 782(i) of the Act, we intend to verify all information relied upon in making our final determination.

Suspension of Liquidation

Because the estimated weighted-average dumping margins for all the examined companies are 0.00 percent, we are not directing the Customs Service to suspend liquidation of entries of pure magnesium from Russia.

ITC Notification

In accordance with section 733(f) of the Act, we have notified the ITC of our determination. If our final determination is affirmative, pursuant to section 735(b)(3) of the Act, the ITC will determine within 75 days after our final determination whether these imports are materially injuring, or threaten material injury to, the U.S. industry.

Disclosure

We will disclose the calculations used in our analysis to parties in this proceeding within five days of the publication of this notice. *See* 19 CFR 351.224(b).

Public Comment

Case briefs for this investigation must be submitted no later than one week after the issuance of the verification reports. Rebuttal briefs must be filed within five days after the deadline for submission of case briefs. A list of authorities used, a table of contents, and an executive summary of issues should accompany any briefs submitted to the Department. Executive summaries should be limited to five pages total, including footnotes.

Section 774 of the Act provides that the Department will hold a hearing to afford interested parties an opportunity to comment on arguments raised in case or rebuttal briefs, provided that such a hearing is requested by any interested party. If a request for a hearing is made in an investigation, the hearing will tentatively be held two days after the deadline for submission of the rebuttal briefs at the U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230. Parties should confirm by telephone the time, date, and place of the hearing 48 hours before the scheduled time.

Interested parties who wish to request a hearing, or to participate if one is requested, must submit a written request to the Assistant Secretary for Import Administration, U.S. Department of Commerce, Room 1870, within 30 days of the publication of this notice. Requests should contain: (1) The party's name, address, and telephone number; (2) the number of participants; and (3) a list of the issues to be discussed. Oral presentations will be limited to issues raised in the briefs. If this investigation proceeds normally, we will make our final determination within 75 days of this preliminary determination.

This determination is issued and published in accordance with sections 733(f) 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 23, 2001.

Bernard T. Carreau,

Deputy Assistant Secretary, Import Administration.

[FR Doc. 01–10685 Filed 4–27–01; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–508–809]

Notice of Preliminary Determination of Sales at Less Than Fair Value: Pure Magnesium from Israel

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

EFFECTIVE DATE: April 30, 2001.

FOR FURTHER INFORMATION CONTACT: Craig Matney or Andrew Covington, Office 1, AD/CVD Enforcement, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone: (202) 482–1778, or (202) 482–3534, respectively.

The Applicable Statute and Regulations

Unless otherwise indicated, all citations to the statute are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Tariff Act of 1930 (the Act) by the Uruguay Round Agreements Act (URAA). In addition, unless otherwise indicated, all citations to the Department of Commerce's (the Department's) regulations refer to the regulations codified at 19 CFR Part 351 (April 2000).

Preliminary Determination

We preliminarily determine that pure magnesium from Israel is being sold, or is likely to be sold, in the United States at less than fair value (LTFV), as provided in section 733 of the Act. The estimated margins are shown in the Suspension of Liquidation section of this notice.

Case History

Since the publication of the notice of initiation of this investigation in the **Federal Register** (*see Initiation of Antidumping Duty Investigations: Pure Magnesium from Israel, the Russian Federation, and the People's Republic of China,* 65 FR 68121 (November 14, 2000) (*Initiation Notice*)), the following events have occurred:

On December 1, 2000, the United States International Trade Commission (ITC) preliminarily determined that there is a reasonable indication that imports of pure magnesium from Israel are materially injuring the United States industry. See 65 FR 77910 (December 13, 2000). On December 4, 2000, the Department requested comments from interested parties regarding the criteria to be used for model matching purposes. The parties submitted comments on our proposed model matching criteria on December 8, 2000. On December 12, 2000, the Department issued an antidumping questionnaire to Dead Sea Magnesium (DSM).

DSM submitted its initial responses to the questionnaire on January 25 and February 1, 2001. The petitioners in this case (*i.e.,* the Magnesium Corporation of America (Magcorp) and the United Steel Workers of America, Locals 482 and 8319) filed comments on the questionnaire responses on February 12, 2001. After analyzing the initial responses and the petitioners' comments, we issued a supplemental questionnaire to DSM on February 22, 2001. We received DSM's response to this supplemental questionnaire on March 15, 2001.

On February 8, 2001, the petitioners requested that the Department initiate an investigation of sales below the cost of production (COP) for DSM. On February 20, 2001, based on our review of the petitioners' below cost allegation, we initiated a cost investigation for DSM and requested that DSM respond to Section D of the antidumping questionnaire concerning COP and constructed value (CV) (*see* Memorandum dated February 20, 2001, to Senior Office Director Susan Kuhbach, which is on file in Import Administration's Central Records Unit (*Cost Initiation Memo*)). DSM filed its Section D response on March 21, 2001. On April 2, 2001, we issued a Section D supplemental questionnaire to DSM. DSM submitted supplemental section D information on April 10 and 16, 2001.

On March 1, 2001, the petitioners made a timely request for a postponement of the preliminary determination pursuant to section 733(c)(1)(A) of the Act. On March 6, 2001, the Department postponed the preliminary determination until no later than April 23, 2001 (*see Notice of Postponement of Preliminary Determinations of Sales at Less Than Fair Value: Pure Magnesium From Israel, the Russian Federation, and the People's Republic of China and Alignment of Final Countervailing Duty Determination With Final Antidumping Duty Determinations: Pure Magnesium From Israel,* 66 FR 14546 (March 13, 2001) (*Postponement Notice*)).

Scope of the Investigation

The scope of this investigation includes imports of pure magnesium products, regardless of chemistry, form, or size, including, without limitation, ingots, raspings, granules, turnings, chips, powder, and briquettes.

Pure magnesium includes: (1) Products that contain at least 99.95 percent primary magnesium, by weight (generally referred to as ''ultra-pure'' magnesium); (2) products that contain less than 99.95 percent but not less than 99.8 percent pure magnesium, by weight (generally referred to as ''pure'' magnesium); and (3) chemical combinations of pure magnesium and other material(s) in which the pure magnesium content is 50 percent or greater, but less than 99.8 percent, by weight, that do not conform to an ''ASTM Specification for Magnesium Alloy'' [1] (generally referred to as ''off-specification pure'' magnesium); and (4) physical mixtures of pure magnesium and other material(s) in which the pure magnesium content is 50 percent or greater, but less than 99.8 percent, by weight, except that mixtures containing 90 percent or less pure magnesium, by weight, when mixed with lime, calcium metal, calcium silicon, calcium carbide, calcium carbonate, carbon slag coagulants, and/or fluorspar, are excluded.

The merchandise subject to this investigation is classifiable under 8104.11.00, 8104.19.00, and 8104.30.00 of the Harmonized Tariff Schedule of the United States (HTSUS). Although the HTSUS subheading is provided for convenience and customs purposes, the written description of the merchandise under investigation is dispositive.

Comments on Scope

In accordance with our regulations, we set aside a period of time for parties to raise issues regarding product coverage and encouraged all parties to submit such comments within 20 calendar days of publication of the *Initiation Notice* (*see* 65 FR at 68123). On December 1, 2000, the petitioners requested that the Department clarify that the scope of this investigation excludes finished mixtures containing pure magnesium and/or off-specification pure magnesium prepared solely for use as a desulfurizer in steel-making, unless such mixtures contain only minimal amounts of non-magnesium materials in order to circumvent an antidumping order. On

[1] The meaning of this term is the same as that used by the American Society for Testing and Materials in its *Annual Book of ASTM Standards: Volume 01.02 Aluminum and Magnesium Alloys.*

December 4, 2000, an interested party in this investigation, ESM, submitted a letter supporting the petitioners' position that magnesium-based reagents should not be included in the scope of the Department's investigation. On January 30, 2001, the petitioners submitted proposed language to further clarify their intent with respect to the scope of this investigation. Based on this submission, we have revised the scope to exclude reagent magnesium.

In its December 4, 2000, submission, ESM also argued that pure magnesium ingot and granular magnesium constitute separate classes or kinds of merchandise and that the Department should exclude granular magnesium from the scope of the investigation. While ESM claimed that magnesium ingot and granular magnesium constitute separate classes or kinds of merchandise, it did not address the criteria for determining separate classes or kinds as set forth in 19 CFR 351.225(k) (*i.e.,* the physical characteristics of the products, the expectations of the ultimate purchasers, the ultimate use of the product, the channels of trade in which the product is sold, and the manner in which the product is advertised or displayed). Instead, ESM addressed the criteria relating to designation of like products. The Department determined prior to initiating this investigation that ingot and granular magnesium are a single like product (*see Initiation Notice* 65 FR at 68122 and Memorandum from the team to Richard W. Moreland, Deputy Assistant Secretary, Office of AD/CVD Enforcement, Group I entitled ''Like Product and Industry Support Determinations in the Antidumping Duty Investigations of Pure Magnesium from Israel, the People's Republic of China, and the Russian Federation and the Countervailing Duty Investigation of Pure Magnesium from Israel,'' dated November 6, 2000 (*Like Product/ Industry Support Memo*).

On April 10, 2001, Rossborough Manufacturing Co., L.P., requested that the Department amend the scope of this investigation to exclude certain additional reagent mixtures and imports of granular magnesium used for making reagent mixtures. Rossborough's submission was filed too late to be given proper consideration for purposes of the preliminary determination, but we will consider these issues for the final determination.

Period of Investigation

The period of investigation (POI) is October 1, 1999, through September 30, 2000. This period corresponds to the respondent's four most recently completed fiscal quarters prior to the filing of the petition (*see* 19 CFR 351.204(b)).

Normal Value

A. Selection of Comparison Market

Pursuant to section 771(16) of the Act, all products produced and sold by the respondents in the comparison market that fit the definition contained in the Scope of the Investigation section of this notice and were sold during the POI comprise the foreign like product. In accordance with section 773(a)(1)(C)(ii) of the Act, in order to determine whether there was a sufficient volume of sales in the home market to serve as a viable basis for calculating normal value (NV), we compared the respondent's volume of home market sales of the foreign like product to the volume of its U.S. sales of the subject merchandise.

DSM reported that its home market sales of pure magnesium during the POI were less than 5 percent of its sales of pure magnesium in the United States. Therefore, DSM did not have a viable home market for purposes of calculating normal value. However, DSM reported that Germany was its largest viable third country market and, therefore, DSM reported its sales to Germany for purposes of calculating normal value. Because all of DSM's German sales failed the cost test, we have disregarded all comparison market sales (*see* the Results of the COP Test section below). Accordingly, we compared the merchandise sold in the United States to CV, in accordance with section 773(a)(4) of the Act.

B. Cost of Production Analysis

Based on a timely cost allegation, and in accordance with section 773(b)(2)(A)(i) of the Act, we found reasonable grounds to believe or suspect that DSM's pure magnesium sales made in Germany were made at prices below COP (see *Cost Initiation Memo*). As a result, the Department has conducted an investigation to determine whether the respondent made sales in its comparison market at prices below the COP during the POI within the meaning of section 773(b) of the Act. We conducted the COP analysis described below.

1. Calculation of COP

In accordance with section 773(b)(3) of the Act, we calculated a weighted-average COP for pure magnesium, based on the sum of the cost of materials and fabrication (COM) for the foreign like product, plus amounts for interest expenses, general and administrative expenses (G&A) and packing costs. We adjusted DSM's reported COM data by treating certain joint products as by-products rather than as co-products. This required the reallocation of manufacturing costs. We also recalculated DSM's reported interest and G&A expenses based on this revised COM. See April 23, 2001 memorandum to Neal Halper regarding adjustments to the COP and CV.

2. Test of Comparison Market Sales Prices

We compared the adjusted, weighted-average, COP for DSM to its prices for German market sales of the foreign like product. The prices were exclusive of billing adjustments, movement expenses, commissions, and other direct and indirect selling expenses. This is in accordance with 773(b) of the Act, and was done to determine whether these sales had been made at prices below the COP within an extended period of time (*i.e.,* a period of one year) in substantial quantities and whether such prices were sufficient to permit the recovery of all costs within a reasonable period of time.

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 at prices less than the COP, we do not disregard any below-cost sales of that product because we determine that the below-cost sales were not made in ''substantial quantities.'' Where 20 percent or more of a respondent's sales of a given product during the POI were at prices less than the COP, we determine such sales to have been made in substantial quantities within an extended period of time. *See also* section 773(b)(2)(B) of the Act. The Department next compares prices from the comparison market to the POI average COP in order to determine whether such sales were made at prices which would permit recovery of all costs within a reasonable period of time. *See* section 773(b)(2)(D) of the Act.

We found that all of DSM's comparison market sales were made within an extended period of time at prices less than the COP. In addition, the prices did not provide for the recovery of costs within a reasonable period of time. Therefore, because there were no comparable comparison market sales in the ordinary course of trade, we compared EP/CEP to CV in accordance with section 773(a)(4) of the Act. *See* the section on Calculation of Normal Value Based on Constructed Value below.

C. Calculation of Normal Value Based on Comparison Market Prices

Because all of DSM's sales of comparable merchandise in the comparison market failed the cost test, we did not calculate NV based on comparison market prices.

D. Calculation of Normal Value Based on Constructed Value

Section 773(a)(4) of the Act provides that where normal value cannot be based on comparison market sales, normal value may be based on the constructed value. Accordingly, because all sales of comparison products failed the COP test, we based NV on CV.

Sections 773(e)(1) and (e)(2)(A) of the Act provide that the CV shall be based on the sum of the cost of materials and fabrication for the foreign like product, plus amounts for selling expenses, G&A, profit, and U.S. packing costs. We calculated the cost of materials and fabrication based on the methodology described in the Calculation of COP section, above.

Because DSM does not have any above cost comparison market sales of subject merchandise, the Department has not determined selling expenses, G&A expenses, and profit under section 773(e)(2)(A) of the Act, which requires sales by the respondent in question in the ordinary course of trade in a comparison market. In situations where we cannot calculate selling expenses, G&A expenses, and profit under section 773(e)(2)(A), section 773(e)(2)(B) of the Act sets forth three alternatives. The Statement of Administrative Action at 840 (H.R. Doc. 103–316 (1994)) states that ''section 773(e)(2)(B) does not establish a hierarchy or preference among these alternative methods.''

Section 773(e)(2)(B)(i) specifies that selling expenses, G&A expenses, and profit may be calculated based on ''actual amounts incurred by the specific exporter or producer * * * on merchandise in the same general category'' as subject merchandise. DSM also produces alloy magnesium, which could be considered as the same general category of merchandise as pure magnesium. However, there is insufficient information on the record for us to determine the selling and G&A expenses or the profit rate for DSM's sales of alloy magnesium.

Alternative (ii) of this section provides that selling expenses, G&A expenses, and profit may be calculated based on ''the weighted average of the actual amounts incurred and realized by {other} exporters or producers that are subject to the investigation.'' However, because there are no other respondents in this case, the Department cannot calculate selling expenses, G&A expenses, and profit based on alternative (ii) of this section.

Therefore, the only statutory option available to the Department to calculate the CV selling expenses, G&A expenses, and profit for DSM is under section 773(e)(2)(B)(iii). Alternative (iii) of this section allows the Department to use ''any other reasonable method'' to calculate the CV selling expenses, G&A expenses, and profit, provided that the amount for profit does not ''exceed the amount normally realized by exporters or producers * * * in connection with the sale, for consumption in the foreign country, of merchandise that is in the same general category of products as the subject merchandise.''

With respect to selling expenses, lacking more suitable information, we calculated CV selling expenses based on DSM's reported comparison market sales. We calculated G&A based on DSM's reported information as applied to a revised COM (see the Calculation of COP section, above), as we have no reason to believe DSM's reported G&A expenses are unreliable as a result of all of its comparison market sales being made at prices below the cost of production.

We calculated amounts for the CV profit based on the profit earned by Dead Sea Periclase (DSP). DSP produces periclase (*i.e.*, magnesium oxide) and other magnesium-based compounds. These magnesium-based products, like subject merchandise, are manufactured from the Dead Sea brine. Periclase is primarily used to manufacture refractories and other flame retardant materials. The other magnesium-based compounds are used in pharmaceuticals, food mineral supplements, rubbers, plastics, and to produce specialty steel for transformers. Because we do not have any further information regarding profit on the same general category of merchandise, we have not been able to quantify the ''profit cap'' described in section 773(e)(2)(B)(iii) of the Act. The SAA, at 841, anticipates such situations and directs that where the Department cannot calculate a profit cap, the Department may apply 773(e)(2)(B)(iii) of the Act on the basis of the facts available. Therefore, we have not calculated a ''profit cap'' for the instant determination. As facts available, we have used DSP's profit rate of 3.12 percent in calculating CV as a reasonable surrogate for DSM's home market profit.

In addition, we added U.S. packing costs. Lastly, we made adjustments to CV for differences in circumstances of sale (COS) (*i.e.*, imputed credit) in accordance with section 773(a)(6)(C)(iii) of the Act and 19 CFR 351.410. We made COS adjustments for both EP and CEP sales.

Fair Value Comparisons

To determine whether sales of pure magnesium from Israel to the United States were made at less than fair value, we compared the export price (EP) or constructed export price (CEP) to NV, as described in the Export Price and Normal Value sections, below. In accordance with section 777A(d)(1)(A)(i) of the Act, we compared POI-wide weighted-average EPs and CEPs to the NVs.

Date of Sale

DSM reported that it made a number of its sales based on term contracts in which the terms of sale (*e.g.,* price, quantity, delivery schedule) purportedly were set at the time the contract was signed. In an April 19, 2001 supplemental questionnaire, the Department requested that DSM provide further information on these sales and report the contract date and other necessary information for all term contract sales negotiated during the POI. The current due date for this questionnaire response is May 2, 2001. For purposes of this preliminary determination, the Department has used the reported invoice date as the date of sale. However, we intend to examine DSM's response to our outstanding supplemental questionnaire and consider this issue further for the final determination.

Export Price

In accordance with section 772 of the Act, we based U.S. price on EP for certain sales. Section 772(a) of the Act defines EP as the price at which the subject merchandise is first sold before the date of importation by the exporter or producer outside the United States to an unaffiliated purchaser in the United States, or to an unaffiliated purchaser for exportation to the United States. Consistent with this definition, we found that some of the respondent's sales during the POI were EP sales. For these sales, we calculated EP based on prices charged to the first unaffiliated customer in the United States.

As the starting U.S. price, we relied on the reported gross unit price. These prices were delivered and FOB prices to unaffiliated customers in the United States. In accordance with section 772(c)(2) of the Act, we reduced the EP, where appropriate, by billing adjustments and movement expenses, including foreign inland freight, foreign

brokerage charges, insurance, international freight and U.S. inland freight.

Constructed Export Price

For certain sales, we used CEP methodology in accordance with sections 772(b), (c) and (d) of the Act, because sales to the first unaffiliated purchaser in the United States took place after importation. Consistent with these definitions, we found that some of the respondent's sales during the POI were CEP sales. For these sales, we calculated CEP based on prices charged to the first unaffiliated customer in the United States.

As the starting U.S. price, we relied on the reported gross unit price. These prices were delivered and FOB prices to unaffiliated customers in the United States. In accordance with section 772(c)(2) of the Act, we reduced the CEP, where appropriate, by billing adjustments and movement expenses, including foreign inland freight, foreign brokerage charges, insurance, international freight and U.S. inland freight. Also, where appropriate, we deducted direct and indirect selling expenses related to commercial activity in the United States. Pursuant to section 772(d)(3) of the Act, where applicable, we made an adjustment for CEP profit.

Currency Conversions

We made currency conversions in accordance with section 773A(a) of the Act.

Verification

In accordance with section 782(i) of the Act, we intend to verify information to be used in making our final determination.

Suspension of Liquidation

In accordance with section 733(d)(2) of the Act, we are directing the Customs Service to suspend liquidation of all imports of subject merchandise from Israel entered, or withdrawn from warehouse, for consumption on or after the date of publication of this notice in the **Federal Register**. We will instruct the Customs Service to require a cash deposit or the posting of a bond equal to the weighted-average amount by which the NV exceeds the EP or CEP, as indicated in the chart below. These suspension of liquidation instructions will remain in effect until further notice.

The weighted-average dumping margins are as follows:

Exporter/producer	Weighted-average margin (in percent)
Dead Sea Magnesium	12.68
All-others	12.68

ITC Notification

In accordance with section 733(f) of the Act, we have notified the ITC of our determination. If our final determination is affirmative, the ITC will determine before the later of 120 days after the date of this preliminary determination or 45 days after our final determination whether these imports are materially injuring, or threaten material injury to, the U.S. industry.

Disclosure

We will disclose the calculations used in our analysis to parties in this proceeding within five days of the publication of this notice. *See* 19 CFR 351.224(b).

Public Comment

Case briefs for this investigation must be submitted no later than one week after the issuance of the verification reports. Rebuttal briefs must be filed within five days after the deadline for submission of case briefs. A list of authorities used, a table of contents, and an executive summary of issues should accompany any briefs submitted to the Department. Executive summaries should be limited to five pages total, including footnotes.

Section 774 of the Act provides that the Department will hold a hearing to afford interested parties an opportunity to comment on arguments raised in case or rebuttal briefs, provided that such a hearing is requested by an interested party. If a request for a hearing is made in an investigation, the hearing will tentatively be held two days after the deadline for submission of the rebuttal briefs at the U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230. Parties should confirm by telephone the time, date, and place of the hearing 48 hours before the scheduled time.

Interested parties who wish to request a hearing, or to participate if one is requested, must submit a written request to the Assistant Secretary for Import Administration, U.S. Department of Commerce, Room 1870, within 30 days of the publication of this notice. Requests should contain: (1) The party's name, address, and telephone number; (2) the number of participants; and (3) a list of the issues to be discussed. Oral presentations will be limited to issues raised in the briefs.

If this investigation proceeds normally, we will make our final determination within 75 days of this preliminary determination.

This determination is issued and published in accordance with sections 733(f) 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 23, 2001.

Bernard T. Carreau,

Deputy Assistant Secretary, Import Administration.

[FR Doc. 01–10686 Filed 4–27–01; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–122–838]

Notice of Initiation of Antidumping Duty Investigation: Certain Softwood Lumber Products From Canada

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

EFFECTIVE DATE: April 30, 2001.

FOR FURTHER INFORMATION CONTACT: Valerie Ellis or Charles Riggle at (202) 482–2336 and (202) 482–0650, respectively; Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230.

Initiation of Investigation

The Applicable Statute and Regulations

Unless otherwise indicated, all citations to the statute are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Tariff Act of 1930 (the Act) by the Uruguay Round Agreements Act (URAA). In addition, unless otherwise indicated, all citations to the Department of Commerce (the Department) regulations are references to the provisions codified at 19 CFR part 351 (2001).

The Petition

On April 2, 2001, the Department received a petition filed in proper form by the Coalition for Fair Lumber Imports Executive Committee,[1] the United

[1] The Coalition for Fair Lumber Imports Executive Committee is comprised of Hood Industries, International Paper Company, Moose River Lumber Company, New South Incorporated, Plum Creek Timber Company, Polatch Corporation, Seneca Sawmill Company, Shearer Lumber Products,

Brotherhood of Carpenters and Joiners, and the Paper, Allied-Industrial, Chemical and Energy Workers International Union (collectively, the petitioners). On April 20, 2001, the petition was amended to include the following four companies individually as petitioners: Moose River Lumber Co., Shearer Lumber Products, Shuqualak Lumber Co. and Tolleson Lumber Co., Inc. The Department received information supplementing the petition during the twenty-day initiation period. In accordance with section 732(b) of the Act, the petitioners allege that imports of certain softwood lumber products from Canada are being, or are likely to be, sold in the United States at less than fair value within the meaning of section 731 of the Act, and that such imports are materially injuring an industry in the United States.

The Department finds that the petitioners have standing to file this petition on behalf of the domestic industry because they are interested parties as defined in sections 771(9)(C), (D) and (E) of the Act and have demonstrated sufficient industry support with respect to the antidumping investigation that they are requesting the Department to initiate. *See Determination of Industry Support for the Petition*, below.

Scope of the Investigation

The products covered by this investigation are softwood lumber, flooring and siding (softwood lumber products). Softwood lumber products include all products classified under headings 4407.1000, 4409.1010, 4409.1090, and 4409.1020, respectively, of the HTSUS, and any softwood lumber, flooring and siding described below. These softwood lumber products include:

(1) Coniferous wood, sawn or chipped lengthwise, sliced or peeled, whether or not planed, sanded or finger-jointed, of a thickness exceeding six millimeters;

(2) Coniferous wood siding (including strips and friezes for parquet flooring, not assembled) continuously shaped (tongued, grooved, rabbeted, chamfered, V-jointed, beaded, molded, rounded or the like) along any of its edges or faces, whether or not planed, sanded or finger-jointed;

(3) Other coniferous wood (including strips and friezes for parquet flooring, not assembled) continuously shaped (tongued, grooved, rabbeted, chamfered, V-jointed, beaded, molded, rounded or the like) along any of its edges or faces (other than wood mouldings and wood dowel rods) whether or not planed, sanded or finger-jointed; and (4) Coniferous wood flooring (including strips and friezes for parquet flooring, not assembled) continuously shaped (tongued, grooved, rabbeted, chamfered, V-jointed, beaded, molded, rounded or the like) along any of its edges or faces, whether or not planed, sanded or finger-jointed.

Although the HTSUS subheadings are provided for convenience and U.S. Customs purposes, the written description of the merchandise under investigation is dispositive.

During our review of the petition, we discussed the scope with the petitioners to ensure that it accurately reflects the products for which the domestic industry is seeking relief. Moreover, as discussed in the preamble to the Department's regulations (62 FR 27323), we are setting aside a period for parties to raise issues regarding product coverage. The Department encourages all interested parties to submit such comments within twenty days after the date of publication of this notice in the **Federal Register**. Comments should be addressed to Import Administration's Central Records Unit at Room 1870, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230. The period for scope comments is intended to provide the Department with ample opportunity to consider all comments and consult with parties prior to the issuance of the preliminary determination.

Determination of Industry Support for the Petition

Section 771(4)(A) of the Act defines the ''industry'' as the producers of a domestic like product. Thus, when determining the degree of industry support, the statute directs the Department to look to producers and workers who produce the domestic like product. The International Trade Commission (ITC), which is responsible for determining whether ''the domestic industry'' has been injured, must also determine what constitutes a domestic like product in order to define the industry. While both the Department and the ITC must apply the same statutory definition regarding the domestic like product (section 771(10) of the Act), they do so for different purposes and pursuant to separate and distinct authority. In addition, the Department's determination is subject to limitations of time and information. Although this may result in different definitions of the like product, such differences do not render the decision of either agency contrary to the law.[2]

Section 771(10) of the Act defines the domestic like product as ''a product which is like, or in the absence of like, most similar in characteristics and uses with, the article subject to an investigation under this subtitle.'' Thus, the reference point from which the domestic like product analysis begins is ''the article subject to an investigation,'' *i.e.,* the class or kind of merchandise to be investigated, which normally will be the scope as defined in the petition.

The petition covers softwood lumber as defined in the *Scope of the Investigation* section, above, a single class or kind of merchandise. The petitioners define the domestic like product as the class or kind of merchandise covered by the scope of the investigation. The Department has no basis on the record to find the petitioners' definition of the domestic like product to be inaccurate.

The Department, therefore, has adopted the domestic like product definition set forth in the petition.

Section 732(b)(1) of the Act requires that a petition be filed on behalf of the domestic industry. Section 732(c)(4)(A) of the Act provides that a petition meets this requirement if the domestic producers or workers who support the petition account for: (1) At least 25 percent of the total production of the domestic like product; and (2) more than 50 percent of the production of the domestic like product produced by that portion of the industry expressing support for, or opposition to, the petition. Finally, section 732(c)(4)(D) of the Act provides that if the petition does not establish support of domestic producers or workers accounting for more than 50 percent of the total production of the domestic like product, the administering agency shall: (i) poll the industry or rely on other information in order to determine if there is support for the petition as required by subparagraph (A), or (ii) determine industry support using a statistically valid sampling method.

In this case, the Department has determined that the petition (and subsequent amendments) contain adequate evidence of industry support; therefore, polling is unnecessary. *See* Attachment I to *AD Investigation Initiation Checklist: Certain Softwood Lumber Products from Canada* (April 23, 2001) (*Initiation Checklist*). To

Shuqualak Lumber Company, Sierra Pacific Industries, Swift Lumber Incorporated, Temple-Inland Forest Products, and Tolleson Lumber Company, Incorporated.

[2] *See Algoma Steel Corp. Ltd., v. United States,* 688 F. Supp. 639, 642–44 (CIT 1988); *High Information Content Flat Panel Displays and Display Glass from Japan: Final Determination; Rescission of Investigation and Partial Dismissal of Petition*, 56 FR 32376, 32380–81 (July 16, 1991).

estimate total domestic production of softwood lumber products, the petitioners relied on year 2000 production figures published by the American Forest and Paper Association (AF&PA). The petitioners also made an upward adjustment to this figure to account, conservatively, for flooring and siding that may or may not otherwise be included in the AF&PA total production figure, but which is included in the definition of domestic like product. In a letter dated April 20, 2001, the Government of Canada attempted to show that this upward adjustment to the year 2000 total production figure was inadequate, and argued that numerous other product categories should also be added to the total production figure. We analyzed the claim made by the Government of Canada and have concluded that it would result in significant double-counting. Further, we have found no other evidence through independent research that would indicate that the petitioners' figure for total U.S. production is in any way understated. We therefore conclude that 67 percent of the U.S. softwood lumber-producing industry supports the petition. Because the petition has support from more than 50 percent of the entire domestic industry, we are not required to consider any expression of opposition in our determination to initiate this investigation. Accordingly, the Department determines that this petition is filed on behalf of the domestic industry within the meaning of section 732(b)(1) of the Act.

Export Price and Normal Value

The petitioners based export price (EP) on affidavits containing price quotes from Canadian lumber producers in British Columbia and Quebec. These quotes reflect prices to unaffiliated U.S. purchasers for different types and sizes of the subject merchandise commonly exported to the United States. In addition, the petitioners provided prices contained in the industry publication *Random Lengths*.[3] Both POI-average and week-specific prices were provided from Random Lengths. Because the terms of these prices are delivered, the petitioners calculated a net U.S. price by subtracting an estimated amount for international freight. In addition, for the price quote from British Columbia, the petitioners deducted a trading company mark-up.

For initiation purposes, we relied only on the estimated margins based on the POI-average *Random Lengths* prices and actual price quotes from Canadian producers. The petitioners argue that the week-specific *Random Lengths* prices should be used by the Department because they are indicative of actual sales that occurred during that week for a specific product with identical sales terms, and they are akin to an individual-price transaction.[4] However, since the POI-average prices from *Random Lengths* and price quotes from Canadian lumber producers are sufficient for the purposes of this initiation, it is not necessary to consider the petitioners' alternative methodology at this time.

With respect to normal value (NV), the petitioners provided a home-market price that was obtained from *Random Lengths* for the eastern-spruce-pine-fir (ESPF) commonly produced in Quebec, and from the British Columbia Ministry of Forest's published market pricing system (MPS) lumber values for western-spruce-pine-fir (WSPF). Inland freight was deducted from the delivered price for ESPF. The prices for WSPF were considered by the petitioners to be ex-mill prices and no deductions were made. For a more detailed discussion of the deductions and adjustments relating to home market price, U.S. price and sources of data, *see Initiation Checklist.* Should the need arise to use any of this information in our preliminary or final determinations as facts available under section 776 of the Act, we may re-examine the information and revise the margin calculations, if appropriate.

Although the petitioners provided information on home market prices, they also provided information demonstrating reasonable grounds to believe or suspect that sales of softwood lumber in Canada were made at prices below the fully absorbed cost of production (COP), within the meaning of section 773(b) of the Act, and requested that the Department conduct a country-wide sales-below-cost investigation.

We note that the WSPF prices provided appear not to be Canada-specific prices. The MPS lumber values are obtained by the British Columbia Ministry of Forests from B.C. lumber producers. However, the petition does not indicate that these prices are in any way restricted to sales in Canada. The petitioners acknowledge this, but contend the MPS lumber values represent conservative prices based on anecdotal evidence that a Canada-specific price would be lower. For purposes of examining the below-cost allegation, we have not considered the WSPF prices. However, we note that they are unnecessary, as the petitioners were able to demonstrate sales below cost using other domestic prices contained in the petition.

Pursuant to section 773(b)(3) of the Act, cost of production (COP) includes cost of manufacturing, selling, general and administrative expenses, and packing. The petitioners based the cost of materials, fabrication and packing on the experience of certain petitioning companies, adjusted for known differences in costs between the United States and Canada, and publicly available Canadian industry data. The petitioners estimated per-unit selling, general and administrative expenses using data from Tembec Industries Inc.''s (Tembec) 2000 financial statements.[5] The petitioners estimated the per-unit financial expense using data from the 2000 financial statements of Tembec's parent company, Tembec Inc. We adjusted the petitioners' calculation of depreciation by using the amount from Tembec's forest products line of business rather than the company as a whole, which includes results from non-subject merchandise such as pulp, publishing paper, paperboard products, and chemicals. *See Initiation of Cost Investigation* section, below.

Based upon the comparison of the home market prices of the foreign like product to the calculated COP of the product, we find reasonable grounds to believe or suspect that sales of the foreign like product were made below the COP, within the meaning of section 773(b)(2)(A)(i) of the Act. Because the NV petitioners used for the softwood lumber sales is below the COP, the petitioners based NV on CV. The petitioners calculated CV incorporating the same costs used for the COP. We made the same depreciation adjustment for CV that was made for COP. The petitioners included an amount for CV profit which was based on the profit of the Canadian producer's financial statements. We adjusted the petitioner's calculation of profit by using profit from the forest products line of business rather than the company as a whole, which includes results from non-subject merchandise such as pulp, publishing paper, paperboard products, and

[3] *Random Lenths* is a weekly newsletter that is received by subscribers int he U.S., Canada, and forty-one other countries. The publication reports prices, analyzes markets, and examines issues affecting markets for the North American softwood lumber industry.

[4] The margins calculated using these prices, revised by the Department as described in the *Initiation Checklist*, would range from 31.52–49.44 percent.

[5] The petitioners chose Tembec because it is one of the largest softwood lumber producers within Canada and operates mills in british Columbis, Quebec, and Ontario.

chemicals. Based upon the comparison of EP to CV, the estimated dumping margins, as adjusted by the Department, range from 0.60 to 37.64 percent.

Initiation of Cost Investigation

As noted above, pursuant to section 773(b) of the Act, the petitioners provided specific factual information demonstrating reasonable grounds to believe or suspect that sales in the Canadian home market were made at prices below the fully absorbed COP and, accordingly, requested that the Department conduct a country-wide sales-below-COP investigation. The Statement of Administrative Action accompanying the URAA, H.R. Doc.103–412 (SAA), states that an allegation of sales below COP need not be specific to individual exporters or producers. The SAA states that ''Commerce will consider allegations of below-cost sales in the aggregate for a foreign country, just as Commerce currently considers allegations of sales at less than fair value on a country-wide basis for purposes of initiating an antidumping investigation.'' *See* SAA at 833.

Further, the SAA provides that ''new section 773(b)(2)(A) retains the current requirement that Commerce have 'reasonable grounds to believe or suspect' that below cost sales have occurred before initiating such an investigation. 'Reasonable grounds' * * * exist when an interested party provides specific factual information on costs and prices, observed or constructed, indicating that sales in the foreign market in question are at below-cost prices.'' *Id.* Based upon the comparison of the adjusted prices from the petition for the representative foreign like products to their costs of production, we find the existence of ''reasonable grounds to believe or suspect'' that sales of the foreign like product in Canada were made below the COP within the meaning of section 773(b)(2)(A)(i) of the Act. Accordingly, the Department is initiating the requested country-wide cost investigation.

Fair Value Comparisons

Based on the data provided by the petitioners, there is reason to believe that imports of certain softwood lumber products from Canada are being, or are likely to be, sold at less than fair value.

Critical Circumstances

In their submission, the petitioners claim that, following the March 31, 2001, expiration of the U.S.-Canada Softwood Lumber Agreement (SLA), there is a reasonable basis to believe or suspect that critical circumstances will exist with regard to imports of softwood lumber from Canada.

Section 733(e)(1) of the Act states that, if a petitioner alleges critical circumstances, the Department will find that such circumstances exist, at any time after the date of initiation, when there is a reasonable basis to believe or suspect that under subparagraph (A)(i) there is a history of dumping and material injury by reason of dumped imports in the United States or elsewhere of the subject merchandise, or (ii) the person by whom, or for whose account, the merchandise was imported knew or should have known that the exporter was selling the subject merchandise at less than its fair value and that there was likely to be material injury by reason of such sales, and (B) there have been massive imports of the subject merchandise over a relatively short period. Section 351.206(h) of the Department's regulations defines ''massive imports'' as imports that have increased by at least 15 percent over the imports during an immediately preceding period of comparable duration. Section 351.206(i) of the regulations states that ''relatively short period'' will normally be defined as the period beginning on the date the proceeding begins and ending at least three months later.

The petitioners allege that importers knew, or should have known, that lumber was being sold at less than its fair value. Specifically, the petitioners allege margins, as adjusted by the Department, as high as 37.64 percent, a level high enough to impute importer knowledge that merchandise was being sold at less than its fair value. Additionally, they state that there is likely to be material injury by reason of such sales, and have submitted numerous documents, including news articles in the lumber trade press published over the past several months, that warn of antidumping and countervailing duty cases and discuss the threat of additional price declines and substantial material injury to the U.S. industry.

The petitioners request that the Department immediately begin reviewing import data of the subject merchandise and that the Department request the U.S. Customs Service to compile information on an expedited basis regarding entries of subject merchandise. We note that section 732(e) of the Act states that when there is a reasonable basis to believe or suspect (1) there is a history of dumping in the United States or elsewhere of the subject merchandise, or (2) the person by whom, or for whose account, the merchandise was imported knew, or should have known, that the exporter was selling the subject merchandise at less than its fair value, the Department may request the Commissioner of Customs to compile information on an expedited basis regarding entries of the subject merchandise.

Taking into consideration the foregoing, we will analyze this matter further and continue to monitor imports of softwood lumber from Canada. If, at any time, the criteria for a finding of critical circumstances are established, we will issue a critical circumstances finding at the earliest possible date. *See Policy Bulletin 98/4*, 63 FR 55364, (October 15, 1998) (determination of critical circumstances may be made any time after initiation).

Allegations and Evidence of Material Injury, Causation and Threat of Material Injury

The petitions allege that the U.S. industry producing the domestic like product is being materially injured, or is threatened with material injury, by reason of the imports of the subject merchandise sold at less than NV. The petitioners contend that the industry's injured condition is evident in the declining trends in production, employment, sales, and income. The allegations of injury and causation are supported by relevant evidence including U.S. Customs import data, lost sales and revenues, and pricing information. The petitioners also allege the imminent threat of material injury, based on the likely increases in production volume of Canadian softwood lumber and the inventory levels of such merchandise, the likelihood of substantially increased imports, and the prices of these imports having the likely effect of depressing or suppressing domestic prices of softwood lumber. We have assessed the allegations and supporting evidence regarding material injury, causation, and the threat of material injury, and we have determined that these allegations are properly supported by accurate and adequate evidence and meet the statutory requirements for initiation. *See* Attachment II of the *Initiation Checklist.*

Initiation of Antidumping Investigation

Based upon our examination of the petition on certain softwood lumber products from Canada, and the petitioners' response to our supplemental questionnaire clarifying the petition, we have found that the petition meets the requirements of section 732 of the Act. Therefore, we are initiating an antidumping duty investigation to determine whether

imports of certain softwood lumber products from Canada are being, or are likely to be, sold in the United States at less than fair value. Unless this deadline is extended, we will make our preliminary determination no later than 140 days after the date of this initiation.

Distribution of Copies of the Petition

In accordance with section 732(b)(3)(A) of the Act, a copy of the public version of the petition has been provided to the representatives of the Government of Canada.

International Trade Commission Notification

We have notified the ITC of our initiation, as required by section 732(d) of the Act.

Preliminary Determination by the ITC

The ITC will determine, no later than May 17, 2001, whether there is a reasonable indication that imports of certain softwood lumber products from Canada are causing material injury, or threatening to cause material injury, to a U.S. industry. A negative ITC determination will result in the investigation being terminated; otherwise, the investigation will proceed according to statutory and regulatory time limits.

This notice is published pursuant to section 777(i) of the Act. Effective January 20, 2001, Bernard T. Carreau is fulfilling the duties of the Assistant Secretary for Import Administration.

April 23, 2001.

Bernard T. Carreau,

Deputy Assistant Secretary, Import Administration.

[FR Doc. 01–10688 Filed 4–27–01; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[C–122–839]

Notice of Initiation of Countervailing Duty Investigation: Certain Softwood Lumber Products from Canada

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

EFFECTIVE DATE: April 30, 2001.

FOR FURTHER INFORMATION CONTACT: Eric B. Greynolds at (202) 482–6071 or James Terpstra at (202) 482–3965, Office of AD/CVD Enforcement VI, Group II, Import Administration, International Trade Administration, U.S. Department of Commerce, Room 1870, 14th Street and Constitution Avenue, NW., Washington, DC 20230.

Initiation of Investigation

The Applicable Statute and Regulations

Unless otherwise indicated, all citations to the statute are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Tariff Act of 1930 (the Act) by the Uruguay Round Agreements Act (URAA). In addition, unless otherwise indicated, all citations to the Department of Commerce (the Department) regulations are references to the provisions codified at 19 CFR part 351 (2001).

The Petition

On April 2, 2001, the Department received a petition filed in proper form by the Coalition for Fair Lumber Imports Executive Committee,[1] the United Brotherhood of Carpenters and Joiners, and the Paper, Allied-Industrial, Chemical and Energy Workers International Union (collectively, the petitioners). On April 20, 2001, the petition was amended to include the following four companies individually as petitioners: Moose River Lumber Co., Shearer Lumber Products, Shuqualak Lumber Co. and Tolleson Lumber Co., Inc. The Department received information supplementing the petition during the twenty-day initiation period. In accordance with section 702(b) of the Act, petitioners allege that Canadian producers of softwood lumber products received countervailable subsidies within the meaning of section 701 of the Act, and that such imports are materially injuring an industry in the United States.

The Department finds that the petitioners have standing to file this petition on behalf of the domestic industry because they are interested parties as defined in sections 771(9)(C), (D) and (E) of the Act and have demonstrated sufficient industry support with respect to the countervailing duty investigation that they are requesting the Department to initiate. *See Determination of Industry Support for the Petition,* below.

Scope of Investigation

The products covered by this investigation are softwood lumber, flooring and siding (softwood lumber products). Softwood lumber products include all products classified under headings 4407.1000, 4409.1010, 4409.1090, and 4409.1020, respectively, of the Harmonized Tariff Schedule of the United States (HTSUS), and any softwood lumber, flooring and siding described below. These softwood lumber products include:

(1) Coniferous wood, sawn or chipped lengthwise, sliced or peeled, whether or not planed, sanded or finger-jointed, of a thickness exceeding six millimeters;

(2) Coniferous wood siding (including strips and friezes for parquet flooring, not assembled) continuously shaped (tongued, grooved, rabbeted, chamfered, V-jointed, beaded, molded, rounded or the like) along any of its edges or faces, whether or not planed, sanded or finger-jointed;

(3) Other coniferous wood (including strips and friezes for parquet flooring, not assembled) continuously shaped (tongued, grooved, rabbeted, chamfered, V-jointed, beaded, molded, rounded or the like) along any of its edges or faces (other than wood mouldings and wood dowel rods) whether or not planed, sanded or finger-jointed; and

(4) Coniferous wood flooring (including strips and friezes for parquet flooring, not assembled) continuously shaped (tongued, grooved, rabbeted, chamfered, V-jointed, beaded, molded, rounded or the like) along any of its edges or faces, whether or not planed, sanded or finger-jointed.

Although the HTSUS subheadings are provided for convenience and U.S. Customs purposes, the written description of the merchandise under investigation is dispositive.

During our review of the petition, we discussed the scope with the petitioners to ensure that it accurately reflects the products for which the domestic industry is seeking relief. Moreover, as discussed in the preamble to the Department's regulations (62 FR 27323), we are setting aside a period for parties to raise issues regarding product coverage. The Department encourages all interested parties to submit such comments within twenty days after the date of publication of this notice in the **Federal Register**. Comments should be addressed to Import Administration's Central Records Unit at Room 1870, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230. The period for scope comments is intended to provide the Department with ample opportunity to consider all comments and consult with parties prior to the issuance of the preliminary determination.

[1] The Coalition for Fair Lumber Imports Executive Committee is comprised of Hood Industries, International Paper Company, Moose River Lumber Company, New South Incorporated, Plum Creek Timber Company, Polatch Corporation, Seneca Sawmill Company, Shearer Lumber Products, Shuqualak Lumber Company, Sierra Pacific Industries, Swift Lumber Incorporated, Temple-Inland Forest Products, and Tolleson Lumber Company, Incorporated.

Consultations

Pursuant to section 702(b)(4)(A)(ii) of the Act, the Department invited representatives of the Government of Canada (GOC) for consultations with respect to the countervailing duty investigation. The Department held consultations with representatives of the GOC on April 18, 2001. *See* the April 19, 2001, memorandum to the file regarding these consultations (public documents on file in the Central Records Unit (CRU) of the Department of Commerce, Room B–099). In addition, on April 19 and 20, 2001, the Government of Canada submitted additional written comments pursuant to the consultations.

Determination of Industry Support for the Petition

Section 771(4)(A) of the Act defines the ''industry'' as the producers of a domestic like product. Thus, when determining the degree of industry support, the statute directs the Department to look to producers and workers who produce the domestic like product. The International Trade Commission (ITC), which is responsible for determining whether ''the domestic industry'' has been injured, must also determine what constitutes a domestic like product in order to define the industry. While both the Department and the ITC must apply the same statutory definition regarding the domestic like product (section 771(10) of the Act), they do so for different purposes and pursuant to separate and distinct authority. In addition, the Department's determination is subject to limitations of time and information. Although this may result in different definitions of the like product, such differences do not render the decision of either agency contrary to the law.[2]

Section 771(10) of the Act defines the domestic like product as ''a product which is like, or in the absence of like, most similar in characteristics and uses with, the article subject to an investigation under this subtitle.'' Thus, the reference point from which the domestic like product analysis begins is ''the article subject to an investigation,'' *i.e.,* the class or kind of merchandise to be investigated, which normally will be the scope as defined in the petition.

The petition covers softwood lumber as defined in the *Scope of Investigation* section, above, a single class or kind of merchandise. The petitioners define the domestic like product as the class or kind of merchandise covered by the scope of the investigation. The Department has no basis on the record to find the petitioners' definition of the domestic like product to be inaccurate.

The Department, therefore, has adopted the domestic like product definition set forth in the petition.

Section 702(b)(1) of the Act requires that a petition be filed on behalf of the domestic industry. Section 702(c)(4)(A) of the Act provides that a petition meets this requirement if the domestic producers or workers who support the petition account for: (1) At least 25 percent of the total production of the domestic like product; and (2) more than 50 percent of the production of the domestic like product produced by that portion of the industry expressing support for, or opposition to, the petition. Finally, section 702(c)(4)(D) of the Act provides that if the petition does not establish support of domestic producers or workers accounting for more than 50 percent of the total production of the domestic like product, the administering agency shall: (i) Poll the industry or rely on other information in order to determine if there is support for the petition as required by subparagraph (A), or (ii) determine industry support using a statistically valid sampling method.

In this case, the Department has determined that the petition (and subsequent amendments) contain adequate evidence of industry support; therefore, polling is unnecessary. *See* Attachment I to *Initiation of Countervailing Duty Investigation: Certain Softwood Lumber Products from Canada* (April 23, 2001) (*Initiation Checklist*), a public document on file in the CRU. To estimate total domestic production of softwood lumber products, the petitioners relied on year 2000 production figures published by the American Forest and Paper Association (AF&PA). The petitioners also made an upward adjustment to this figure to account, conservatively, for flooring and siding that may or may not otherwise be included in the AF&PA total production figure, but which is included in the definition of domestic like product. In a letter dated April 20, 2001, the Government of Canada attempted to show that this upward adjustment to the year 2000 total production figure was inadequate, and argued that numerous other product categories should also be added to the total production figure. We analyzed the claim made by the Government of Canada and have concluded that it would result in significant double-counting. Further, we have found no other evidence through independent research that would indicate that the petitioners' figure for total U.S. production is in any way understated. We therefore conclude that 67 percent of the U.S. softwood lumber-producing industry supports the petition. Because the petition has support from more than 50 percent of the entire domestic industry, we are not required to consider any expression of opposition in our determination to initiate this investigation. Accordingly, the Department determines that this petition is filed on behalf of the domestic industry within the meaning of section 702(b)(1) of the Act.

Injury Test

Because Canada is a ''Subsidies Agreement Country'' within the meaning of section 701(b) of the Act, section 701(a)(2) applies to this investigation. Accordingly, the ITC must determine whether imports of the subject merchandise from Canada materially injure, or threaten material injury to, a U.S. industry.

Allegations of Subsidies

Section 702(b) of the Act requires the Department to initiate a countervailing duty proceeding whenever an interested party files, on behalf of an industry, a petition that: (1) Alleges the elements necessary for an imposition of a duty under section 701(a); and (2) is accompanied by information reasonably available to petitioners supporting the allegations.

We are initiating an investigation of the following programs alleged in the petition to have provided countervailable subsidies to producers and exporters of the subject merchandise in Canada (a full description of each program is provided in the *Initiation Checklist*):

A. Federal and Provincial Timber Management Systems

This includes stumpage provided for less than adequate remuneration in the Provinces of British Columbia, Quebec, Ontario, Alberta, Manitoba, Saskatchewan, and the Yukon Territory and Northwest Territories. With respect to the Provinces of British Columbia, Quebec, Ontario, and Alberta, if we determine that cross-border is not an appropriate benchmark, we will also examine log export restrictions under the criteria of 771(5)(B). *See Initiation Checklist.*

[2] *See Algoma Steel Corp. Ltd., v. United States,* 688 F. Supp. 639, 642–44 (CIT 1988); *High Information Content Flat Panel Displays and Display Glass from Japan: Final Determination; Rescission of Investigation and Partial Dismissal of Petition,* 56 FR 32376, 32380–81 (July 16, 1991).

B. Programs Administered by the Government of Canada

1. Non-Repayable Grants and Conditionally Repayable Contributions from the Department of Western Economic Diversification
2. Canadian Forest Service: Industry, Trade and Economics Program
3. Federal Economic Development Initiative in Northern Ontario

C. Programs Administered by the Province of British Columbia

1. Grants, Loans and Loan Guarantees Provided from Forest Renewal B.C.
2. Job Protection Act
3. Subsidies to Skeena Cellulose Inc.

D. Programs Administered by the Province of Quebec

1. Societe de Recuperation, d'Exploitation et Developpement Forestiers du Quebec (REXFOR)
2. Assistance under Article 7 of the Societe de Developpement Industriel du Quebec (SDI)
3. Export Assistance under SDI
4. Export Assistance from Investissement Quebec
5. Redemption by Tembec, Inc. of Preferred Stock Held by SDI
6. Private Forest Development Program
7. Funds to Create Jobs in Forest Industry under Budget of Quebec

E. Programs Administered by the Province of Ontario

1. Development Corporations of the Government of Ontario: Export Support Loan Program
2. Sales Tax Exemption for Seedlings

F. Program Administered by the Province of Alberta

1. Loan Guarantees to Attract New Mills

We are not initiating an investigation of the following programs alleged in the petition to have provided countervailable subsidies to producers and exporters of the subject merchandise in Canada (a full description of each program and the reason for not initiating an investigation of the program is provided in the *Initiation Checklist*):

A. Programs Administered by the Government of Canada

1. Loan Gurantees, Loan Insurance and Credit Insurance from the Department of Western Economic Diversification
2. Northern Ontario Business Development Loan Fund for Small to Medium Sized Businesses
3. Logging Tax Deduction

B. Programs Administered by the Province of British Columbia

1. B.C. Rail Volume Incentive Program for Lumber
2. Forest Science Program
3. Identified Wildlife Management Strategy and Landscape Unit Planning
4. B.C. Council of Forest Industries Marketing Plan
5. Toleration of Timber Theft
6. Excessive Contract Payments to Producers from Forest Renewal B.C.

C. Programs Administered by the Province of Quebec

1. Small-Wood Subsidy
2. Timber Under-Scaling
3. Financing Assistance from Investissement Quebec
4. Preferential Loans to Tembec, Inc.
5. APEX Program
6. Refinancing of Domtar Inc: New Share Subscription by Crown Corporations
7. Refinancing of Domtar Inc: Conversion of SDI Loan into Preferred Shares

D. Programs Administered by the Province of Alberta

1. Industrial Electricity Rebate Program
2. Infrastructure Grants to Attract New Mills

Critical Circumstances

In their submission, the petitioners claim that, following the March 31, 2001, expiration of the U.S.-Canada Softwood Lumber Agreement (SLA), there is a reasonable basis to believe or suspect that critical circumstances will exist with regard to imports of softwood lumber from Canada.

Section 703(e)(1) of the Act states that the Department will find that critical circumstances exist, at any time after the date of initiation, when there is a reasonable basis to believe or suspect that under paragraph (A) the alleged countervailable subsidies are inconsistent with the Subsidies Agreement and that under paragraph (B) there have been massive imports of the subject merchandise over a relatively short period of time. Section 351.206(h) of our regulations defines ''massive imports'' as imports that have increased by at least by 15 percent over the imports during an immediately preceding period of comparable duration. Section 351.206(i) of the regulations states that ''relatively short period'' will normally be defined as the period beginning on the date the proceeding begins and ending at least three months later.

In the petition, petitioners allege various export subsidy programs. We have initiated investigations on the following alleged export subsidy programs: (1) Export Assistance from the SDI, (2) Export Assistance from Investissement Quebec, and (3) the Development Corporations of the Government of Ontario Export Support Loan Program. Petitioners have alleged that these programs are inconsistent with the Subsidies Agreement.

The petitioners request that the Department immediately begin reviewing import data of the subject merchandise and that the Department request the U.S. Customs Service to compile information on an expedited basis regarding entries of subject merchandise. We note that section 702(e) of the Act states that when there is a reasonable basis to believe or suspect that the alleged countervailable subsidies are inconsistent with the Subsidies Agreement, the Department may request the Commissioner of Customs to compile information on an expedited basis regarding entries of the subject merchandise.

Taking into consideration the foregoing, we will analyze this matter further and continue to monitor imports of softwood lumber from Canada. If at any time, the criteria for a finding of critical circumstances are established, we will issue a critical circumstances finding at the earliest possible date. *See Policy Bulletin 98/4,* 63 FR 55364, (October 15, 1998) (determination of critical circumstances may be made any time after initiation).

Allegations and Evidence of Material Injury and Causation

The petitioners allege that the U.S. industry producing the domestic like product is being materially injured, or is threatened with material injury, by reason of the subsidization of individual and cumulated imports of the subject merchandise. Petitioners contend that the industry's injured condition is evident in the declining trends in net operating profits, net sales volumes, profit-to-sales ratios, and capacity utilization. The allegations of injury and causation are supported by relevant evidence including U.S. Customs import data, lost sales, and pricing information. We have assessed the allegations and supporting evidence regarding material injury and causation, and have determined that these allegations are properly supported by accurate and adequate evidence and meet the statutory requirements for initiation. *See* Attachment II of the *Initiation Checklist.*

Initiation of Countervailing Duty Investigation

The Department has examined the countervailing duty petition on certain softwood lumber products from Canada, and found that it complies with the requirements of section 702(b) of the Act. Therefore, in accordance with

section 702(b) of the Act, we are initiating a countervailing duty investigation to determine whether manufacturers, producers, or exporters of certain softwood lumber products from Canada receive countervailable subsidies.

Exclusion Requests

Due to the extraordinarily large number of Canadian producers, the Department anticipates that it will conduct this countervailing duty investigation on an aggregate basis consistent with section 777A(e)(2)(B) of the Act. If so, the Department expects that it will receive numerous requests for exclusions during the course of this investigation. In light of petitioners' allegation that 75 percent of timber harvest in the Maritime Provinces are from private lands, we anticipate a particularly large percentage of exclusion requests from the Maritimes. The circumstances that warranted a general exclusion for the Maritimes in the past are not present in this case. Therefore, the Department anticipates creating a system that will allow us to expeditiously process and rule on these exclusion requests without compromising the integrity of the CVD law, while, at the same time, ensuring fairness and transparency in the treatment of the exclusion requests. We will seek the cooperation of the Government of Canada and the provincial governments in Canada in implementing any such system, which could involve, for example, province and/or company certifications. Comments on this issue should be submitted to the Department within 15 days of the publication of this notice in the **Federal Register**. Comments should be addressed to Import Administration's Central Records Unit at Room 1870, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230.

Distribution of Copies of the Petitions

In accordance with section 702(b)(3)(A) of the Act, a copy of the public version of the petition has been provided to the representatives of the GOC.

ITC Notification

We have notified the ITC of our initiation, as required by section 702(d) of the Act.

Preliminary Determination by the ITC

The ITC will determine, no later than May 17, 2001, whether there is a reasonable indication that imports of certain softwood lumber products from Canada are causing material injury, or threatening to cause material injury, to a U.S. industry. A negative ITC determination will result in the investigation being terminated; otherwise, the investigation will proceed according to statutory and regulatory time limits.

This notice is published pursuant to section 777(i) of the Act. Effective January 20, 2001, Bernard T. Carreau is fulfilling the duties of the Assistant Secretary for Import Administration.

Dated: April 23, 2001.

Bernard T. Carreau,

Deputy Assistant Secretary, Import Administration.

[FR Doc. 01–10687 Filed 4–27–01; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration, Commerce

Export Trade Certificate of Review

ACTION: Notice of issuance of an amended Export Trade Certificate of Review, Application No. 88–4A012.

SUMMARY: The Department of Commerce has issued an amendment to the Export Trade Certificate of Review granted to The National Tooling and Machining Association (''NTMA'') on April 5, 2001. Notice of issuance of the original Certificate was published in the **Federal Register** on October 25, 1988 (53 FR 43140).

FOR FURTHER INFORMATION CONTACT: Vanessa M. Bachman, Acting Director, Office of Export Trading Company Affairs, International Trade Administration, (202) 482–5131. This is not a toll-free number.

SUPPLEMENTARY INFORMATION: Title III of the Export Trading Company Act of 1982 (15 U.S.C. 4001–21) authorizes the Secretary of Commerce to issue Export Trade Certificates of Review. The regulations implementing Title III are found at 15 CFR part 325 (2000).

The Office of Export Trading Company Affairs (''OETCA'') is issuing this notice pursuant to 15 CFR 325.6(b), which requires the Department of Commerce to publish a summary of a Certificate in the **Federal Register**. Under Section 305(a) of the Act and 15 CFR 325.11(a), any person aggrieved by the Secretary's determination may, within 30 days of the date of this notice, bring an action in any appropriate district court of the United States to set aside the determination on the ground that the determination is erroneous.

Description of Amended Certificate:

Export Trade Certificate of Review No. 88–00012, was originally issued to NTMA on October 18, 1988 (53 FR 43140, October 25, 1988).

NTMA's Export Trade Certificate of Review has been amended so that the attached list will constitute the ''Members'' of the Certificate within the meaning of section 325.2(1) of the Regulations (15 CFR 325.2(1)).

Effective Date: December 5, 2000.
Dated: April 23, 2001.

Vanessa M. Bachman,

Acting Director, Office of Export Trading Company Affairs.

BILLING CODE 3510–D–R–F

NTMA CERTIFICATE MEMBER LIST APPLICATION 88–4A012

Name	Location
A & A Industries, Inc	Peabody, MA.
A & A Machine Company, Inc	Southampton, PA.
A & A Machine Shop, Inc	La Marque, TX.
A & B Machine	Van Nuys, CA.
A & B Machine Shop	Rockford, IL.
A & B Tool & Manufacturing Corp	Toledo, OH.
A & D Precision	Fremont, CA.
A & E Custom Manufacturing	Kansas City, KS.
A & E Machine Shop, Inc	Lone Star, TX.
A & G Machine, Inc	Auburn, WA.
A & S Tool & Die Company, Inc	Kernersville, NC.
A A Precisioneering, Inc	Meadville, PA.
A B A Division	Manchester, CT.

NTMA CERTIFICATE MEMBER LIST APPLICATION 88–4A012—Continued

Name	Location
A B C 0 Tool & Engineering	Phoenix, AZ.
A B Heller, Inc	Milford, MI.
A B N Industrial Co., Inc	Buena Park, CA.
A B R Enterprises Inc	South Pasadena, CA.
A. C. Cut-Off, Inc	Azusa, CA.
A C Machine, Inc	Akron, OH.
A E Machine Works, Inc	Houston, TX.
A F C Tool Company, Inc	Dayton, OH.
A I M Tool & Die	Grand Haven, MI.
AMA Plastics	Corona, CA.
A M C Precision, Inc	N. Tonawanda, NY.
A M Design	E. Canton, OH.
A M Machine Company, Inc	Baltimore, MD.
A Mfg	Grand Terrace, CA.
APEC, LLC	Hingham, MA.
A S C Corporation Owings	Mills, MD.
ATC Distribution Group	Louisville, KY.
A+ Engineering	Ipswich, MA.
A-G Tool & Die	Miamitown, OH.
A-Line Tool & Die, Inc	Louisville, KY.
A-RanD, Inc	Phoenix, AZ.
ABBEC Manufacturing	Rochester, NY.
Abbott Machine & Tool, Inc	Toledo, OH.
Abbott Tool, Inc	Toledo, OH.
Ability Tool Company	Rockford, IL.
Able Wire EDM, Inc	Brea, CA.
Abrams Airborne Manufacturing	Tucson, AZ.
Absolute Manufacturing	N. Chelmsford, MA.
Acadiana Hydraulic Works, Inc	New Iberia, LA.
Accu Die & Mold Inc	Stevensville, MI.
Accu-Roll, Inc	Rochester, NY.
Harrison Enterprise, Inc	Phoenix, AZ.
AccuCraft	New Haven, MO.
Accudynamics, Inc	Middleboro, MA.
Accudyne Aerospace & Defense	Palm Bay, FL.
Accura Industries, Inc	Rochester, NY.
Accurate Grinding Corp	Warwick, RI.
Accurate Grinding & Mfg. Corp	Los Angeles, CA.
Accurate Machining	Mukilteo, WA.
Accurate Manufacturing Company	Glendale, CA.
Accurate Manufacturing Company	Alsip, IL.
Accurate Products Co	Tucson, AZ.
Accurite Machine & Mfg. Inc	Louisville, KY.
Accutronics, Inc	Littleton, CO.
Ace Manufacturing Company	Cincinnati, OH.
Ace Specialty Company, Inc	Tonawanda, NY.
Ackley Machine Corporation	Moorestown, NJ.
Acme Brass & Machine Works, Inc	Kansas City, MO.
ACMT, Inc dba A C Tool & Machine	Louisville, KY.
Acraloc Corporation	Oak Ridge, TN.
Acro Industries, Inc	Rochester, NY.
Acro Tool & Die Company, Inc	Akron, OH.
Actco Tool & Mfg. Co	Meadville, PA.
Action Die & Tool Inc	Wyoming, MI.
Action Mold & Machining, Inc	Grand Rapids, MI.
Action Precision Grinding Inc	North Tonawanda, NY.
Action SuperAbrasive Products	Brimfield, OH.
Action Tool & Die Inc	Rockford, IL.
Active Tool Company	Meadville, PA.
Acucut, Inc	Southington, CT.
Acutec Precision Machining Inc	Saegertown, PA.
Ada Machine Company, Inc	Santa Clara, CA.
Adams Engineering, Division of	South Bend, IN.
Adaptive Technologies Inc	Springboro, OH.
Addison Precision Mfg. Corp	Rochester, NY.
Adena Tool Corporation	Dayton, OH.
Admill Machine Company	Newington, CT.
Adron Tool Corporation	Menomonee Falls, WI.
Advance Gear & Machine Corp	Gardena, CA.
Advance Manufacturing Corp	Cleveland, OH.
Advance Manufacturing Technology	Salt Lake City, UT.
Advanced Ceramic Technology	Orange, CA.

NTMA CERTIFICATE MEMBER LIST APPLICATION 88–4A012—Continued

Name	Location
Advanced Composite Products	Huntington Beach, CA.
Advanced Cutting Tools, Inc	Clio, MI.
Advanced Machine & Eng. Co	Rockford, IL.
Advanced Machine Programming	Morgan Hill, CA.
Advanced Machining Corporation	Salisbury, NC.
Advanced Measurement Labs, Inc	Sun Valley, CA.
Advanced Mold & Tooling Inc	Rochester, NY.
Advanced Tooling Systems, Inc	Comstock Park, MI.
Advantage Mold & Design	Meadville, PA.
Aero Comm Machining	Wichita, KS.
Aero Design & Manufacturing Co	Phoenix, AZ.
Aero Engineering & Mfg. Company	Valencia, CA.
Aero Gear, Inc	Windsor, CT.
Aero Machining Company	Garden Grove, CA.
Aero Mechanical Engineering, Inc	Huntington Beach, CA.
Aero-Tech Engineering, Inc	Wichita, KS.
Aerofab, Inc	Tucson, AZ.
Aerostar Aerospace Inc	Phoenix, AZ.
Aetna Machine Company	Cochranton, PA.
Aggressive Tool & Die, Inc	Buckner, KY.
Agrimson Tool Company	Brooklyn Park, MN.
Ahaus Tool & Engineering, Inc	Richmond, IN.
Aimco Precision, Inc	Phoenix, AZ.
Airfoil Technology, Inc	Gilbert, AZ.
Airmetal Corporation	Jackson, MI.
Ajax Tool, Inc	Fort Wayne, IN.
Akro Tool Co., Inc	Cincinnati, OH.
Akron Steel Fabricators Company	Akron, OH.
Akron Tool & Die Company, Inc	Akron, OH.
Alamance Machine Company, Inc	Burlington, NC.
Alart Tool & Die, Inc	Houston, TX.
Albertson & Hem, Inc	Wichita, KS.
Albion Machine & Tool Company	Albion, MI.
Alco Manufacturing, Inc	Santa Ana, CA.
Alfred Manufacturing Company	Denver, CO.
Alfro Custom Manufacturing	Waterbury, CT.
Alger Machine Company, Inc	Rochester, NY.
Alignment Engineering Co., Inc	Knoxville, TN.
ALKAB Contract Manufacturing, Inc	New Kensington, PA.
All Five Tool Company, Inc	Bristol, CT.
All Tool Company	Union, NJ.
All Tools Company	Oklahoma City, OK.
All Tools Texas, Inc	Houston, TX.
All Weld Machine	Milpitas, CA.
All-Tech Machine & Eng., Inc	San Jose, CA.
All-Tech Machining, Inc	Wilmer, AL.
Allen Aircraft Products, Inc	Ravenna, OH.
Allen Precision Industries, Inc	Asheboro, NC.
Allen Precision Machining Co	Angleton, TX.
Allen Randall Enterprises, Inc	Akron, OH.
Alliance Machine Tool Co., Inc	Louisville, KY.
Allied Mechanical Products	Ontario, CA.
Allied Screw Products, Inc	Mishawaka, IN.
Allied Tool & Die Company, LLC	Phoenix, AZ.
Allied Tool & Die, Inc	Cleveland, OH.
Allied Tool & Machine, Inc	Saginaw, MI.
Allied Tool & Machine Company	Kernersville, NC.
Allied Tools of Texas	Houston, TX.
Alloy Metal Products	Hayward, CA.
Allstate Tool & Die, Inc	Rochester, NY.
Almar Mfg. & Engineering, Inc	Garden Valley, CA.
Alpha Mold Inc., LLC	Huber Heights, OH.
Alpha Mold West Inc	Broomfield, CO.
Alpha Precision Machining Inc	Kent, WA.
Alpha Tool & Machine Company	Bellmawr, NJ.
Alpha Tooling, Inc	Santa Fe Springs, CA.
Alpine Precision, Inc	North Billerica, MA.
Alro Specialty Metals	St. Louis, MO.
Alt's Tool & Machine, Inc	Santee, CA.
Alton Products, Inc	Maumee, OH.
Alves Precision Engineered	Watertown, CT.
Amatrol, Inc	Jeffersonville, IN.

NTMA CERTIFICATE MEMBER LIST APPLICATION 88–4A012—Continued

Name	Location
Ambel Precision Mfg. Corp	Bethel, CT.
Ambox, Inc	Houston, TX.
American Machine & Gundrilling, Co	Maple Grove, MN.
American Metal Masters, Inc	Plantsville, CT.
American Mfg. & Machining, Inc	Racine, WI.
American Mold & Engineering Co	Fridley, MN.
American Precision Machining	Phoenix, AZ.
American Precision Technologies	San Fernando, CA.
American Tool & Die, Inc	Toledo, OH.
American Wire EDM, Inc	Orange, CA.
Amerimold, Inc	Mogadore, OH.
Ameritech Die & Mold, Inc	Mooresville, NC.
Amity Mold Company	Tipp City, OH.
Ampswiss Engineering	Fremont, CA.
Anchor Lamina Inc	Madison Heights, MI.
Anchor Tool & Die Company	Cleveland, OH.
Anchor Tool & Die Company	Warren, MI.
Anders Machine and Engraving	Rochester, NY.
Anderson Tool & Engineering Co	Anderson, IN.
Andrew Tool Company, Inc	Plymouth, MN.
Anglo-American Mold, Inc	Louisville, KY.
Angus LLC	Indianapolis, IN.
Anmar Precision Components Inc	North Hollywood, CA.
Anoplate Corporation	Syracuse, NY.
Apex Precision Technologies, Inc	Camby, IN.
Apex Machine Company	Ft. Lauderdale, FL.
Apex Manufacturing, Inc	Phoenix, AZ.
Apex Tool & Manufacturing, Inc	Evansville, IN.
Apollo E.D.M. Company	Fraser, MI.
Apollo Precision, Inc	Plymouth, MN.
Apollo Products Inc	Willoughby, OH.
Applegate EDM, Inc	Dallas, TX.
Applied Engineering, Inc	Yankton, SD.
Applied Technology Manufacturing	Rochester, NY.
Aram Precision Tool & Die, Inc	Chatsworth, CA.
Arc Drilling Inc	Garfield Heights, OH.
Arca Systems	Tacoma, WA.
Arco Industries, Inc	Dayton, OH.
Arco Metals Corporation	Baltimore, MD.
Ardekin Machine Company	Rockford, IL.
Area Tool & Manufacturing, Inc	Meadville, PA.
Aremco, Inc	Grand Rapids, MN.
Argo Tool Corporation	Twinsburg, OH.
Argus Machine, Inc	Tucson, AZ.
Aries Tool, Inc	New Berlin, WI.
Arkansas Tool & Die, Inc	North Little Rock, AR.
Arken Manufacturing, Inc	Cleveland, OH.
Arlington Machine & Tool Company	Fairfield, NJ.
Arma Tool & Die Company, Inc	Ridgefield, CT.
Armin Tool & Manufacturing Co	South Elgin, IL.
Armstrong-Blum Mfg. Co	Mt. Prospect, IL.
Armstrong Machine Works, Inc	Rogersville, TN.
Armstrong Mold, Machining Div	East Syracuse, NY.
Armstrong Technology, Inc	Sunnyvale, CA.
Arnett Tool, Inc	New Paris, OH.
Arrington Supply House, Inc	Tuscaloosa, AL.
Arro Tool & Die, Inc	Lakewood, NY.
Arrow Diversified Tooling, Inc	Ellington, CT.
Arrow Grinding, Inc	Tonawanda, NY.
Arrowsmith International, Inc	Southfield, MI.
Artisan Machining, Inc	Bohemia, NY.
Ascension Industries	North Tonawanda, NY.
Ash Machine Corporation	Pataskala, OH.
Aspen Precision Technologies	Petaluma, CA.
Associated Electro-Mechanics	Springfield, MA.
Associated Gear, Inc	Santa Fe Springs, CA.
Associated Technologies	Brea, CA.
Associated Toolmakers, Inc	Keokuk, IA.
Associates Commercial Corp	Irving, TX.
Astley Precision Machine Co	Irwin, PA.
Astro Automation, Inc	Irwin, PA.
Astro Machine Works Inc	Ephrata, PA.

NTMA CERTIFICATE MEMBER LIST APPLICATION 88–4A012—Continued

Name	Location
Astrotronics Inc	Mesa, AZ.
AT Engineering & Mfg., Inc	Chatsworth, CA.
Atec Engineering	Phoenix, AZ.
Atec Tool & Engineering, Inc	Santa Clara, CA.
Athens Industries	Southington, CT.
Atkins Tool Company	Riverton, NJ.
Atlantic Alloys, Inc	Bristol, RI.
Atlantic Precision Products Inc	Biddeford, ME.
Atlantic Tool & Die Company	Strongsville, OH.
Atlas Die & Manufacturing Co	Rockford, IL.
Atlas Machine & Supply, Inc	Louisville, KY.
Atlas Tool, Inc	Roseville, MI.
August Machine, Inc	Phoenix, AZ.
Austin Machine Company Inc	O'Fallon, MO.
Austinburg Machine, Inc	Austinburg, OH.
Austro Mold Incorporated	Rochester, NY.
Autocam Corporation	Kentwood, MI.
Automated Cells & Equipment, Inc	Painted Post, NY.
Automated EDM Incorporated	Ramsey, MN.
Automatic Stamp Products, Inc	Cleveland, OH.
Automation Tool & Die, Inc	Brunswick, OH.
Automation Tool Company	Cookeville, TN.
Axian Technology	Phoenix, AZ.
Axis Mfg. Inc	Tempe, AZ.
Ay Machine Company	Ephrata, PA.
Ay-Mac Precision, Inc	Yorba Linda, CA.
Azbill Tool & Die, Inc	Huntington Beach, CA.
B & A Design Inc	Vernon, CT.
B & B Machine & Grinding Service	Denver, CO.
B & B Manufacturing Company	Largo, FL.
B & B Precision Mfg., Inc	Avon, NY.
B & B Tool Company, Inc	Rockford, IL.
B & E Tool Company, Inc	Southwick, MA.
B & G Quality Machine & Tool	Baltimore, MD.
B & H Fabricators, Inc	Wilmington, CA.
B & H Tool Co. Inc	San Marcos, CA.
B & H Tool Works, Inc	Richmond, KY.
B & K Engineering, Inc	Mountain View, CA.
B & L Tool and Machine Company	Plainville, CT.
B & M Machine Corporation of Racine	Racine, WI.
B & R Mold, Inc	Simi Valley, CA.
B C D Metal Products Inc	Malden, MA.
B J Williams Machining Co	Edinboro, PA.
BMCO Industries Inc	Cranston, RI.
B P I Corporation	Santa Clara, CA.
BT Laser, Inc	Santa Clara, CA.
B-W Grinding Service, Inc	Houston, TX.
Babbitt Bearing, Inc	Syracuse, NY.
Bachman Machine Company, Inc	St. Louis, MO.
Bachmann Precision Machine	South El Monte, CA.
Badge Machine Products, Inc	Canandaigua, NY.
Baham & Sons Machine Works, Inc	Houston, TX.
Bahrs Die & Stamping Company	Cincinnati, OH.
Baker Hill Industries, Inc	Coral Springs, FL.
Banner Machine Inc	Phoenix, AZ.
Banner Tool & Die, Inc	Rockford, IL.
Barberie Mold	Gardena, CA.
Barile Precision Grinding Inc	Cleveland, OH.
Basic VI	San Jose, CA.
Bass Machining Inc	Baltimore, MD.
Bateman Manufacturing Co., Inc	Hayward, CA.
The Baughman Group	Louisville, KY.
Baumann Engineering	Claremont, CA.
Bawden Industries, Inc	Romulus, MI.
Baxter Machine Products, Inc	Huntingdon, PA.
Bay Industrial Machine	Green Bay, WI.
Bayport Machine, Inc	La Porte, TX.
Beach Mold & Tool, Inc	New Albany, IN.
Beacon Tool Company, Inc	Whittier, CA.
Beaver Fab Inc	Cedar Hill, TX.
Beaver Tool & Machine Company, Inc	Feasterville, PA.
The Bechdon Company, Inc	Upper Marlboro, MD.

NTMA CERTIFICATE MEMBER LIST APPLICATION 88–4A012—Continued

Name	Location
Bechier Cams, Inc	Anaheim, CA.
Becker, Inc	Kenosha, WI.
Becksted Machine, Inc	Tucson, AZ.
Bedard Machine, Inc	Brea, CA.
Bel-Kur, Inc	Temperance, MI.
Belco Tool & Mfg. Inc	Meadville, PA.
Belgian Screw Machine Products	Jackson, MI.
Bell Engineering, Inc	Saginaw, MI.
Beilco Precision Manufacturing	McKinney, TX.
Beloit Precision Die Co. Inc	Beloit, WI.
Benda Tool & Model Works	Hercules, CA.
Bendon Gear Machine	Rockland, MA.
Bennett Tool & Machine	Fremont, CA.
Bennett Tool & Die Company	Nashville, TN.
Benning Inc	Blame, MN.
Bent River Machine Inc	Clarkdale, AZ.
Berman Tool & Die	Waldorf, MD.
Bermar Associates, Inc	Troy, MI.
Bertram Tool & Machine Co., Inc	Farrell, PA.
Best Tool & Manufacturing Co	Kansas City, MO.
Best Way Stamping Inc	La Mirada, CA.
Bestway Industries, Inc	Cleveland, OH.
Beta Machine Co. Inc	Cleveland, OH.
Beta Tool & Mold/Dyna-Tech	Wadsworth, OH.
Bilar Tool & Die Corporation	Warren, MI.
Billet Industries, Inc	York, PA.
Bishop Steering Technology, Inc	Indianapolis, IN.
Blackburn Melton Mfg. Company	Houston, TX.
Blackwood Grinding Inc	Hurst, TX.
Blandford Machine & Tool Co	Louisville, KY.
Blue Chip Mold, Inc	Rochester, NY.
Blue Chip Tool Company, Inc	New Castle, PA.
Bluegrass Forging, Tool & Die	Shelbyville, KY.
Bob's Tool & Cutter Grinding	Indianapolis, IN.
Boice Industrial Corporation	Ruffsdale, PA.
Boittech Inc	West Newton, PA.
Boring, Inc	Rockford, IL.
Bosma Machine & Tool	Tipp City, OH.
Boston Centerless Inc	Woburn, MA.
Bowden Manufacturing Corp	Willoughby, OH.
Boyce Machine, Inc	Cuyahoga Falls, OH.
Boyle, Inc	Freeport, PA.
Bra-Vor Tool & Die Company, Inc	Meadville, PA.
Bradford Machine Company Inc	Brattleboro, VT.
Bradhart Products, Inc	Brighton, MI.
Bramko Tool & Engineering, Inc	O' Fallon, MO.
Brimar Products Inc	Fontana, CA.
Brinkman Tool & Die, Inc	Dayton, OH.
Bristol Instrument Gears, Inc	Forestville, CT.
Britt Tool Inc	Brazil, IN.
Brittain Machine, Inc	Wichita, KS.
Broadway Companies, Inc	Englewood, OH.
Brogdon Tool & Die, Inc	Blue Springs, MO.
Brookfield Machine, Inc	West Brookfield, MA.
Brooklyn Machine & Mfg. Co. Inc	Cuyahoga Heights, OH.
Brooklyn Scraping & Re-Machining	W. Lafayette, IN.
Brown-Covey, Inc	Kansas City, MO.
Brownstown Quality Tool & Design	Brownstown, IN.
The Budd Company	Shelbyville, KY.
Budney Overhaul & Repair, LTD	Berlin, CT.
Buerk Tool & Machine Corporation	Buffalo, NY.
Buiter Tool & Die, Inc	Grand Rapids, MI.
Bundy Manufacturing Inc	El Segundo, CA.
Burckhardt America, Inc	Greensboro, NC.
Burco Precision Products, Inc	Denton, TX.
Burger Engineering, Inc	Olathe, KS.
Burgess Brothers, Inc	Canton, MA.
Burkland Textron Inc	Goodrich, MI.
Burton Industries Inc	Mentor, OH.
C + H Manufacturing Inc	Ontario, CA.
C & C Machine Company	Akron, OH.
C & C Manufacturing Corporation	Englewood, CO.

NTMA CERTIFICATE MEMBER LIST APPLICATION 88–4A012—Continued

Name	Location
C & G Machine & Tool Co., Inc	Granby, MA.
C & J Industries Inc	Meadville, PA.
C & M Machine Products, Inc	Willoughby, OH.
C & R Manufacturing, Inc	Shawnee, KS.
C & S Machine & Manufacturing	Louisville, KY.
C A R Engineering & Mfg	Victor, NY.
C B Enterprises	Manchester, CT.
C B S Manufacturing Company, Inc	Windsor, CT.
C D M Tool & Mfg. Co., Inc	Hartford, WI.
C F A Company, Inc	Milford, CT.
CG Manufacturing Company	Willoughby, OH.
C J Winter Machine Technologies	Rochester, NY.
C K Tool	Harborcreek, PA.
C M Gordon Industries Inc	Santa Fe Springs, CA.
C M Industries, Inc	Old Saybrook, CT.
C M Smillie & Company	Ferndale, MI.
C N C Machine & Engineering	Colorado Springs, CO.
C N C Precision Machining, Inc	Comstock Park, MI.
C.N.C. Tool & Mold	Naples, FL.
C R E Enterprises, Inc	Phoenix, AZ.
C T D Machines, Inc	Los Angeles, CA.
C T M, Inc	Grand Rapids, MI.
C V Tool Company, Inc	Southington, CT.
C. G. Tech, Inc	Phoenix, AZ.
C–P Mfg. Corp.	Van Nuys, CA.
Caco Pacific Corporation	Covina, CA.
Cadco Program & Machine	St. Charles, MO.
Cal-Weld	Fremont, CA.
Calder Machine Co. (C M C)	Florence, SC.
California Mold	Fullerton, CA.
Calmax Machining, Inc	Santa Clara, CA.
Cambridge Specialty Company, Inc	Kensington, CT.
Cambridge Tool & Die Corp	Cambridge, OH.
Cameron Machine Shop, Inc	Richardson, TX.
Campbell Grinding & Machine, Inc	Lewisville, TX.
Campbell Machinery, Inc	Stow, OH.
CAMtech Precision Manufacturing	Jupiter, FL.
CamTech Systems Inc	Alhambra, CA.
Canto Tool Corporation	Meadville, PA.
Capitol Technologies, Inc	South Bend, IN.
Capitol Tool & Die, L. P	Madison, TN.
Carbi-Tech, Inc	Apollo, PA.
Carbide Probes, Inc	Dayton, OH.
Cardinal Machine Company, Inc	Strongsville, OH.
Carius Tool Co., Inc	Cleveland, OH.
Carlin Machine Company, Inc	Southborough, MA.
Carlson Capital Manufacturing Co.	Rockford, IL.
Carlson Industrial Grinding Inc	Erie, PA.
Carlson Tool & Manufacturing	Cedarburg, WI.
Cascade Mold & Die, Inc	Portland, OR.
Cass Screw Machine Products	Brooklyn Center, MN.
Castle Precision Products	Stockton, CA.
Catalina Precision Engineering, LLC	Orange, CA.
Catalina Tool & Mold, Inc	Tucson, AZ.
Cates Machine Shop, Inc	Tyler, TX.
Cee-San Machine & Fabrication	Houston, TX.
Cempi Industries Inc	Huntington Beach, CA.
Centaur Tool & Die, Inc	Bowling Green, OH.
Centennial Technologies, Inc	Saginaw, MI.
Center Line Machine Company	Lafayette, CO.
Center Line Tool	Freeport, PA.
Center Line Industries, Inc	West Springfield, MA.
Central Industrial Supply	Grand Prairie, TX.
Central Mass. Machine, Inc	Holyoke, MA.
Central States Machine Service	Elkhart, IN.
Central Tool & Machine Co., Inc	Bridgeport, CT.
Central Tool Company, Inc	Fortville, IN.
Central Tools, Inc	Cranston, RI.
Centric Machine & Instrument	Tampa, FL.
Century Die Company	Fremont, OH.
Century Mold Company, Inc	Rochester, NY.
Century Tool & Engr., Inc	Indianapolis, IN.

NTMA CERTIFICATE MEMBER LIST APPLICATION 88–4A012—Continued

Name	Location
Certified Grinding & Machine	Rochester, NY.
Certified Industries, II, LLC	Phoenix, AZ.
Challenger Worldwide (USA), LLC	Chandler, AZ.
Chalmers & Kubeck, Inc	Aston, PA.
Chamtek Mfg., Inc	Rochester, NY.
Chandler Tool & Design Inc	Rockford, IL.
Chance Tool & Die Co., Inc	Cincinnati, OH.
Chapman Engineering, Inc	Santa Ana, CA.
Charmilles Technologies	Lincolnshire, IL.
Chase Machine & Mfg. Co	Rochester, NY.
Chelar Tool & Die, Inc	Belleville, IL.
Cherokee Industries	Hampshire, IL.
Cherry Valley Tool & Machine Inc	Belvidere, IL.
The Chesapeake Machine Co	Baltimore, MD.
Chicago Grinding & Machine Co	Melrose Park, IL.
Chicago Mold Engineering Co., Inc	St. Charles, IL.
Chickasha Manufacturing Company	Chickasha, OK.
Chippewa Tool & Manufacturing Co	Woodville, OH.
CHIPSCO, Inc	Meadville, PA.
Christie Manufacturing, Inc	Gainesville, TX.
Christopher Tool & Manufacturing	Solon, OH.
Circle-K-Industries	Sterling, VA.
City Industrial Tool & Die	Harbor City, CA.
Clarion Tech. Caledonia Tool	Caledonia, MI.
Clark & Wheeler Engineering, Inc	Cerritos, CA.
Clark-Reliance Corporation	Strongsville, OH.
Clarke Engineering, Inc	North Hollywood, CA.
Class Machine & Welding, Inc	Akron, OH.
Classic Tool	Saegertown, PA.
Classic Tool, Inc	Macedonia, OH.
Clay & Bailey Mfg. Co	Kansas City, MO.
Cleveland Electric Laboratories	Twinsburg, OH.
Clifton Automatic Screw	Lake City, PA.
Cloud Company	San Luis Obispo, CA.
Coast Cutters Company, Inc	South El Monte, CA.
Coastal Machine Company	Branford, CT.
Cobak Tool & Manufacturing Co	St. Louis, MO.
Coffey Associates	Washington, DC.
Colbrit Manufacturing Co., Inc	Chatsworth, CA.
A E Cole Die & Engraving	Columbus, OH.
Collins Instrument Company	Angleton, TX.
Collins Machine & Tool Co., Inc	Madison, TN.
Collins Machine Works, Inc	Weilford, SC.
Collins Manufacturing, Inc	Essex, MA.
Colonial Machine Company	Kent, OH.
Colonial Machine & Tool Co., Inc	Coventry, RI.
Colorado Laser Marking, Inc	Colorado Springs, CO.
Colorado Surface Grinding, Inc	Denver, CO.
Columbia Machine Works, Inc	Columbia, TN.
Columbia Products, Inc	Dallastown, PA.
Comac Manufacturing Corporation	Oroville, CA.
Comet Tool, Inc	Hopkins, MN.
Comfab, Inc	Spartanburg, SC.
Command Tooling Systems	Ramsey, MN.
Commerce Grinding, Inc	Dallas, TX.
Commonwealth Machine Co., Inc	Danville, VA.
Competition Tooling, Inc	High Point, NC.
Competitive Engineering Inc	Tucson, AZ.
Composidie, Inc	Apollo, PA.
Compu Die, Inc	Wyoming, MI.
Compumachine Incorporated	Wilmington, MA.
Computech Manufacturing Co., Inc	North Kansas City, MO.
Computerized Machining Service,	Englewood, CO.
Concept Tool & Die Company	Euclid, OH.
Conco Systems, Inc	Verona, PA.
Condor Engineering, Inc	Colorado Springs, CO.
Connecticut Jig Grinding, Inc	New Britain, CT.
Connelly Machine Works	Santa Ana, CA.
Connolly Tool & Machine Co	Dallas, TX.
Connor Formed Metal Products	Grand Prairie, TX.
Conroy & Knowlton, Inc	Los Angeles, CA.
Consolidated Mold & Mfg. Inc	Kent, OH.

NTMA CERTIFICATE MEMBER LIST APPLICATION 88–4A012—Continued

Name	Location
Consulting-Design-Construction, Inc	Phoenix, AZ.
Conti Machine Tool Company, Inc	Haverhill, MA.
Conti Tool & Die Company	Akron, OH.
Continental Precision, Inc	Phoenix, AZ.
Continental Tool & Machine	Strongsville, OH.
Continental Tool & Manufacturing	Lenexa, KS.
Contour Metrological & Mfg., Inc	Troy, MI.
Converse Industries Inc	Kenosha, WI.
Convex Mold, Inc	Sterling Heights, MI.
R F Cook Manufacturing Co	Stow, OH.
Cook Machine and Engineering	Gardena, CA.
Cook Specialty Company	Green Lane, PA.
Coorstek	Livermore, CA.
Corbitt Mfg. Company	St. Louis, MO.
Cornerstone Screw Machine	Burbank, CA.
Corrigan Manufacturing Co., Inc	Rockford, IL.
Corrugated Roller & Machine Inc	Santa Fe Springs, CA.
Corry Custom Machine	Corry, PA.
Corver Engineering Company, Inc	Detroit, MI.
Cosar Mold, Inc	Brimfield, OH.
Costa Machine, Inc	Akron, OH.
Country Machine & Tool, Inc	Tipp City, OH.
Covert Manufacturing, Inc	Galion, OH.
Cox Mfg. Co. Inc	San Antonio, TX.
Cox Tool Company, Inc	Excelsior Springs, MO.
Craft Tech, Inc	Carrollton, TX.
Craft-Tech Enterprises, Inc	Troy, MI.
Craig Machinery & Design, Inc	Louisville, KY.
Creative Precision, West	Phoenix, AZ.
Creb Engineering, Inc	Pascoag, RI.
Crenshaw Die & Manufacturing	Irvine, CA.
Crest Manufacturing Company	Lincoln, RI.
Criterion Tool & Die, Inc	Brook Park, OH.
Crossland Machinery	Kansas City, MO.
CrossRidge Precision	Oak Ridge, TN.
Crown Machine, Inc	Rockford, IL.
Crown Mfg. Co., Inc	Newark, CA.
Crown Mold & Machine	Streetsboro, OH.
Crown Tool & Die Co., Inc	Bridgeport, CT.
Crucible Materials Corporation	Camillus, NY.
Crush Master Grinding Corp	Walnut, CA.
Cumberland Machine Company	Nashville, TN.
Custom Engineering, Inc	Evansville, IN.
Custom Gear & Machine, Inc	Rockford, IL.
Custom Machine, Inc	Woburn, MA.
Custom Machine, Inc	Cleveland, OH.
Custom Mold & Design, Inc	New Hope, MN.
Custom Tool & Design, Inc	Erie, PA.
Custom Tool & Grinding Inc	Washington, PA.
Custom Tool & Model Corp	Frankfort, NY.
Cut-Right Tools Corporation	Willoughby, OH.
D & B Industries, Inc	Dayton, OH.
D & H Manufacturing Company	Fremont, CA.
D & J Precision Machining, Inc	Hayward, CA.
D & K Industries, Inc	Chatsworth, CA.
D & N Precision, Inc	San Jose, CA.
D & R Precision Machining	San Jose, CA.
D & S Manufacturing Corporation	Southwick, MA.
D. F. O'Brien Precision Machining	Santa Fe Springs, CA.
D K Mold & Engineering, Inc	Wyoming, MI.
D M E Company	Madison Heights, MI.
D M Machine & Tool	Kennerdell, PA.
D M Machine Company, Inc	Willoughby, OH.
D P I, Inc	Southampton, PA.
D P Tool & Machine Inc	Avon, NY.
D S A Precision Machining, Inc	Livonia, NY.
D S Greene Company, Inc	Wakefield, MA.
D S Mfg., Inc	Ventura, CA.
DT Scheu & Kniss	Louisville, KY.
D-Velco Manufacturing	Phoenix, AZ.
D-K Manufacturing Corporation	Fulton, NY.
DaCo Precision Manufacturers	Sandy, UT.

NTMA CERTIFICATE MEMBER LIST APPLICATION 88–4A012—Continued

Name	Location
Dadeks Machine Works Corporation	Houston, TX.
Daily Industrial Tools	Costa Mesa, CA.
Dan's Precision Grinding	Sun Valley, CA.
Danco Precision, Inc	Phoenixville, PA.
Dane Systems, Inc	Stevensville, MI.
Danly IEM	Middleburg Heights, OH.
Data Mold & Tool, Inc	Walbridge, OH.
Dave Jones Machinists	Mishawaka, IN.
David Engineering & Mfg	Corona, CA.
Davis Machine & Manufacturing	Arlington, TX.
Davken Inc	Brea, CA.
Dayton Progress Corporation	West Carrollton, OH.
Dayton Reliable Tool & Mfg. Co	Dayton, OH.
De King Screw Products Inc	Burbank, CA.
De Long Manufacturing Co., Inc	Santa Clara, CA.
De-Lux Mold & Machine, Inc	Brady Lake, OH.
Dean Machine	Cranston, RI.
Dearborn Precision Tubular	Fryeburg, ME
Deck Brothers, Inc.	Buffalo, NY.
Dekalb Tool & Die, Inc	Tucker, GA.
Delco Corporation	Akron, OH.
Delco Machine & Gear	No.Long Beach, CA.
Dell Tool	Penfield, NY.
Delltronics, Inc	Englewood, CO.
Delta Machine & Tool Company	Cleveland, OH.
Delta Machining, Inc	Niles, MI.
Delta Tech, Inc	Mentor, OH.
Demaich Industries, Inc	Johnston, RI.
Dependable Machine Company, Inc	Indianapolis, IN.
Dependable Tool & Manufacturing	Cleveland, OH.
Desert Precision Mfg., Inc	Tucson, AZ.
Designs For Tomorrow, Inc	St. Louis, MO.
Detail Technologies, Inc	Grandville, MI.
Detroit Tool & Engineering Co	Lebanon, MO.
Deutsch ECD	Hemet, CA.
Devtek Engineering	Colorado Springs, CO.
Di-Matrix	Phoenix, AZ.
Dial Machine Company	Andalusia, PA.
Diamond Lake Tool, Inc	Anoka, MN.
Diamond Machine Works, Inc	Seattle, WA.
Diamond Tool & Die Co., Inc	Euclid, OH.
Diamond Tool & Engineering, Inc	Bertha, MN.
Dickey & Son Machine & Tool Co	Indianapolis, IN.
Dickson Machine & Tool, Inc	Dickson, TN.
Die Cast Die and Mold, Inc	Perrysburg, OH.
Die Dimensions	Kentwood, MI.
Die Matic Corporation	Brooklyn Heights, OH.
Die-Namic Inc	Taylor, MI.
Die Products Corporation	Minneapolis, MN.
Die Quip Corp	Bethel Park, PA.
Die Tech Industries, Ltd	Providence, RI.
The Die Works Inc	Hillsboro, MO.
Die-Matic Tool and Die, Inc	Grand Rapids, MI.
Die-Mension Corporation	Brunswick, OH.
Die-Namic Tool & Mfg., Inc	Rockford, IL.
Diemaster Tool & Mold, Inc	Macedonia, OH.
Dietooling, Div. of Diemolding	Wampsville, NY.
Digital Tool & Die, Inc	Grandville, MI.
Dimac Manufacturing Co., Inc	Alexander, AR.
Distinctive Machine Corporation	Grand Rapids, MI.
Diversified Engraving Stamp	Akron, OH.
Diversified Manufacturing	Lockport, NY.
Diversified Tool & Die	Vista, CA.
Diversified Tool, Inc	Mukwonago, WI.
Dixie Tool & Die Co., Inc	Gadsden, AL.
Dixon Automatic Tool, Inc	Rockford, IL.
Double D Machine & Tool Company	Fremont, OH.
Douglas Machine & Engineering Co	Davenport, IA.
Downey Grinding Company, Inc	Downey, CA.
Dowty's Machine Works, Inc	Baton Rouge, LA.
Doyle Manufacturing, Inc	Holland, OH.
Drabik Tool and Die, Inc	Brook Park, OH.

NTMA CERTIFICATE MEMBER LIST APPLICATION 88–4A012—Continued

Name	Location
Drewco Corporation	Franksville, WI.
Drill Masters Inc	Hamden, CT.
Du-Well Grinding Company, Inc	Milwaukee, WI.
Dugan Tool & Die Company	Toledo, OH.
Dugan Tool & Die, Inc	Cottage Hills, IL.
Dun-Rite Fabricating, Inc	Saginaw, MI.
Dun-Rite Industries, Inc	Monroe, MI.
Dunn & Bybee Tool Company, Inc	Sparta, TN.
Duplicate Parts Company, Inc	San Marcos, CA.
Dura-Metal Products Corporation	Irwin, PA.
Durivage Pattern & Mfg. Co. Inc	Williston, OH.
DuWest Tool & Die, Inc	Cleveland, OH.
Dwyer Instruments, Inc	Grandview, MO.
DynaGrind Precision, Inc	New Kensington, PA.
Dynamic Engineering, Inc	Minneapolis, MN.
Dynamic Fabrication, Inc	Santa Ana, CA.
Dynamic Machine & Fabricating	Phoenix, AZ.
Dynamic Technologies and Design	Grand Rapids, MI.
Dynamic Tool & Design, Inc	Menomonee Falls, WI.
Dysinger Incorporated	Dayton, OH.
E & C Manufacturing Company, Inc	Toledo, OH.
E B & Sons Machine Inc	Aliquippa, PA.
E. C. M. Mold & Die, Inc	Tucson, AZ.
E C M Of Florida	Jupiter, FL.
E. D. M. Exotics, Inc	Hayward, CA.
E F Precision Inc	Willow Grove, PA.
EISC/CME	Toledo, OH.
E J Codd Co. of Baltimore City	Baltimore, MD.
E K L Machine Company, Inc	Andalusia, PA.
E–M-Solutions, Inc	Fremont, CA.
E R C Concepts Company, Inc	Sunnyvale, CA.
E. T. Tool, Inc	Racine, WI.
E W Johnson Company, Inc	Lewisville, TX.
E-Fab, Inc	Santa Clara, CA.
Eagle Mold Company, Inc	Carlisle, OH.
Eagle Technology Group	St. Joseph, MI.
Eagle Tool & Machine Company	Springfield, OH.
Eason & Wailer	Phoenix, AZ.
East Coast Tool & Mfg., Inc	Orchard Park, NY.
East Side Machine, Inc	Webster, NY.
East Texas Machine Works, Inc	Longview, TX.
Eaton Manufacturing, Inc	Fremont, CA.
Ebway Corporation	Fort Lauderdale, FL.
Eckert Enterprises Ltd.	Tempe, AZ.
Eckert Machining, Inc	San Jose, CA.
Eclipse Mold, Inc	Clinton Township, MI.
Eclipse Tool & Die, Inc	Wayland, MI.
Ed Brown Products, Inc	Perry, MO.
Edco, Inc	Toledo, OH.
EDM Supplies, Inc	Downey, CA.
Edwardsville Machine & Welding	Edwardsville, IL.
Efficient Die & Mold Inc	Cleveland, OH.
Egli Machine Company, Inc	Sidney, NY.
Ehlert Tool Co., Inc	New Berlin, WI.
Ehrhardt Tool & Machine Company	Granite City, IL.
Eicom Corporation	Moraine, OH.
86 Tool Company	Cambridge Springs, PA.
Ejay's Machine Co., Inc	Fullerton, CA.
Elcam Tool & Die, Inc	Wilcox, PA.
Electra Form Industries Inc	Vandalia, OH.
Electric Enterprise Inc	Stratford, CT.
Electro Form Corporation	Binghamton, NY.
Electro-Freeto Manufacturing Co	Wayland, MA.
Electro-Mechanical Products, Inc	Denver, CO.
Electro-Tech Machining	Long Beach, CA.
Electroform Co. Inc	Machesney Park, IL.
Elgin Machine Corporation	Inwood, NY.
Elite Tool & Machinery Systems, Inc	O'Fallon, MO.
Elizabeth Carbide Die Co., Inc	McKeesport, PA.
Elizabeth Carbide of North	Lexington, NC.
Elkhart Machine Group	Elkhart, IN.
Elliot Tool & Manufacturing Co.	St. Louis, MO.

NTMA CERTIFICATE MEMBER LIST APPLICATION 88–4A012—Continued

Name	Location
Elliott's Precision, Inc	Peoria, AZ.
Ellison Machine Company	Laurens, SC.
Elrae Industries	Alden, NY.
Emig Machine and Tool	Warwick, PA.
Emmert Welding & Manufacturing	Independence, MO.
Empire Manufacturing Corporation	Bridgeport, CT.
Engineered Machine Tool, Inc	Wichita, KS.
Engineered Pump Services, Inc	Pasadena, TX.
Entek Corporation	Norman, OK.
Enterprise Tool & Die	Brooklyn Heights, OH.
Ephrata Precision Parts, Inc	Denver, PA.
Epicor Software Corporation	Minneapolis, MN.
Erca Tool Die & Stamping Company	Richmond Hill, NY.
Erickson Tool & Machine Company	Rockford, IL.
Erie Shore Machine Co., Inc	Cleveland, OH.
Erie Specialty Products, Inc	Erie, PA.
Ermco, Inc	Cleveland, OH.
Estee Mold & Die, Inc	Dayton, OH.
Esterle Mold & Machine Co.	Stow, OH.
Estul Tool & Manufacturing Co.	Matthews, NC.
Evans Tool & Die, Inc	Conyers, GA.
Ever Fab, Inc	East Aurora, NY.
Ever-Ready Tool, Inc	Largo, FL.
Everett Pattern and Mfg., Inc	Middleton, MA.
Everite Machine Products	Philadelphia, PA.
Arthur J. Evers Corporation	Riverton, NJ.
Ewart-Ohison Machine Company	Cuyahoga Falls, OH.
Ex-Cel Machine & Tool, Inc	Louisville, KY.
Exact Cutting Service, Inc	Brecksville, OH.
Exact Tool & Die, Inc	Brook Park, OH.
Exacta Tech Inc	Livermore, CA.
Exacto, Inc of South Bend	South Bend, IN.
Excalibur Precision Machine Co.	Hampstead, NH.
Excel Machine Company	Philadelphia, PA.
Excel Manufacturing, Inc	Valencia, CA.
Excel Manufacturing Inc	Seymour, IN.
Excel Stamping & Manufacturing	Houston, TX.
Executive Mold Corporation	Huber Heights, OH.
Ezell Precision Tool Company	Clearwater, FL.
F & F Machine Specialties	Mishawaka, IN.
F & G Tool & Die Company	Dayton, OH.
F & L Tools Corporation	Corona, CA.
F & S Tool, Inc	Erie, PA.
F C Machine Tool & Design, Inc	Cuyahoga Falls, OH.
F D T Precision Machine Co., Inc	Taunton, MA.
F G A Inc	Baton Rouge, LA.
F K Instrument Co., Inc	Clearwater, FL.
FMF Racing	Rancho Dominguez, CA.
F M Machine Company	Akron, OH.
F N Smith Corporation	Oregon, IL.
F P Pla Tool & Manufacturing Co.	Buffalo, NY.
F R B Machine Inc	Emlenton, PA.
F S G Inc	Mishawaka, IN.
F. S. Machining, Inc	Englewood, CO.
F T T Manufacturing Inc	Geneseo, NY.
F Tinker & Sons Company	Pittsburgh, PA.
F W Gartner Thermal Spraying Co.	Houston, TX.
F–Squared, Inc	Tarentum, PA.
Fab Lab, Inc	Maryland Heights, MO.
FabCorp, Inc	Houston, TX.
Fairbanks Machine & Tool	Raytown, MO.
Fairview Machine Company, Inc	Topsfield, MA.
Faith Tool & Manufacturing, Inc	Willoughby, OH.
Falcon Precision Machining Co	West Springfield, MA.
Falls City Machine Technology	Louisville, KY.
FallsMold & Die, Inc	Stow, OH.
Fame Tool & Manufacturing Co	Cincinnati, OH.
Fantasy Manufacturing, Inc	Windsor, CA.
Fargo Machine Company, Inc	Ashtabula, OH.
Farzati Manufacturing Corp	Greensburg, PA.
Fast Physics Inc	Tempe, AZ.
Fay & Quartermaine Machining	El Monte, CA.

NTMA CERTIFICATE MEMBER LIST APPLICATION 88–4A012—Continued

Name	Location
Fay Tool & Die, Inc	Orlando, FL.
Feedall, Inc	Willoughby, OH.
Feilhauer's Machine Shop, Inc	Cincinnati, OH.
Feller Tool Co., Inc	Elyria, OH.
Fenton Manufacturing, Inc	Ashtabula, OH.
Fenwick Machine & Tool	Piedmont, SC.
Feral Productions LLC	Newark, CA.
Ferriot Inc	Akron, OH.
First International Bank	Hartford, CT.
Fischer Precision Spindles, Inc	Berlin, CT.
Fischer Tool & Die Corporation	Temperance, MI.
Fitzwater Engineering Corp	Scituate, RI.
Five Star Industries LLC	Dayton, OH.
Five Star Tool Company, Inc	Rochester, NY.
Flasche Models & Patterns, Inc	Cleveland, OH.
Fleck Machine Company, Inc	Hanover, MD.
Foriska Machine Shop	Saegertown, PA.
Forster Tool & Mfg., Inc	Bensenville, IL.
Forte Company	Kansas City, MO.
The Foster Group	Rochester, NY.
Foster-Tobin Corp	Meadville, PA.
4 Axis Machining, Inc	Denver, CO.
Fox Valley Tool & Die, Inc	Kaukauna, WI.
Franchino Mold & Engineering	Lansing, MI.
Frank J. Stolitzka & Son, Inc	Akron, OH.
Frasal Tool Co., Inc	Newington, CT.
Frazier Aviation, Inc	San Fernando, CA.
Fre-Mar Industries, Inc	Brunswick, OH.
J F Fredericks Tool Company, Inc	Farmington, CT.
Fredon Corporation	Mentor, OH.
Freeport Welding & Fabricating	Freeport, TX.
Frost & Company	Charlestown, RI.
Fulcrum Group, LLC	Hayward, CA.
Fulton Industries, Inc	Rochester, IN.
Furno Co. Inc	Pomona, CA.
Future Fabricators	Phoenix, AZ.
Future Tool & Die Company, Inc	Cleveland, OH.
Future Tool & Die, Inc	Grandville, MI.
Fyco Tool & Die, Inc	Houston, TX.
G & G Tool Company, Inc	Sidney, OH.
G & K Machine Company	Denver, CO.
G & L Tool Corp	Agawam, MA.
G B F Enterprises, Inc	Santa Ana, CA.
G B Tool Company	Warwick, RI.
G F T Manufacturing Company	Vandergrift, PA.
G H Tool & Mold, Inc	Washington, MO.
G M T Corporation	Waverly, IA.
G R McCormick, Inc	Burbank, CA.
G S C Manufacturing Inc	Indianapolis, IN.
G S G Tool and Manufacturing	Meadville, PA.
G S Precision, Inc	Brattleboro, VT.
Gadsden Tool, Inc	Gadsden, AL.
Gainesville Machining Inc	Gainesville, TX.
Gales Manufacturing Corporation	Racine, WI.
Galgon Industries, Inc	Fremont, CA.
Gambar Products Company, Inc	Warwick, RI.
Garcia Associates	Arlington, VA.
Gatco, Inc	Plymouth, MI.
Gauer Mold & Machine Company	Talimadge, OH.
Gaum, Inc	Robbinsville, NJ.
Gear Manufacturing, Inc	Anaheim, CA.
Gebhardt Machine Works, Inc	Portland, OR.
Geiger Manufacturing, Inc	Stockton, CA.
Gem City Engineering Company	Dayton, OH.
Gene's Gundri 11 ing Inc	Alahambra, CA.
General Aluminium Forgings	Colorado Springs, CO.
General Die Engraving, Inc	Twinsburg, OH.
General Engineering Company	Toledo, OH.
General Grinding, Inc	Oakland, CA.
General Machine-Diecron, Inc	Griffin, GA.
General Machine Shop, Inc	Cheverly, MD.
General Tool & Die Company, Inc	Racine, WI.

NTMA CERTIFICATE MEMBER LIST APPLICATION 88–4A012—Continued

Name	Location
General Tool Company	Cincinnati, OH.
Genesee Manufacturing Company	Rochester, NY.
Genesee Precision Mfg., Inc	Avon, NY.
Genesis Plastics & Engineering	Scottsburg, IN.
Gentec Manufacturing Inc	San Jose, CA.
Geometric Tool & Machine Co	Piedmont, SC.
German Machine, Inc	Rochester, NY.
Germantown Tool & Machine	Huntingdon Valley, PA.
Gibbs Die Casting Corporation	Henderson, KY.
Gibbs Machine Company, Inc	Greensboro, NC.
Gilbert Engineering Company	Glendale, AZ.
Gilbert Machine & Tool Company	Greene, NY.
Gill Tool & Die, Inc	Grand Rapids, MI.
Gillette Machine & Tool Company	Rochester, NY.
Girard Tool & Die/Jackburn Mfg	Girard, PA.
Gischel Machine Company Inc	Baltimore, MD.
Givmar Precision Machining	Mountain View, CA.
Glaze Tool & Engineering, Inc	New Haven, IN.
Glendale Machine Company, Inc	Solon, OH.
Glendo Corporation	Emporia, KS.
Glidden Machine & Tool, Inc	North Tonawanda, NY.
Global Mfg. & Assembly	Phoenix, AZ.
Global Precision, Inc	Davie, FL.
Golis Machine, Inc	Montrose, PA.
Goodwin-Bradley Pattern Co., Inc	Providence, RI.
Graham Tech, Inc	Cochranton, PA.
Granby Mold, Inc	Walled Lake, MI.
Graybill's Tool & , Inc	Manheim, PA.
Great Lakes E.D.M., Inc	Clinton Twp., MI.
Great Lakes Metal Treating, Inc	Tonawanda, NY.
Great Lakes Precision Machine	Niles, MI.
Great Western Grinding & Eng	Huntington Beach, CA.
Grind All Precision Tool Co	Warren, MI.
Grind-All, Inc	Cleveland, OH.
GrindC/O, Inc	Chelmsford, MA.
Grinding Service & Mfg. Co	Bristol, CT.
Grindworks Inc	Glendale, AZ.
Grosmann Precision	Baliwin, MO.
Grover Gundrilling, Inc	Norway, ME.
Guill Tool & Engineering Co	West Warwick, RI.
Gulf Machining	Pinellas Park, FL.
Gulf South Machine/Drilex Corp	Houston, TX.
Gurney Precision Machining	Saint Petersburg, FL.
H & H Machine Company	Whittier, CA.
H & H Machine Shop Of Akron, Inc	Akron, OH.
H & H Machined Products, Inc	Erie, PA.
H & K Machine Service Co., Inc	O'Fallon, MO.
H & M Precision Machining	Santa Clara, CA.
H & S Enterprises, Inc	Monrovia, CA.
H & W Machine Company	Broomfield, CO.
H & W Tool Company, Inc	Dover, NJ.
H B Machine, Inc	Phoenix, AZ.
HB Molding, Inc	Louisville, KY.
H–B Tool & Cutter Grinding, Inc	Willow Grove, PA.
H Brauning Company, Inc	Manassas, VA.
H H Mercer, Inc	Mesquite, TX.
H R M Machine, Inc	Costa Mesa, CA.
Haberman Machine, Inc	St. Paul, MN.
Hackett Precision Company	Nashville, TN.
Hager Machine & Tool, Inc	Houston, TX.
Haig Precision Mfg. Corp	Campbell, CA.
Hal-West Technologies, Inc	Kent, WA.
Hamblen Gage Corporation	Indianapolis, IN.
Hamill Manufacturing Company	Trafford, PA.
Hamilton Industries, Inc	Tempe, AZ.
Hamilton Machine Co., Inc	Nashville, TN.
Hamilton Mold & Machine, Inc	Cleveland, OH.
Hamilton Tool Company, Inc	Meadville, PA.
Hamlin Steel Products, Inc	Akron, OH.
Hammill Manufacturing Company	Toledo, OH.
Hammon Precision Technologies	Hayward, CA.
Hanks Pattern Company	Montrose, MN.

NTMA CERTIFICATE MEMBER LIST APPLICATION 88–4A012—Continued

Name	Location
Hanover Machine Company	Ashland, VA.
Hans Rudolph, Inc	Kansas City, MO.
Hansen Engineering	Harbor City, CA.
Hansford Manufacturing Corp	Rochester, NY.
The Hanson Group, LTD	Ludlow, MA.
Hanson Mold	St. Joseph, MI.
Har-Phill Machine Products, Inc	Tempe, AZ.
Hardy Machine Inc	Hatfield, PA.
Hardy-Reed Tool & Die Co	Manitou Beach, MI.
Harley & Son, Inc	Yorba Linda, CA.
Hartup Tool Inc	Columbus, IN.
J W Harwood Company	Cleveland, OH.
Haserodt Machine & Tool, Inc	Cleveland, OH.
Haskell Machine & Tool, Inc	Homer, NY.
Haumiller Engineering Company	Elgin, IL.
Hawkeye Precision, Inc	Gilbert, AZ.
Hawkins Machine Company, Inc	Coventry, RI.
Hawkinson Mold Engineering Co	Alhambra, CA.
Hayden Corporation West	Springfield, MA.
Heatherington Machine Corp	Orlando, FL.
Heinhold Engineering & Machine	Salt Lake City, UT.
Heisey Machine Co., Inc	Lancaster, PA.
Heitz Machine & Manufacturing	Maryland Heights, MO.
Hellebusch Tool & Die, Inc	Washington, MO.
Helm Precision, Ltd	Phoenix, AZ.
Henman Engineering & Machine	Muncie, IN.
Herman Machine, Inc	Tallmadge, OH.
Herrick & Cowell Company	Hamden, CT.
Hetrick Mfg., Inc	Lower Burrell, PA.
Heyden Mold & Bench Company	Tallmadge, OH.
Heyl Engraving, Inc	North Canton, OH.
Hi Tech Manufacturing, LLC	Greensboro, NC.
Hi-Tech Machining & Engineering LLC	Tucson, AZ.
Hi-Tech Tool Industries, Inc	Troy, MI.
Hi-Tech Tool, Inc	Lower Burrell, PA.
Hiatt Metal Products Company	Muncie, IN.
Hickory Machine Company, Inc	Newark, NY.
High Tech Turning Co.	Watertown, MA.
High-Tech Industries	Holland, MI.
Highldnd Mfg. Inc	Manchester, CT.
Hill Engineering, Inc	Villa Park, IL.
Hillcrest Precision Tool Co. Inc	Haverhill, MA.
Hillcrest Tool & Die, Inc	Titusville, PA.
Hilton Tool & Die Corporation	Rochester, NY.
Hittle Machine & Tool Company	Indianapolis, IN.
Hobson & Motzer, Inc	Durham, CT.
Hodon Manufacturing, Inc	Willoughby, OH.
Hoercher Industries, Inc	East Rochester, NY.
Hoffman Custom Tool & Die	Newport Beach, CA.
Hoffstetter Tool & Die	Clearwater, FL.
Hole Specialists, Inc	Ludlow, MA.
Holland Hitch Co.	Wylie, TX.
Hollis Line Machine Co., Inc	Hollis, NH.
Holmes Manufacturing Corporation	Cleveland, OH.
Holton Mold & Engineering	Upland, CA.
Homeyer Tool and Die Co.	Marthasville, MO.
Honemasters, Inc	Huntington Beach, CA.
Hoop's Machine & Welding, Inc	Denton, TX.
Hope Manufacturing, Inc	Greensboro, NC.
Hoppe Tool, Inc	Chicopee, MA.
Horizon Industries	Lancaster, PA.
Horizon Tool & Die Corp.	Grandville, MI.
Houston Cutting Tools, Inc	Houston, TX.
Howell Tool & Machine	Flower Mound, TX
Howland Machine Corporation	Colorado Springs, CO.
Hubbell Machine Company, Inc	Cleveland, OH.
Humboldt Instrument Company	San Leandro, CA
Hunt Machine & Manufacturing Co	Tallmadge, OH.
Huron Machine Products, Inc	Fort Lauderdale, FL.
HydraWedge Corporation	El Segundo, CA.
Hydro Aluminum Cedar Tools	Cedar Springs, MI.
Hydrodyne Division Of FPI, Inc	Burbank, CA.

NTMA CERTIFICATE MEMBER LIST APPLICATION 88–4A012—Continued

Name	Location
Hydromat, Inc	St. Louis, MO.
Hygrade Precision Technologies	Plainville, CT.
Hytron Manufacturing Company	Huntington Beach, CA.
ILM Tool, Inc	Hayward, CA.
IQC, Inc	Vandalia, OH.
ISO Machining, Inc	Pleasanton, CA.
I T M, Inc	Shertz, TX.
ITW CIP Tool and Die	Santa Fe Springs, CA.
Ideal Grinding Technologies, Inc	Chatsworth, CA.
Imperial Die & Manufacturing Co	Cleveland, OH.
Imperial Machine & Tool Company	Wadsworth, OH.
Imperial Machining Co	Denver, CO.
Imperial Mfg	Santa Fe Springs, CA.
Imperial Newbould	Meadville, PA.
Imperial Tool & Manufacturing Co	Lexington, KY.
IndTool, Inc	Burlington, NC.
Indiana Tool & Die Company	Indiana, PA.
Industrial Babbitt Bearing	Gonzales, LA.
Industrial Custom Automatic	Dayton, OH.
Industrial Grinding, Inc	Dayton, OH.
Industrial Machine Company	Oklahoma City, OK.
Industrial Machine & Tool Co., Inc	Nashville, TN.
Industrial Machining Corporation	Santa Clara, CA.
Industrial Maintenance	Lavergne, TN.
Industrial Mold + Machine	Twinsburg, OH.
Industrial Molds, Inc	Rockford, IL.
Industrial Precision, Inc	Westfield, MA.
Industrial Precision Products	Oswego, NY.
Industrial Tool & Machine Co.	Cuyahoga Falls, OH.
Industrial Tool, Die	Tucson, AZ.
Industrial Tool, Inc	Minneapolis, MN.
Industrial Tooling Technologies	Muskegon, MI.
Ingersoll Contract Manufacturing	Loves Park, IL.
Injection Mold & Machine Company	Akron, OH.
Inland Tool & Manufacturing Co	Kansas City, KS.
Inline Inc	Phoenix, AZ.
Innex Industries, Inc	Rochester, NY.
Innovative E D M, LLC	Troy, MI.
Innovative Systems Machine	Toledo, OH.
Insulate Inc	Auburn, WA.
Integrated Machine Systems	Bethel, CT.
Integrity Mfg. L.L.C.	Farmington, CT.
International Stamping Inc	Warwick, RI.
International Tooling & Stamping	Mt. Juliet, TN.
Interscope Manufacturing Inc	Middletown, OH.
Intrex Corporation	Louisville, CO.
Iverson Industries, Inc	Wyandotte, MI.
J & A Tool Company, Inc	Franklin, PA.
J & F Machine Company	Cleveland, OH.
J & F Machine Inc	Cypress, CA.
J & J Tool Co., Inc	Louisville, KY.
J & L EDM	Sunnyvale, CA.
J & M Machine, Inc	Fairport Harbor, OH.
J & M Unlimited	Ashland City, TN.
J.B.A.T. t/a Cherry Hill	Cherry Hill, NJ.
JBK Manufacturing & Development	Dayton, OH.
J B Tool Die & Engineering, Inc	Fort Wayne, IN.
J B Tool, Inc	Placentia, CA.
J C B Precision Tool & Mold, Inc	Commerce City, CO.
J. C. Milling Co., Inc	Rockford, IL.
J D Kauffman Machine Shop, Inc	Christiana, PA.
J D Machining	Santa Clara, CA.
J I Machine Company, Inc	San Diego, CA.
J K Tool & Die, Inc	Apollo, PA.
J M Fabrication Corporation	Arlington, TX.
J M Mold South	Easley, SC.
J M Mold, Inc	Piqua, OH.
J M P Industries, Inc	Cleveland, OH.
J M S Mold & Engineering Co	South Bend, IN.
J R Custom Metal Products, Inc	Wichita, KS.
JRM Machine Company	St. Paul, MN.
J Ross Miller & Sons, Inc	Kimberton, PA.

NTMA CERTIFICATE MEMBER LIST APPLICATION 88–4A012—Continued

Name	Location
J S Die & Mold, Inc	Byron Center, MI.
Jackman Machining	Corona, CA.
Jackson & Heit Machine Company	Southampton, PA.
Jacksonville Machine Inc	Jacksonville, IL.
Jaco Engineering	Anaheim, CA.
Jaco Tool & Die, Inc	Grand Rapids, MI.
Jadco Inc	Springfield, MA.
Jamison Mfg. Co	North Royalton, OH
Jason Tool & Engineering, Inc	Garden Grove, CA.
Jatco Machine & Tool Company	Pittsburgh, PA.
Jena Tool Corporation	Dayton, OH.
Jenkins Machine, Inc	Bethlehem, PA.
Jenn Manufacturing Company, Inc	Warminster, PA.
Jennison Corporation	Carnegie, PA.
Jergens Tool and Mold	Englewood, OH.
Jergens, Inc	Cleveland, OH.
Jesel, Inc	Lakewood, NJ.
Jesse Industries, Inc	Sparks, NV.
Jet Products Co., Inc	Phoenix, AZ.
Jewett Machine Mfg. Co., Inc	Richmond, VA.
Jig Grinding Service Company	Cleveland, OH.
Jirgens Modern Tool Corporation	Kalamazoo, MI.
John Ramming Machine Company	St. Louis, MO.
Johnson Engineering Company	Indianapolis, IN.
Johnson Precision, Inc	Buffalo, NY.
Johnson Tool, Inc	Fairview, PA.
Joint Production Technology, Inc	Macomb, MI.
Joint Venture Tool & Mold	Saegertown, PA.
Jonco Tool Company	Racine, WI.
T R Jones Machine Company, Inc	Crystal Lake, IL.
Joseph Alziebler Company	Arleta, CA.
Juell Machine Company, Inc	Pomona, CA.
Just in Time CNC Machining, Inc	Dansville, NY.
K & A Tooling	Santa Ana, CA.
K & E Mfg. Company	Lee's Summit, MO.
K & H Mold & Machine Division	Akron, OH.
K & H Precision Products, Inc	Honeoye Falls, NY.
K & M Machine-Fabricating, Inc	Cassopolis, MI.
K & M Precision Machining, Inc	Signal Hill, CA.
K & S Tool & Die, Inc	Meadville, PA.
K & S Tool & Mfg. Company, Inc	Jamestown, NC.
K.C.K. Tool & Die Co., Inc	Ferndale, MI.
K-Form, Inc	Tustin, CA.
K L H Industries, Inc	Germantown, WI.
K L N Precision Machining	Fremont, CA.
K M F, Inc	Fairdale, KY.
K M S Machine Works, Inc	Taunton, MA.
K Mold & Engineering, Inc	Granger, IN.
K V, Inc	Huntingdon Valley, PA.
Ka-Wood Gear & Machine Company	Madison Heights, MI.
Kahre Brothers, Inc	Evansville, IN.
Kalman Manufacturing	Morgan Hill, CA.
Kamashian Engineering, Inc	Bellf lower, CA.
Kanis Machine & Manufacturing, Inc	Tewksbury, MA.
Kansas City Screw Products, Inc	Kansas City, MO.
T. J. Karg Company, Inc	Akron, OH.
Karlson Machine Works, Inc	Phoenix, AZ.
Karsten Precision	Phoenix, AZ.
Kaskaskia Tool & Machine, Inc	New Athens, IL.
Kaufhold Machine Shop, Inc	Lancaster, PA.
C B Kaupp & Sons, Inc	Maplewood, NJ.
Kearflex Engineering Company	Warwick, RI.
Keck-Schmidt Tool & Die	South El Monte, CA.
Kell-Strom Tool Company, Inc	Wethersfield, CT.
Kellems & Coe Tool Corporation	Jeffersonville, IN.
Keller Technology Corporation	Tonawanda, NY.
Kelley Industries, Inc	Eighty Four, PA.
Kelitech Precision Machining, Inc	San Jose, CA.
Keim Manufacturing Company	Benton Harbor, MI.
Kelmar, Inc	Midland, VA.
Kern-Mu-Co	Hayward, CA.
Kemco Tool & Machine Company	Fenton, MO.

NTMA CERTIFICATE MEMBER LIST APPLICATION 88–4A012—Continued

Name	Location
Kenlee Precision Corporation	Baltimore, MD.
Kennametal Inc	Latrobe, PA.
Kennebec Tool & Die Co., Inc	Augusta, ME.
Kennedy & Bowden Machine Company	La Vergne, TN.
Kennick Mold & Die, Inc	Cleveland, OH.
Kentucky Machine & Tool Company	Louisville, KY.
Kern Special Tools Company, Inc	New Britain, CT.
Ketcham Diversified Tooling Inc	Cambridge, PA.
Kewill ERP, Inc	Edina, MN.
Keyes Machine Works, Inc	Gates, NY.
Keystone Machine, Inc	Littlestown, PA.
Kimberly Gear & Spline, Inc	Phoenix, AZ.
King Machine & Engineering Co	Indianapolis, IN.
King-Tek EDM & Precision Machining	Fullerton, CA.
Kipp Group	Ontario, CA.
Kirby Risk Precision Machining	Lafayette, IN.
Kirca Precision	Rochester, NY.
Kiwanda Machine Works, Inc	Clackamas, OR.
Klein Steel Service, Inc	Rochester, NY.
Klix Tool Corporation	Syracuse, NY.
Knowlton Manufacturing Company	Norwood, OH.
Knust—S B O	Houston, TX.
Kolar, Inc	Ithaca, NY.
Kolenda Tool & Die, Inc	Wyoming, MI.
Kordenbrock Tool & Die Company	Cincinnati, OH.
Kovacs Machine & Tool Company	Wallingford, CT.
Krause Tool, Inc	Golden, CO.
Kuester Tool & Die Co., Inc	Quincy, IL.
Kuhn Tool & Die Co	Meadville, PA.
Kurt J. Lesker Company	Pittsburgh, PA.
Kurt Manufacturing Company	Minneapolis, MN.
L & L Machine, Inc	Ludlow, MA.
L & P Machine, Inc	Santa Clara, CA.
L A I Southwest, Inc	Phoenix, AZ.
L H Carbide Corporation	Fort Wayne, IN.
L P I Corporation	Hollywood, FL.
L R G Corporation	Jeannette, PA.
L R W Cutting Tools, Inc	Phoenix, AZ.
L T L Company, Inc	Rockford, IL.
LaBarge Products, Inc	St. Louis, MO.
Lake Manufacturing Co., Inc	Newburyport, MA.
Lakeside Manufacturing Company	Stevensville, MI.
Lamb Machine & Tool Company	Indianapolis, IN.
Lamina, Inc	Oak Park, MI.
Lampin Corporation	Uxbridge, MA.
Lancaster Machine Shop	Lancaster, TX.
Lancaster Metal Products Company	Lancaster, OH.
Lancaster Mold, Inc	Lancaster, PA.
Land Specialties Manufacturing	Raytown, MO.
Lane Enterprise	Rochester, NY.
Lane Punch Corporation	Salisbury, NC.
Laneko Engineering Company	Ft. Washington, PA.
Laneko Roll Form, Inc	Hatfield, PA.
Lange Precision, Inc	Fullerton, CA.
Langenau Manufacturing Company	Cleveland, OH.
Laser Automation, Inc	Chagrin Falls, OH.
Laser Beam Technology	Hayward, CA.
Laser Fare, Inc	Smithfield, RI.
Laser Tool, Inc	Saegertown, PA.
LaserFab, Inc	Concord, CA.
Lathe Tool Works, Inc	Richmond, CA.
Lavelle Machine	Westford, MA.
Lavigne Manufacturing, Inc	Cranston, RI.
Layke Incorporated	Phoenix, AZ.
Layke Tool & Manufacturing, Inc	Meadville, PA.
LeBlanc Grinding Company	Anaheim, CA.
Ledford Engineering Company, Inc	Cedar Rapids, IA.
Lee's Grinding, Inc	Cleveland, OH.
Leech Industries, Inc	Meadville, PA.
Lees Enterprise	Chatsworth, CA.
Leese & Co., Inc	Greensburg, PA.
Leggett & Platt, Inc	Whittier, CA.

NTMA CERTIFICATE MEMBER LIST APPLICATION 88–4A012—Continued

Name	Location
Leicester Die & Tool, Inc	Leicester, MA
Lemco-Miller Corporation	Danvers, MA.
Lenz Technology, Inc	Mountain View, CA.
Leonardi Manufacturing Co., Inc	Weedsport, NY.
Lewis Aviation	Phoenix, AZ.
Lewis Machine and Tool Company	Milan, IL.
Lewis Machine & Tool Co. Inc	Cuba, MO.
Liberty Precision Industries, Ltd.	Rochester, NY.
Libra Precision Machining	Tecumseh, MI.
Light & Medium Fabricating, Inc	Willoughby, OH.
Light Machines Corporation	Manchester, NH.
Ligi Tool & Engineering, Inc	Pompano Beach, FL.
Lilly Software Associates, Inc	Hampton, NH.
Limmco, Inc	New Albany, IN.
Linco, Inc	Phoenix, AZ.
Lindberg Heat Treating	Paramount, CA.
Linmark Machine Products, Inc	Union, MO.
Little Rhody Machine Repair, Inc	Coventry, RI.
Littlecrest Machine Shop, Inc	Houston, TX.
Lloyd Company	Houston, TX.
Lobart Company	Pacoima, CA.
Loecy Precision Mfg.	Mentor, OH.
LOMA Automation Technologies, Inc	Louisville, KY.
Lordon Engineering	Gardena, CA.
Louis C. Morin Co. Inc	N. Billerica, MA.
Loyal Machine Company, Inc	Chelsea, MA.
Luick Quality Gage & Tool, Inc	Muncie, IN.
Lunar Tool & Machinery Company	St. Louis, MO.
Lunar Tool & Mold, Inc	North Royalton, OH.
Lunquist Manufacturing Corp	Rockford, IL.
Lux Manufacturing, Inc	Sunnyvale, CA.
Lynn Welding Co. Inc	Newington, CT.
Lyons Tool & Die Company	Meriden, CT.
M & D Loe Manufacturing, Inc	Benicia, CA.
M & H Engineering Company, Inc	Danvers, MA.
M & H Tool & Die, Inc	Gadsden, AL.
M & J Grinding & Tool Co.	Holland, OH.
M & J Valve Services, Inc	Lafayette, LA.
M & S Holes Corporation	New Brunswick, NJ.
M C I Tool & Die, Inc	Saginaw, MI.
M C Mold & Machine, Inc	Talimadge, OH.
M D F Tool Corporation	North Royalton, OH.
M F Engineering Co. Inc	Bristol, RI.
M J C Machine Tooling	Hudson, NH.
M J K Precision	Woodland Park, CO.
M. J. Machining, Inc	Morgan Hill, CA.
M P Components	Grand Rapids, MI.
M P E Machine Tool Inc	Corry, PA.
M P Technologies, Inc	Brecksville, OH.
MRC Technologies	Buffalo, NY.
M. R. Mold & Engineering Corp	Brea, CA.
M S Willett, Inc	Cockeysville, MD.
M T E, Inc	San Jose, CA.
M T M Grinding	Thorndike, MA.
M–C Fabrication, Inc	Olathe, KS.
M–Ron Corporation	Glendale, AZ.
M–Tron Manufacturing Company,	San Fernando, CA.
Mac Machine and Metal Works, Inc	Connersville, IN.
Mac-Mold Base, Inc	Romeo, MI.
Machine Incorporated	Stoughton, MA.
Machine Mastery	Santa Clara, CA.
Machine Specialties, Inc	Greensboro, NC.
Machine Tooling, Inc	Cleveland, OH.
Machinist Cooperative	Gilroy, CA.
Machinists, Inc	Seattle, WA.
MacKay Manufacturing	Spokane, WA.
Maddox Metal Works, Inc	Dallas, TX.
Madgett Enterprises Inc	Milipitas, CA.
Magdic Precision Tooling, Inc	East McKeesport, PA.
Maghielse Tool Corporation	Grand Rapids, MI.
Magic Manufacturing, Inc	Sunnyvale, CA.
Magna Machine & Tool Company	New Castle, IN.

NTMA CERTIFICATE MEMBER LIST APPLICATION 88–4A012—Continued

Name	Location
Magnum Manufacturing Center, Inc	Colorado Springs, CO.
Magnus Mfg. Corp	Shortsville, NY.
Mahuta Tool Corp	Germantown, WI.
Main Tool & Mfg. Co., Inc	Minneapolis, MN.
Maine Machine Products	South Paris, ME.
Mainline Machine, Inc	Broussard, LA.
Majer Precision Engineering, Inc	Tempe, AZ.
Major Tool & Machine, Inc	Indianapolis, IN.
Makino	Mason, OH.
Malmberg Engineering, Inc	Livermore, CA.
Manda Machine Company, Inc	Dallas, TX.
Manetek, Inc	Broussard, LA.
Manheim Special Machine Shop	Manheim, PA.
Mann Tool Company, Inc	Pacific, MO.
Manor Research, Inc	Hayward, CA.
Manufactured Technical Solutions	Jenison, MI.
Manufacturing Machine Corp	Pawtucket, RI.
Manufacturing Service Corp	West Hartford, CT.
Marberry Machine, Inc	Houston, TX.
Marco Manufacturing Company	Akron, OH.
Marcy Machine, Inc	Grandview, MO.
Mardon Tool & Die Company, Inc	Rochester, NY.
Marini Tool & Die Company, Inc	Racine, WI.
Mans Systems Design, Inc	Spencerport, NY.
Markham Machine Co. Inc	Akron, OH.
Marlin Tool, Inc	Cuyahoga Falls, OH.
Marquette Tool & Die Company	St. Louis, MO.
Marshall Manufacturing Company	Minneapolis, MN.
Martinek Manufacturing	Fremont, CA.
Martinelli Machine	San Leandro, CA.
Masco Machine, Inc	Cleveland, OH.
Massachusetts Machine Works, Inc	Westwood, MA.
Massey Industries, Inc	Houston, TX.
Master Cutting & Engineering,	Santa Fe Springs, CA.
Master Industries Inc	Piqua, OH.
Master Precision Tool Corp	Sterling Heights, MI.
Master Research & Manufacturing	Norwalk, CA.
Master Tool & Die	Anaheim, CA.
Master Tool & Mold, Inc	Grafton, WI.
Mastercraft Mold, Inc	Phoenix, AZ.
Mastercraft Tool Co	St. Louis, MO.
Mastercraft Tool & Machine Co	Southington, CT.
Masterman Engineering	Kent, WA.
MaTech Machining Technologies	Salisbury, MD.
Matthews Gauge, Inc	Santa Ana, CA.
Maudlin & Son Manufacturing Co	Kemah, TX.
May Tool & Die, Inc	North Royalton, OH.
May Tool & Mold Company, Inc	Kansas City, MO.
Mayf ran International	Cleveland, OH.
McCurdy Tool & Machine Inc	Caledonia, IL.
McAfee Tool & Die, Inc	Uniontown, OH.
McDowell Enterprises, Inc	Elkhart, IN.
Dan McEachern Company	Alameda, CA.
McGill Manufacturing Company	Flint, MI.
McGough & Kilguss	Providence, RI.
McIvor Manufacturing, Inc	Buffalo, NY.
McKee Carbide Tool Division	Olanta, PA.
McKenzie Automation Systems, Inc	Rochester, NY.
McNeal Enterprises, Inc	San Jose, CA.
McNeill Manufacturing Company	Oakland, CA.
McSwain Manufacturing Corp.	Cincinnati, OH.
Meadows Manufacturing Co., Inc	Sunnyvale, CA.
Meadville Plating Company, Inc	Meadville, PA.
Meadville Tool Grinding	Meadville, PA.
Mechanical Manufacturing Corp	Sunrise, FL.
Mechanical Metal Finishing Co	Gardena, CA.
Mechanized Enterprises, Inc	Anaheim, CA.
Medved Tool & Die Company	Milwaukee, WI.
Menegay Machine & Tool Company	Canton, OH.
Mercer Machine Company, Inc	Indianapolis, IN.
Mercier Tool & Die Company	Canton, OH.
Meriden Manufacturing	Meriden, CT.

NTMA CERTIFICATE MEMBER LIST APPLICATION 88–4A012—Continued

Name	Location
Merritt Tool Company, Inc	Kilgore, TX.
Metal Cutting Specialists, Inc	Houston, TX.
Metal Form Engineering	Redlands, CA.
Metal Processors Inc	Stevensville, MI.
Metallon, Inc	Thomaston, CT.
Metals USA, Flagg Steel Co., Inc	St. Louis, MO.
Metco Manufacturing Company, Inc	Warrington, PA.
Metplas, Inc	Natrona Heights, PA.
Metric Machining	Monrovia, CA.
Metric Precision Inc	Spartanburg, SC.
Metro Manufacturing, Inc	Phoenix, AZ.
Miami Tool & Die, Inc	Huntington, IN.
Michigan Machining Inc	Mt. Morris, MI.
Micro Chrome & Lapping, Inc	San Jose, CA.
Micro Engineering Inc	Caledonia, MI.
Micro Instrument Corporation	Rochester, NY.
Micro Matic Tool, Inc	Youngstown, OH.
Micro Precision Company	Houston, TX.
Micro Precision Corporation	Lancaster, PA.
Micro Punch & Die Company	Rockford, IL.
Micro Surface Engineering, Inc	Los Angeles, CA.
Micro Tool & Manufacturing, Inc	Meadville, PA.
Micro-Tec	Chatsworth, CA.
Micro-Tech Machine Inc	Newark, NY.
Micro-Tronics, Inc	Tempe, AZ.
Microfinish	Clayton, OH.
Micropulse West, Inc	Tempe, AZ.
Mid-Central Manufacturing, Inc	Wichita, KS.
Mid-Continent Engineering, Inc	Minneapolis, MN.
Mid-State Manufacturing, Inc	Milldale, CT.
Mid-States Forging Die & Tool	Rockford, IL.
Middle River Machine Services	Baltimore, MD.
Midland Precision Machining, Inc	Tempe, AZ.
Midway Mfg. Inc	Elyria, OH
Midwest Machine & Manufacturing Co.	Muskegon, MI.
Midwest Tool & Die Corporation	Fort Wayne, IN.
Midwest Tool & Engineering Co.	Dayton, OH.
Mikana Manufacturing Co., Inc	San Dimas, CA.
Mikron Machine, Inc	Cranesville, PA.
Mikron Manufacturing, Inc	Colorado Springs, CO.
Mu-Tool & Plastics Inc	Zephyrhills, FL.
Milco Wire EDM, Inc	Huntington Beach, CA.
Millat Industries Corp.	Dayton, OH.
Miller Equipment Corporation	Richmond, VA.
Miller Machine & Design, Inc	Charlotte, NC.
Miller Mold Company	Saginaw, MI.
Millrite Machine Inc	Westfield, MA.
Milrose Industries	Cleveland, OH.
Miltronics, Inc	Painesville, OH.
Milwaukee Precision Corporation	Milwaukee, WI.
Milwaukee Punch Corporation	Greendale, WI.
Minco Tool & Mold Inc	Dayton, OH.
Mission Tool & Manufacturing Co.	Hayward, CA.
Mitchell Machine, Inc	Springfield, MA.
Mitchum Schaefer, Inc	Indianapolis, IN.
Mittler Brothers Machine & Tool	Foristell, MO.
Mod Tech Industries, Inc	Shawano, WI.
Model Machine Company, Inc	Baltimore, MD.
Model Mold & Machine Company,	Noblesville, IN.
Modern Industries Inc	Phoenix, AZ.
Modern Machine Company	San Jose, CA.
Modern Machine Company	Bay City, MI.
Modern Mold, Inc	Grand Rapids, MI.
Modern Technologies Corp.	Xenia, OH.
Modular Mining Systems, Inc	Tucson, AZ.
Mold Threads, Inc	Branford, CT.
Moldcraft, Inc	Depew, NY.
Monks Manufacturing Co., Inc	Wilmington, MA.
Monsees Tool & Die, Inc	Rochester, NY.
Montgomery Machine Company	Houston, TX.
Moon Tool & Die, Inc	Conneaut Lake, PA.
Moore Gear Mfg. Co., Inc	Hermann, MO.

NTMA CERTIFICATE MEMBER LIST APPLICATION 88–4A012—Continued

Name	Location
Moore Machine, Inc	Walkerton, IN.
Moore Quality Tooling, Inc	Dayton, OH.
Morlin Incorporated	Erie, PA.
Morris Machine Co., Inc	Indianapolis, IN.
Morton & Company, Inc	Wilmington, MA.
Moseys' Production Machinists	Anaheim, CA.
Moss Machine/Module	San Francisco, CA.
Motor Machine Co., Inc	Edison, NJ.
Mountain States Automation, Inc	Englewood, CO.
Mt. Sterling Industries	Mt. Sterling, KY.
MTI Engineering Corp./Mitutoyo	Huntington Beach, CA.
Mueller Machine & Tool Company	Berkeley, MO.
Muller Tool, Inc	Cheektowaga, NY.
Multi Dimensional Machining Inc	Englewood, CO.
Multi-Tool, Inc	Saegertown, PA.
Mustang-Major Tool & Die Co	Eden, NY.
Mutual Precision, Inc	West Springfield, MA.
Mutual Tool & Die, Inc	Dayton, OH.
Myers Industries	Akron, OH.
MyersPrecision Grinding Company	Warrensville Hts., OH.
Myles Tool Co., Inc	Sanborn, NY.
N C Dynamics, Inc	Long Beach, CA.
N D T Industries, Inc	Dayton, OH.
N E T & Die Company, Inc	Fulton, NY.
Nashville Machine Company, Inc	Nashville, TN.
National Carbide Die	McKeesport, PA.
National Jet Company, Inc	LaVale, MD.
National Tool & Machine Co. Inc	East St. Louis, IL.
Nationwide Precision Products	Rochester, NY.
Neal Manufacturing, Inc	Greensboro, NC.
Nel-Mac Tool & Mfg. Inc	McKinney, TX.
Nelson Bros. & Strom Co., Inc	Racine, WI.
Nelson Engineering	Garden Grove, CA.
Nelson Grinding, Inc	Fullerton, CA.
Nelson Precision Drilling Co	Glastonbury, CT.
Nemes Machine Co	Cuyahoga, OH.
Nerjan Development Company	Stamford, CT.
Neutronics, Inc	Phoenix, AZ.
New Age Plastics, Inc	San Jose, CA.
New Century Fabricators, Inc	New Iberia, LA.
New Century Remanufacturing, Inc	Santa Fe Springs, CA.
New Coy Fabrication, Inc	Rochester, NY.
New England Die Co., Inc	Waterbury, CT.
New Standard Corporation	York, PA.
Newman Machine Company, Inc	Greensboro, NC.
Newton Tool & Manufacturing Co	Swedesboro, NJ.
Niagara Punch & Die Corporation	Buffalo, NY.
Nifty Bar, Inc	Penfield, NY.
Niles Machine & Tool Works, Inc	Livermore, CA.
Nixon Tool Co., Inc	Richmond, IN.
Noble Tool Corporation	Dayton, OH.
Norbert Industries, Inc	Sterling Heights, MI.
Nordon Tool & Mold, Inc	Rochester, NY.
Norman , Inc	Cleveland, OH.
Normike Industries, Inc	Plainville, CT.
North Canton Tool Company, Inc	Canton, OH.
North Central Tool & Die, Inc	Houston, TX.
North Coast Tool & Mold Corp	Cleveland, OH.
North Easton Machine Co., Inc	North Easton, MA.
North Florida Tool Engineering	Jacksonville, FL.
Northeast E D M	Newburyport, MA.
Northeast Manufacturing Co., Inc	Stoneham, MA.
Northeast Tool & Manufacturing	Indian Trail, NC.
Northern Machine Tool Company	Muskegon, MI.
Northland Extension Drills	Grove City, MN.
Northmont Tool & Gage Inc	Clayton, OH.
Northwest Machine Works, Inc	Grand Junction, CO.
Northwest Tool Corporation	Tucson, AZ.
Northwest Tool & Die, Inc	Saegertown, PA.
Northwest Tool & Die Company	Grand Rapids, MI.
Northwood Industries, Inc	Perrysburg, OH.
Norv's Molds, Inc	Nyssa, OR.

NTMA CERTIFICATE MEMBER LIST APPLICATION 88–4A012—Continued

Name	Location
Norwood Tool Company	Dayton, OH.
Nova Manufacturing Company	North Hollywood, CA.
Now-Tech Industries Inc	Lackawanna, NY.
Nu-Tool Industries, Inc	North Royalton, OH.
Nu-Tech Industries	Grandview, MO.
Numeric Machine	Fremont, CA.
Numeric Machining Co., Inc	West Springfield, MA.
Numerical Precision, Inc	Wheeling, IL.
Numerical Productions, Inc	Indianapolis, IN.
Numet Machine	Stratford, CT.
NuTec Tooling Systems, Inc	Meadville, PA.
O & S Machine Company, Inc	Latrobe, PA.
O–A, Inc	Agawam, MA.
OEM Controls Inc	Shelton, CT.
O E M Industries, Inc	Dallas, TX.
O E M, Inc	Corvallis, OR.
O-D Tool & Cutter Inc	Mansfield, IvIA.
O'Keefe Ceramics	Woodland Park, CO.
O'Neal Tool & Machine Co., Inc	DeSoto, MO.
Oakley Die & Mold Company, Inc	Mason, OH.
Obars Machine & Tool Company	Toledo, OH.
Oberg Industries Inc	Freeport, PA.
Oconee Machine & Tool Company	Westminster, SC.
Oconnor Engineering Laboratories	Costa Mesa, CA.
Ohio Gasket & Shim Company	Akron, OH.
Ohio Transitional Machine & Tool	Toledo, OH.
Ohlemacher Mold & Die	Strongsville, OH.
Oilfield Die Manufacturing Co	Lafayette, LA.
Okuma America Corporation	Charlotte, NC.
Olson Mfg. & Distribution Inc	Shawnee, KS.
Omax Corporation	Kent, WA.
Omega One, Inc	Maple Heights, OH.
Omega Tool, Inc	Menomonee Falls, WI.
Omni Tool, Inc	Winston Salem, NC.
Orenda National Aerospace, LLC	Glendale, AZ.
Osborn Products, Inc	Phoenix, AZ.
Osley & Whitney, Inc	Westfield, MA.
Overland Boiling	Dallas, TX.
Overton & Sons Tool & Die Co	Mooresville, IN.
Overton Corporation	Willoughby, OH.
P & N Machine Company, Inc	Houston, TX.
P & P Mold & Die, Inc	Tallmadge, OH.
P & A Tool & Die, Inc	Rochester, NY.
P & R Industries, Inc	Rochester, NY.
PDQ Machine, Inc	Machesney Park, IL.
PDT Tooling, Inc	Lincolnshire, IL.
P. J. M. Machine Inc	North Canton, OH.
PMR, Inc	Avon, OH.
PR Machine Works, Inc	Mansfield, OH.
P. Tool & Die Company, Inc	N. Chili, NY.
P–K Tool & Manufacturing Company	Chicago, IL.
Pacific Bearing Company	Rockford, IL.
Pacific Precision Machine, Inc	San Carlos, CA.
Pacific Tool & Die, Inc	Brunswick, OH.
Pahl Tool Services	Cleveland, OH.
Palma Tool & Die Company, Inc	Lancaster, NY.
Palmer Machine Company Inc	Conway, NH.
Palmer Manufacturing Company	Maiden, MA.
Parallax, Inc	Largo, FL.
Paramount Machine & Tool Corp	Fairfield, NJ.
Park Hill Machine, Inc	Lancaster, PA.
Parker Plastics Corporation	Pittsburgh, PA.
Parr-Green Mold and Machine Co	North Canton, OH.
Parris Tool & Die Company	Goodlettsville, TN.
Parrish Machine, Inc	South Bend, IN.
Pasco Tool & Die, Inc	Meadville, PA.
Patco Machine & Fab, Inc	Houston, TX.
Path Technologies, Inc	Mentor, OH.
Patkus Machine Company	Rockford, IL.
Patriot Machine, Inc	St. Charles, MO.
Patriot Precision Products	North Canton, OH.
Patten Tool & Engineering, Inc	Kittery, ME.

NTMA CERTIFICATE MEMBER LIST APPLICATION 88–4A012—Continued

Name	Location
Paul E. Seymour Tool & Die Co	North East, PA.
Peerless Precision, Inc	Westfield, MA.
Peffen Machine Company	Nashville, TN.
Peko Precision Products	Rochester, NY.
Pell Engineering & Manufacturing	Peiham, NH.
Penco Precision	Fontana, CA.
Pendleton Tool Company, Inc	Erie, PA.
Peninsula Screw Machine Products	Belmont, CA.
Penn State Tool & Die Corp	North Huntingdon, PA.
Penn United Tech, Inc	Saxonburg, PA.
Pennoyer-Dodge Company	Glendale, CA.
Pennsylvania Crusher	Cuyahoga Falls, OH.
Pennsylvania Tool & Gages, Inc	Meadville, PA.
Perfection Mold & Machine Co	Akron, OH.
Perfection Tool & Mold Corp	Dayton, OH.
Perfecto Tool & Engineering Co	Anderson, IN.
Perfekta, Inc	Wichita, KS.
Performance Grinding	Tempe, AZ.
Performance Machining, Inc	Irwin, PA.
Perry Tool & Research, Inc	Hayward, CA.
Petersen Precision Engineering, LLC	Redwood City, CA.
F H Peterson Machine Corporation	Stoughton, MA.
Peterson Jig & Fixture, Inc	Rockford, MI.
Petro-Chem Industries, Inc	Stafford, TX.
Pettey Machine Works, Inc	Trinity, AL.
Petty Enterprises	Hollister, CA.
Phil-Coin Machine & Tool Co	Hudson, MA.
Philips Enabling Technologies Group	South Plainfield, NJ.
Philips Machining Company, Inc	Coopersville, MI.
Phoenix Gear, Inc	Phoenix, AZ.
Phoenix Grinding	Phoenix, AZ.
Phoenix Tool & Gage, Inc	Phoenix, AZ.
Phoenix, Inc	Seekonk, MA.
Piece-Maker Company	Troy, MI.
Pierce Products, Inc	Cleveland, OH.
Pierson Precision, Inc	Campbell, CA.
Pinehurst Tool & Die	Conneaut Lake, PA.
Pinnacle Engineering Co., Inc	Manchester, MI.
Pinnacle Manufacturing Co., Inc	Chandler, AZ.
Pioneer Industries	Seattle, WA.
Pioneer Precision Grinding, Inc	West Springfield, MA.
Pioneer Tool & Die Company	Akron, OH.
Pioneer Tool & Die, Inc	Meadville, PA.
Pioneer Tool Die & Machine Co	Ivyland, PA.
Pitt-Tex	Latrobe, PA.
Plainfield Stamping Illinois, Inc	Plainfield, IL.
Piano Machine & Instrument Inc	Gainesville, TX.
Plas Tool Co	Niles, IL.
Plastic Mold Technology Inc	Grand Rapids, MI.
Plastipak Packaging, Inc	Medina, OH.
Plating Technology, Inc	Columbus, OH.
Pleasant Precision, Inc	Kenton, OH.
Plesh Industries, Inc	Buffalo, NY.
Pocal Industries Inc	Scranton, PA.
Pol-Tek Industries, Ltd	Cheektowaga, NY.
Polynetics, Inc	Fullerton, CA.
Polytec Products Corporation	Menlo Park, CA.
Ponderosa Industries, Inc	Denver, CO.
Popp Machine & Tool, Inc	Louisville, KY.
Port City Machine & Tool Company	Muskegon Heights, MI.
Portage Knife Company, Inc	Mogadore, OH.
Post Products, Inc	Kent, OH.
Powder Metallurgy Company	Lewisville, TX.
Powers Bros. Machine, Inc	Montebello, CA.
Powill Manufacturing	Phoenix, AZ.
PQ Enterprise, L.L.C	Grand Rapids, MI.
Practical Machine Company	Barberton, OH.
Pre Tech Manufacturing	Schaumburg, IL.
Pre-Mec Corporation	Clinton Township, MI.
Precise Products Corporation	Minneapolis, MN.
Precise Technologies Inc	Largo, FL.
Precise Tool & Die, Inc	Leechburg, PA.

NTMA CERTIFICATE MEMBER LIST APPLICATION 88–4A012—Continued

Name	Location
Precision Aircraft Components	Dayton, OH.
Precision Aircraft Machining	Sun Valley, CA.
Precision Automated Machining	Englewood, CO.
Precision Automation Co., Inc	Clarksville, IN.
Precision Balancing & Analyzing	Mentor, OH.
Precision Boring Company	Detroit, MI.
Precision Deburring Enterprises	Sun Valley, CA.
Precision Die & Stamping Inc	Tempe, AZ.
Precision Engineering, Inc	Uxbridge, MA.
Precision Engineering & Mfg. Co	Haymarket, VA.
Precision Gage & Tool Company	Dayton, OH.
Precision Gage, Inc	Tempe, AZ.
Precision Grinding & Mfg. Corp	Rochester, NY.
Precision Grinding, Inc	Birmingham, AL.
Precision Grinding, Inc	Phoenix, AZ.
Precision Identity Corporation	Campbell, CA.
Precision Industries, Inc	Providence, RI.
Precision Industries, Inc	Baton Rouge, LA.
Precision Machine & Instrument	Houston, TX.
Precision Machine & Tool Co	Longview, TX.
Precision Machine & Engineering	Phoenix, AZ.
Precision Machine Rebuilding	Rogers, MN.
Precision Machine Company	Lancaster, PA.
Precision Manufacturing	Grand Junction, CO.
Precision Metal Crafters, Ltd	Greensburg, PA.
Precision Metal Fabrication	Dayton, OH.
Precision Metal Tooling, Inc	San Leandro, CA.
Precision Mold & Engineering	Warren, MI.
Precision Mold Base Corporation	Tempe, AZ.
Precision Mold Welding, Inc	Little Rock, AR.
Precision Mold, Inc	Kent, WA.
Precision Piece Parts Inc	Mishawaka, IN.
Precision Products Inc	Greenwood, IN.
Precision Resource	Huntington Beach, CA.
Precision Resource Tool & Machine	Shelton, CT.
Precision Resources	Hawthorne, CA.
Precision Specialties	San Jose, CA.
Precision Specialists, Inc	West Berlin, NJ.
Precision Stamping & Tool, Inc	Irvine, CA.
Precision Stamping, Inc	Farmers Branch, TX.
Precision Technology, Inc	Chandler, AZ.
Precision Tool & Die, Inc	Derry, NH.
Precision Tool Work, Inc	New Iberia, LA.
Precision Tool & Mold, Inc	Clearwater, FL.
Precision Wire EDM Service Inc	Grand Rapids, MI.
Precision Wire Cut Corporation	Waterbury, CT.
Preferred Grinding Co., Inc	Dallas, TX.
Preferred Tool & Die Co., Inc	Comstock Park, MI.
Preferred Tool Company, Inc	Seymour, IN.
Prescott Aerospace, Inc	Prescott Valley, AZ.
Pressco Products	Kent, WA.
Prestige Mold Incorporated	Rancho Cucamonga, CA.
Price Products, Inc	Escondido, CA.
Pride	Champlin, MN.
Prima Die Castings, Inc	Clearwater, FL.
Prime-Co Tool Inc	East Rochester, NY.
Primeway Tool & Engineering Co	Madison Heights, MI.
Pro-Tech Machine, Inc	Burton, MI.
Pro-Mold, Inc	Spencerport, NY.
Process Equipment Company	Tipp City, OH.
Product Engineering Company	Columbus, IN.
Production Saw Works, Inc	North Hollywood, CA.
Production Tool & Mfg. Co	Portland, OR.
Producto Machine Company	Bridgeport, CT.
Professional Grinding, Inc	Akron, OH.
Professional Instruments Co., Inc	Hopkins, MN.
Professional Machine & Tool, Inc	Valley Center, KS.
Professional Machine & Tool Co	Gallatin, TN.
Proficient Machining Co., Inc	Mentor, OH.
Profile Grinding, Inc	Cleveland, OH.
Proformance Manufacturing, Inc	Corona, CA.
Progressive Concepts Machining	Pleasanton, CA.

NTMA CERTIFICATE MEMBER LIST APPLICATION 88–4A012—Continued

Name	Location
Progressive Metallizing	Akron, OH.
Progressive Tool Company	Waterloo, IA.
Progressive Tool & Die, Inc	Meadville, PA.
Progressive Tool & Die, Inc	Gardena, CA.
Promax Tool Co.	Rancho Cordova, CA.
ProMold, Inc	Cuyahoga Falls, OH.
Prompt Machine Products, Inc	Chatsworth, CA.
Proper Cutter, Inc	Guys Mills, PA.
Proper Mold & Engineering, Inc	Center Line, MI.
Proteus Manufacturing Co., Inc	Woburn, MA.
Proto-Design, Inc	Redmond, WA.
Proto Machine & Manufacturing	Kent, OH.
Proto-Cam, Inc	Grand Rapids, MI.
Protonics Engineering Corp	Cerritos, CA.
Prototype & Plastic Mold Co	Middietown, CT.
Puehier Tool Company	Valley View, OH.
Pulibrite, Inc	Fremont, CA.
Punch Press Products, Inc	Los Angeles, CA.
Punchcraft Company—Subsidiary of	Warren, MI.
Q K Mold & Manufacturing, Inc	Kent, OH.
Q M C Technologies, Inc	Depew, NY.
Qualfab Machining	Redwood City, CA.
Quality Centerless Grinding Corp	Middlefield, CT.
Quality Engineering Services	Wallingford, CT.
Quality Grinding & Machining	Bridgeport, CT.
Quality Machine Engineering, Inc	Santa Rosa, CA.
Quality Machining Technology, Inc	Oakdale, CA.
Quality Mold & Die, Inc	Santa Ana, CA.
Quality Mold & Engineering	Baroda, MI.
Quality Mold Shop, Inc	McMinnville, TN.
Quality Precision, Inc	Hayward, CA.
Quality Tool Company	Toledo, OH.
Quantum Manufacturing, Inc	Burbank, CA.
Quick-Way Stampings	Euless, TX.
R & D Machine Shop	Dallas, TX.
R & D Specialty/Manco	Phoenix, AZ.
R & D Tool & Engineering	Lee's Summit, MO.
R & G Precision Tool Inc	Thomaston, CT.
R & H Manufacturing Inc	Kingston, PA.
R & J Tool, Inc	Brookville, OH.
R & M Machine Tool	Freeland, MI.
R & M Manufacturing Company	Niles, MI.
R & M Mold Manufacturing Co	Bloomsbury, NJ.
R & R Precision Machine, Inc	Wichita, KS.
R & S EDM, Inc	W. Springfield, MA.
R & S Machining, Inc	Oakville, MO.
RB Machine Co., Inc	Phoenix, AZ.
R D C Machine, Inc	Santa Clara, CA.
R Davis EDM	Anaheim, CA.
R E F Machine Company, Inc	Middlefield, CT.
REO Hydro-Pierce Inc	Detroit, MI.
R G F Machining Technologies	Canon City, CO.
R J S Corporation	Akron, OH.
R M I	Van Nuys, CA.
R 0 C Carbon Company	Houston, TX.
R S Precision Industries, Inc	Farmingdale, NY.
P. T R Slotting & Machine Inc	Cuyahoga Falls, OH.
RTS Wright Industries, Inc	Nashville, TN.
R W Machine, Inc	Houston, TX.
P. W. Smith Company, Inc	Dallas, TX.
B. Radtke & Sons, Inc	Round Lake Park, IL.
Rainbow Tool & Machine Co., Inc	Gadsden, AL.
Rabid Corporation	Reisterstown, MD.
Ram Tool, Inc	Grafton, WI.
Ranger Tool & Die Company	Saginaw, MI.
Rapid-Line Inc	Grand Rapids, MI.
Rapidac Machine Corporation	Rochester, NY.
Ratnik Industries, Inc	Victor, NY.
Rawlings Engineering	Macon, GA.
Ray Paradis Machine, Inc	Jackson, CA.
Re-Del Engineering	Campbell, CA.
Realco Diversified, Inc	Meadville, PA.

NTMA CERTIFICATE MEMBER LIST APPLICATION 88–4A012—Continued

Name	Location
Reardon Machine Co., Inc	St. Joseph, MO.
Reber Machine & Tool Company	Muncie, IN.
Rectack of America	Los Angeles, CA.
Reed Instrument Company	Houston, TX.
Reese Machine Company, Inc	Ashtabula, OH.
Reichert Stamping Company	Toledo, OH.
Reid Industries, Inc	Roseville, MI.
Reitz Tool & Die Company, Inc	Walbridge, OH.
Reitz Tool, Inc	Cochranton, PA.
Reliable EDM, Inc	Houston, TX.
Remarc Manufacturing Inc	Hayward, CA.
Remmele Engineering, Inc	St. Paul, MN.
Remtex, Inc	Longview, TX.
Reny & Company Inc	El Monte, CA.
Repairtech International, Inc	Van Nuys, CA.
Repko Tool Inc	Meadville, PA.
Republic Industries	Louisville, KY.
Republic-Lagun	Carson, CA.
Research Tool, Inc	East Haven, CT.
Reuther Mold & Manufacturing Co	Cuyahoga Falls, OH.
Reynolds Manufacturing Co., Inc	Rock Island, IL.
Rhode Island Centerless, Inc	Johnston, RI.
Rich Tool & Die Company	Scarborough, ME.
Richard Manufacturing Company	Milford, CT.
Richard 0. Schulz Company	Elmwood Park, IL.
Richard Tool & Die Corporation	New Hudson, MI.
Richard's Grinding, Inc	Cleveland, OH.
Richards Machine Tool Company	Lancaster, NY.
Richsal Corporation	Elyria, OH.
Rick Sanford Machine Company	San Leandro, CA.
Rid-Lom Precision Tool Corp	Rochester, NY.
Ridge Machine & Welding Company	Toronto, OH.
Riggins Engineering, Inc	Van Nuys, CA.
Right Tool & Die, Inc	Toledo, OH.
Rima Enterprises	Huntington Beach, CA.
Rite-Way Industries, Inc	Louisville, KY.
Riverview Machine Company, Inc	Holyoke, MA.
Riviera Tool Company	Grand Rapids, MI.
Robert C. Reetz Company, Inc	Pawtucket, RI.
Roberts Aerospace Mfg. & Eng	Gardena, CA.
Roberts Tool & Die Company	Chillicothe, MO.
Roberts Tool Company, Inc	Northridge, CA.
Robrad Tool & Engineering	Mesa, AZ.
Rochester Gear, Inc	Rochester, NY.
Rochester Manufacturing	Wellington, OH.
Rockburl Industries, Inc	Rochester, NY.
Rockford Process Control, Inc	Rockford, IL.
Rockford Tool & Manufacturing	Rockford, IL.
Rockford Toolcraft, Inc	Rockford, IL.
Rockhill Machining Industries	Barberton, OH.
Rockstedt Tool & Die	Brunswick, OH.
Rocon Manufacturing Corporation	Rochester, NY.
Rogers Associates Machine Tool	Rochester, NY.
Romac Electronics, Inc	Plainview, NY.
Romold Inc	Rochester, NY.
Ron Grob Company	Loveland, CO.
Ronart Industries, Inc	Detroit, MI.
Ronlen Industries, Inc	Brunswick, OH.
Rons Racing Products, Inc	Tucson, AZ.
Royal Wire Products, Inc	N. Royalton, OH.
Royalton Manufacturing, Inc	Cleveland, OH.
Royster's Machine Shop, LLC	Henderson, KY.
Rozal Industries, Inc	Farmingdale, NY.
RREN Manufacturing & Engineering	Springfield, MA.
Rubbermaid, Inc., Mold Division	Wooster, OH.
Ruoff & Sons, Inc	Runnemede, NJ.
Russing Machining Corp	Glendale, CA.
Ryan Industries Inc	York, PA.
S & B Tool & Die Co., Inc	Lancaster, PA.
S & R CNC Machining	Arleta, CA.
S & R Precision Company, LLC	Fremont, CA.
S & S Precision Company, LLC	San Jose, CA.

NTMA CERTIFICATE MEMBER LIST APPLICATION 88–4A012—Continued

Name	Location
S. C. Machine	Chatsworth, CA.
S C Manufacturing	Akron, OH.
S D S Machine, Inc	Hayward, CA.
S G S Tool Company	Munroe Falls, OH.
S L P Machine, Inc	Ham Lake, MN.
S M K Fabricators, Inc	May, TX.
S P M/Anaheim	Anaheim, CA.
S P S Technologies	Santa Ana, CA.
Saeibo Manufacturing Industries	Blauvelt, NY.
Sage Machine & Fabricating	Houston, TX.
Sagehill Engineering, Inc	Menlo Park, CA.
Saginaw Products Corporation	Saginaw, MI.
Salomon Smith Barney	Washington, DC.
Samax Precision, Inc	Sunnyvale, CA.
San Diego Swiss Machining, Inc	Chula Vista, CA.
Sanders Tool & Mould Company	Hendersonville, TN.
Sandor Tool & Manufacturing Co	Lawrence, MA.
Sandy Bay Machine	Rockport, MA.
Santin Engineering, Inc	West Peabody, MA.
Sattler Machine Products, Inc	Sharon Center, OH.
Sawing Services Co	Chatsworth, CA.
Sawtech	Lawrence, MA.
Schaffer Grinding Company, Inc	Montebello, CA.
Schill Corp	Toledo, OH.
Schlitter Tool	Warren, MI.
Schmald Tool & Die, Inc	Burton, MI.
Schmiede Corporation	Tullahoma, TN.
Schneider & Marguard, Inc	Newton, NJ.
Schober's Machine & Engineering	Alhambra, CA.
Schoitz Engineering, Inc	Waterloo, IA.
Schroeder Tool & Die Corporation	Van Nuys, CA.
Schuetz Tool & Die, Inc	Hiawatha, KS.
Schulze Tool Company	Independence, MO.
Schwab Machine, Inc	Sandusky, OH.
Schwartz Industries, Inc	Warren, MI.
Scott County Machine & Tool Co	Scottsburg, IN.
Seabury & Smith, Inc	Miami, FL.
Sebewaing Tool & Engineering Co	Sebewaing, MI.
Seemcor Inc	Englewood, NJ.
Albert Seisler Machine Corp	Mohnton, PA.
Select Industrial Systems Inc	Fairborn, OH.
Select Tool & Eng., Inc	Elkhart, IN.
Select Tool & Die Tool Div	Dayton, OH.
SelfLube	Coopersville, MI.
Selzer Tool & Die, Inc	Elyria, OH.
Sematool Mold & Die Co	Santa Clara, CA.
Serrano Industries Inc	Santa Fe Springs, CA.
Service Manufacturing and	Anaheim, CA.
Service Tool & Die, Inc	Henderson, KY.
Setters Tools, Inc	Piedmont, SC.
Sharon Center Mold & Die	Sharon Center, OH.
Shaw Industries, Inc	Franklin, PA.
Shear Tool, Inc	Saginaw, MI.
Sheets Tool & Manufacturing, Inc	Saegertown, PA.
Shelby Engineering Company, Inc	Indianapolis, IN.
Sherer Manufacturing	Clearwater, FL.
Sherlock Machine Company	Clearwater, FL.
The Sherman Corporation	Inglewood, CA.
Sherman Tool & Gage	Erie, PA.
Shiloh Industries	Wellington, OH.
Shookus Special Tools, Inc	Raymond, NH.
Shop Tech Industrial Software Corp	Rocky Hill, CT.
Sibley Machine & Foundry Corp	South Bend, IN.
Sieger Engineering, Inc	S. San Francisco, CA.
Sigma Precision Mfg., Inc	Aston, PA.
Signa Molds & Engineering	Sylmar, CA.
Signal Machine Company	New Holland, PA.
Silicon Valley Mfg	Fremont, CA.
Sipco, Inc	Meadville, PA.
Sirius Enterprises, Inc	Dallas, TX.
Six Sigma	Louisville, KY.
Ski-Way Machine Products Company	Euclid, OH.

NTMA CERTIFICATE MEMBER LIST APPLICATION 88–4A012—Continued

Name	Location
Skillcraft Machine Tool Company	West Hartford, CT.
Skulsky, Inc	Gardena, CA.
Skyfab, Inc	Denton, TX.
Skyline Manufacturing Corp	Nashville, TN.
Skylon Mold & Machining	Sugar Grove, PA.
Skyway Manufacturing Corporation	Phoenix, AZ.
Smith-Renaud, Inc	Cheshire, CT.
Smith's Machine	Cottondale, AL.
Smithfield Manufacturing, Inc	Clarksville, TN.
Snyder Systems	Benicia, CA.
Solar Tool & Die, Inc	Kansas City, MO.
Sonic Machine & Tool, Inc	Tempe, AZ.
Sonoma Precision Mfg. Co	Santa Rosa, CA.
Sonora Precision Molds, Inc	Mi Wuk Village, CA.
South Bay Machining	Santa Clara, CA.
South Bend Form Tool Company	South Bend, IN.
South Eastern Machining, Inc	Piedmont, SC.
Southampton Manufacturing, Inc	Feasterville, PA.
Southeastern Technology, Inc	Murfreesboro, TN.
Southern Mfg. Technologies, Inc	Tampa, FL.
Southwest Industrial Services	Ft. Worth, TX.
Southwest Manufacturing, Inc	Wichita, KS.
Southwest Metalcraft Corporation	Tucson, AZ.
Southwest Mold, Inc	Tempe, AZ.
Space City Machine & Tool Co	Houston, TX.
Spalding & Day Tool & Die Co	Louisville, KY.
Spark Technologies, Inc	Schenley, PA.
Spartak Products, Inc	Houston, TX.
Spartan Manufacturing Company	Garden Grove, CA.
Specialty Machine & Hydraulics	Pleasantville, PA.
Spenco Machine & Manufacturing	Temecula, CA.
Spike Industries	North Lima, OH.
Spin Pro Inc	Sunnyvale, CA.
Spiral Grinding Company	Culver City, CA.
Spirex Southwest	Gainesville, TX.
Springfield Tool & Die, Inc	Greenville, SC.
Sprint Tool & Die, Inc	Meadville, PA.
Spun Metals, Inc	Phoenix, AZ.
St. Louis Tool & Mold	Valley Park, MO.
Stadco	Los Angeles, CA.
Standard Jig Boring Service, Inc	Akron, OH.
Standard Machine Inc	Cleveland, OH.
Standard Welding & Steel	Medina, OH.
Stanek Tool Corporation	New Berlin, WI.
Stanley Machining & Tool Corp	Carpentersville, IL.
Star Tool & Die, Inc	Elkhart, IN.
Star Tool & Engineering, Inc	Redwood City, CA.
Starn Tool & Manufacturing Co	Meadville, PA.
State Industrial Products, Inc	Phoenix, AZ.
Stauble Machine & Tool Company	Louisville, KY.
Stelted Manufacturing, Inc	Tempe, AZ.
Sterling Engineering Corporation	Winsted, CT.
Sterling Tool Company	Racine, WI.
Stevens Manufacturing Co., Inc	Milford, CT.
Stewart Manufacturing Company	Phoenix, AZ.
Stieg Grinding Corporation	Rockford, IL.
Stillion Industries	Ann Arbor, MI.
Stillwater Technologies, Inc	Troy, OH.
Stines' Machine, Inc	Vista, CA.
Ralph Stockton Valve Products	Houston, TX.
Stoney Crest Regrind Service	Bridgeport, MI.
Strobel Machine, Inc	Worthington, PA.
Studwell Engineering, Inc	Sun Valley, CA.
Subsea Ventures, Inc	Houston, TX.
Suburban Manufacturing Company	Euclid, OH.
The Sullivan Corporation	Hartland, WI.
Summit Machine Company	Scottdale, PA.
Summit Precision, Inc	Phoenix, AZ.
Sun Polishing Corporation	North Royalton, OH.
Sun Tool Company	Houston, TX.
Sun Valley Tool, Inc	Tempe, AZ.
Sunbelt Plastics, Inc	Frisco, TX.

NTMA CERTIFICATE MEMBER LIST APPLICATION 88–4A012—Continued

Name	Location
Sunrise Tool & Die, Inc	Henderson, KY.
Sunset Tool, Inc	Saint Joseph, MI.
Super Finishers II	Phoenix, AZ.
Superior Die Set Corporation	Oak Creek, WI.
Superior Die Tool Machine Co	Columbus, OH.
Superior Gear Box Company	Stockton, MO.
Superior Jig, Inc	Anaheim, CA.
Superior Mold Company	Ontario, CA.
Superior Mold, Inc	Clearwater, FL.
Superior Roll Forming Company	Valley City, OH.
Superior Thread Rolling Company, Inc	Arleta, CA.
Superior Tool & Die Company	Bensalem, PA.
Superior Tool & Die Company, Inc	Elkhart, IN.
Superior Tool, Inc	Willow Street, PA.
Supreme Tool & Die Company	Fenton, MO.
Surface Manufacturing	Auburn, CA.
Svedala Pumps & Process	Colorado Springs, CO.
Swiss Wire E D M	Costa Mesa, CA.
Swissco, Inc	Bell Gardens, CA.
Synergis Technologies Group	Grand Rapids, MI.
Synergy Machine, Inc	Kent, WA.
Syst-A-Matic Tool & Design	Meadville, PA.
Systems 3, Inc	Tempe, AZ.
T & S Industrial Machining Corp	Woburn, MA.
TCI Aluminum North	Hayward, CA.
T C I Precision Metals	Gardena, CA.
T J Tool and Mold	Guys Mills, PA.
T–K & Associates, Inc	La Porte, IN.
T M Industries, Inc	East Berlin, CT.
T M Machine & Tool, Inc	Toledo, OH.
T M S Inc	Lincoln, RI.
T–M Manufacturing Corporation	Sunnyvale, CA.
TAE Corporation	Kent, WA.
Tag Engineering, Inc	Tucson, AZ.
Tait Design & Machine Company, Inc	Manheim, PA.
Talbar, Inc	Meadville, PA.
Talcott Machine Products, Inc	Meriden, CT.
Talent Tool & Die, Inc	Berea, OH.
Tana Corporation	Toledo, OH.
Tangent Tool, Inc	Fraser, MI.
Tanner Oil Tools Inc	Houston, TX.
Tapco USA, Inc	Loves Park, IL.
Taurus Tool & Engineering, Inc	Muncie, IN.
Tebben Enterprises	Clara City, MN.
Tech-Etch, Inc	Plymouth, MA.
Tech Industries, Inc	Cleveland, OH.
Tech Manufacturing Company	Wright City, MO.
Tech Mold, Inc	Tempe, AZ.
Tech Ridge, Inc	South Chelmsford, MA.
Tech Tool & Mold, Inc	Meadville, PA.
Tech Tool and Machine Inc	Toledo, OH.
Tech Tool, Inc	Detroit, MI.
Tech-Machine, Inc	Colorado Springs, CO.
Techmetals, Inc	Dayton, OH.
Techni-Cast Corporation	South Gate, CA.
Techni-Products, Inc	East Longmeadow, MA.
Technics 2000 Inc	Olathe, KS.
Technodic, Inc	Providence, RI.
TecoMetrix, LLC	Tempe, AZ.
Tedco, Inc	Cranston, RI.
Teke Machine Corp	Rochester, NY.
Tell Tool, Inc	Westfield, MA.
Temco Corporation	Danvers, MA.
Tenk Machine & Tool Company	Cleveland, OH.
Tennessee Metal Works, Inc	Nashville, TN.
Tennessee Tool Corporation	Charlotte, TN.
Terrell Manufacturing Inc	Strongsville, OH.
Testand Corporation	Pawtucket, RI.
Tetco, Inc	Plainville, CT.
Teter Tool & Die, Inc	La Porte, IN.
Texas Honing, Inc	Pearland, TX.
Thaler Machine Company	Dayton, OH.

NTMA CERTIFICATE MEMBER LIST APPLICATION 88–4A012—Continued

Name	Location
The Goforth Corp	Fremont, CA.
Therm, Inc	Ithaca, NY.
Thiel Tool & Engineering Co	St. Louis, MO.
Thomas Machine Works, Inc	Newburyport, MA.
Pleasanton Tool and Manufacturing	Pleasanton, CA.
Thompson Gundrilling, Inc	Van Nuys, CA.
Thor Tool Corporation	San Leandro, CA.
Thornhurst Manufacturing, Inc	Tampa, FL.
Three-Way Pattern, Inc	Wichita, KS.
Time Machine & Stamping, Inc	Phoenix, AZ.
The Timken Company	Canton, OH.
Timon Tool & Die Co	Toledo, OH.
Tipco Punch, Inc	Hamilton, OH.
Tipp Machine & Tool, Inc	Tipp City, OH.
Tisza Industries, Inc	Niles, MI.
Titan, Inc	Sturtevant, WI.
TLT-Babcock, Inc	Akron, OH.
TMK Manufacturing Inc	Campbell, CA.
Toledo Blank, Inc	Toledo, OH.
Toledo Molding & Die Inc	Toledo, OH.
Tolerance Masters, Inc	Circle Pines, MN.
Tomak Precision	Lebanon, OH.
TomKen Tool & Engineering, Inc	Muncie, IN.
Tool Gauge & Machine Works, Inc	Tacoma, WA.
Tool Mate Corporation	Cincinnati, OH.
Tool Specialties Company	Hazelwood, MO.
Tool Specialty Company	Los Angeles, CA.
Tool Steel Service of	Los Angeles, CA.
Tool Tech Corporation	San Jose, CA.
Tool Tech, Inc	Springfield, OH.
Tool Technology, Inc	Danvers, MA.
Tool Technology, Inc	Cookeville, TN.
Tool-Matic Company, Inc	City of Commerce, CA.
Toolcomp Tooling & Components	Toledo, OH.
Toolcraft of Phoenix, Inc	Glendale, AZ.
Toolcraft Products, Inc	Dayton, OH.
Toolex, Inc	Houston, TX.
Tools, Inc	Sussex, WI.
Tools Renewal Company	Birmingham, AL.
Top Tool & Die, Inc	Cleveland, OH.
Top Tool Company	Minneapolis, MN.
Totally Radical Associates, Inc	Placentia, CA.
Toth Industries, Inc	Toledo, OH.
Toth Technologies	Cherry Hill, NJ.
Tower Tool & Engineering, Inc	Machesney Park, IL.
Trace-A-Matic Corporation	Brookfield, WI.
Tracer Tool & Die Company Inc	Grand Rapids, MI.
Trademark Die & Engineering	Belmont, MI.
Tram Tek Inc	Phoenix, AZ.
Trans-World Electric Inc	Port Arthur, TX.
Treblig, Inc	Greenville, SC.
Trec Industries, Inc	Brooklyn Heights, OH.
Tree City Mold & Machine Co., Inc	Kent, OH.
Treffers Precision, Inc	Phoenix, AZ.
Tresco Tool, Inc	Guys Mills, PA.
Tn Craft, Inc	Middleberg Heights, OH.
Tn J Machine Company, Inc	Gardena, CA.
Tn-City Machine Products, Inc	Peoria, IL.
Tn-City Tool & Die, Inc	Bay City, MI.
Tri-M-Mold, Inc	Stevensville, MI.
Tn-Wire, Inc	Rockford, IL.
Triad Plastic Technologies	Reno, NV.
Triangle Mold & Machine Co. Inc	Hartville, OH.
Triangle Tool Company	Erie, PA.
Tricon Machine & Tool, Inc	Rochester, NY.
Tricore Mold & Die	Machesney Park, IL.
Tridecs Corporation	Hayward, CA.
Trident Precision Manufacturing	Webster, NY.
Trig Aerospace	Santa Ana, CA.
Trimac Manufacturing, Inc	Santa Clara, CA.
Trimetric Specialties, Inc	Newark, CA.
Trimline Tool, Inc	Grandville, MI.

NTMA CERTIFICATE MEMBER LIST APPLICATION 88–4A012—Continued

Name	Location
Trinity Tools, Inc	North Tonawanda, NY.
Trio Tool & Die, Inc	Hawthorne, CA.
Triple Quality Tool & Die, Inc	Bell, CA.
Triple-T Cutting Tools Inc	West Berlin, NJ.
Triplett Machine, Inc	Phelps, NY.
Triumph Precision, Inc	Phoenix, AZ.
Trojan Mfg. Co. Inc	Piqua, OH.
Trotwood Corporation	Trotwood, OH.
Tru Cut, Inc	Sebring, OH.
Tru Form Manufacturing Corp.	Rochester, NY.
Tru Tool, Inc	Sturtevant, WI.
True Cut EDM Inc	Garland, TX.
True Position, Inc	Chatsworth, CA.
True-Tech Corporation	Fremont, CA.
Trueline Tool & Machine, Inc	Springfield, OH.
Trust Technologies	Willoughby, OH.
Trutron Corporation	Troy, MI.
Tschida Engineering, Inc	Napa, CA.
Tucker Machine Company	North Branford, CT.
Turbo Machine & Tool, Inc	Cleveland, OH.
Turn-Tech, Inc	Decker Prairie, TX.
Turner and Walima Mfg. Co., Inc	Essex, MA.
Turner's Machine Shop	Phoenix, AZ.
Twin City Plating Company	Minneapolis, MN.
Two-M Precision Co., Inc	Willoughby, OH.
Tymar Precision Inc	Santa Clara, CA.
U C 0 Tool & Die, Inc	Union City, OH.
U F E Incorporated	Stillwater, MN.
U M C, Inc	Hamel, MN.
U P Machine & Engineering Co.	Powers, MI.
USAeroteam	Dayton, OH.
U S Machine & Tool, Inc	Murfreesboro, TN.
Uddeholm	Santa Fe Springs, CA.
Ugm, Inc	Santa Clara, CA.
Ultra Precision, Inc	Freeport, PA.
Ultra Stamping & Assembly, Inc	Rockford, IL.
Ultra Tool & Manufacturing, Inc	Menomonee Falls, WI.
Ultra-Tech, Inc	Kansas City, KS.
Ultramation, Inc	Waco, TX.
Ultron	Long Beach, CA.
Uneco Manufacturing, Inc	Chicopee, MA.
Unigraphics Solutions	Brookfield, WI.
Unique Machine Company	Montgomeryville, PA.
Unique Tool & Manufacturing	Randleman, NC.
Unitech, Inc	Kansas City, MO.
United Centerless Grinding	East Hartford, CT.
United Engineering Company	Kernersville, NC.
United Machine Co., Inc	Wichita, KS.
The United Plastics Group, Inc	Ludlow, MA.
United States Fittings, Inc	Warrensville Heights, OH.
United Tool & Engineering Co	South Beloit, IL.
United Tool & Engineering, Inc	Mishawaka, IN.
United Tool & Mold Inc	Holland, MI.
Universal Brixius Inc	Milwaukee, WI.
Universal Custom Process, Inc	Streetsboro, OH.
Universal Precision Products Inc	Akron, OH.
Universal Tool Company	Dayton, OH.
Universal Tools & Manufacturing	Springfield, NJ.
Universe Industries	Irvine, CA.
Upland Fab, Inc	Ontario, CA.
V & M Tool Company, Inc	Perkasie, PA.
V & S Die & Mold, Inc	Lakewood, OH.
V A Machine & Tools, Inc	Broussard, LA.
V Ash Machine Company	Cleveland, OH.
V I Mfg.	Webster, NY.
V P. C, Inc	Berea, OH.
Valley Machine Works, Inc	Phoenix, AZ.
Valley Tool & Die, Inc	North Royalton, OH.
Valley Tool Room, Inc	Phoenix, AZ.
Valv-Trol Company	Stow, OH.
Van Engineering	Cincinnati, OH.
Van Os Machine Works, Inc	St. Louis, MO.

NTMA CERTIFICATE MEMBER LIST APPLICATION 88–4A012—Continued

Name	Location
Van Reenen Tool & Die, Inc	Rochester, NY.
Van-Am Tool & Engineering, Inc	St. Joseph, MO.
Vanderveer Industrial Plastics	Placentia, CA.
Vanpro, Inc	Cambridge, MN.
Vaughn Manufacturing Company	Nashville, TN.
Vektek, Inc	Emporia, KS.
Venango Machine Products, Inc	Reno, PA.
Venture Precision Machining Co	Champaign, IL.
Venture Tool, Inc	Erie, PA.
Ver-Sa-Til Associates, Inc	Chanhassen, MN.
VersaTool & Die Machining	Beloit, WI.
Vi-Tec Manufacturing Inc	Livermore, CA.
Viking Tool & Engineering	Whitehall, MI.
Viking Tool & Gage, Inc	Conneaut Lake, PA.
Vistek Precision Machine Company	Ivyland, PA.
Vitron Manufacturing, Inc	Phoenix, AZ.
Vitullo & Associates, Inc	Warren, MI.
Vobeda Machine & Tool Company	Racine, WI.
Vulcan Tool Corporation	Dayton, OH.
W + D Machinery Company, Inc	Overland Park, KS.
W & H Stampings & Fineblanking, Inc	Hauppauge, NY.
W D & J Machine & Engineering Inc	Fullerton, CA.
W E C Technologies Corporation	Amityville, NY.
W G Strohwig Tool & Die, Inc	Richfield, WI.
WSI Industries, Inc	Minneapolis, MN.
W W G, Inc	Indianapolis, IN.
WADKO Precision, Inc	Houston, TX.
Wagner Engineering, Inc	Gilbert, AZ.
Waiteco Machine	Acton, MA.
Wajo Tool and Die, Inc	East Hampstead, NH.
Walker Corporation	Ontario, CA.
Walker Tool & Machine Company	Perrysburg, OH.
Wallner Tooling/Expac, Inc	Rancho Cucamonga, CA.
Waltco Engineering, Inc	Gardena, CA.
Walter Tool & Mfg. Inc	Elgin, IL.
Walter Waukesha, Inc	Waukesha, WI.
Walz & Krenzer, Inc	Rochester, NY.
Warmelin Precision Products	Hawthorne, CA.
Waukesha Tool & Stamping Inc	Sussex, WI.
Wausau Insurance Companies	Wausau, WI.
Wayne Manufacturing, Inc	Boulder, CO.
Webco Machine Products, Inc	Valley View, OH.
Weco Metal Products	Ontario, NY.
Weiss-Aug Co. Inc	East Hanover, NJ.
Wejco Instruments Inc	Houston, TX.
George Welsch & Son Company	Cleveland, OH.
Weltek-Swiss	Englewood, CO.
Wemco Precision Tool, Inc	Meadville, PA.
Wentworth Company	Glastonbury, CT.
Werkema Machine Company, Inc	Grand Rapids, MI.
Wes Products	Madison Heights, MI.
West Hartford Tool & Die Company	Newington, CT.
West Pharmaceutical Services	Erie, PA.
West Tool & Manufacturing, Inc	Cleveland, OH.
West Valley Milling, Inc	Chatsworth, CA.
West Valley Precision Inc	Santa Clara, CA.
Westbrook Manufacturing, Inc	Dayton, OH.
Western Mass. MechTech, Inc	Ware, MA.
Western Steel Cutting, Inc	San Jose, CA.
Western Tap Manufacturing Co	Buena Park, CA.
Westfield Gage Company, Inc	Westfield, MA.
Westfield Tool & Die, Inc	Westfield, MA.
Westlake Tool & Die Mfg.	Avon, OH.
Westtool Inc	Phoenix, AZ.
White Machine, Inc	North Kingstown, RI.
White Machine, Inc	North Royalton, OH.
Whitehead Tool & Design, Inc	Guys Mills, PA.
Wiegel Tool Works, Inc	Wood Dale, IL.
Wightman Engineering Services	Santa Clara, CA.
Wilco Die Tool Machine Company	Maryland Heights, MO.
Wilkinson Mfg., Inc	Santa Clara, CA.
The Will-Burt Company	Orrville, OH.

NTMA CERTIFICATE MEMBER LIST APPLICATION 88–4A012—Continued

Name	Location
Willer Tool Corporation	Jackson, WI.
William Sopko & Sons Co., Inc	Cleveland, OH.
Williams Engineering	Chatsworth, CA.
Williams Machine, Inc	Lake Elsinore, CA.
Windsor Tool & Die, Inc	Cleveland, OH.
Winter's Grinding Service	Menomonee Falls, WI.
Wire Cut Company, Inc	Buena Park, CA.
Wire Tech E D M, Inc	Los Alamitos, CA.
WireCut E D M, Inc	Dallas, TX.
Wirecut Technologies Inc	Indianapolis, IN.
Wiretec, Inc	Delmont, PA.
Wisconsin Engraving Company	New Berlin, WI.
Wisconsin Metalworking Machinery	Waukesha, WI.
Wisconsin Mold Builders, LLC	Waukesha, WI.
Wise Machine Co., Inc	Butler, PA.
Wolfe Engineering, Inc	Campbell, CA.
Wolverine Bronze Company	Roseville, MI.
Wolverine Tool & Engineering	Belmont, MI.
Wolverine Tool Company	St. Clair Shores, MI.
Woodruff Corporation	Torrance, CA.
Wright Brothers Welding	Hollister, CA.
Wright Industries, Inc	Gilbert, AZ.
Wright-K Technology, Inc	Saginaw, MI.
X L I Corporation	Rochester, NY.
Yates Tool, Inc	Medina, OH.
Yoder Die Casting Corporation	Dayton, OH.
Youngberg Industries, Inc	Belvidere, IL.
Youngers and Sons Manufacturing	Viola, KS.
Youngstown Plastic Tooling	Youngstown, OH.
Z & Z Machine Products Inc	Racine, WI.
Z M D Mold & Die Inc	Mentor, OH.
Zip Tool & Die Co., Inc	Cleveland, OH.
Zircon Precision Products, Inc	Tempe, AZ.
Zuelzke Tool & Engineering	Milwaukee, WI

[FR Doc. 01–10646 Filed 4–27–01; 8:45 am]
BILLING CODE 3510–DR–P

DEPARTMENT OF COMMERCE

International Trade Administration, Commerce.

Export Trade Certificate of Review

ACTION: Notice of issuance of an amended Export Trade Certificate of Review, Application No. 97–4A0003.

SUMMARY: The Department of Commerce has issued an amendment to the Export Trade Certificate of Review granted to The Association for the Administration of Rice Quotas, Inc. (''AARQ'') on April 10, 2001. Notice of issuance of the original Certificate was published in the **Federal Register** on January 28, 1998 (63 FR 4220).

FOR FURTHER INFORMATION CONTACT: Vanessa M. Bachman, Acting Director, Office of Export Trading Company Affairs, International Trade Administration, (202) 482–5131. This is not a toll-free number.

SUPPLEMENTARY INFORMATION: Title III of the Export Trading Company Act of 1982 (15 U.S.C. 4001–21) authorizes the Secretary of Commerce to issue Export Trade Certificates of Review. The regulations implementing Title III are found at 15 CFR part 325 (2000).

The Office of Export Trading Company Affairs (''OETCA'') is issuing this notice pursuant to 15 CFR 325.6(b), which requires the Department of Commerce to publish a summary of a Certificate in the **Federal Register**. Under section 305(a) of the Act and 15 CFR 325.11(a), any person aggrieved by the Secretary's determination may, within 30 days of the date of this notice, bring an action in any appropriate district court of the United States to set aside the determination on the ground that the determination is erroneous.

Description of Amended Certificate

Export Trade Certificate of Review No. 97–00003, was originally issued to AARQ on January 21, 1998 (63 FR 4220, January 28, 1998).

AARQ's Export Trade Certificate of Review has been amended to:

1. Delete the following company as a ''Member'' of the Certificate within the meaning of § 325.2(1) of the Regulations (15 CFR 325.2(1)): ContiGroup Companies, Inc., New York, New York;

2. Add the following companies as new ''Members'' of the Certificate within the meaning of § 325.2(1) of the Regulations (15 CFR 325.2(1)): Alliance Grain, Inc., Voorhees, NJ (Controlling Entity: ConAgra Foods, Inc., Omaha); Associated Rice Marketing Cooperative, Durham, CA; California Rice Marketing, LLC, Sacramento, CA; The Sun Valley Rice Co., LLC, Arbuckle; and

3. Change the listings of the current Members as follows: ''AC HUMKO, Corp., Cordova, Tennessee'' to ''ACH Food Companies, Inc., Cordova, Tennessee;'' California Commodity Traders, LLC, Sacramento, California'' to ''California Commodity Traders, LLC, Robbins, California and its affiliate, American Commodity Company, LLC, Robbins, California;'' ''ConAgra, Inc. for the activities of KBC Trading and Processing Company, Stockton, California'' to ''ConAgra Foods, Inc., Omaha, Nebraska, and its subsidiary, Alliance Grain, Inc., Voorhees, New Jersey;'' ''Kennedy Rice Dryers, Inc., Mer Rouge, Louisiana'' to'Kennedy Rice Dryers, L.L.C., Mer Rouge, Louisiana;'' ''Kitoku America, Inc., Davis, California (a subsidiary of Kitoku Co., Ltd.)'' to ''Kitoku America, Inc., Davis, California

(a subsidiary of Kitoku Shinryo Co., Ltd.);'' ''Newfield Partners Ltd., Miami, Florida'' to ''Newfieldrice, Inc., Miami, Florida;'' ''The Connell Company, Westfield, New Jersey'' to ''The Connell Company, Berkeley Heights, New Jersey.''

A copy of the amended certificate will be kept in the International Trade Administration's Freedom of Information Records Inspection Facility, Room 4102, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230.

Effective Date: January 10, 2001.
Dated: April 23, 2001.

Vanessa M. Bachman,

Acting Director, Office of Export Trading Company Affairs.

[FR Doc. 01–10647 Filed 4–27–01; 8:45 am]

BILLING CODE 3510–DR–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 042501A]

Dr. Nancy Foster Scholarship Program

AGENCY: National Oceanic and Atmospheric Administration (NOAA).

ACTION: Proposed information collection; comment request.

SUMMARY: The Department of Commerce, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Pub. L. 104–13 (44 U.S.C. 3506(c)(2)(A)).

DATES: Written comments must be submitted on or before June 29. 2001.

ADDRESSES: Direct all written comments to Madeleine Clayton, Departmental Paperwork Clearance Officer, Department of Commerce, Room 6086, 14th and Constitution Avenue NW, Washington DC 20230 (or via Internet at MClayton@doc.gov).

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instrument(s) and instructions should be directed to Joanne Flanders, N, Room 13154, 1305 East-West Highway, Silver Spring, MD 20910–3282 (phone 301–713–3074, ext. 133).

SUPPLEMENTARY INFORMATION:

I. Abstract

The Dr. Nancy Foster Scholarship Program recognizes outstanding scholarship by providing financial support to graduate students pursuing masters and doctoral degrees in the areas of marine biology, oceanography, and maritime archaeology. Applicants must submit documentation that NOAA uses to select candidates, including three letters of recommendation. Persons receiving scholarships will be required to submit certain reports and other information detailed below.

II. Method of Collection

No forms are used. Respondents meet solicitation or award requirements with paper submissions. Electronic submissions are being considered.

III. Data

OMB Number: 0648–0432.
Form Number: None.
Type of Review: Regular submission.
Affected public: Individuals or households.
Estimated Number of Respondents: 400.
Estimated Time Per Response: 5 hours per application, 45 minutes for a letter of recommendation, 15 minutes for an employment/non-employment certification, 15 minutes for a Selective Service Statement from a male awardee, 30 minutes for an academic progress report, 30 minutes for an approved study/research plan certification from the awardee's school advisor, 30 minutes for an annual financial request, and 90 minutes for a biography and photo from each awardee.
Estimated Total Annual Burden Hours: 747.
Estimated Total Annual Cost to Public: $44.

IV. Request for Comments

Comments are invited on: (a) whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden (including hours and cost) of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of this information collection; they also will become a matter of public record.

Dated: April 24, 2001.

Madeleine Clayton,

Departmental Paperwork Clearance Officer, Office of the Chief Information Officer.

[FR Doc. 01–10658 Filed 4–27–01; 8:45 am]

BILLING CODE 3510–JT–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 042501B]

Saltonstall-Kennedy Grant Program (S-K Program) Applications and Reports

AGENCY: National Oceanic and Atmospheric Administration (NOAA).

ACTION: Proposed information collection; comment request.

SUMMARY: The Department of Commerce, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Pub. L. 104–13 (44 U.S.C. 3506(c)(2)(A)).

DATES: Written comments must be submitted on or before June 29, 2001.

ADDRESSES: Direct all written comments to Madeleine Clayton, Departmental Paperwork Clearance Officer, Department of Commerce, Room 6086, 14th and Constitution Avenue NW, Washington DC 20230 (or via Internet at MClayton@doc.gov).

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instrument(s) and instructions should be directed to Alicia Jarboe, F/SF2, Room 13112, 1315 East-West Highway, Silver Spring, MD 20910–3282 (phone 301–713–2358, ext. 199).

SUPPLEMENTARY INFORMATION:

I. Abstract

The S–K Program provides financial assistance on a competitive basis for research and development projects that benefit U.S. fishing communities. In addition to standard Federal government grant application requirements, S–K applications must provide a project summary form (NOAA Form 88–204), use NOAA Form 88–0205 instead of SF–424A for budget information, and provide nine copies of applications. Successful grants applicants are required to submit semi-annual progress reports and a final report.

II. Method of Collection

Final reports must be submitted in electronic form unless an exemption is granted. The other documentation is in paper form.

III. Data

OMB Number: 0648–0135.
Form Number: None.
Type of Review: Regular submission.
Affected public: Not-for-profit institutions, business or other for-profit organizations, individuals or households, and state, local, or tribal government.
Estimated Number of Respondents: 210.
Estimated Time Per Response: 1 hour for a project summary form, 1 hour for a budget form, 2.5 hours for a semi-annual report, and 13 hours for a final report.
Estimated Total Annual Burden Hours: 985.
Estimated Total Annual Cost to Public: $0.

IV. Request for Comments

Comments are invited on: (a) whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden (including hours and cost) of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of this information collection; they also will become a matter of public record.

Dated: April 24, 2001.

Madeleine Clayton,

Departmental Paperwork Clearance Officer, Office of the Chief Information Officer.

[FR Doc. 01–10659 Filed 4–27–01; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D.041801A]

Marine Mammals; File No.782-1613

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

ACTION: Issuance of permit.

SUMMARY: Notice is hereby given that The National Marine Mammal Laboratory, NMFS, 7600 Sand Point Way, N.E., Seattle, Washington 98115-0070, has been issued a permit to take California sea lions (*Zalophus californianus*), harbor seals (*Phoca vitulina*), and northern elephant seals (*Mirounga angustirostris*), and to incidentally harass northern fur seals (*Callorhinus ursinus*) for purposes of scientific research.

ADDRESSES: The permit and related documents are available for review upon written request or by appointment in the following office(s):

Permits and Documentation Division, Office of Protected Resources, NMFS, 1315 East-West Highway, Room 13705, Silver Spring, MD 20910 (301/713-2289).

FOR FURTHER INFORMATION CONTACT: Tammy Adams or Ruth Johnson, 301/713–2289.

SUPPLEMENTARY INFORMATION: On February 14, 2001, notice was published in the Federal Register (66 FR 10272) that a request for a scientific research permit to take California sea lions (*Zalophus californianus*), harbor seals (*Phoca vitulina*), and northern elephant seals (*Mirounga angustirostris*), and to incidentally harass northern fur seals (*Callorhinus ursinus*) had been submitted by the above-named organization. The requested permit has been issued under the authority of the Marine Mammal Protection Act of 1972, as amended (16 U.S.C. 1361 *et seq.*), the Regulations Governing the Taking and Importing of Marine Mammals (50 CFR part 216), and the Fur Seal Act of 1966, as amended (16 U.S.C. 1151 *et seq.*).

Dated: April 24, 2001.

Ann D. Terbush,

Chief, Permits and Documentation Division, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 01–10656 Filed 4–27–01; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 041801D]

Pacific Fishery Management Council; Public Meeting

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

ACTION: Notice of public meeting.

SUMMARY: The Pacific Fishery Management Council's (Council) Scientific and Statistical Committee (SSC) will hold a workshop to review market squid stock assessment methods.

DATES: The workshop is scheduled for Monday, May 14, 2001, from 8 a.m to 5 p.m.; Tuesday, May 15, 2001, from 8 a.m. to 5 p.m.; Wednesday, May 16, 2001, from 8 a.m. to 5 p.m.; and Thursday, May 17, 2001, from 8 a.m. until business for the day is completed.

ADDRESSES: The meeting will be held at NMFS Southwest Fisheries Science Center, 8604 La Jolla Shores Drive, La Jolla, CA 92038.

Council address: Pacific Fishery Management Council, 2130 SW Fifth Avenue, Suite 224, Portland, OR 97201.

FOR FURTHER INFORMATION CONTACT: Mr. Dan Waldeck, Pacific Fishery Management Council, (503) 326–6352.

SUPPLEMENTARY INFORMATION: A workshop will be held to review market squid stock assessment methods. The workshop is, in part, to address disapproved provisions in the Council's Coastal Pelagic Species (CPS) Fishery Management Plan (FMP); specifically, maximum sustainable yield (MSY) for market squid. Since the development of the FMP, research conducted on squid life history along with enhanced fishery data (port sampling and logbooks) have provided significant new information. A principal goal of the stock assessment review (STAR) is to integrate the ongoing squid research into the Council's CPS FMP. Terms of reference for the STAR Panel address the MSY issue as well as control rules for practical management of the squid fishery.

Draft Agenda

Monday, May 14, 2001

A. Welcome, introductions, and logistics.

B. Review terms of reference and agenda. Assignment of rapporteurs.

C. Presentation of working papers.

Lunch

D. Presentation of working papers–continued.

E. Discussion of recent biological findings as they relate to stock assessment and management (Section 2 of the STAR Panel Report).

F. Requests for additional information and/or data from working paper authors (as necessary).

Tuesday, May 15, 2001

G. Discussion of newly developed fisheries-related data as they relate to stock assessment and management (Section 3 of the STAR Panel Report). Requests for additional information and/or data from working paper authors (as necessary).

H. Discussion of MSY estimation for squid and the SFA requirements (Section 4). Requests for additional analysis and/or data from authors (as necessary).

Lunch

I. Discussion of management measures including operationally-practical control rules, long-term monitoring programs, and inseason adjustment mechanisms (Section 5). Requests for additional analysis and/or data from authors (as necessary).

J. Review additional data and analyses, as requested from working paper authors.

Wednesday, May 16, 2001

K. Review additional data and analyses, as requested from working paper authors.

L. Review draft rapporteur's report on biology and life history findings (Section 2).

M. Review draft rapporteur's report on fisheries-related data (Section 3).

N. Continue review of additional data and analyses, as requested from working paper authors.

O. Review draft rapporteur's report on MSY estimation (Section 4).

P. Review draft of rapporteur's report on control rules and other management measures (Section 5).

Q. Drafting session for full STAR Panel draft report.

Thursday, May 17, 2001

R. Drafting session for full STAR Panel draft report– continued.

S. Discussion of research and data needs (Section 6 of the STAR Panel Report).

T. Review full STAR Panel draft report.

U. Discuss procedures for completion of the final STAR Panel report.

Adjournment

Although non-emergency issues not contained in this notice may arise during the workshop, those issues may not be the subject of formal action during this meetings. Formal 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 Fishery Conservation and Management Act, provided the public has been notified of the 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 Ms. Carolyn Porter at (503) 326–6352 at least 5 days prior to the meeting date.

Dated: April 25, 2001.

Richard W. Surdi,

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

[FR Doc. 01–10660 Filed 4–27–01; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 041801F]

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's Crustaceans Plan Team and the 77th meeting of the Council's Scientific and Statistical Committee (SSC) will hold public meetings.

DATES: The meetings will be held between Monday, May 14, 2001, and Thursday, May 17, 2001. See **SUPPLEMENTARY INFORMATION** for specific dates and times.

ADDRESSES: The meetings will be held at the Western Pacific Fishery Management Council office conference room, 1164 Bishop St., Suite 1400, Honolulu, HI; telephone: (808–522–8220).

Council address: Western Pacific Fishery Management Council, 1164 Bishop St., Suite 1400, Honolulu, HI, 96813.

FOR FURTHER INFORMATION CONTACT: Kitty M. Simonds, Executive Director; telephone 808–522–8220.

SUPPLEMENTARY INFORMATION:

Meeting Dates, Times, and Agendas

9–5 p.m.- Monday, May 14, 2001

The Crustaceans Plan Team will discuss and may make recommendations to the Council on the agenda items shown here. The order in which agenda items will be addressed can change.

1. Annual report/status of the stocks

2. Status of the fishery closures

A. Court actions
B. NMFS actions
C. Executive Orders for Northwestern Hawaiian Islands (NWHI) Reserve
D. Impacts/Fishery Disaster Relief

3. NMFS plans for research and charter cruises

4. Recommendations of Monk Seal Recovery Team

5. Status of the Draft Environmental Impact Statement (EIS)/Biological Opinion (BO)

6. Scope-of-Work for 5–year Review of Fishery Management Plan (FMP)

A. Reasons for implementing Amendment 9
B. Basic elements of Amendment 9
C. Modification since Amendment 9
D. Future considerations and needs
E. Overcapitalization study
F. Previous SSC and Council recommendations
G. Technical Review Panel/ assessment model

7. Research priorities for lobster fisheries

8. Other business

9–5 p.m.- Tuesday May 15, 2001

The SSC will discuss and may make recommendations to the Council on the agenda items below. The order in which agenda items will be addressed can change.

1. Precious corals fisheries

A. Gold coral growth rates and minimum (possibly maximum) size
B. Framework adjustment regarding the exploratory area and the management of undiscovered sites
C. Current and future research on precious corals
D. Refinement of Maximum Sustainable Yield (MSY) models
E. Status of Draft Environmental Impact Statement (DEIS)
F. Precious Corals Plan Team recommendations

2. Crustaceans fisheries (NWHI lobsters)

A. Crustaceans Plan Team recommendations

3. Bottomfish fisheries

A. Summary of 2000 annual report modules and recommendations
B. Plan Team recommendations
C. Status of litigation, BO, observer program
D. DEIS public comments (if available)

4. Monk seals

A. Current population trends and factors affecting monk seal populations
B. U. S. Coast Guard Environmental Risk Assessment
C. Recommendations of the Monk Seal Recovery Team
D. Bottomfish/monk seal mitigation measures

5. Observer program

A. Archipelago Marine Research Ltd.
B. Digital Observer Project

6. Proposed Oceanic Fisheries Research Program for American Samoa

8:30–5 p.m.- Wednesday May 16, 2001

1. Pelagic fisheries

A. First quarter 2001 Hawaii and American Samoa longline reports
B. Turtle conservation and management
(1) Overview of litigation, EIS, BO
(2) Biological Opinion
(3) Turtle population models
i. Turtle simulation model
ii. Other models
(4) Status of turtle recovery plans
(5) Council Turtle Conservation Plan
(6) Turtle research
i. Fishing experiment
ii. Other research (biology, tagging, US/Mexico research etc.)
C. Seabird conservation and management
i. EIS measures and the US Fish & Wildlife Service BO
ii. National Plan of Action
iii. Fishers Forum
iv. Underwater setting chute
D. Marine Mammal Protection Act reclassification of Hawaii longline fishery
E. International Management Multilateral High Level Conference, Inter-American Tropical Tuna Commission, Committee on Fisheries

8:30–5 p.m.- Thursday, May 17, 2001

1. Ecosystem and Habitat

A. Ecosystem management plans (demersal, pelagics)
B. Public/agency comments on Draft Coral Reef Ecosystem FMP/DEIS
C. Coral Reef Ecosystem Plan Team recommendations

2. Overfishing definitions/MSY

3. Report on Best Available Science Workshop

4. Alternative for turtle conservation plan

5. Other business

6. Schedule for next meeting

Although non-emergency issues not contained in this agenda may come before the Council for discussion, these issues may not be the subject of formal Council action during these meetings. Council action will be restricted to those issues specifically listed in this notice and any issues arising after publication of this notice that require emergency action under section 305(c) of the Magnuson-Stevens Fishery Conservation and Management Act, provided the public has been notified of the Council's intent to take final actions to address such emergencies.

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 meeting date.

Dated: April 23, 2001.

Richard W. Surdi,

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

[FR Doc. 01–10657 Filed 4–27–01; 8:45 am]

BILLING CODE 3510–22–S

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Adjustment of Import Limits for Certain Cotton, Wool, Man-Made Fiber, Silk Blend and Other Vegetable Fiber Textiles and Textile Products Produced or Manufactured in Taiwan

April 25, 2001.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs adjusting limits.

EFFECTIVE DATE: May 1, 2001.

FOR FURTHER INFORMATION CONTACT: Roy Unger, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–4212. For information on the quota status of these limits, refer to the Quota Status Reports posted on the bulletin boards of each Customs port, call (202) 927–5850, or refer to the U.S. Customs website at http://www.customs.gov. For information on embargoes and quota re-openings, refer to the Office of Textiles and Apparel website at http://otexa.ita.doc.gov.

SUPPLEMENTARY INFORMATION:

Authority: Section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); Executive Order 11651 of March 3, 1972, as amended.

The current limits for certain categories are being adjusted for swing and carryforward used.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 65 FR 82328, published on December 28, 2000). Also see 66 FR 11003, published on February 21, 2001.

D. Michael Hutchinson,

Acting Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

April 25, 2001.

Commissioner of Customs,
Department of the Treasury, Washington, DC 20229.

Dear Commissioner: This directive amends, but does not cancel, the directive issued to you on February 15, 2001, by the Chairman, Committee for the Implementation of Textile Agreements. That directive concerns imports of certain cotton, wool, man-made fiber, silk blend and other vegetable fiber textiles and textile products, produced or manufactured in Taiwan and exported during the twelve-month period which began on January 1, 2001 and extends through December 31, 2001.

Effective on May 1, 2001, you are directed to adjust the current limits for the following categories, as provided for under the terms of the current bilateral textile agreement:

Category	Adjusted twelve-month limit [1]
Group I	
200–224, 225/317/326, 226, 227, 229, 300/301/607, 313–315, 360–363, 369–L/670–L/870 [1], 369–S [2], 369–O [3], 400–414, 464–469, 600–606, 611, 613/614/615/617, 618, 619/620, 621, 623, 624, 625/626/627/628/629, 665, 666, 669–P [4], 669–T [5], 669–O [6], 670–H [7] and 670–O [8], as a group.	619,934,870 square meters equivalent.
Sublevels in Group I	
225/317/326	43,221,719 square meters.

Category	Adjusted twelve-month limit [1]
300/301/607	1,890,609 kilograms of which not more than 1,575,508 kilograms shall be in Category 300; not more than 1,575,508 kilograms shall be in Category 301; and not more than 1,575,508 kilograms shall be in Category 607.
363	13,126,649 numbers.
611	3,509,832 square meters.
619/620	15,999,546 square meters.
625/626/627/628/629.	20,819,189 square meters.
Group II	
237, 239, 330–332, 333/334/335, 336, 338/339, 340–345, 347/348, 349, 350/650, 351, 352/652, 353, 354, 359–C/659–C [9], 359–H/659–H [10], 359–O [11], 431–444, 445/446, 447/448, 459, 630–632, 633/634/635, 636, 638/639, 640, 641–644, 645/646, 647/648, 649, 651, 653, 654, 659–S [12], 659–O [13], 831–844 and 846–859, as a group.	725,479,292 square meters equivalent.
Sublevels in Group II	
336	130,968 dozen.
338/339	1,031,939 dozen.
340	1,290,612 dozen.
345	126,645 dozen.
347/348	1,493,018 dozen of which not more than 1,288,567 dozen shall be in Categories 347–W/348–W [14].
435	27,171 dozen.
436	5,359 dozen.
438	30,247 dozen.
442	46,018 dozen.
445/446	144,335 dozen.
638/639	6,483,811 dozen.
640	946,682 dozen of which not more than 281,710 dozen shall be in Category 640–Y [15].
642	831,532 dozen.
647/648	5,351,981 dozen of which not more than 5,088,804 dozen shall be in Categories 647–W/648–W [16].
659–S	1,713,821 kilograms.
Within Group II Subgroup	
342	229,491 dozen.
351	381,798 dozen.
447/448	22,304 dozen.
636	418,610 dozen.
651	478,801 dozen.

[1] Category 870; Category 369–L: only HTS numbers 4202.12.4000, 4202.12.8020, 4202.12.8060, 4202.92.1500, 4202.92.3016, 4202.92.6091 and 6307.90.9905; Category 670–L: only HTS numbers 4202.12.8030, 4202.12.8070, 4202.92.3020, 4202.92.3031, 4202.92.9026 and 6307.90.9907.

[2] Category 369–S: only HTS number 6307.10.2005.

[3] Category 369–O: all HTS numbers except 4202.12.4000, 4202.12.8020, 4202.12.8060, 4202.92.1500, 4202.92.3016, 4202.92.6091, 6307.90.9905 (Category 369–L); and 6307.10.2005 (Category 369–S).

[4] Category 669–P: only HTS numbers 6305.32.0010, 6305.32.0020, 6305.33.0010, 6305.33.0020 and 6305.39.0000.

[5] Category 669–T: only HTS numbers 6306.12.0000, 6306.19.0010 and 6306.22.9030.

[6] Category 669–O: all HTS numbers except 6305.32.0010, 6305.32.0020, 6305.33.0010, 6305.33.0020, 6305.39.0000 (Category 669–P); 6306.12.0000, 6306.19.0010 and 6306.22.9030 (Category 669–T).

[7] Category 670–H: only HTS numbers 4202.22.4030 and 4202.22.8050.

[8] Category 670–O: all HTS numbers except 4202.22.4030, 4202.22.8050 (Category 670–H); 4202.12.8030, 4202.12.8070, 4202.92.3020, 4202.92.3031, 4202.92.9026 and 6307.90.9907 (Category 670–L).

[9] Category 359–C: only HTS numbers 6103.42.2025, 6103.49.8034, 6104.62.1020, 6104.69.8010, 6114.20.0048, 6114.20.0052, 6203.42.2010, 6203.42.2090, 6204.62.2010, 6211.32.0010, 6211.32.0025 and 6211.42.0010; Category 659–C: only HTS numbers 6103.23.0055, 6103.43.2020, 6103.43.2025, 6103.49.2000, 6103.49.8038, 6104.63.1020, 6104.63.1030, 6104.69.1000, 6104.69.8014, 6114.30.3044, 6114.30.3054, 6203.43.2010, 6203.43.2090, 6203.49.1010, 6203.49.1090, 6204.63.1510, 6204.69.1010, 6210.10.9010, 6211.33.0010, 6211.33.0017 and 6211.43.0010.

[10] Category 359–H: only HTS numbers 6505.90.1540 and 6505.90.2060; Category 659–H: only HTS numbers 6502.00.9030, 6504.00.9015, 6504.00.9060, 6505.90.5090, 6505.90.6090, 6505.90.7090 and 6505.90.8090.

[11] Category 359–O: all HTS numbers except 6103.42.2025, 6103.49.8034, 6104.62.1020, 6104.69.8010, 6114.20.0048, 6114.20.0052, 6203.42.2010, 6203.42.2090, 6204.62.2010, 6211.32.0010, 6211.32.0025 and 6211.42.0010 (Category 359–C); 6505.90.1540 and 6505.90.2060 (Category 359–H).

[12] Category 659–S: only HTS numbers 6112.31.0010, 6112.31.0020, 6112.41.0010, 6112.41.0020, 6112.41.0030, 6112.41.0040, 6211.11.1010, 6211.11.1020, 6211.12.1010 and 6211.12.1020.

[13] Category 659–O: all HTS numbers except 6103.23.0055, 6103.43.2020, 6103.43.2025, 6103.49.2000, 6103.49.8038, 6104.63.1020, 6104.63.1030, 6104.69.1000, 6104.69.8014, 6114.30.3044, 6114.30.3054, 6203.43.2010, 6203.43.2090, 6203.49.1010, 6203.49.1090, 6204.63.1510, 6204.69.1010, 6210.10.9010, 6211.33.0010, 6211.33.0017 and 6211.43.0010 (Category 659–C); 6502.00.9030, 6504.00.9015, 6504.00.9060, 6505.90.5090, 6505.90.6090, 6505.90.7090, 6505.90.8090 (Category 659–H); 6112.31.0010, 6112.31.0020, 6112.41.0010, 6112.41.0020, 6112.41.0030, 6112.41.0040, 6211.11.1010, 6211.11.1020, 6211.12.1010 and 6211.12.1020 (Category 659–S).

[14] Category 347–W: only HTS numbers 6203.19.1020, 6203.19.9020, 6203.22.3020, 6203.22.3030, 6203.42.4005, 6203.42.4010, 6203.42.4015, 6203.42.4025, 6203.42.4035, 6203.42.4045, 6203.42.4050, 6203.42.4060, 6203.49.8020, 6210.40.9033, 6211.20.1520, 6211.20.3810 and 6211.32.0040; Category 348–W: only HTS numbers 6204.12.0030, 6204.19.8030, 6204.22.3040, 6204.22.3050, 6204.29.4034, 6204.62.3000, 6204.62.4005, 6204.62.4010, 6204.62.4020, 6204.62.4030, 6204.62.4040, 6204.62.4050, 6204.62.4055, 6204.62.4065, 6204.69.6010, 6204.69.9010, 6210.50.9060, 6211.20.1550, 6211.20.6810, 6211.42.0030 and 6217.90.9050.

[15] Category 640–Y: only HTS numbers 6205.30.2010, 6205.30.2020, 6205.30.2050 and 6205.30.2060.

[16] Category 647–W: only HTS numbers 6203.23.0060, 6203.23.0070, 6203.29.2030, 6203.29.2035, 6203.43.2500, 6203.43.3500, 6203.43.4010, 6203.43.4020, 6203.43.4030, 6203.43.4040, 6203.49.1500, 6203.49.2015, 6203.49.2030, 6203.49.2045, 6203.49.2060, 6203.49.8030, 6210.40.5030, 6211.20.1525, 6211.20.3820 and 6211.33.0030; Category 648–W: only HTS numbers 6204.23.0040, 6204.23.0045, 6204.29.2020, 6204.29.2025, 6204.29.4038, 6204.63.2000, 6204.63.3000, 6204.63.3510, 6204.63.3530, 6204.63.3532, 6204.63.3540, 6204.69.2510, 6204.69.2530, 6204.69.2540, 6204.69.2560, 6204.69.6030, 6204.69.9030, 6210.50.5035, 6211.20.1555, 6211.20.6820, 6211.43.0040 and 6217.90.9060.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception of the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

D. Michael Hutchinson,

Acting Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 01–10648 Filed 4–27–01; 8:45 am]

BILLING CODE 3510–DR–F

CONSUMER PRODUCT SAFETY COMMISSION

Proposed Collection; Comment Request—Recordkeeping Requirements Under the Safety Regulations for Non-Full-Size Cribs

AGENCY: Consumer Product Safety Commission.

ACTION: Notice.

SUMMARY: As required by the Paperwork Reduction Act of 1995 (44 U.S.C.

Chapter 35), the Consumer Product Safety Commission requests comments on a proposed extension of approval through August 31, 2004, of information collection requirements in the safety regulations for non-full-size cribs codified at 16 CFR 1500.18(a)(14) and Part 1509. These regulations were issued to reduce hazards of strangulation, suffocation, pinching, bruising, laceration, and other injuries associated with non-full-size cribs. (A non-full-size crib is a crib having an interior length greater than 55 inches or smaller than 49¾ inches; or an interior width greater than 30⅝ inches or smaller than 25⅜ inches; or both.) The regulations prescribe performance, design, and labeling requirements for non-full-size cribs. They also require manufacturers and importers of those products to maintain sales records for a period of three years after the manufacture or importation of non-full-size cribs. If any non-full-size cribs subject to provisions of 16 CFR 1500.18(a)(14) and Part 1509 fail to comply in a manner severe enough to warrant a recall, the required records can be used by the manufacturer or importer and by the Commission to identify those persons and firms who should be notified of the recall. The Commission will consider all comments received in response to this notice before requesting approval of this collection of information from the Office of Management and Budget.

DATES: Written comments must be received by the Office of the Secretary not later than June 29, 2001.

ADDRESSES: Written comments should be captioned ''Collection of Information—Requirements Under the Safety Regulations for Non-Full-Size Cribs'' and mailed to the Office of the Secretary, Consumer Product Safety Commission, Washington, DC 20207, or delivered to that office, room 502, 4330 East-West Highway, Bethesda, Maryland 20814. Written comments may also be sent to the Office of the Secretary by facsimile at (301) 504–0127 or by e-mail at cpsc-os@cpsc.gov.

FOR FURTHER INFORMATION CONTACT: For information about the proposed collection of information call or write Linda L. Glatz, Office of Planning and Evaluation, Consumer Product Safety Commission, Washington, DC 20207; (301) 504–0416, Ext. 2226.

SUPPLEMENTARY INFORMATION:

A. Estimated Burden

The Commission staff estimates that there are 16 firms required to annually maintain sales records of non-full-size cribs. The staff further estimates that the average number of hours per respondent is five per year, for a total of 80 hours of annual burden (16 × 5 = 80). The annualized cost to respondents for the collection of information is $1,080, based on a total of 80 hours at $13.50 per hour (the average hourly non-farm wage figure, U.S. Statistical Abstract, 2000).

B. Request for Comments

The Commission solicits written comments from all interested persons about the proposed collection of information. The Commission specifically solicits information relevant to the following topics:

—Whether the collection of information described above is necessary for the proper performance of the Commission's functions, including whether the information would have practical utility;
—Whether the estimated burden of the proposed collection of information is accurate;
—Whether the quality, utility, and clarity of the information to be collected could be enhanced; and
—Whether the burden imposed by the collection of information could be minimized by use of automated, electronic or other technological collection techniques, or other forms of information technology.

Dated: April 25, 2001.

Sadye E. Dunn,

Secretary, Consumer Product Safety Commission.

[FR Doc. 01–10692 Filed 4–27–01; 8:45 am]

BILLING CODE 6355–01–P

CONSUMER PRODUCT SAFETY COMMISSION

Proposed Collection; Comment Request—Recordkeeping Requirements Under the Safety Regulations for Full-Size Cribs

AGENCY: Consumer Product Safety Commission.

ACTION: Notice.

SUMMARY: As required by the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the Consumer Product Safety Commission requests comments on a proposed extension of approval through August 31, 2004, of information collection requirements in the safety regulations for full-size cribs codified at 16 CFR 1500.18(a)(13) and Part 1508. These regulations were issued to reduce hazards of strangulation, suffocation, pinching, bruising, laceration, and other injuries associated with full-size cribs. (A full-size crib is a crib having an interior length of 52⅜ ± ⅝ inches and an interior width of 28 ± ⅝ inches.) The regulations prescribe performance, design, and labeling requirements for full-size cribs. They also require manufacturers and importers of those products to maintain sales records for a period of three years after the manufacture or importation of full-size cribs. If any full-size cribs subject to provisions of 16 CFR 1500.18(a)(13) and Part 1508 fail to comply in a manner severe enough to warrant a recall, the required records can be used by the manufacturer or importer and by the Commission to identify those persons and firms who should be notified of the recall. The Commission will consider all comments received in response to this notice before requesting approval of this collection of information from the Office of Management and Budget.

DATES: Written comments must be received by the Office of the Secretary not later than June 29, 2001.

ADDRESSES: Written comments should be captioned ''Collection of Information—Requirements Under the Safety Regulations for Full-Size Cribs'' and mailed to the Office of the Secretary, Consumer Product Safety Commission, Washington, DC 20207, or delivered to that office, room 502, 4330 East-West Highway, Bethesda, Maryland 20814. Written comments may also be sent to the Office of the Secretary by facsimile at (301) 504–0127 or by e-mail at cpsc-os@cpsc.gov.

FOR FURTHER INFORMATION CONTACT: For information about the proposed collection of information call or write Linda L. Glatz, Office of Planning and Evaluation, Consumer Product Safety Commission, Washington, DC 20207; (301) 504–0416, Ext. 2226.

SUPPLEMENTARY INFORMATION:

A. Estimated Burden

The Commission staff estimates that there are 54 firms required to annually maintain sales records of full-size cribs. The staff further estimates that the average number of hours per respondent is five per year, for a total of 270 hours of annual burden (54 × 5 = 270). The annualized cost to respondents for the hour burden for the collection of information is $3,645, based on 270 hours times $13.50 per hour (the average hourly non-farm wage figure, U.S. Statistical Abstract, 2000.)

B. Request for Comments

The Commission solicits written comments from all interested persons about the proposed collection of information. The Commission

specifically solicits information relevant to the following topics:

—Whether the collection of information described above is necessary for the proper performance of the Commission's functions, including whether the information would have practical utility;

—Whether the estimated burden of the proposed collection of information is accurate;

—Whether the quality, utility, and clarity of the information to be collected could be enhanced; and

—Whether the burden imposed by the collection of information could be minimized by use of automated, electronic or other technological collection techniques, or other forms of information technology.

Dated: April 25, 2001.

Sadye E. Dunn,

Secretary, Consumer Product Safety Commission.

[FR Doc. 01–10693 Filed 4–27–01; 8:45 am]

BILLING CODE 6355–01–P

CONSUMER PRODUCT SAFETY COMMISSION

Proposed Collection; Comment Request—Procedures for Export of Noncomplying Products

AGENCY: Consumer Product Safety Commission.

ACTION: Notice.

SUMMARY: As required by the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the Consumer Product Safety Commission requests comments on a proposed extension of approval through August 31, 2004, of information collection requirements in regulations codified at 16 CFR part 1019, which establish procedures for export of noncomplying products. These regulations implement provisions of the Consumer Product Safety Act, the Federal Hazardous Substances Act, and the Flammable Fabrics Act that require persons and firms to notify the Commission before exporting any product that fails to comply with an applicable standard or regulation enforced under provisions of those laws. The Commission is required by law to transmit the information relating to the proposed exportation to the government of the country of intended destination. The Commission will consider all comments received in response to this notice before requesting approval of this collection of information from the Office of Management and Budget.

DATES: Written comments must be received by the Office of the Secretary not later than June 29, 2001.

ADDRESSES: Written comments should be captioned ''Collection of Information—Procedures for Export of Noncomplying Products'' and mailed to the Office of the Secretary, Consumer Product Safety Commission, Washington, DC 20207, or delivered to that office, room 502, 4330 East-West Highway, Bethesda, Maryland 20814. Written comments may also be sent to the Office of the Secretary by facsimile at (301) 504–0127 or by e-mail at cpsc-os@cpsc.gov.

FOR FURTHER INFORMATION CONTACT: For information about the proposed collection of information call or write Linda L. Glatz, Office of Planning and Evaluation, Consumer Product Safety Commission, Washington, DC 20207; (301) 504–0416, Ext. 2226.

SUPPLEMENTARY INFORMATION:

A. Estimated Burden

The Commission staff estimates that there are 65 firms required to annually submit information to the Commission on proposed exports of noncomplying products. The staff further estimates that these 65 firms will submit 75 responses with one hour for each response needed, for a total of 75 hours of annual burden. At a cost of $13.50 per hour, the average hourly non-farm wage figure, U.S. Statistical Abstract, 2000, the annualized cost to respondents would be $1,012.50.

B. Request for Comments

The Commission solicits written comments from all interested persons about the proposed collection of information. The Commission specifically solicits information relevant to the following topics:

—Whether the collection of information described above is necessary for the proper performance of the Commission's functions, including whether the information would have practical utility;

—Whether the estimated burden of the proposed collection of information is accurate;

—Whether the quality, utility, and clarity of the information to be collected could be enhanced; and

—Whether the burden imposed by the collection of information could be minimized by use of automated, electronic or other technological collection techniques, or other forms of information technology.

Dated: April 25, 2001.

Sadye E. Dunn,

Secretary, Consumer Product Safety Commission.

[FR Doc. 01–10694 Filed 4–27–01; 8:45 am]

BILLING CODE 6355–01–P

CONSUMER PRODUCT SAFETY COMMISSION

Proposed Collection; Comment Request—Testing and Recordkeeping Requirements Under the Standard for the Flammability of Mattresses and Mattress Pads

AGENCY: Consumer Product Safety Commission.

ACTION: Notice.

SUMMARY: As required by the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the Consumer Product Safety Commission requests comments on a proposed extension of approval through August 31, 2004, of information collection requirements in the Standard for the Flammability of Mattresses and Mattress Pads (16 CFR part 1632). The standard is intended to reduce unreasonable risks of burn injuries and deaths from fires associated with mattresses and mattress pads. The standard prescribes a test to assure that a mattress or mattress pad will resist ignition from a smoldering cigarette. The standard requires manufacturers to perform prototype tests of each combination of materials and construction methods used to produce mattresses or mattress pads and to obtain acceptable results from such testing. Sale or distribution of mattresses without successful completion of the testing required by the standard violates section 3 of the Flammable Fabrics Act (15 U.S.C. 1192). An enforcement rule implementing the standard requires manufacturers to maintain records of testing performed in accordance with the standard and other information about the mattresses or mattress pads that they produce. The Commission will consider all comments received in response to this notice before requesting approval of this collection of information from the Office of Management and Budget.

DATES: Written comments must be received by the Office of the Secretary not later than June 29, 2000.

ADDRESSES: Written comments should be captioned ''Collection of Information—Mattress Flammability Standard'' and mailed to the Office of the Secretary, Consumer Product Safety Commission, Washington, DC 20207, or delivered to that office, room 502, 4330

East-West Highway, Bethesda, Maryland 20814. Written comments may also be sent to the Office of the Secretary by facsimile at (301) 504–0127 or by e-mail at cpsc-os@cpsc.gov.

FOR FURTHER INFORMATION CONTACT: For information about the proposed collection of information call or write Linda L. Glatz, Office of Planning and Evaluation, Consumer Product Safety Commission, Washington, DC 20207; (301) 504–0416, Ext. 2226.

SUPPLEMENTARY INFORMATION:

A. Estimated Burden

The Commission staff estimates that there are 850 firms required to test mattresses and keep records. The staff further estimates that each respondent will spend 26 hours for testing and recordkeeping annually for a total of 22,100 hours of annual burden. At a cost of $13.50 per hour, the average hourly non-farm wage figure, U.S. Statistical Abstract, 2000, the annualized cost to respondents would be $298,350.

B. Request for Comments

The Commission solicits written comments from all interested persons about the proposed collection of information. The Commission specifically solicits information relevant to the following topics:

—Whether the collection of information described above is necessary for the proper performance of the Commission's functions, including whether the information would have practical utility;

—Whether the estimated burden of the proposed collection of information is accurate;

—Whether the quality, utility, and clarity of the information to be collected could be enhanced; and

—Whether the burden imposed by the collection of information could be minimized by use of automated, electronic or other technological collection techniques, or other forms of information technology.

Dated: April 25, 2001.

Sadye E. Dunn,

Secretary, Consumer Product Safety Commission.

[FR Doc. 01–10695 Filed 4–27–01; 8:45 am]

BILLING CODE 6355–01–M

CONSUMER PRODUCT SAFETY COMMISSION

[CPSC Docket No. 01–C0006]

Cosco, Inc., a Corporation, and Safety 1st, Inc., a Corporation, Subsidiaries of Dorel U.S.A., Inc., Provisional Acceptance of a Settlement Agreement and Order; Correction

AGENCY: Consumer Product Safety Commission.

ACTION: Notice; correction.

SUMMARY: The Consumer Product Safety Commission published a document in the **Federal Register** of April 9, 2001, concerning a provisionally accepted settlement agreement and order with Cosco, Inc. and Safety 1st, Inc. The Summary paragraph of the document contained incomplete information about the two civil penalties contained in the agreement.

FOR FURTHER INFORMATION CONTACT: Ronald G. Yelenik or Patricia Kennedy, Trial Attorneys, Office of Compliance and Enforcement, Consumer Product Safety Commission, Washington, DC 20207; telephone 301–504–0626.

Correction

In the **Federal Register** issue of April 9, 2001, 66 FR 18450, in the Summary, add before the period of the final sentence the words ''for Cosco and a civil penalty of $450,000 for Safety 1st.''

Dated: April 24, 2001.

Sadye E. Dunn,

Secretary.

[FR Doc. 01–10691 Filed 4–27–01; 8:45 am]

BILLING CODE 6355–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP01–157–000]

Georgia-Pacific Corp.; Notice of Petition for Declaratory Order

April 24, 2001.

Take notice that on April 16, 2001, Georgia-Pacific Corporation (Georgia-Pacific) filed a petition for a declaratory order in the above-styled proceeding, requesting that the Federal Energy Regulatory Commission issue an order declaring that a prospective lease or other long-term arrangement under which a third-party owner of an industrial facility has the right to a portion of the capacity of Georgia-Pacific's pipeline that crosses the Arkansas/Louisiana border: (1) Shall not constitute the transportation of natural gas in interstate commerce; and (2) shall not subject such pipeline to any greater Commission regulation or oversight than currently in place.

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 on or before May 15, 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. 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. 01–10584 Filed 4–27–01; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Application Accepted for Filing and Soliciting Comments, Protests, and Motions To Intervene

April 24, 2001.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. *Type of Application:* Preliminary Permit.

b. *Project No.:* 11942–000.

c. *Date filed:* April 3, 2001.

d. *Applicant:* Hammond Hydroelectric Company.

e. *Name of Project:* Big Creek Hydroelectric Project.

f. *Location:* On Big Creek, on the border between Custer and Lemhi Counties, Idaho. The project would utilize lands of the United States within Challis National Forest, as well as lands administered by the Bureau of Land Management.

g. *Filed Pursuant to:* Federal Power Act, 16 USC 791(a)–825(r).

h. *Applicant Contact:* Mr. Jack S. Hammond, PO Box 1070, Challis, ID 83226, (208) 879–5333.

FERC Contact: James Hunter, (202) 219–2839.

j. *Deadline for filing comment, protests, and motions to intervene:* 60 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 motions to intervene may be filed electronically via the internet in lieu of paper. See, 18 CFR 385.2001(a)(iii) and the instructions on the Commission's web site at http://www.ferc.fed.us/efi/doorbell.htm.

Please include the project number (P–11942–000) on any comments or motions filed.

The Commission's Rules of Practice and Procedure require all interveners filing documents with the Commission to serve a copy of that document on each person in the official service list for the project. Further, if an intervener files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

k. *Description of Project:* The proposed project would consist of: (1) An 8-foot-high, 16-foot-long concrete diversion structure, crest elevation 6,560 feet, on Big Creek; (2) an adjacent 8-foot-wide intake structure and a 16,000-foot-long, 48-inch-diameter steel penstock; (3) a power plant containing a generating unit with an installed capacity of 2,000 kilowatts; (4) two 500-foot-long, 48-inch-diameter corrugated metal pipes returning flows to Big Creek at elevation 6,260 feet; (5) a 4-mile-long transmission line; and (6) appurtenant facilities. The project would have an annual generation of 9.4 GWh that would be sold to Utah Power & Light Company.

l. A copy of the application is available for inspection and reproduction at the Commission's Public Reference Room, located at 888 First Street, NE., Room 2A, Washington, DC 20426, or by calling (202) 208–1371. The application may be viewed on http://www.ferc.fed.us/online/rims.htm (call (202) 208–2222 for assistance). A copy is also available for inspection and reproduction at the address in item h above.

m. *Preliminary Permit*—Anyone desiring to file a competing application for preliminary permit for a proposed project must submit the competing application itself, or a notice of intent to file such an application, to the Commission on or before the specified comment date for the particular application (see 18 CFR 4.36). Submission of a timely notice of intent allows an interested person to file the competing preliminary permit application no later than 30 days after the specified comment date for the particular application. A competing preliminary permit application must conform with 18 CFR 4.30(b) and 4.36.

n. *Preliminary Permit*—Any qualified development applicant desiring to file a competing development application must submit to the Commission, on or before a specified comment date for the particular application, either a competing development application or a notice of intent to file such an application. Submission of a timely notice of intent to file a development application allows an interested person to file the competing application no later than 120 days after the specified date for the particular application. A competing license application must conform with 18 CFR 4.30(b) and 4.36.

o. *Notice of intent*—A notice of intent must specify the exact name, business address, and telephone number of the prospective applicant, and must include an unequivocal statement of intent to submit, if such an application may be filed, either a preliminary permit application or a development application (specify which type of application). A notice of intent must be served on the applicant(s) named in this public notice.

p. *Proposed Scope of Studies under Permit*—A preliminary permit, if issued, does not authorize construction. The term of the proposed preliminary permit would be 36 months. The work proposed under the preliminary permit would include economic analysis, preparation of preliminary engineering plans, and a study of environmental impacts. Based on the results of these studies, the Applicant would decide whether to proceed with the preparation of a development application to construct and operate the project.

q. *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.

r. *Filing and Service of Responsive Documents*—Any filings msut bear in all capital letters the title ''COMMENTS'', ''NOTICE OF INTENT TO FILE COMPETING APPLICATION'', ''COMPETING APPLICATION'', ''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. An additional copy must be sent to Director, Division of Hydropower Administration and Compliance, Federal Energy Regulatory Commission, at the above-mentioned address. A copy of any notice of intent, competing application of motion to intervene must also be served each representative of the Applicant specified in the particular application.

s. *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. 01–10588 Filed 4–27–01; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 2000–010—New York]

Power Authority of the State of New York; Notice of Meetings To Discuss Settlement for Relicensing of the St. Lawrence-FDR Power Project

April 24, 2001.

The establishment of the Cooperative Consultation Process (CCP) Team and the Scoping Process for relicensing of the St. Lawrence-FDR Power Project was identified in the NOTICE OF MEMORANDUM OF UNDERSTANDING, FORMATION OF COOPERATIVE CONSULTATION PROCESS TEAM, AND INITIATION OF

SCOPING PROCESS ASSOCIATED WITH RELICENSING THE ST. LAWRENCE-FDR POWER PROJECT issued May 2, 1996, and found in the **Federal Register** dated May 8, 1996, Volume 61, No. 90, on page 20813.

The following is a list of the tentative meetings for the CCP Team to continue settlement negotiations on ecological and local issues. The meetings will be conducted at the New York Power Authority (NYPA) Robert Moses Powerhouse, at 10:00 a.m., located in Massena, New York.

The CCP Team will meet:

June 21 and 22, 2001
July 17, 2001
August 21, 2001
September 12, 2001

If you would like more information about the CCP Team and the relicensing process, please contact any one of the following individuals:

Mr. Thomas R. Tatham, New York Power Authority, (212) 468–6747, fax (212) 468–6141, e-mail: *Tatham,T@NYPA. Gov.*

Mr. Bill Little, Esq., New York State Dept. of Environmental Conservation, (518) 457–0986, fax (518) 457–3978, e-mail: *WGLittle@GW.DEC.State.NY.US*

Dr. Jennifer Hill, Federal Energy Regulatory Commission, (202) 219–2797, fax (202) 219–2152, e-mail: *Jennifer.Hill@FERC.Fed.US.*

Further information about NYPA and the St. Lawrence-FDR Power Project can be obtained through the Internet at *http://www.stl.nypa.gov/index.htm.* Information about the Federal Energy Regulatory Commission can be obtained at *http://www.ferc.fed.us.*

David P. Boergers,

Secretary.

[FR Doc. 01–10586 Filed 4–27–01; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Proposed Change in Project Boundary and Soliciting Comments, Motions to Intervene, and Protests

April 24, 2001.

a. *Application Type:* Change in Project Boundary

b. *Project No:* 2576–025

c. *Date Filed:* July 18, 2000

d. *Applicant:* Northeast Generation Services

e. *Name of Project:* Housatonic Project

f. *Location:* On Candlewood Lake, Town of New Milford, County of Hartford, State of Connecticut. The project does not utilize federal or tribal lands.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. *Applicant Contact:* Robert Gates, Northeast Generation Services, 41 Park Lane, New Milford, Connecticut 06776, telephone 860–354–8840.

i. *FERC Contact:* James T. Griffin, (202) 219–2799, james.griffin@ferc.fed.us.

j. *Deadline for filing comments and or motions:* May 20, 2001.

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 385.200(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 (P–2576–025) on any comments or motions filed.

The Commission's rules of practice and procedure require all interveners filing documents with the Commission to serve a copy of that document on each person on the official service list for the project. Further, if an intervener files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

k. *Description of Filing:* Northeast Generation Services proposes to convey to the Town of New Milford and remove from the project boundary two parcels of land on Lake Candlewood that are part of the project lands for the Housatonic Project, Rocky River Development, for the expansion of Lynn Deming Municipal Park.

l. *Locations of the Application:* A copy of the application is available for inspection and reproduction at the Commission's Public Reference Room, located at 888 First Street, NE, Room 2A, Washington, DC 20426, or by calling 202–208–1371. This filing may be viewed on http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance). A copy is also available for inspection and reproduction at the address in item h above.

m. *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 became a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date above. Individuals desiring to be included on the Commission's mailing list should so indicate by writing to the Secretary of the Commission.

n. *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. A copy of any motion to intervene must also be served upon each representative of the Applicant.

David P. Boergers,

Secretary.

[FR Doc. 01–10587 Filed 4–27–01; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. RP00–495–000 and RP01–97–000]

Texas Gas Transmission Corporation; Notice of Change in Technical Conference

April 24, 2001.

The technical conference in the above-captioned dockets which was previously scheduled to begin at 9 a.m. on May 24, 2001, by notice issued April 19, 2001, will instead begin at 10 a.m. on the same day, in order to accommodate the travel arrangements of theparties.

David P. Boergers

Secretary.

[FR Doc. 01–10589 Filed 4–27–01; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EG01–141–000, et al.]

Effingham County Power, LLC, et al.; Electric Rate and Corporate Regulation Filings

April 23, 2001.

Take notice that the following filings have been made with the Commission:

1. Effingham County Power, LLC

[Docket No. EG01–141–000]

Take notice that on April 17, 2001, Effingham County Power, LLC, 411 Fayetteville Street Mall, Raleigh, NC 27601, tendered for filing the Federal Energy Regulatory Commission (Commission) an amendment to Part III of its application for determination of exempt wholesale generator status pursuant to section 32(a)(1) of the Public Utility Holding Company Act of 1935 (PUHCA). The applicant is a limited liability company that will engage directly or indirectly and exclusively in the business of owning and/or operating eligible facilities in the United States and selling electric energy at wholesale. The applicant proposes to own and operate an approximately 537 megawatt gas-fired combustion turbine. All electric energy sold by the applicant will be sold exclusively at wholesale.

Comment date: May 14, 2001, in accordance with Standard Paragraph E at the end of this notice. The Commission will limit its consideration of comments to those that concern the adequacy or accuracy of the application.

2. Rowan County Power, LLC

[Docket No. EG01–142–000]

Take notice that on April 17, 2001, Rowan County Power, LLC, 411 Fayetteville Street Mall, Raleigh, NC 17602, tendered for filing with the Federal Energy Regulatory Commission (Commission), an amendment to Part III of its application for determination of exempt wholesale generator status pursuant to Part 365 of the Commission's regulations. The applicant is a limited liability company that will engage directly or indirectly and exclusively in the business of owning and/or operating eligible facilities in the United States and selling electric energy at wholesale. The applicant proposes to own and operate an approximately 500 megawatt gas-fired combustion turbine. All electric energy sold by the applicant will be sold exclusively at wholesale.

Comment date: May 14, 2001, in accordance with Standard Paragraph E at the end of this notice. The Commission will limit its consideration of comments to those that concern the adequacy or accuracy of the application.

3. ManChief Power Company, LLC

[Docket No. EG01–194–000]

Take notice that on April 19, 2001, ManChief Power Company, LLC , 1001 Louisiana Street, Houston, Texas 77002, filed with the Federal Energy Regulatory Commission (Commission), an application for determination of exempt wholesale generator status pursuant to Part 365 of the Commission's regulations.

ManChief Power Company, LLC is a Delaware limited liability company formed by El Paso ManChief Power Company, LLC (El Paso ManChief), a Delaware limited liability company and wholly owned subsidiary of Fulton Cogeneration Associates L.P., a New York limited partnership, to acquire, own and maintain a natural gas-fired single-cycle electric generation plant with a maximum capacity of approximately 301.8 MW, located near Brush, Colorado.

Comment date: May 14, 2001, in accordance with Standard Paragraph E at the end of this notice. The Commission will limit its consideration of comments to those that concern the adequacy or accuracy of the application.

4. Indigo Generation LLC

[Docket No. EG01–195–000]

Take notice that on April 19, 2001, Indigo Generation LLC (Indigo Generation) filed with the Commission an application for determination of exempt wholesale generator (EWG) status pursuant to Part 365 of the Commission's regulations.

Comment date: May 14, 2001, in accordance with Standard Paragraph E at the end of this notice. The Commission will limit its consideration of comments to those that concern the adequacy or accuracy of the application.

5. Larkspur Energy LLC

[Docket No. EG01–196–000]

Take notice that on April 19, 2001, Larkspur Energy LLC (Larkspur Energy) filed with the Commission an application for determination of exempt wholesale generator (EWG) status pursuant to Part 365 of the Commission's regulations.

Comment date: May 14, 2001, in accordance with Standard Paragraph E at the end of this notice. The Commission will limit its consideration of comments to those that concern the adequacy or accuracy of the application.

6. Wildflower Energy LP

[Docket No. EG01–197–000]

Take notice that on April 19, 2001, Wildflower Energy LP (Wildflower Energy) filed with the Commission an application for determination of exempt wholesale generator (EWG) status pursuant to Part 365 of the Commission's regulations.

Comment date: May 14, 2001, in accordance with Standard Paragraph E at the end of this notice. The Commission will limit its consideration of comments to those that concern the adequacy or accuracy of the application.

7. Entergy Louisiana, Inc., Entergy Gulf States, Inc., and Entergy Mississippi, Inc.

[Docket Nos. OA97–337–002, OA97–342–002; OA97–346–002; and OA97–348–002]

Take notice that on April 18, 2001, Entergy Services, Inc., on behalf of Entergy Louisiana, Inc., Entergy Gulf States, Inc., and Entergy Mississippi, Inc., tendered for filing its revised compliance filing in response to the Commission's order in Entergy Louisiana, Inc., 94 FERC & 61,330 (2001).

Comment date: May 9, 2001, in accordance with Standard Paragraph E at the end of this notice.

8. Entergy Services, Inc.

[Docket Nos. ER95–112–013 and ER96–586–008]

Take notice that on April 18, 2001, Entergy Services, Inc., on behalf of Entergy Arkansas, Inc., Entergy Gulf States, Inc., Entergy Mississippi, Inc., Entergy Louisiana, Inc., and Entergy New Orleans, Inc., tendered for filing Substitute Original Sheet No. 153 to its Order No. 614 compliance Open Access Transmission Tariff in the above-captioned dockets.

Comment date: May 9, 2001, in accordance with Standard Paragraph E at the end of this notice.

9. Connecticut Energy Cooperative, Inc.

[Docket No. ER01–1279–001]

Take notice that on April 18, 2001 Connecticut Energy Cooperative, Inc. (the Aco-op) tendered for filing Co-op's amended Rate Schedule FERC No. 1; the amended Rate Schedule FERC No. 1 contains the designation format required by Order No. 614, FERC Stats. & Regs. ¶ 31,096 (2000).

Comment date: May 9, 2001, in accordance with Standard Paragraph E at the end of this notice.

10. Whiting Clean Energy, Inc.

[Docket No. ER01–1300–001]

Please take notice that on April 18, 2001, Whiting Clean Energy, Inc. (WCE), an indirect wholly owned subsidiary of NiSource Inc., tendered for filing tariff sheets in compliance with the April 12, 2001 Order of the Federal Energy Regulatory Commission. The April 12, 2001 Order required WCE to modify the designations on certain tariff sheets to comply with Order No. 614, FERC Stats. & Regs. ¶ 31,096 (2000). WCE states that the tariff sheets filed pursuant to the April 12, 2001 Order comply with Order No. 614. Specifically, WCE is filing:

Original Sheet No. 6
FERC Electric Tariff, Original Volume No. 1
Original Sheet No. 7
FERC Electric Tariff, Original Volume No. 1
Original Sheet No. 8
FERC Electric Tariff, Original Volume No. 1

Comment date: May 9, 2001, in accordance with Standard Paragraph E at the end of this notice.

11. Whiting Clean Energy, Inc.

[Docket No. ER01–1300–002]

Please take notice that on April 18, 2001, Whiting Clean Energy, Inc. (WCE), an indirect wholly owned subsidiary of NiSource Inc., tendered for filing tariff sheets in compliance with the April 12, 2001 Order of the Federal Energy Regulatory Commission. The April 12, 2001 Order required WCE to modify the designations on certain tariff sheets to comply with Order No. 614, FERC Stats. & Regs. ¶ 31,096 (2000). WCE states that the tariff sheets filed pursuant to the April 12, 2001 Order comply with Order No. 614. Specifically, WCE is filing:

Original Sheet No. 6
FERC Electric Tariff, Original Volume No. 1
Original Sheet No. 7
FERC Electric Tariff, Original Volume No. 1
Original Sheet No. 8
FERC Electric Tariff, Original Volume No. 1

Comment date: May 9, 2001, in accordance with Standard Paragraph E at the end of this notice.

12. Wolverine Power Supply Cooperative, Inc.

[Docket No. ER01–1815–000]

Take notice that on April 18, 2001, Wolverine Power Supply Cooperative, Inc. (Wolverine), tendered for filing proposed changes to its Rate Schedule FERC No. 4—Wholesale Service to Member Distribution Cooperatives. The proposed changes amend Rate Schedule FERC No. 4 by adding Rider MOS—Member Owned Substation Credit to account for Wolverine member distribution cooperatives purchasing from Wolverine distribution substations dedicated to the member's use.

Copies of the filing were served on the public utility's jurisdictional customers and the Public Utility Commission of Michigan.

Comment date: May 9, 2001, in accordance with Standard Paragraph E at the end of this notice.

13. Cinergy Services, Inc.

[Docket No. ER01–1816–000]

Take notice that on April 18, 2001, Cinergy Services, Inc. (Cinergy) tendered for filing a Notice of Cancellation of MP Energy, Inc. for the Cost-Based Power Sales, Market-Based Power Sales, and the Resale, Assignment or Transfer of Transmission Rights and Ancillary Service Rights. Cinergy respectfully requests waiver of any applicable regulation to the extent necessary to make the tariff changes effective as of the date of each of the listed name changes.

A copy of the filing has been served to MP Energy, Inc.

Comment date: May 9, 2001, in accordance with Standard Paragraph E at the end of this notice.

14. Exelon Generation Company, LLC

[Docket No. ER01–1817–000]

Take notice that on April 18, 2001, Exelon Generation Company, LLC (Exelon Generation) tendered for filing a service agreement for wholesale power sales transactions between Exelon Generation and Consumers Energy Company under Exelon Generation's wholesale power sales tariff, FERC Electric Tariff, Original Volume No. 1.

Comment date: May 9, 2001, in accordance with Standard Paragraph E at the end of this notice.

15. Allegheny Energy Service Corporation, on Behalf of Monongahela Power Company The Potomac Edison Company, and West Penn Power Company, (Allegheny Power)

[Docket No. ER01–1818–000]

Take notice that on April 18, 2001, Allegheny Energy Service Corporation on behalf of Monongahela Power Company, The Potomac Edison Company and West Penn Power Company (Allegheny Power), tendered for filing Service Agreement No. 351 to add Calpine Energy Services, L.P. to Allegheny Power's Open Access Transmission Service Tariff which has been accepted for filing by the Federal Energy Regulatory Commission in Docket No. ER96–58–000. The proposed effective date under the Service Agreement is April 17, 2001 or a date ordered by the Commission.

Copies of the filing have been provided to the Public Utilities Commission of Ohio, the Pennsylvania Public Utility Commission, the Maryland Public Service Commission, the Virginia State Corporation Commission, and the West Virginia Public Service Commission.

Comment date: May 9, 2001, in accordance with Standard Paragraph E at the end of this notice.

16. Cogentrix Lawrence County, LLC

[Docket No. ER01–1819–000]

Take notice that on April 18, 2001, Cogentrix Lawrence County, LLC (Lawrence County), an electric power developer organized under the laws of Delaware, tendered for filing acceptance of its market-based rate tariff, waiver of certain requirements under Subparts B and C of Part 35 of the Commission's regulations, and preapproval of transactions under Part 34 of the regulations. Lawrence County is developing an 810 MW (summer rated) gas fired generating facility in Lawrence County, Indiana.

Copies of this filing are on file with the Commission and are available for public inspection.

Comment date: May 9, 2001, in accordance with Standard Paragraph E at the end of this notice.

17. Cinergy Services, Inc.

[Docket No. ER01–1820–000]

Take notice that on April 18, 2001, Cinergy Services, Inc. (Cinergy Services), on behalf of The Cincinnati Gas & Electric Co. (CG&E) and PSI Energy, Inc. (PSI) (together, the Operating Companies) tendered for filing a short-form market-based rate tariff (Proposed MR Tariff), which included a form of umbrella service agreement. The proposed market based rate tariff does not replace Cinergy Services's existing market-based rate tariff, FERC Electric Tariff, Original Volume No. 7. Cinergy Services requests waiver of the Commission's notice of filing requirements to allow the proposed tariff to become effective on April 19, 2001, the day after filing.

Cinergy Services has served this filing upon the Indiana Utility Regulatory Commission, the Kentucky Public Service Commission and the Public Utilities Commission of Ohio.

Comment date: May 9, 2001, in accordance with Standard Paragraph E at the end of this notice.

18. Power Dynamics, Inc.

[Docket No. ER01–1821–000]

Take notice that on April 18, 2001, Power Dynamics, Inc. (PDI) petitioned the Commission, pursuant to section 205 of the Commission's Rules of Practice and Procedure, 18 CFR 385.205 (1999), tendered for filing an order accepting its Rate Schedule FERC No. 1; for the granting of certain blanket approvals, including the authority to sell electricity at market-based rates; and for the waiver of certain Commission regulations.

PDI intends to engage in wholesale electric power and energy purchases and sales as a marketer. PDI is not in the business of generating or transmitting electric power.

Comment date: May 9, 2001, in accordance with Standard Paragraph E at the end of this notice.

19. Midwest Generation, LLC

[Docket No. ER01–1827–000]

Take notice that on April 18, 2001, Midwest Generation, LLC (Midwest) tendered for filing a long-term service agreement for the sale of power under Midwest's market-based rate tariff, FERC Electric Rate Tariff, Original Volume No. 1 accepted in Docket No. ER99–3693–000.

Comment date: May 9, 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. 01–10644 Filed 4–27–01; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER01–1263–001, et al.]

Mirant Zeeland, LLC, et al.; Electric Rate and Corporate Regulation Filings

April 24, 2001.

Take notice that the following filings have been made with the Commission:

1. Mirant Zeeland, LLC ,Mirant Neenah, LLC, Mirant Americas Energy Marketing, LP, Mirant Bowline, LLC, Mirant California, LLC, Mirant Canal, LLC, Mirant Chalk Point, LLC, Mirant Delta, LLC, Mirant Kendall, LLC, Mirant Lovett, LLC, Mirant Mid-Atlantic, LLC, Mirant New England, LLC, Mirant NY-Gen, LLC, Mirant Peaker, LLC, Mirant Potomac River, LLC, and Mirant Potrero, LLC

[Docket Nos. ER01–1263–001–ER01–1278–001]

Take notice that on April 12, 2001, Mirant Zeeland, LLC, Mirant Neenah, LLC, Mirant Americas Energy Marketing, LP, Mirant Bowline, LLC, Mirant California, LLC, Mirant Canal, LLC, Mirant Chalk Point, LLC, Mirant Delta, LLC, Mirant Kendall, LLC, Mirant Lovett, LLC, Mirant Mid-Atlantic, LLC, Mirant New England, LLC, Mirant NY-Gen, LLC, Mirant Peaker, LLC, Mirant Potomac River, LLC, Mirant Potrero, LLC tendered for filing Electric Tariff Sheets with amended header designations (placed in accordance with Order 614). These were corrections, rather than true amendments and do not change our status in any way.

Comment date: May 10, 2001, in accordance with Standard Paragraph E at the end of this notice.

2. PJM Interconnection, L.L.C.

[Docket No. ER00–3513–004]

Take notice that on April 19, 2001, PJM Interconnection, L.L.C. (PJM) tendered for filing revised sheets to PJM's Open Access Transmission Tariff that were filed April 13, 2001 in the above-referenced docket, pursuant to the Commission's March 14, 2001 order in PJM Interconnection, L.L.C., 94 FERC ¶ 61,251 (March 14 Order), to replace the previously filed Tariff sheets that were misdesignated.

PJM states that it served copies of this filing on all parties of record, all PJM Members and the state electric regulatory commissions in the PJM control area.

Comment date: May 10, 2001, in accordance with Standard Paragraph E at the end of this notice.

3. Indigo Generation LLC, Larkspur Energy LLC, and Wildflower Energy LP

[Docket Nos. ER01–1822–000]

Take notice that on April 19, 2001, Indigo Generation LLC, Larkspur Energy LLC, and Wildflower Energy LP (together, the Wildflower Entities) tendered for filing: (1) Accept for filing the Wildflower Entities' proposed FERC Electric Tariffs, and grant their requests for blanket authority to make market-based sales of energy, capacity and certain ancillary services; and (2) grant the Wildflower Entities such waivers and authorizations as have been granted by the Commission to other entities authorized to transact at market-based rates.

Comment date: May 10, 2001, in accordance with Standard Paragraph E at the end of this notice.

4. Virginia Electric and Power Company

[Docket No. ER01–1823–000]

Take notice that on April 19, 2001, Virginia Electric and Power Company (Dominion Virginia Power or the Company) tendered for filing the following Service Agreements with Sempra Energy Trading Corporation (Transmission Customer):

1. Executed Third Amended Service Agreement for Firm Point-to-Point Transmission Service designated Fifth Revised Service Agreement No. 253 under the Company's FERC Electric Tariff, Second Revised Volume No. 5;

2. Executed Third Amended Service Agreement for Non-Firm Point-to-Point Transmission Service designated Fifth Revised Service Agreement No. 49 under the Company's FERC Electric Tariff, Second Revised Volume No. 5.

The foregoing Service Agreements are tendered for filing under the Company's 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 the Transmission Customer under the rates, terms and conditions of the Open Access Transmission Tariff. The Company requests waiver of the Commission's regulations to permit an effective date of February 12, 2001.

Copies of the filing were served upon Sempra Energy Trading Corporation, the

Virginia State Corporation Commission, and the North Carolina Utilities Commission.

Comment date: May 10, 2001, in accordance with Standard Paragraph E at the end of this notice.

5. Alliant Energy Corporate Services, Inc.

[Docket No. ER01–1824–000]

Take notice that on April 19, 2001, Alliant Energy Corporate Services Inc., tendered for filing a signed Service Agreement under ALTM's Market Based Wholesale Power Sales Tariff (MR–1) between itself and Constellation Power Source, Inc. ALTM respectfully requests a waiver of the Commission's notice requirements, and an effective date of April 10, 2001.

Comment date: May 10, 2001, in accordance with Standard Paragraph E at the end of this notice.

6. Louisville Gas and Electric Company/ Kentucky Utilities Company

[Docket No. ER01–1825–000]

Take notice that on April 19, 2001, Louisville Gas and Electric Company (LG&E)/Kentucky Utilities (KU) (hereinafter Companies) tendered for filing an executed unilateral Service Sales Agreement between Companies and Detroit Edison Company under the Companies' Rate Schedule MBSS.

Comment date: May 10, 2001, in accordance with Standard Paragraph E at the end of this notice.

7. Louisville Gas and Electric Company/ Kentucky Utilities Company

[Docket No. ER01–1826–000]

Take notice that on April 19, 2001, Louisville Gas and Electric Company (LG&E)/Kentucky Utilities (KU) (hereinafter Companies) tendered for filing an executed unilateral Service Sales Agreement between Companies and Williams Energy Marketing and Trading Company under the Companies' Rate Schedule MBSS.

Comment date: May 10, 2001, in accordance with Standard Paragraph E at the end of this notice.

8. Arizona Public Service Company

[Docket No. ER01–463–004]

Take notice that on April 19, 2001, Arizona Public Service Company (APS) tendered for filing its Compliance to FERC's Order on Compliance Filing in Docket No. ER01–463–002.

A copy of this filing has been served on all parties on the official service list.

Comment date: May 10, 2001, in accordance with Standard Paragraph E at the end of this notice.

9. Cargill-Alliant, LLC

[Docket No. ER97–4273–011]

Take notice that on April 19, 2001, Cargill-Alliant, LLC, tendered for filing an updated market analysis.

Comment date: May 10, 2001, in accordance with Standard Paragraph E at the end of this notice.

10. ONEOK Power Marketing Company

[Docket No. ER98–3897–008]

Take notice that on April 19, 2001, ONEOK Power Marketing Company (OPMC) tendered for filing Electric Tariff, Original Volume No.1, which will supercede Rate Schedule No. 2, in compliance with Commission Order No. 614 and Commission Order dated April 2, 2001 in the referenced proceeding.

OPMC requests an effective date of April 1, 2001.

Comment date: May 10, 2001, in accordance with Standard Paragraph E at the end of this notice.

11. American Electric Power Service Corporation

[Docket No. ER00–2413–005]

Take notice that on April 19, 2001, American Electric Power Service Corporation tendered for filing, on behalf of the operating companies of the American Electric Power System, proposed amendments to the Open Access Transmission Tariff, in compliance with the Commission's February 21, 2001 Order Granting Clarification and Denying Rehearing.

AEP requests an effective date of sixty (60) days from the date of filing. Copies of AEP's filing have been served upon AEP's transmission customers and the public service commissions of Arkansas, Indiana, Kentucky, Louisiana, Michigan, Ohio, Tennessee, Texas, Virginia and West Virginia and the Oklahoma Corporation Commission.

Comment date: May 10, 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. 01–10645 Filed 4–27–01; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 2634–007]

Great Northern Paper, Inc.; Availability of Draft Environmental Assessment

April 24, 2001.

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 application for a new license for the existing and operating Storage Project, located on Ragged Stream, Caucomgomoc Stream, West Branch and South Branch of the Penobscot River in the Counties of Somerset and Piscataquis, Maine and has prepared a Draft Environmental Assessment (EA) for the project.

Copies of the EA are available for review in the Public Reference Branch, Room 2–A, of the Commission's offices at 888 First Street, NE., Washington, DC 20426. The EA may also be viewed on the web at *http://www.ferc.us/online/rims.htm.* Please call (202) 208–2222 for assistance.

Any comments should be filed within 30 days from the date of this notice and should be addressed to David P. Boergers, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Room 1–A, 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 affix ''Storage Project No. 2634–007'' to the top page of all comments. For further information,

contact John Costello at (202) 219–2914 or *john.costello@ferc.fed.us.*

David P. Boergers,

Secretary.

[FR Doc. 01–10585 Filed 4–27–01; 8:45 am]

BILLING CODE 6717–01–M

FEDERAL COMMUNICATIONS COMMISSION

Notice of Public Information Collection(s) Being Submitted to OMB for Review and Approval

April 24, 2001.

SUMMARY: The Federal Communications Commissions, as part of its continuing effort to reduce paperwork burden invites the general public and other Federal agencies to take this opportunity to comment on the following information collection, as required by the Paperwork Reduction Act of 1995, Public Law 104–13. An agency may not conduct or sponsor a collection of information unless it displays a currently valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the Paperwork Reduction Act (PRA) that does not display a valid control number. Comments are requested concerning (a) whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimate; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

DATES: Written comments should be submitted on or before May 30, 2001. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below as soon as possible.

ADDRESSES: Direct all comments to Les Smith, Federal Communications Commission, Room 1–A804, 445 12th Street, SW., Washington, DC 20554 or via the Internet to *lesmith@fcc.gov.*

FOR FURTHER INFORMATION CONTACT: For additional information or copies of the information collections contact Les Smith at (202) 418–0217 or via the Internet at *lesmith@fcc.gov.*

SUPPLEMENTARY INFORMATION: *OMB Control Number:* 3060–XXXX.

Title: Implementation of the Satellite Home View Improvement Act, Broadcast Signal Carriage Issues, Retransmission Consent Issues, CS Docket Nos. 00–96 and 99–363.

Form Number: N/A.

Type of Review: New collection.

Respondents: Businesses or other for-profit entities.

Number of Respondents: 452.

Estimated Time per Response: 1 to 5 hrs.

Frequency of Response: On occasion reporting requirement.

Total Annual Burden: 2,700 hrs.

Total Annual Costs: $90,000.

Needs and Uses: Congress directed the FCC to adopt regulations that apply broadcast signal carriage requirements to satellite carriers pursuant to the changes outlined in the Satellite Home Viewer Improvement Act of 1999. The availability of such information is to inform the public of the method of broadcast signal carriage. In addition, the information is needed so that local broadcast stations can assert their carriage rights within their local markets.

OMB Control Number: 3060–XXXX.

Title: 1998 Biennial Review—Streamlining of Cable Television Services Part 76 Public File and Notice Requirements.

Form Number: N/A.

Type of Review: New collection.

Respondents: Businesses or other for-profit entities; State, local, or tribal government.

Number of Respondents: 10,800.

Estimated Time per Response: 30 mins. to 3 hrs.

Frequency of Response: Recordkeeping; On occasion, semi-annual, and annual reporting requirements; Third party disclosure.

Total Annual Burden: 43,200 hrs.

Total Annual Costs: None.

Needs and Uses: Pursuant to Section 631 of the Communications Act, as amended, 47 U.S.C. 551, upon subscribing to cable or other services, and at least once a year thereafter, a cable operator shall provide a separate, written statement to the subscriber informing the subscriber of: (a) The personally identifiable information to be collected about them; (b) the nature, frequency, and purpose of any disclosure and to whom the disclosure may be made; (c) the period during which such information will be maintained by the cable operator; (d) the times and places at which the subscriber may have access to such information in accordance with Section 631(d); (e) the limitations provided by Section 631 with respect to the collection and disclosure of information by a cable operator; and (f) the right of the subscriber under Sections 631(f) and 631(h) to enforce such limitations. The Report and Order also amends the Commission's cable television rules so that: (1) This subscriber notice is now referenced at the end of various new rule sections; and (2) this filing is now referenced at the end of new 47 CFR 76.1800 pursuant to the Copyright Act, 17 U.S.C. 111(d)(1), which requires cable operators to file, semi-annually, a statement of account with the Licensing Division of the Copyright Office, Library of Congress.

Federal Communications Commission.

Magalie Roman Salas,

Secretary.

[FR Doc. 01–10628 Filed 4–27–01; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL ELECTION COMMISSION

[Notice 2001–4]

Filing Dates for the Virginia Special Election in the 4th Congressional District

AGENCY: Federal Election Commission.

ACTION: Notice of filing dates for special election.

SUMMARY: Virginia has scheduled a special election on June 19, 2001, to fill the U.S. House of Representatives seat in the Fourth Congressional District held by the late Congressman Norman Sisisky.

Committees participating in the Virginia special election are required to file pre- and post-election reports.

FOR FURTHER INFORMATION CONTACT: Mr. Gregory J. Scott, Information Division, 999 E Street, NW., Washington, DC 20463; Telephone: (202) 694–1100; Toll Free (800) 424–9530.

SUPPLEMENTARY INFORMATION: All principal campaign committees of candidates who participate in the Virginia Special General and all other political committees that support candidates in the Special General shall file a 12-day Pre-General Report on June 7, 2001, with coverage dates from the close of the last report filed, or the day of the committee's first activity, whichever is later, through May 30, 2001; and a consolidated 30-day Post-General and Mid-Year Report on July 19, 2001, with coverage dates from May 31 through July 9, 2001.

Committees filing monthly that support candidates in the Virginia Special General should continue to file according to the non-election year monthly reporting schedule.

CALENDAR OF REPORTING DATES FOR VIRGINIA SPECIAL ELECTION

[Committees involved in the special general (06/19/01) must file]

Report	Close of books[1]	Reg./cert. mailing date[2]	Filing date
Pre-General	05/30/01	06/04/01	06/07/01
Post-General & Mid-Year[3]	07/09/01	07/19/01	07/19/01

[1] The period begins with the close of books of the last report filed by the committee. If the committee has filed no previous reports, the period begins with the date of the committee's first activity.
[2] Reports sent registered or certified mail must be postmarked by the mailing date; otherwise, they must be received by the filing date.
[3] Committees should file a consolidated Post-General and Mid-Year Report by the filing date of the Post-General Report.

Dated: April 24, 2001.

David M. Mason,

Vice-Chairman, Federal Election Commission.

[FR Doc. 01–10575 Filed 4–27–01; 8:45 am]

BILLING CODE 6715–01–P

FEDERAL EMERGENCY MANAGEMENT AGENCY

Federal Radiological Preparedness Coordinating Committee Meeting

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice.

SUMMARY: The Federal Radiological Preparedness Coordinating Committee (FRPCC) advises the public that the FRPCC will next meet on May 8, 2001 in Washington DC.

DATES: The meeting will be held on May 8, 2001, at 9 a.m.

ADDRESSES: The meeting will be held at the Federal Emergency Management Agency Conference Center in the lobby of 500 C Street, SW., Washington, DC 20472.

FOR FURTHER INFORMATION CONTACT: Pat Tenorio, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472, telephone (202) 646–2870; fax (202) 646–3508; or e-mail *pat.tenorio@fema.gov*.

SUPPLEMENTARY INFORMATION: The role and functions of the FRPCC are described in 44 CFR 351.10(a) and 351.11(a). The Agenda for the upcoming FRPCC meeting is expected to include: (1) a review of the FRPCC meetings held on January 17, 2001 and March 7–8, 2001, (2) a report on the National Radiological Emergency Preparedness Conference, (3) reports from FRPCC subcommittees, and (4) old and new business.

The meeting is open to the public, subject to the availability of space. Reasonable provision will be made, if time permits, for oral statements from the public not more than five minutes in length. Any member of the public who wishes to make an oral statement at the May 8, 2001 FRPCC meeting should request time in writing from Russell Salter, FRPCC Chair, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472. The request should be received at least five business days before the meeting. Any member of the public who wishes to file a written statement with the FRPCC should mail the statement to: Federal Radiological Preparedness Coordinating Committee, c/o Pat Tenorio, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472.

Dated: April 24, 2001.

Russell Salter,

Chair, Federal Radiological Preparedness Coordinating Committee.

[FR Doc. 01–10666 Filed 4–27–01; 8:45 am]

BILLING CODE 6718–06–P

FEDERAL RESERVE SYSTEM

Sunshine Act Meeting

AGENCY HOLDING THE MEETING: Board of Governors of the Federal Reserve System

TIME AND DATE: Approximately 4 p.m., Wednesday, May 2, 2001, following a recess at the conclusion of the open meeting.

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: Michelle A. Smith, 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 25, 2001.

Robert deV. Frierson,

Associate Secretary of the Board.

[FR Doc. 01–10754 Filed 4–25–01; 4:57 pm]

BILLING CODE 6210–01–P

FEDERAL RESERVE SYSTEM

Sunshine Act Meeting

AGENCY HOLDING THE MEETING: Board of Governors of the Federal Reserve System.

TIME AND DATE: 3 p.m., Wednesday, May 2, 2001.

PLACE: Marriner S. Eccles Federal Reserve Board Building, C Street entrance between 20th and 21st Streets, NW., Washington, DC 20551.

STATUS: Open.

MATTERS TO BE CONSIDERED:

Discussion Agenda

1. Proposals regarding sections 23A and 23B of the Federal Reserve Act:

a. Publication for comment of proposed new Regulation W (Transactions between Banks and their Affiliates) to simplify compliance with sections 23A and 23B and to implement provisions of the Gramm-Leach-Bliley Act;

b. Proposed interim final rule under the Board's Miscellaneous Interpretations regarding the application of sections 23A and 23B to derivative transactions with affiliates and intraday extensions of credit to affiliates and to implement provisions of the Gramm-Leach-Bliley Act; and

c. Proposed final rule granting certain exemptions from section 23A. (Proposed earlier for public comment; Docket Numbers R–1015 and R–1016).

2. Any items carried forward from a previously announced meeting.

Note: This meeting will be recorded for the benefit of those unable to attend. Cassettes will be available for listening in the Board's Freedom of Information Office, and copies may be ordered for $6 per cassette by calling 202–452–3684 or by writing to: Freedom of Information Office, Board of Governors of the Federal Reserve System Washington, DC 20551.

CONTACT PERSON FOR MORE INFORMATION: Michelle A. Smith, Assistant to the Board; 202–452–3204.

SUPPLEMENTARY INFORMATION: You may call 202–452–3206 for a recorded announcement of this meeting; or you may contact the Board's Web site at http://www.federalreserve.gov for an electronic announcement. (The Web site also includes procedural and other information about the open meeting.)

Dated: April 25, 2001.

Robert deV. Frierson,

Associate Secretary of the Board.

[FR Doc. 01–10755 Filed 4–25–01; 4:58 pm]

BILLING CODE 6210–01–P

FEDERAL RESERVE SYSTEM

Sunshine Act Meeting

AGENCY HOLDING THE MEETING: Board of Governors of the Federal Reserve System Federal Register Citation of Previous Announcement: Unavailable.

PREVIOUSLY ANNOUNCED TIME AND DATE OF THE MEETING: 3 p.m., Wednesday, May 2, 2001.

Changes in the Meeting: *The following open item has been moved to the Summary Agenda:* (Because of its routine nature, no discussion of the item is anticipated. This matter will be voted on without discussion unless a member of the Board requests that the item be moved to the discussion item.)

Proposed final rule granting certain exemptions from section 23A of the Federal Reserve Act. (Proposed earlier for public comment; Docket Numbers R–1015 and R–1016)

CONTACT PERSON FOR MORE INFORMATION: Michelle A. Smith, Assistant to the Board; 202–452–3204.

SUPPLEMENTARY INFORMATION: You may call 202–452–3206 for a recorded announcement of this meeting; or you may contact the Board's Web site at *http://www.federalreserve.gov* for an electronic announcement. (The Web site also includes procedural and other information about the open meeting.)

Dated: April 25, 2001.

Jennifer J. Johnson,

Secretary of the Board.

[FR Doc. 01–10758 Filed 4–26–01; 10:18 am]

BILLING CODE 6210–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[Program Announcement 01101]

Health Promotion and Disease Prevention Research Centers Cooperative Agreement; 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 to fund up to two Health Promotion and Disease Prevention Research Centers (PRCs). This program addresses the ''Healthy People 2010'' focus area of Educational and Community-Based Programs.

The purpose of the PRC program is to support health promotion and disease prevention research that (1) focuses on the major causes of death and disability; (2) improves public health practice within communities; and (3) cultivates more effective state and local public health programs.

B. Eligible Applicants

Applications may be submitted by schools of public health, schools of medicine or osteopathy with an accredited Preventive Medicine Residency that have:

1. A multidisciplinary faculty with expertise in public health and which has working relationships with relevant groups in such fields as medicine, psychology, nursing, social work, education and business;
2. Graduate training programs relevant to disease prevention;
3. A core faculty in epidemiology, biostatistics, social sciences, behavioral and environmental sciences, and health administration; and
4. A demonstrated curriculum in disease prevention.

Note: Title 2 of the United States Code, Chapter 26, Section 1611 states that an organization described in section of the 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 $1,434,000 is available in FY 2001 to fund up to two PRCs at approximately $717,000 per center. It is expected that the awards 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 two years. Funding estimates may change. Continuation awards within an approved project period will be made on the basis of satisfactory progress as evidenced by required reports and the availability of funds.

Direct Assistance

You may request Federal personnel, in lieu of a portion of financial assistance (see Application Content).

D. Program Requirements

In conducting activities to achieve the purpose of this program, the recipients will be responsible for the activities under 1. (Recipient Activities), and CDC will be responsible for the activities under 2. (CDC Activities).

1. Recipient Activities

a. Select a research theme that will serve as a focus for Prevention Research activities.

b. Develop the administrative structure and recruit staff to implement a Prevention Research Center plan.

c. Conduct and evaluate a research or demonstration project in health promotion and disease prevention or preventive health services research, within a defined community or special population. The project must reflect the needs of the community within the applicant's jurisdiction and show evidence of having used an appropriate, collaborative planning process with community partners in determining project selection and implementation.

d. Specify how the research project will advance the translation of research into improved public health practice.

e. Establish an advisory committee to provide input on the major program activities. Membership may include but is not limited to a variety of local health-care providers, health and education agency officials, community leaders and organizers, and representatives of local businesses, religious organizations, voluntary organizations, and consumers.

f. Establish collaborative activities with appropriate organizations, individuals, and State and local health departments.

g. Establish the capacity to implement and evaluate multidisciplinary, professional training programs in prevention research or to conduct applied community-based training in

research methods to foster community involvement and build community capacity for participatory research. If appropriate, this training may include a distance-learning-based format.

h. Establish a plan to ensure translation of research results and program findings to appropriate constituencies (beyond publication in peer-reviewed journals).

i. Designate a core staff member with expertise in research dissemination and information management to assist in the following types of activities: (1) the development of bibliographies and other archives pertaining to research publications and other documents; (2) training and other research and translation activities etc.

2. CDC Activities

a. Assist the recipient in all stages of the program by providing programmatic and technical assistance.

b. Assist in improving program performance through consultation based on information and activities of other projects.

c. At the request of the applicant, assign Federal personnel in lieu of a portion of the financial assistance to assist with developing the curriculum, training, or conducting other specific necessary activities.

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. Content

Letter of Intent (LOI)

An LOI is required for this program. The narrative should be no more than 2 double-spaced pages, printed on one side, with one inch margins, and 12″ font. Your letter of intent will be used to plan the external peer reivew panel, and should briefly describe the proposed theme for the prospective Prevention Research Center (maximum of one paragraph), the applicant's experience and expertise on the proposed theme (maximum of one paragraph), and a brief description of the propose community partners (maximum of one paragraph). The LOI must also include the name, address, telephone number, facsimile (fax) number, and E-mail address for a contact person from the applicant institution. Attachments, booklets, or other documents will not be accepted with the LOI.

Applications

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 90 double-spaced paged, printed on one side, with one inch margins, and 12″ font, excluding appendixes and PHS Form 398. Appendices must not exceed 25 pages and must be hard copy documents (i.e., no audiovisual materials, posters, etc.). Instructions contained here regarding font and page length supersede those in the PHS Form 398.

1. Research Theme

Identify a research theme and describe activities designed to focus on the theme that will result in innovative approaches to prevention research. Clearly identify the needs of the partner communities and describe the PRC's experience working with communities in selecting or revising/focusing the research theme. The applicant may wish to refer to products from the Task Force Community Preventive Services when considering their research theme. (For detailed information, visit the Guide to Community Preventive Services on the Web at *http://www.communityguide.org).*

Examples of research themes from current Research Prevention Centers include:

a. Bridging the Gap Between Public Health Science and Practice in Undeserved Populations.

b. Promoting the Health of Multiethnic Communities of the Southwest.

c. Putting Health Promotion into Action: Community Collaboration.

d. Reduction of Excess Morbidity and Mortality in the Harlem Community.

e. Promoting Health Through Physical Activity.

f. Community-based Marketing.

2. Prevention Research Center Plan

Identify and submit a plan for a prevention research center with specified goals, objectives, activities, and timeliness to include:

a. A description of goals and objectives of the PRC for the budget period that are consistent with the research theme.

b. A description of the use of other federal funds that will impact on stated program objectives.

c. A description of any financial and in-kind contributions from non-federal sources.

d. Describe a plan for building the identity of the PRC within the university and local community.

e. Documentation describing the composition, membership, rationale for membership, and objectives for a Community Advisory Committee. Documentation of how the Advisory Committee will collaborate in the selection and implementation of priority activities for the centers as well as facilitate collaboration with community organizations, state and local health or education departments. Documentation of dissemination activities to these constituencies.

f. Either a description of plans for conducting community-based applied training or a description of capacity to provide prevention research training for professionals.

g. Documentation of commitment to minority and undeserved populations, or other defined populations or communities (Be sure to give an operational definition of community).

h. A description of significant factors that may favorably or adversely impact on program performance and how these will be addressed during implementation of the center.

3. Management and Staffing Plan

Provide a management plan that includes a description of all organizational units and functions in the PRC. The plan should reflect the ability of the PRC to carry out the chosen research theme. Describe how the applicant will integrate the PRC within the parent institution. The following areas should be considered in developing a management and staffing plan:

a. Describe the PRC's personnel infrastructure.

1. Describe proposed leadership roles including how they complement one another.

2. Describe how staff filling each role will be actively engaged in the PRC.

b. Describe how proposed staffing will support center activity. Current resumes must be included.

c. Describe how the proposed staff meet the goal of establishing a multidisciplinary prevention research center.

d. No less than two full-time positions (FTE's) must be allocated for the following functions:

(Percentages of an FTE may be used for several positions.)

(1) Center Leadership: Responsible for overall center functions and the final authority for decision making about program and project activities/issues.

(2) Scientific oversight: Accountable for center research and development,

design, methodology, project evaluation, and publications.

(3) Community Development: Community liaison, advisory committee, community training activities, and community dissemination.

(4) Program and Project Management: Oversight of center supported research and Institutional Review Board (IRB) protocols, coordination of center studies, mentorship of junior investigators, dissemination activities, and professional training in prevention research.

(5) Center Administration: Responsible for communication with CDC's Prevention Research Centers Program staff and Procurement and Grants Office. Responsibilities will include submission of fiscal reports, fiscal tracking and reports, personnel, and center procurement.

4. Research Project

Provide a description of a research or demonstration project that is consistent with the PRC Program objectives and selected PRC theme. The narrative for specific project should contain:

a. A description of the project including goals, objectives, time-line, research questions and target population.

b. A description of the methods including methods for participant recruitment, data collection, evaluation design, and data analysis.

c. A description of the extent of community and other research collaborations in the proposed project.

d. A description of project staff (number and types of positions).

e. A project budget.

f. A description of the plans to translate research findings onto public health practice or policy.

g. A description of how the project addresses the requirements of title 45 CFR Part 46 for the protection of human subjects.

5. Evaluation Plan

Describe a plan to evaluate PRC program and activities with regard to program progress and process; fulfillment of outcome objectives; impact, and community involvement; the PRC's community-based objectives; and any other indicators, such as cost benefit analyses. Describe a plan to evaluate the scientific methods utilized or described in center research projects, publications, and protocols. Specify staff responsible for the plans and their background and experience in center level evaluation.

6. Budget Information

Provide a line-item budget and narrative justification for all requested costs that are consistent with the goals, objectives, and proposed research activities, to include:

a. Line-item breakdown and justification for all personnel, i.e., name, position title, annual salary, percentage of time and effort, and amount requested.

b. Line-item breakdown and justification for all contracts and consultants, to include:

(1) Name of contractor or consultant

(2) Period of performance

(3) Method of selection (e.g., competitive or sole source)

(4) Scope of work

(5) Method of accountability

(6) Itemized budget

c. To request new direct assistance assignees, include:

(1) number of assignees requested;

(2) description of the position and proposed duties for each assignee;

(3) ability or inability to hire locally with financial assistance;

(4) justification for request;

(5) organizational chart and the name of intended supervisor;

(6) opportunities for training, education, and work experiences for assignees; and

(7) description of assignee's access to computer equipment for communication with (e.g., personal computer at home, personal computer at workstation, shared computer at workstation on site, shared computer at a central office).

F. Submission and Deadline

Letter of Intent (LOI)

On or before May 24, 2001, submit an original and 2 copies of the LOI to the Grants Management Specialist identified in the ''Where to Obtain Additional Information'' section of this announcement.

Application

Submit the original and five copies of the application PHS Form 398 (OMB Number 0925–0001) (adhere to the instructions on the Errata Instruction Sheet for PHS 398). Forms are available in the application kit and at the following Internet address: www.cdc.gov/od/pgo/forminfo.htm

On or before June 15, 2001, submit the application to the Grants Management Specialist identified in the ''Where to Obtain Additional Information'' section of this announcement.

Deadline: Applications shall be considered as meeting the deadline if they are either:

(a) Received on or before the deadline date; or

(b) Sent on or before the deadline date and received in time for submission to the independent review group. (Applicants must request a legibly dated U.S. Postal Service postmark or obtain a legibly dated receipt from a commercial carrier or the U.S. Postal Service. Private metered postmarks shall not be acceptable as proof of timely mailing.)

G. Evaluation Criteria

Each application will be evaluated individually against the following criteria by an external peer review panel: (1) PRC Theme; (2) Center Plan; (3) Management and Staffing Plan; (4) Research Project; and (5) Evaluation. The Budget and Human Subjects sections are reviewed but not scored. The review panel will score each of the 5 criteria listed above on a 1–5 scale (with increments of 0.1) with 1=highest (best) and 5-lowest. The review panel will also score the application overall, based on the same scale. the reviewers' scores are then averaged and multiplied by 100 to attain a priority score for the application. The review panel will compile a summary and recommendations including the strengths and weaknesses of the application.

1. PRC Theme

(a) To what extent does the research theme meet health priorities and emerging public health needs of identified communities or special groups?

(b) To what extent has there been community involvement in the selection of the theme?

2. Center Plan

(a) To what extent does the plan have objectives that are clear, specific, measurable, attainable, realistic and time-phased?

(b) Does the plan make effective use of both PRC and community resources to advance the PRC theme?

(c) Is the plan consistent with the PRC purpose, and does it include a two-year time-line?

(d) Does the plan describe the composition of a Community Advisory Committee and rationale for its membership, relevance and feasibility of committee objectives and its role within the PRC?

(e) Is a plan included to establish collaborative activities with appropriate organizations, individuals, State, and local health departments?

(f) Is a plan included to conduct community-based training in research methods to foster community involvement and build community

capacity for participatory research or does the plan contain a description of the Center's capacity for providing professional, multidisciplinary prevention research training in the area of health promotion and disease prevention?

(g) Does the plan address dissemination of findings to the community?

3. Management and Staffing Plan

(a) To what extent does the applicant demonstrate the ability, capacity, organizational structure, and staffing to carry out the overall theme, objectives, and specific project plans?

(b) Does the applicant demonstrate well-defined and active leadership roles for the center?

4. Research Project

(a) Does the applicant demonstrate an understanding of the community contexts, current scientific literature, as well as other information sources relevant to the proposed project?

(b) Are the conceptual framework, design, methods, analyses, and translation plan adequately developed, well-integrated, scientifically strong, and appropriate to the aims of the project?

(c) Does the proposed approach allow for flexibility or change in research methods or focus as necessary?

(d) Does the applicant acknowledge potential problem areas and consider alternative tactics?

(e) Is there an appropriate work plan included?

(f) Does the project include plans to measure progress toward achieving the stated objectives?

(g) Does the applicant propose research translation approaches or methods from the project?

(h) The degree to which the applicant has met the CDC policy requirements regarding the inclusion of women, ethnic and racial groups in the proposed research. This includes:

(1) The proposed plan for the inclusion of both sexes and racial and ethnic minority populations for appropriate representation.

(2) The proposed justification when representation is limited or absent.

(3) A statement as to whether the design of the study is adequate to measure differences when warranted.

(4) A statement as to whether the plans for recruitment and outreach for study participants include the process of establishing partnerships with community(ies) and recognition of mutual benefits.

5. Evaluation

(a) To what extent are the plan and methodology proposed to evaluate the PRC program and activities with regard to program progress and process; fulfillment of outcome objectives; impact, and community involvement; the PRCs community-based objectives; and any other indicators, such as cost-benefit analyses feasible and of scientific merit?

(b) Are there adequate plans for periodic evaluation of the technical and scientific merit of research projects and publications?

6. Budget (Reviewed But Not Scored)

The extent to which the budget and justification are consistent with the program objectives and purpose.

7. Human Subjects (Reviewed But Not Scored)

Does the application adequately address the requirements of Title 45 CFR Part 46 for the protection of human subjects?

H. Other Requirements

Technical Reporting Requirements

Provide CDC with original plus two copies of

1. annual reports;
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 1 of the announcement.

AR–1 Human Subjects Requirements
AR–2 Requirements for Inclusion of Women and Racial and Ethnic Minorities in Research
AR–7 Executive Order 12372 Review
AR–8 Public Health System Reporting Requirements
AR–9 Paperwork Reduction Act Requirements
AR–10 Smoke-Free Workplace Requirements
AR–11 Healthy People 2010
AR–12 Lobbying Restrictions
AR–22 Research Integrity

I. Authority and Catalog of Federal Domestic Assistance Number

This program is authorized under sections 301(a), 317(k)(2) and 1706 [42 U.S.C. 241(a), 247b(k)(2) and 300u–5] of the Public Health Service Act, as amended. The Catalog of Federal Domestic Assistance number is 983.135.

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 receive aditional written information and to request on application kit, call 1–888–GRANTS4 (1–888–472–6874). You will be asked to leave your name and address and will be instructed to identify the Program Announcement number of interest.

Should you have questions after reviewing the contents of all the documents, business management technical assistance may be obtained from: Robert Hancock, 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) 488–2746, E-mail address: rnh2@cdc.gov.

For program technical assistance, contact: David Elswick, Deputy Program Director, Prevention Research Centers Office, National Center for Chronic Disease Prevention and Health Promotion, Centers for Disease Control and Prevention, 4770 Buford Highway, Northeast, Atlanta, GA 30341–3724, Telephone number: 404–488–5395, E-mail address: dcel@cdc.gov.

Dated: April 23, 2001.

John L. Williams,

Procurement and Grants Office, Centers for Disease Control and Prevention (CDC).

[FR Doc. 01–10481 Filed 4–27–01; 8:45 am]

BILLING CODE 4163–18–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Disease, Disability and Injury Prevention and Control Special Emphasis Panel: Grant Program for Strategies for Improving Health Risk Communication Related to Military Deployments Among Military Personnel, Veterans, Their Family Members, and Their Health Care Providers, PA# 01021

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), the Centers for Disease

Control and Prevention (CDC) announces the following meeting.

Name: Disease, Disability and Injury Prevention and Control Special Emphasis Panel: Grant Program for Strategies for Improving Health Risk Communication Related to Military Deployments among Military Personnel, Veterans, their Family Members, and their Health Care Providers, PA# 01021.

Times and Dates: 8 a.m.–9:15 a.m., June 4, 2001 (Open), 9:15 a.m.–4:30 p.m., June 4, 2001 (Closed), 8:30 a.m.–4:30 p.m., June 5, 2001 (Closed).

Place: Holiday Inn Select Conference Center, 130 Clairemont Avenue, Decatur, GA 30030.

Status: Portions of the meeting will be closed to the public in accordance with provisions set forth in section 552b(c)(4) and (6), Title 5 U.S.C., and the Determination of the Deputy Director for Program Management, CDC, pursuant to Public Law 92–463.

Matters to be Discussed: The meeting will include the review, discussion, and evaluation of applications received in response to PA# 01021.

Contact Person for More Information: Drue Barrett, Ph.D., Chief, Veterans' Health Activity Working Group, National Center for Environmental Health, CDC, 1600 Clifton Rd, NE, MS E–19, Atlanta, Ga. 30333. Telephone 404/639–4862, e-mail dhb1@cdc.gov.

The Director, Management Analysis and Services Office, has been delegated the authority to sign **Federal Register** notices pertaining to announcements of meetings and other committee management activities, for the both the Centers for Disease Control and Prevention and the Agency for Toxic Substances and Disease Registry.

Dated: April 12, 2001.

Carolyn J. Russell,

Director, Management Analysis and Services Office, Centers for Disease Control and Prevention.

[FR Doc. 01–10612 Filed 4–27–01; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

[Program Announcement No. ACYF–PA–CCB–2001–03]

Early Learning Opportunities Act Discretionary Grants

AGENCY: Administration on Children, Youth and Families (ACYF), ACF, DHHS.

ACTION: Announcement of the availability of competitive grants to Local Councils.

SUMMARY: The purpose of this program announcement is to announce the availability of Fiscal Year 2001 Discretionary Funds, authorized by Congress under the FY 2001 Consolidated Appropriations Act, for grants to Local Councils.

DATES: The closing date for submission of applications is June 14, 2001. Mailed applications postmarked after the closing date will be classified as late.

Deadline: Mailed applications shall be considered as meeting an announced deadline if they are either received on or before the deadline date, or sent on or before the deadline date and received by ACF in time for the independent review to: Administration on Children, Youth and Families, Child Care Bureau Program Announcement No. ACYF–PA–CCB–2001–03, 1815 North Fort Myer Drive, Suite 300, Arlington, VA 22209, Telephone: 1–800–351–2293.

Applicants must ensure that a legibly dated U.S. Postal Service postmark or a legibly dated, machine produced postmark of a commercial mail service is affixed to the envelope/package containing the application(s). To be acceptable as a proof of timely mailing, a postmark from a commercial mail service must include the logo/emblem of the commercial mail service company and must reflect the date the package was received by the commercial mail service company from the applicant. Private metered postmarks shall not be acceptable as proof of timely mailing.

Applications hand carried by applicants, applicant couriers, or by other representatives of the applicant shall be considered as meeting an announced deadline if they are received on or before the deadline date, between the hours of 8:00 a.m. and 4:30 p.m., EST, Monday through Friday (excluding Federal holidays) at the address above. (Applicants are cautioned that express/overnight mail services do not always deliver as agreed.)

ACF cannot accommodate transmission of applications by fax or through other electronic media, regardless of date or time of submission and receipt. Therefore, applications transmitted to ACF electronically will not be accepted.

Late Applications. Applications that do not meet the criteria stated above are considered late applications. ACF shall notify each late applicant that its application will not be considered in the current competition.

Extension of Deadlines. ACF may extend an application deadline for applicants affected by acts of God such as floods and hurricanes, when there is widespread disruption of mail service, or for other disruptions of services, such as a prolonged blackout, that affect the public at large. A determination to extend or waive deadline requirements rests with the Chief Grants Management Officer.

Notice of Intent to Submit Application: If you intend to submit an application, please contact ACYF's Operations Center at 1–800–351–2293 with the following information: the number and title of this announcement; your organization's name and address; and your contact person's name, phone number, fax number, and e-mail address. The information will be used to determine the number of expert reviewers needed to evaluate applications and to update the mailing list for program announcements.

FOR FURTHER INFORMATION CONTACT: Administration on Children, Youth and Families, Child Care Bureau, Room 2046, Mary E. Switzer Building, 330 C Street, Southwest, Washington, DC 20447, Phone: 202–690–6243 or 202–401–5130, Fax: 202–690–5600.

SUPPLEMENTARY INFORMATION: The ACF Uniform Discretionary Grant Application, covering all ACF announcements contained in the Application Kit, and this Supplementary Information section, contains all the forms and instructions needed to apply for a grant under this announcement. No additional application materials are needed.

The Supplementary Information section consists of seven parts. Part I includes general information about funding requirements, and application procedures for child care grants under this program announcement. Part II provides background information on the Child Care Bureau and the Early Learning Opportunities Act as well as relevant definitions. Part III describes goals and priorities related to this announcement. Part IV provides instructions for the Uniform Project Description. Part V describes the evaluation criteria and selection process. Part VI describes the application process. Part VII provides information on the content of the application and submission instructions. The contents are outlined below:

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Part I. General Information

A. Purpose

The purpose of this program announcement is to announce the availability of fiscal year 2001 funds, authorized under the Early Learning Opportunities Act (ELOA), for early learning programs likely to produce sustained gains in early learning.

B. Citations

1. *Sponsorship.* Grants being awarded under this announcement are sponsored by the Child Care Bureau (the Bureau) of the Administration on Children, Youth and Families (ACYF) in the Administration for Children and Families (ACF), U.S. Department of Health and Human Services (DHHS). The Bureau will manage the projects.

2. *Funding Authority.* Funding is provided by ACF under the Consolidated Appropriations Act, 2001 (Pub. L. 106–554).

3. *Catalog of Federal Domestic Assistance.* The Catalog of Federal Domestic Assistance Number is 93.577.

C. Number of Awards

Up to 25 projects will be funded in fiscal year 2001 (by September 30, 2001) subject to the availability of funds and the results of the review process.

D. Project Duration

The project period will be 17 months. It is anticipated that the project period will be September 23, 2001 to February 28, 2003.

E. Funding Levels and Budget Periods

Awards will be for 17-month project and budget periods. Individual awards will be between $250,000 and $1,000,000 depending on the size of the population to be served as well as geographic area to be served and the reasonableness of the budget in relationship to the services to be provided. While this will vary depending on the scope of the applications submitted, awards are expected to average $700,000.

The Act (section 809) provides that the Secretary shall reserve a portion of each year's total appropriation for the Early Learning Opportunities Act (ELOA) for Indian Tribes, Regional Corporations, and Native Hawaiian entities. ACF anticipates competitively awarding funds to at least one Local Council designated by an Indian Tribe and one Local Council designated by an Alaska Native Regional Corporation or Native Hawaiian entity, subject to receipt of applications meeting the requirements of the Act as reflected in this announcement. ACF intends to award no less than one percent of the FY 2001 ELOA appropriation in grants to Indian Tribes, Alaska Natives, and Native Hawaiians.

F. Non-Federal Share of Project Costs

Grantees must provide at least 15 percent of the total approved project cost. The total approved cost is the sum of the Federal share and the non-Federal share. Therefore, a project requesting $500,000 in Federal funds must include a match of at least $88,236 (15 percent total project cost). The non-Federal share may be contributed in cash or in-kind, fairly evaluated, including facilities, equipment, or services, which may be provided from State or local public sources, or through donations from private entities. For the purposes of this paragraph, the term ''facilities'' includes the use of facilities, but the term ''equipment'' means donated equipment and not the use of equipment. Grantees will be held accountable on the grant award for commitments of non-Federal resources even if the approved amount exceeds the minimum match required. Failure to provide the amount specified on the grant award can result in a disallowance of Federal funds.

G. Other Financial Requirements

Amounts received shall be used to supplement and not supplant other Federal, State, and local public funds expended to promote early learning. No funds provided shall be used to carry-out an activity funded under another provision of law providing for Federal child care or early learning programs, unless an expansion of such activity is identified in the local needs assessment and performance goals.

Not more than three percent of the Federal funds received by the Local Council through this announcement shall be used to pay for the administrative costs (as defined in Part II.C.) of the Local Council in carrying out activities funded under the grant.

H. Eligibility

An eligible applicant for these grants must be designated by a local government entity (or Indian Tribe, Regional Corporation, or Native Hawaiian entity) as a ''Local Council'' to serve one or more localities. Applicants must include a letter from the designating entity in their application (see Part V, Evaluation Criteria, Criterion 4). Membership of the governing body of the applicant organization must include representatives as follows:

1. Local agencies that will be directly affected by early learning programs assisted under the Early Learning Opportunities Act and this announcement;
2. Parents;
3. Other individuals concerned with early learning issues in the locality, such as representatives of entities providing elementary education, child care resource and referral services, early learning opportunities, child care, and health services; and
4. Other key community leaders.

Local Councils that have been formed prior to the date of enactment of the Early Learning Opportunities Act and have similar membership will also be considered eligible. It is critical that Councils be able to demonstrate organizational and fiscal capabilities. Further, it is not recommended that Local Councils provide direct services to the children and families in their communities.

A Local Council may enter into an agreement with an entity with a demonstrated capacity for administering grants that is affected by, or concerned with, early learning issues, including the State, to serve as fiscal agent for the

administration of grant funds received by the Local Council under this program. The Local Council, however, must be the applicant under this announcement, and if selected for a grant, must be responsible for ensuring compliance with the activities and terms of the grant.

Non-profit organizations submitting an application must submit proof of their non-profit status in their applications at the time of submission. This can be accomplished by providing a copy of the applicant's listing in the Internal Revenue Service's (IRS) most recent list of tax-exempt organizations described in section 501(c)(3) of the IRS code *or* by providing a copy of the currently valid IRS tax exemption certificate, *or* by providing a copy of the articles of incorporation bearing the seal of the State in which the corporation or association is domiciled.

I. Protections

1. No person, including a parent, shall be required to participate in any program of early childhood education, early learning, parent education, or developmental screening pursuant to the provisions of the Early Learning Opportunities Act.

2. Nothing in the Early Learning Opportunities Act shall be construed to affect the rights of parents otherwise established in Federal, State, or local law.

3. No entity that receives funds under this title shall be required to provide services under this title through a particular instructional method or in a particular instructional setting to comply with this title.

Part II. Background and Context

A. The Child Care Bureau

The Child Care Bureau was established in 1994 to provide leadership to efforts to enhance the quality, affordability, and supply of child care. The Child Care Bureau administers the Child Care and Development Fund (CCDF), a $4.6 billion child care program that includes funding for child care subsidies and activities to improve the quality and availability of child care. CCDF was created after amendments to ACF child care programs by Title VI of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 consolidated four Federal child care funding streams including the Child Care and Development Block Grant, AFDC/JOBS Child Care, Transitional Child Care, and At-Risk Child Care.

The Bureau works closely with ACF Regions, States, Territories and Tribes to assist with, oversee, and document implementation of new policies and programs in support of State, local and private sector administration of child care services and systems. In addition, the Bureau collaborates extensively with other offices throughout the Federal government to promote integrated, family-focused services and coordinated child care delivery systems. In all of these activities, the Bureau seeks to enhance the quality, availability, and affordability of child care services, support children's healthy growth and development in safe child care environments, enhance parental choice and involvement in their children's care, and facilitate the linkage of child care with other community services.

B. The Early Learning Opportunities Act

The Early Learning Opportunities Act (ELOA) was passed by Congress to award grants to States to enable them to increase, support, expand and better coordinate early learning opportunities for children and their families through local community organizations. The purposes of the Act are to: (1) Increase the availability of voluntary programs, services, and activities that support early childhood development, increase parent effectiveness, and promote the learning readiness of young children so that young children enter school ready to learn; (2) support parents, child care providers, and caregivers who want to incorporate early learning activities into the daily lives of young children; (3) remove barriers to the provision of an accessible system of early childhood learning programs in communities throughout the United States; (4) increase the availability and affordability of professional development activities and compensation for caregivers and child care providers; and (5) facilitate the development of community-based systems of collaborative service delivery models characterized by resource sharing, linkages between appropriate supports, and local planning for services.

The Act provides that if the amount appropriated for this program in any fiscal year is less than $150 million, the Department of Health and Human Services (DHHS) shall award grants on a competitive basis directly to Local Councils. DHHS is administering the program under this special provision in FY 2001.

C. Definitions

Administrative Costs—Administrative costs are defined as costs related to the overall management of the program which do not directly relate to the provision of program services. These costs can be in both the personnel and non-personnel budget categories and include, but are not limited to: salaries of managerial and administrative staff, indirect costs, and other costs associated with administrative functions such as accounting, payroll services or auditing.

Caregiver—The term ''caregiver'' means an individual, including a relative, neighbor, or family friend, who regularly or frequently provides care, with or without compensation, for a child for whom the individual is not the parent.

Child Care Provider—The term ''child care provider'' means a provider of non-residential child care services (including center-based, family-based, and in-home child care services) for compensation who or that is legally operating under State law, and complies with applicable State and local requirements for the provision of child care services.

Early Learning—used with respect to a program or activity, means learning designed to facilitate the development of cognitive, language, motor, and social-emotional skills for, and to promote learning readiness in, young children (see definition of young child).

Early Learning Program—is a program of services or activities that helps parents, caregivers, and child care providers to incorporate early learning into the daily lives of young children; or a program that directly provides early learning to young children.

Indian Tribe—The term ''Indian Tribe'' has the meaning given the term in section 4 of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450b).

Local Council—The term ''Local Council'' means a Local Council established or designated by a local government, Indian Tribe, Regional Corporation, or Native Hawaiian entity to serve as applicant under this announcement and that serves one or more localities.

Locality—The term ''locality'' means a city, county, borough, township, or area served by another general purpose unit of local government, an Indian Tribe, a Regional Corporation, or a Native Hawaiian entity.

Native Hawaiian Entity—A private non-profit organization that serves the interests of Native Hawaiians, and is recognized by the Governor of Hawaii for the purpose of planning, conducting, or administering programs (or parts of programs) for the benefit of Native Hawaiians.

Parent—''parent'' means a biological parent, an adoptive parent, a stepparent, a foster parent, or a legal guardian of, or

a person standing in loco parentis to a child.

Regional Corporation—Native Alaska Regional Corporation; an entity listed in section 419(4)(B) of the Social Security Act (42 U.S.C. 619(4)(B)).

Young Child—for purposes of this program, the term ''young child'' means any child from birth to the age of mandatory school attendance in the State where the child resides.

Part III. Early Learning Opportunities Act Grants—Goals and Priorities

For FY 2001, grants will be awarded directly to Local Councils that can best assess their community needs and create a plan to facilitate the development of community-based systems and collaborative service delivery models.

These grants will be available to Local Councils that have been so designated by a local government, Indian Tribe, Regional Corporation, or Native Hawaiian entity. Multiple applications from the same locality and applications that cover overlapping geographic areas will not be considered. Local Councils will be required to submit a current needs and resources assessment, documenting the needs of the young children and families in their locality, as well as a local plan that addresses the most significant needs. The plan will include three or more of the required Early Learning Activities (listed below) and clarify the outcome measures for each activity being proposed. Grants will be awarded to Councils for seventeen months through a competitive process.

Local Councils must include three or more of the following activities in their implementation plan to be eligible for grants.

1. Helping parents, caregivers, child care providers, and educators increase their capacity to facilitate the development of cognitive, language comprehension, expressive language, social-emotional, and motor skills, and promote learning readiness.
2. Promoting effective parenting.
3. Enhancing early childhood literacy.
4. Developing linkages among early learning programs within a community and between early learning programs and health care services for young children.
5. Increasing access to early learning opportunities for young children with special needs including developmental delays, by facilitating coordination with other programs serving such young children.
6. Increasing access to existing early learning programs by expanding the days or times that the young children are served, by expanding the number of young children served, or by improving the affordability of the programs for low-income families.
7. Improving the quality of early learning programs through professional development and training activities, increased compensation, and recruitment and retention incentives, for early learning providers.
8. Removing ancillary barriers to early learning, including transportation difficulties and absence of programs during nontraditional work times.

Part IV. General Instructions for the Uniform Project Description

The following ACF Uniform Project Description has been approved under OMB Control Number 0970–0139. This format is to be used to submit an application under this announcement.

A. Project Summary/Abstract

Provide a summary of the project description (a page or less) with reference to the funding request.

B. Objectives and Need for Assistance

Clearly identify the physical, economic, social, financial, institutional, and/or other problem(s) requiring a solution. The need for assistance must be demonstrated and the principal and subordinate objectives of the project must be clearly stated; supporting documentation, such as letters of support and testimonials from concerned interests other than the applicant, may be included. Any relevant data based on planning studies should be included or referred to in the endnotes/footnotes. Incorporate demographic data and participant/beneficiary information, as needed. In developing the project description, the applicant may volunteer or be requested to provide information on the total range of projects currently being conducted and supported (or to be initiated); some of which may be outside the scope of the program announcement.

C. Results or Benefits Expected

Identify the results and benefits to be derived. For example, describe who will receive early learning services, where and how these services will be provided, the anticipated numbers of children and families to be served, and how the services will benefit the young children, families and community to be served.

D. Approach

Outline a plan of action, which describes the scope and detail of how the proposed work will be accomplished. Account for all functions or activities identified in the application. Cite factors which might accelerate or decelerate the work and state your reason for taking the proposed approach rather than others.

Describe any unusual features of the project such as design or technological innovations, reductions in cost or time, or extraordinary social and community involvement. Provide quantitative monthly or quarterly projections of the accomplishments to be achieved for each function or activity in such terms as the number of people to be served and the number of activities accomplished. When accomplishments cannot be quantified by activity or function, list them in chronological order to show the schedule of accomplishments and their target dates.

If any data is to be collected, maintained, and/or disseminated, clearance may be required from the U.S. Office of Management and Budget (OMB). This clearance pertains to any ''collection of information that is conducted or sponsored by ACF.''

List organizations, cooperating entities, consultants, or other key individuals who will work on the project along with a short description of the nature of their effort or contribution.

E. Evaluation

Provide a narrative addressing how the results of the project and the conduct of the project will be evaluated. In addressing the evaluation of results, state how you will determine the extent to which the project has achieved its stated objectives and the extent to which the accomplishment of objectives can be attributed to the project. Discuss the criteria to be used to evaluate results, and explain the methodology that will be used to determine if the needs identified and discussed are being met and if the project results and benefits are being achieved. With respect to the conduct of the project, define the procedures to be employed to determine whether the project is being conducted in a manner consistent with the work plan presented and discuss the impact of the project's various activities on the project's effectiveness.

F. Geographic Location

Describe the precise location of the project and boundaries of the area to be served by the proposed project. Maps or other graphic aids may be attached.

G. Additional Information

Following are requests for additional information that need to be included in the application.

1. *Staff and Position Data:* Provide a biographical sketch for each key person appointed and a job description for each vacant key position. A biographical sketch will also be required for new key staff as appointed.

2. *Plan for Project Continuance Beyond Grant Support:* Provide a plan for securing resources and continuing project activities after Federal assistance has ceased.

3. *Organizational Profiles:* Provide information on the applicant organization(s) and cooperating partners such as organizational charts, financial statements, audit reports or statements from CPAs/Licensed Public Accountants, Employer Identification Numbers, names of bond carriers, contact persons and telephone numbers, child care licenses and other documentation of professional accreditation, information on compliance with Federal/State/local government standards, documentation of experience in the program area, and other pertinent information. Any non-profit organization submitting an application must submit proof of its non-profit status in its application at the time of submission. The non-profit agency can accomplish this by providing a copy of the applicant's listing in the Internal Revenue Service's (IRS) most recent list of tax-exempt organizations described in section 501(c)(3) of the IRS code, *or* by providing a copy of the currently valid IRS tax exemption certificate, *or* by providing a copy of the articles of incorporation bearing the seal of the State in which the corporation or association is domiciled.

4. *Third-Party Agreements:* Include written agreements between grantees and subgrantees or subcontractors or other cooperating entities. These agreements must detail scope of work to be performed, work schedules, remuneration, and other terms and conditions that structure or define the relationship.

5. *Letters of Support:* Provide statements from community, public and commercial leaders that support the project proposed for funding. All submissions should be included in the application *OR* by application deadline.

H. Budget and Budget Justification

Provide line item detail and detailed calculations for each budget object class identified on the Budget Information form. Detailed calculations must include estimation methods, quantities, unit costs, and other similar quantitative detail sufficient for the calculation to be duplicated. The detailed budget must also include a breakout by the funding sources identified in Block 15 of the SF–424.

Provide a narrative budget justification that describes how the categorical costs are derived. Discuss the necessity, reasonableness, and allocability of the proposed costs.

General: The following guidelines are for proposing the budget and budget justification. Both Federal and non-Federal resources shall be detailed and justified in the budget and narrative justification. For purposes of preparing the budget and budget justification, ''Federal resources'' refers only to the ACF grant for which you are applying. Non-Federal resources are all other Federal and non-Federal resources. It is suggested that budget amounts and computations be presented in a columnar format: first column, object class categories; second column, Federal budget; next column(s), non-Federal budget(s), and last column, total budget. The budget justification should be a narrative.

1. *Personnel:* Description: Costs of employee salaries and wages. Justification: Identify the project director or principal investigator, if known. For each staff person, provide the title, time commitment to the project (in months), time commitment to the project (as a percentage or full-time equivalent), annual salary, grant salary, wage rates, etc. Do not include the costs of consultants or personnel costs of delegate agencies or of specific project(s) or businesses to be financed by the applicant.

2. *Fringe Benefits:* Description: Costs of employee fringe benefits unless treated as part of an approved indirect cost rate. Justification: Provide a breakdown of the amounts and percentages that comprise fringe benefit costs such as health insurance, FICA, retirement insurance, taxes, etc.

3. *Travel:* Description: Costs of project-related travel by employees of the applicant organization (does not include costs of consultant travel). Justification: For each trip, show the total number of traveler(s), travel destination, duration of trip, per diem, mileage allowances, if privately owned vehicles will be used, and other transportation costs and subsistence allowances. Travel costs for key staff to attend ACF-sponsored workshops should be detailed in the budget.

4. *Equipment:* Description: ''Equipment'' means an article of nonexpendable, tangible personal property having a useful life of more than one year and an acquisition cost which equals or exceeds the lesser of (a) the capitalization level established by the organization for the financial statement purposes, or (b) $5,000. (Note: Acquisition cost means the net invoice unit price of an item of equipment, including the cost of any modifications, attachments, accessories, or auxiliary apparatus necessary to make it usable for the purpose for which it is acquired. Ancillary charges, such as taxes, duty, protective in-transit insurance, freight, and installation shall be included in or excluded from acquisition cost in accordance with the organization's regular written accounting practices.) Justification: For each type of equipment requested, provide a description of the equipment, the cost per unit, the number of units, the total cost, and a plan for use in the project, as well as use or disposal of the equipment after the project ends. An applicant organization that uses its own definition for equipment should provide a copy of its policy or section of its policy which includes the equipment definition.

5. *Supplies:* Description: Costs of all tangible personal property other than that included under the Equipment category. Justification: Specify general categories of supplies and their costs. Show computations and provide other information that supports the amount requested.

6. *Contractual:* Description: Costs of all contracts for services and goods except for those which belong under other categories such as equipment, supplies, construction, etc. Third-party evaluation contracts (if applicable) and contracts with secondary recipient organizations, including delegate agencies and specific project(s) or businesses to be financed by the applicant, should be included under this category. Justification: All procurement transactions shall be conducted in a manner to provide, to the maximum extent practical, open and free competition. Recipients and subrecipients, other than States that are required to use Part 92 procedures, must justify any anticipated procurement action that is expected to be awarded without competition and exceeds $100,000. Recipients might be required to make available to ACF pre-award review and procurement documents, such as request for proposals or invitations for bids, independent cost estimates, etc. Note: Whenever the applicant intends to delegate part of the project to another agency, the applicant must provide a detailed budget and budget narrative for each delegate agency, by agency title, along with the required supporting information referred to in these instructions.

7. *Non-Federal Resources:* Description: Amounts of non-Federal

resources that will be used to support the project as identified in Block 15 of the SF–424. Justification: The firm commitment of these resources must be documented and submitted with the application in order to be given credit in the review process. A detailed budget must be prepared for each funding source.

8. *Program Income:* Description: The estimated amount of income, if any, expected to be generated from this project. Justification: Describe the nature, source and anticipated use of program income in the budget or refer to the pages in the application which contain this information.

Part V. Evaluation Criteria

The six evaluation criteria that follow will be used to review and evaluate each application. Each of the criteria should be addressed in the project description section of the application. The point values indicate the maximum numerical weight each criterion will be accorded in the review process. Note that the highest possible score an application can receive is 100 points.

A. Evaluation Criteria

Criterion 1. Objectives and Need for Assistance (20 Points)

1. The extent to which the applicant specifies the goals and objectives of the project and describes how implementation will fulfill the purposes of the Early Learning Opportunities Act. The applicant must demonstrate a thorough understanding of the importance of early learning services and activities that help parents, caregivers, and child care providers incorporate early learning into the daily lives of young children, as well as programs that directly provide early learning to young children.

2. The extent to which the applicant demonstrates the need for assistance including identification and discussion of its needs and resources assessment concerning early learning services. Relevant data from the assessment should be included. Participant and beneficiary information must also be included.

3. The extent to which the applicant demonstrates how it will give preference to supporting activities/projects that maximize the use of resources through collaboration with other early learning programs, provide continuity of services for young children across the age spectrum, and help parents and other caregivers promote early learning with their young children. The applicant must provide information about how decisions will be made about who will provide each early learning service and/or activity funded through this grant.

4. The extent to which the applicant demonstrates that it has worked with local education agencies to identify cognitive, social, and emotional, and motor developmental abilities which are necessary to support children's readiness for school; that the programs, services, and activities assisted under this title will represent developmentally appropriate steps toward the acquisition of those abilities; and, that the programs, services, and activities assisted provide benefits for children cared for in their own homes as well as children placed in the care of others.

Criterion 2. Results and Benefits Expected (10 Points)

The extent to which the applicant:

1. Specifies the number of children and families to be served and how the services to be provided will be funded consistent with the assessment.

2. Explains how the expected results will benefit the population to be served in meeting its needs for early learning services and activities.

3. Describes how it will assess the effects that services provided under this grant have had in addressing the needs identified under its needs and resources assessment. Particular attention must be paid to discussing how the effectiveness of the activities included in their implementation plan (approach) will be assessed.

4. Demonstrates that completion of the proposed objectives will result in specific, measurable results. The specific information provided in the narrative and plan on expected results or benefits for each objective is the standard upon which its achievement can be evaluated at the end of the project period (i.e., 17 months).

Criterion 3. Approach (35 Points)

The extent to which the applicant:

1. Includes a detailed plan that identifies goals and objectives, relates those goals and objectives to the findings of its needs and resources assessment, and provides a work plan identifying specific activities necessary to accomplish the stated goals and objectives. The plan must demonstrate that each of the project objectives and activities supports the current needs and resource assessment and can be accomplished with the available or expected resources during the proposed project period. In addition, the plan must:

- Indicate when the objective and major activities under each objective will be accomplished (a timeline is recommended);
- Specify who will conduct the activities under each objective;
- Describe how subcontractors will be chosen and held accountable for carrying out activities in compliance with this application and grant terms and conditions;
- Describe how actual and perceived conflict of interest will be avoided if the Local Council is also a direct service provider; and,
- Indicate how programs, services, and activities are provided based on the family's ability to pay (for services that customarily require a payment).

2. Describes how the project will form collaborations among local early learning, youth, social service, and educational providers to maximize resources and concentrate efforts on areas of greatest need.

3. Includes a feasible plan for securing resources and continuing early learning activities after Federal assistance has ended.

Criterion 4. Geographic Location (5 Points)

1. The applicant must describe the precise location of the project and boundaries of the area to be served. Maps or other graphic aids that are easily duplicated may be attached. Applications from multiple applicants proposing to serve the same or overlapping geographic areas will be disqualified.

2. The applicant must include a letter from an entity of local government (or Indian Tribe, Regional Corporation, or Native Hawaiian entity) designating the applicant as a ''Local Council'' to serve one or more localities.

Criterion 5. Staff and Position Data and Organizational Profiles (20 Points)

The extent to which the applicant:

1. Demonstrates its staff and organizational experience particularly in areas of facilitating needs and resources assessments and collaborative activities as they relate to early learning services. The applicant must also document its experience in facilitating such activities and the length of time the applicant has been involved in these activities. Evidence of the applicant's ability to manage a project of the proposed scope is demonstrated. The application clearly shows the successful management of projects of similar scope by the organization, and/or by the individuals designated to manage the project.

2. Provides position descriptions and/or resumes of key personnel, including those of consultants. The position

descriptions and/or resumes relate specifically to the staff proposed in the applicant's plan and proposed budget. Position descriptions must clearly describe each position and its duties and clearly relate to the personnel staffing required to achieve the project objectives. Resumes and/or proposed position descriptions demonstrate that the proposed staff are or will be qualified to carry out the project activities. Either the position descriptions or the resumes contain the qualifications and/or specialized skills necessary for overall quality management of the project. Resumes must be included if individuals have been identified for positions in the application. Resumes must indicate what position the individual will fill and position descriptions must specifically describe the job as it relates to the proposed project. The applicant must also list organizations and consultants who will work on the program along with a short description of the nature of their effort or contribution.

3. Describes the applicant agency including the types, quantities and costs of services it provides. The applicant must discuss the role of other organizations that will be involved in providing direct services to children and families through this grant. This discussion must include information about the written agreements that will be executed with subgrantees, subcontractors, or other cooperating entities. These agreements, or proposed agreements, must detail the scope of work to be performed, work schedules, remuneration, and other terms and conditions that structure or define the relationship.

4. If the Local Council will work with a fiscal agent, that entity, its qualifications, and its relationship to the Council must be described. List all sites, including addresses, phone numbers and staff contacts. Organizational charts must be provided.

Criterion 6. Budget and Budget Justification (10 Points)

The extent to which the applicant demonstrates:

1. That the funds requested will be used for early learning services that will be provided under this announcement. The discussion must refer to (1) the budget information presented on Standard Forms 424 and 424A and the applicant's budget justification and (2) the results or benefits identified under Criterion 2 above. Funds must be designated to allow two representatives from the Local Council to attend one grantee meeting in Washington D.C.

2. That the project's costs are reasonable in view of the activities to be carried out, that the funds are appropriately allocated across component areas, and that the budget is sufficient to accomplish the objectives.

3. That it has sufficient fiscal and accounting capacity to ensure prudent use, proper disbursement, and accurate accounting of funds, and that unanticipated problems can be resolved and that the project will be completed on time and with a high degree of quality.

Part VI. Application Process

A. Assistance to Prospective Grantees

Potential grantees can direct questions about application forms to the Administration on Children, Youth and Families, Child Care Bureau Program Announcement, 1815 North Fort Myer Drive, Suite 300, Arlington, VA 22209; Telephone: 1–800–351–2293; electronic mail: CCB@lcgnet.com. Questions about program requirements may be directed to the Child Care Bureau at 202–690–6243 or 202–401–5130, Fax: 202–690–5600.

B. Application Requirements

To be considered for a grant, each application must be submitted on the forms provided in the Application Kit and in accordance with the guidance provided in Part VII below.

C. Paperwork Reduction Act of 1995 (Public Law 104–13)

The Uniform Project Description information collection within this Program Announcement is approved under Uniform Project Description (0970–0139) which expires 12/31/2003.

Public reporting burden for this collection of information is estimated to average 10 hours per response, including the time for reviewing instructions, gathering and maintaining the data needed, and reviewing the collection of information. An agency may not conduct or sponsor and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

D. Notification Under Executive Order 12372

This program announcement is not covered under Executive Order 12372, ''Intergovernmental Review of Federal Programs,'' and 45 CFR Part 100, ''Intergovernmental Review of Department of Health and Human Services Program and Activities.''

E. Availability of Forms and Other Materials

A copy of the forms that must be submitted as part of an application and instructions for completing the application are provided in the Application Kit. Legislation referenced in Part I, section B.2 of this announcement may be found in major public libraries and on the Child Care Bureau's website at http://www.acf.dhhs.gov/programs/ccb/policy1/index.htm. Additional copies of this announcement may be obtained by calling 1–800–351–2293. Many standard forms can also be downloaded and printed from the following ACF webpage: http://www.acf.dhhs.gov/programs/oa/form.htm.

An Application Kit containing the necessary forms may be obtained from: Administration on Children, Youth and Families, Child Care Bureau Program Announcement, No. ACYF–PA–CCB 2001–03, 1815 North Fort Myer Drive, Suite 300, Arlington, VA 22209, Telephone: 1–800–351–2293, Electronic Mail: CCB@lcgnet.com.

F. Application Consideration and Selection

Each application will undergo an eligibility and conformance review by Federal Child Care Bureau staff. Applications that pass the eligibility and conformance review will be evaluated on a competitive basis according to the evaluation criteria listed in Part V of this program announcement. This review will be conducted in Washington, DC, by panels of Federal and non-Federal experts knowledgeable in the areas of early learning, child care, early childhood education and other relevant areas.

Application review panels will assign a score to each application, identifying its strengths and weaknesses. The Child Care Bureau will conduct an administrative review of the applications and results of the competitive review panels and make recommendations for funding to the Commissioner, ACYF.

The Commissioner, ACYF, will make the final selection of the applications to be funded. Applications may be funded in whole or in part depending on: (1) The ranked order of applicants resulting from the competitive review; (2) staff review and consultations; (3) the combination of projects that best meets the Bureau's objectives; (4) the funds available; (5) the statutory requirement that reserves funds for Indian Tribes, Alaska Native Regional Corporations, and Native Hawaiian entities; and (6)

other relevant considerations. The Commissioner may also elect not to fund any applicants having known management, fiscal, reporting, program, or other problems which make it unlikely that they would be able to provide effective services.

Successful applicants will be notified through the issuance of a Financial Assistance Award that sets forth the amount of funds granted, the terms and conditions of the grant award, the effective date of the award, and the budget period for which support is given, and the total project period for which support is provided. Organizations whose applications will not be funded will be notified in writing by the Commissioner, ACF. Every effort will be made to notify all unsuccessful applicants as soon as possible after final decisions are made.

Part VII. Application Content and Submission Instructions

A. Application Content

Each application must contain the following items in the order listed:

1. A signed cover letter. The application must include a cover letter that includes the announcement number, contact information for the applicant, and information about the entity that has designated the Local Council (local government, Indian Tribe, Regional Corporation, or Native Hawaiian entity). The letter must be signed by an individual authorized to act for the applicant agency and to assume responsibility for the obligations imposed by terms and conditions of the grant award.

2. Application for Federal Assistance (Standard Form 424, REV 4–92). Follow the instructions in the Application Kit. In Item 8 of Form 424, check ''New.'' In Item 10 of the 424, clearly identify the *Catalog of Federal Domestic Assistance* (CFDA) program title and number: Early Learning Opportunities Act, 93.577.

3. Budget and Budget Justification (Standard Form 424A, REV 4–92). Follow the instructions in the Application Kit. The budget justification should be typed on standard size plain white paper, provide breakdowns for major budget categories and justify significant costs. List amounts and sources of all funds, both Federal and non-Federal, to be used for this project.

4. Standard Form 424B, ''Assurances: Non-Construction Programs.'' A duly authorized representative of the applicant organization must certify that the applicant is in compliance with these assurances and certifications.

5. Assurances/Certifications. The applicant must certify its compliance with: (1) Drug-Free Workplace Requirements; (2) Debarment and Other Responsibilities; (3) Pro-Children Act of 1994 (Certification Regarding Environmental Tobacco Smoke). A signature on the SF 424 indicates compliance with the Drug Free Workplace Requirements, Debarment and Other Responsibilities and Environmental Tobacco Smoke Certifications. A signature on the application constitutes an assurance that the applicant will comply with the pertinent Departmental regulations contained in 45 CFR Part 74. In addition, applicants must provide a certification concerning Lobbying. Prior to receiving an award in excess of $100,000, applicants shall furnish an executed copy of the lobbying certification. Applicants must sign and return the certification with their applications.

6. Table of Contents.

7. Project Summary/Abstract (one page maximum). Clearly mark this page with the applicant name as shown on item 5 of the SF 424, identify the title of the proposed project as shown in item 11 and the service area as shown in item 12 of the SF 424. The summary description should not exceed 300 words. Care should be taken to produce a summary that accurately and concisely reflects the proposed project. It should describe the objectives of the project, the approach to be used and the results and benefits expected.

8. The Project Description. The applicant is strongly encouraged to use the evaluation criteria in Part V to organize its response to Part IV, the Uniform Project Description. Specific information should be provided that addresses all components of each criterion. It is in the applicant's best interest to ensure that the project description is easy to read, logically developed in accordance with the evaluation criteria, and adheres to page limitations. In addition, the applicant should be mindful of the importance of preparing and submitting applications using language, terms, concepts, and descriptions that are generally known to the field of early learning as defined under this announcement.

9. The pages of the project description must be numbered and are limited to 40 typed pages, double spaced, printed on only one side, with at least 1/2 inch margins. Pages over the limit will be removed from the application and will not be reviewed. In addition, please note that previous attempts by applicants to circumvent space limitations or to exceed page limits by using small print have resulted in negative responses from reviewers because of the difficulty in reviewing the application.

10. Documents of Support. The maximum number of pages for supporting documentation is 30 pages, double-spaced, exclusive of letters of support or agreement. These documents must be numbered and might include excerpts from the needs and resources assessment, resumes, photocopies of news clippings, evidence of the program's efforts to coordinate child care services at the local level, etc. Documentation over the 30-page limit will not be reviewed. The applicant may, however, include as many letters of support or agreement as are appropriate.

B. Application Submission

To be considered for funding, the applicant must submit one signed original and two additional copies of the application, including all attachments, to the application receipt point specified above. The original copy of the application must have original signatures, signed in *black* ink. Each copy must be stapled (back and front) in the upper left corner. All copies of an application must be submitted in a single package.

Because each application will be duplicated, do not use or include separate covers, binders, clips, tabs, plastic inserts, maps, brochures or any other items that cannot be processed easily on a photocopy machine with an automatic feed. Do not bind, clip, staple, or fasten in any way separate subsections of the application, including supporting documentation. Applicants are advised that the copies of the application submitted, not the original, will be reproduced by the Federal government for review.

Dated: April 24, 2001.

Gail E. Collins,

Acting Deputy Commissioner, Administration on Children, Youth and Families.

[FR Doc. 01–10640 Filed 4–27–01; 8:45 am]

BILLING CODE 4184–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 01N–0176]

Agency Information Collection Activities; Proposed Collection; Comment Request; Good Laboratory Practices (GLP) Regulations for Nonclinical Laboratory Studies

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing an opportunity for public comment on the proposed collection of certain information by the agency. Under the Paperwork Reduction Act of 1995 (the PRA), Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of an existing collection of information, and to allow 60 days for public comment in response to the notice. This notice solicits comments on the GLP for Nonclinical Laboratory Studies regulations.

DATES: Submit written or electronic comments on the collection of information by June 29, 2001.

ADDRESSES: Submit electronic comments on the collection of information via the Internet at http://www.accessdata.fda.gov/scripts/oc/dockets/comments/commentdocket.cfm. Submit written comments on the collection of information to the Dockets Management Branch (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. All comments should be identified with the docket number found in brackets in the heading of this document.

FOR FURTHER INFORMATION CONTACT: JonnaLynn P. Capezzuto, Office of Information Resources Management (HFA–250), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–4659.

SUPPLEMENTARY INFORMATION: Under the PRA (44 U.S.C. 3501–3520), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. ''Collection of information'' is defined in 44 U.S.C. 3502(3) and 5 CFR 1320.3(c) and includes agency requests or requirements that members of the public submit reports, keep records, or provide information to a third party. Section 3506(c)(2)(A) of the PRA (44 U.S.C. 3506(c)(2)(A)) requires Federal agencies to provide a 60-day notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of an existing collection of information, before submitting the collection to OMB for approval. To comply with this requirement, FDA is publishing notice of the proposed collection of information set forth in this document.

With respect to the following collection of information, FDA invites comments on: (1) Whether the proposed collection of information is necessary for the proper performance of FDA's functions, including whether the information will have practical utility; (2) the accuracy of FDA's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques, when appropriate, and other forms of information technology.

Good Laboratory Practices (GLP) Regulations for Nonclinical Laboratory Studies—(21 CFR Part 58)—(OMB Control Number 0910–0119)—Extension

Sections 409, 505, 512, and 515 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 348, 355, 360b, and 360e) and related statutes require manufacturers of food additives, human drugs and biological products, animal drugs, and medical devices to demonstrate the safety and utility of their product by submitting applications to FDA for research or marketing permits. Such applications contain, among other important items, full reports of all studies done to demonstrate product safety in man and/or other animals. In order to ensure adequate quality control for these studies and to provide an adequate degree of consumer protection, the agency issued the GLP regulations. The regulations specify minimum standards for the proper conduct of safety testing and contain sections on facilities, personnel, equipment, standard operating procedures (SOPs), test and control articles, quality assurance, protocol and conduct of a safety study, records and reports, and laboratory disqualification.

The GLP regulations contain requirements for the reporting of the results of quality assurance unit inspections, test and control article characterization, testing of mixtures of test and control articles with carriers, and an overall interpretation of nonclinical laboratory studies. The GLP regulations also contain recordkeeping requirements relating to the conduct of safety studies. Such records include: (1) Personnel job descriptions and summaries of training and experience; (2) master schedules, protocols and amendments thereto, inspection reports, and SOPs; (3) equipment inspection, maintenance, calibration, and testing records; (4) documentation of feed and water analyses and animal treatments; (5) test article accountability records; and (6) study documentation and raw data.

The information collected under GLP regulations is generally gathered by testing facilities routinely engaged in conducting toxicological studies and is used as part of an application for a research or marketing permit that is voluntarily submitted to FDA by persons desiring to market new products. The facilities that collect this information are typically operated by large entities, e.g., contract laboratories, sponsors of FDA-regulated products, universities, or government agencies. Failure to include the information in a filing to FDA would mean that agency scientific experts could not make a valid determination of product safety. FDA receives, reviews and approves hundreds of new product applications each year based on information received. The recordkeeping requirements are necessary to document the proper conduct of a safety study, to assure the quality and integrity of the resulting final report, and to provide adequate proof of the safety of regulated products. FDA conducts onsite audits of records and reports, during its inspections of testing laboratories, to verify reliability of results submitted in applications.

FDA estimates the burden of this collection of information as follows:

TABLE 1.—ESTIMATED ANNUAL REPORTING BURDEN[1]

21 CFR Section	No. of Respondents	Annual Frequency per Response	Total Annual Responses	Hours per Response	Total Hours
58.35(b)(7)	300	60.25	18,075	1	18,075
58.185	300	60.25	18,075	27.65	499,774
Total					517,849

[1] There are no capital costs or operating and maintenance costs associated with this collection of information.

TABLE 2.—ESTIMATED ANNUAL RECORDKEEPING BURDEN[1]

21 CFR Section	No. of Recordkeepers	Annual Frequency per Recordkeeping	Total Annual Records	Hours per Recordkeeper	Total Hours
58.29(b)	300	20	6,000	.21	1,260
58.35(b)(1) through (b)(6) and (c)	300	270.56	81,228	3.36	279,926
58.63(b) and (c)	300	60	18,000	.09	1,620
58.81(a) through (c)	300	301.8	90,540	.14	12,676
58.90(c) and (g)	300	62.7	18,810	.13	2,445
58.105(a) and (b)	300	5	1,500	11.8	17,700
58.107(d)	300	1	300	4.25	1,275
58.113(a)	300	15.33	4,599	6.8	31,273
58.120	300	15.38	4,614	32.7	150,878
58.195	300	251.5	75,450	3.9	294,255
Total					793,308

[1] There are no capital costs or operating and maintenance costs associated with this collection of information.

Dated: April 24, 2001.

William K. Hubbard,

Senior Associate Commissioner for Policy, Planning, and Legislation.

[FR Doc. 01–10623 Filed 4–27–01; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 01N–0178]

Agency Information Collection Activities; Proposed Collection; Comment Request; Premarket Notification 510(k) Submissions

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing an opportunity for public comment on the proposed collection of certain information by the agency. Under the Paperwork Reduction Act of 1995 (the PRA), Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of an existing collection of information, and to allow 60 days for public comment in response to the notice. This notice solicits comments on information collection requirements for premarket notification 510(k) submissions.

DATES: Submit written or electronic comments on the collection of information by June 29, 2001.

ADDRESSES: Submit electronic comments on the collection of information to http://www.accessdata.fda.gov/scripts/oc/dockets/edockethome.cfm. Submit written comments on the collection of information to the Dockets Management Branch (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. All comments should be identified with the docket number found in brackets in the heading of this document.

FOR FURTHER INFORMATION CONTACT: Peggy Schlosburg, Office of Information Resources Management (HFA–250), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–1223.

SUPPLEMENTARY INFORMATION: Under the PRA (44 U.S.C. 3501–3520), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. ''Collection of information'' is defined in 44 U.S.C. 3502(3) and 5 CFR 1320.3(c) and includes agency requests or requirements that members of the public submit reports, keep records, or provide information to a third party. Section 3506(c)(2)(A) of the PRA (44 U.S.C. 3506(c)(2)(A)) requires Federal agencies to provide a 60-day notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of an existing collection of information, before submitting the collection to OMB for approval. To comply with this requirement, FDA is publishing notice of the proposed collection of information set forth in this document.

With respect to the following collection of information, FDA invites comments on: (1) Whether the proposed collection of information is necessary for the proper performance of FDA's functions, including whether the information will have practical utility; (2) the accuracy of FDA's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques, when appropriate, and other forms of information technology.

Premarket Notification 510(k) Submissions (21 CFR Part 807) (OMB Control No. 0910–0120)—Extension

Section 510(k) of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 360(k)) requires a person who intends to market a medical device to submit a premarket notification submission to FDA at least 90 days before proposing to begin the introduction, or delivery for introduction into interstate commerce, for commercial distribution of a device intended for human use. The definition of ''person'' has been expanded to include hospitals who reuse or remanufacture single-use medical devices. The estimated submissions below include those submitted by hospitals remanufacturing single-use medical devices.

Section 510(k) of the act allows for exemptions to the 510(k) submissions (i.e., a premarket notification submission would not be required if FDA determines that premarket notification is not necessary for the protection of the public health, and they are specifically exempted through the regulatory process). Under 21 CFR 807.85, ''Exemption from premarket notification,'' a device is exempt from premarket notification if the device intended for introduction into commercial distribution is not generally available in finished form for purchase and is not offered through labeling and advertising by the manufacturer, importer, or distributor for commercial distribution. In addition, the device must meet one of the following

conditions: (1) It is intended for use by a patient or dentist (or other specially qualified persons), or (2) it is intended solely for use by a physician or dentist and is not generally available to other physicians or dentists.

A commercial distributor who places a device into commercial distribution for the first time under their own name and a repackager who places their own name on a device, and does not change any other labeling or otherwise affect the device, shall be exempted from premarket notification if the device was legally in commercial distribution before May 28, 1976, or a premarket notification was submitted by another person.

The information collected in a premarket notification is used by the medical, scientific, and engineering staffs of FDA in making determinations as to whether or not devices can be allowed to enter the U.S. market. The premarket notification review process allows for scientific and/or medical review of devices, subject to section 510(k) of the act, to confirm that the new devices are as safe and as effective as legally marketed predicate devices. This review process, therefore, prevents potentially unsafe and/or ineffective devices, including those with fraudulent claims, from entering the U.S. market. This information will allow FDA to collect data to ensure that the use of the device will not present an unreasonable risk for the subject's rights. The respondents to this information collection will primarily be medical device manufacturers and businesses.

FDA Form 3514 was developed to assist respondents in organizing 510(k) data for submission to FDA. This form also assists respondents in organizing and submitting data for other FDA medical device programs such as premarket approval applications, investigational device exemptions, and humanitarian device exemptions.

FDA estimates the burden of this collection of information as follows:

TABLE 1.—ESTIMATED ANNUAL REPORTING BURDEN[1]

21 CFR Section	Form No.	No. of Respondents	Annual Frequency per Response	Total Annual Responses	Hours per Response	Total Hours
807.81 and 807.87 (part 807, subpart E)		4,000	1	4,000	80	320,000
	FDA 3514	2,000	1	2,000	.5	1,000
Total						321,000

[1] There are no capital costs or operating and maintenance costs associated with this collection of information.

TABLE 2.—ESTIMATED ANNUAL RECORDKEEPING BURDEN[1]

21 CFR Section	No. of Recordkeepers	Annual Frequency per Recordkeeping	Total Annual Records	Hours per Recordkeeper	Total Hours
807.93	2,000	10	20,000	0.5	10,000
Total					10,000

[1] There are no capital costs or operating and maintenance costs associated with this collection of information.

FDA has based these estimates on conversations with industry and trade association representatives, and from internal review of the documents listed in tables 1 and 2 of this document. The total burden for using voluntary FDA Form 3514 is estimated to be approximately 1,000 hours and has been included in this information collection. Once this information collection has been approved, the burden for FDA Form 3514 will be reported and approved in each of the following OMB information collections: 0910–0078, Investigational Device Exemption Reports and Records; 0910–0231, Premarket Approval of Medical Devices; and 0910–0332, Medical Devices, Humanitarian Devices.

Dated: April 24, 2001.

William K. Hubbard,

Senior Associate Commissioner for Policy, Planning, and Legislation.

[FR Doc. 01–10624 Filed 4–27–01; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 01N–0175]

Agency Information Collection Activities; Proposed Collection; Comment Request; Survey of Single-Use Medical Device Reuse and Reprocessing in Hospitals

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing an opportunity for public comment on the proposed collection of certain information by the agency. Under the Paperwork Reduction Act of 1995 (the PRA), Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, and to allow 60 days for public comment in response to the notice. This notice solicits comments on the proposed voluntary survey of hospitals to collect information on the extent and nature of current practice of reprocessing of single-use medical devices by these institutions.

DATES: Submit written or electronic comments on the collection of information by June 29, 2001.

ADDRESSES: Submit electronic comments on the collection of information to http://www.accessdata.fda.gov/scripts/oc/dockets/edockethome.cfm. Submit written comments on the collection of information to the Dockets Management

Branch (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. All comments should be identified with the docket number found in brackets in the heading of this document.

FOR FURTHER INFORMATION CONTACT: Peggy Schlosburg, Office of Information Resources Management (HFA–250), Food and Drug Administration, 5600 Fishers Lane, rm. 16B–26, Rockville, MD 20857, 301–827–1223.

SUPPLEMENTARY INFORMATION: Under the PRA (44 U.S.C. 3501–3520), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. ''Collection of information'' is defined in 44 U.S.C. 3502(3) and 5 CFR 1320.3(c) and includes agency requests or requirements that members of the public submit reports, keep records, or provide information to a third party. Section 3506(c)(2)(A) of the PRA (44 U.S.C. 3506(c)(2)(A)) requires Federal agencies to provide a 60-day notice in the **Federal Register** concerning each proposed collection of information, before submitting the collection to OMB for approval. To comply with this requirement, FDA is publishing notice of the proposed collection of information set forth in this document.

With respect to the following collection of information, FDA invites comments on: (1) Whether the proposed collection of information is necessary for the proper performance of FDA's functions, including whether the information will have practical utility; (2) the accuracy of FDA's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques when appropriate, and other forms of information technology.

Survey of Single-Use Medical Device Reuse and Reprocessing in Hospitals

Section 1701(a)(4) of the Public Health Service Act (42 U.S.C. 300u(a)(4)) authorizes FDA to conduct research relating to health information. The ''Survey of Single-Use Medical Device Reuse and Reprocessing in Hospitals'' will provide information on the frequency, nature, and scope of reuse and reprocessing of single-use medical devices by U.S. hospitals. The survey will provide statistically reliable estimates of the number of U.S. hospitals that are currently reusing and internally reprocessing single-use medical devices, whether they have registered with FDA, whether they are aware of the FDA educational materials on the reuse of single-use medical devices, and, if they are not currently internally reprocessing single-use devices, whether they have reused and reprocessed single-use medical devices in the past 3 years.

FDA will use these results to estimate the number of U.S. hospitals that reused and reprocessed single-use medical devices in the past, and those that currently reuse and internally reprocess single-use medical devices. This information will help FDA design its inspection plan, modify its education program, and evaluate the economic impact of current and future policies regarding single-use medical devices. The respondents to this collection of information will be U.S. hospitals.

FDA estimates the burden of this collection of information as follows:

TABLE 1.—ESTIMATED ANNUAL REPORTING BURDEN FOR TELEPHONE SURVEY[1]

No. of Respondents	Annual Frequency per Response	Total Annual Responses	Hours per Response	Total Hours
4,480	1	4,480	0.125	560

[1] There are no capital costs or operating and maintenance costs associated with this collection of information.

This is a one-time survey. The burden estimate for the telephone survey is based on a pretest of a preliminary survey instrument administered to nine hospitals.

Dated: April 24, 2001.

William K. Hubbard,

Senior Associate Commissioner for Policy, Planning, and Legislation.

[FR Doc. 01–10626 Filed 4–27–01; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 01N–0170]

Abbott Laboratories' Sarafloxacin for Poultry; Withdrawal of Approval of NADAs

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is withdrawing approval of two new animal drug applications (NADAs) sponsored by Abbott Laboratories. The NADAs provide for use of sarafloxacin to treat poultry. In a final rule published elsewhere in this issue of the **Federal Register**, FDA is amending the animal drug regulations by removing the portions reflecting approval of these NADAs.

DATES: Withdrawal of approval is effective April 30, 2001.

FOR FURTHER INFORMATION CONTACT: Mohammad I. Sharar, Center for Veterinary Medicine (HFV–216), Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855, 301–827–0159.

SUPPLEMENTARY INFORMATION: Abbott Laboratories, North Chicago, IL 60064, is sponsor of the following NADAs: (1) NADA 141–017 SaraFlox® (sarafloxacin hydrochloride) WSP, a water-soluble powder used in the drinking water of broiler chickens and growing turkeys for control of mortality associated with *Escherichia coli* in (21 CFR 520.2095); and (2) NADA 141–018 SaraFlox® (sarafloxacin hydrochloride) Injection, an injectable solution used in 18-day embryonated broiler eggs and day-old broiler chickens for control of early chick mortality associated with *E. coli* (21 CFR 522.2095).

The sponsor was informed by FDA that, on the basis of new data and information before it, there is a question of human food safety, due to the use of fluoroquinolones such as sarafloxacin in poultry. After being informed by FDA of this question, Abbott Laboratories requested voluntary withdrawal of approval of NADAs 141–017 and 141–018. By doing so, the firm waived its opportunity for hearing.

Therefore, under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.10), redelegated to the Center for Veterinary Medicine (21 CFR 5.84),

and in accordance with § 514.115 *Withdrawal of approval of applications* (21 CFR 514.115), notice is given that approval of NADAs 141–017 and 141–018, and all supplements and amendments thereto is hereby withdrawn effective April 30, 2001. Any new animal drug product that is not the subject of an approved application is subject to regulatory action at any time.

In a final rule published elsewhere in this issue of the **Federal Register**, FDA is amending the animal drug regulations to reflect the withdrawal of approval of these NADAs.

Dated: April 17, 2001.

Stephen F. Sundlof,

Director, Center for Veterinary Medicine.

[FR Doc. 01–10067 Filed 4–27–01; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 00P–0788]

Neurological Devices; Reclassification of the Totally Implanted Spinal Cord Stimulator; Denial of Petition

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that it has denied a petition submitted by Advanced Neuromodulation Systems, Inc. (ANS), to reclassify the totally implanted spinal cord stimulator (SCS) for treatment of chronic intractable pain of the trunk or limbs from class III into class II. FDA had previously made available for public comment the recommendation of the Neurological Devices Panel (the Panel) on the reclassification petition and FDA's tentative findings on the Panel's recommendation. After considering all the available information, including the public comments on the Panel's recommendation, FDA denied the reclassification petition by order in a letter to the petitioner.

ADDRESSES: A copy of the denial order is available at the Dockets Management Branch (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852.

FOR FURTHER INFORMATION CONTACT: Mark N. Melkerson, Center for Devices and Radiological Health (HFZ–410), Food and Drug Administration, 9200 Corporate Blvd., Rockville, MD 20850, 301–594–1184.

SUPPLEMENTARY INFORMATION:

I. Background

The Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 301 *et. seq.*), as amended by the Medical Device Amendments of 1976 (the 1976 amendments) (Public Law 94–295), the Safe Medical Devices Act of 1990 (Public Law 101–629), and the Food and Drug Administration Modernization Act of 1997 (Public Law 105–115), established a comprehensive system for the regulation of medical devices intended for human use. Section 513 of the act (21 U.S.C. 360c) established three categories (classes) of devices, depending on the regulatory controls needed to provide reasonable assurance of their safety and effectiveness. The three categories of devices are class I (general controls), class II (special controls), and class III (premarket approval).

Under section 513 of the act, devices that were in commercial distribution before May 28, 1976 (the 1976 amendments enactment date), generally referred to as preamendments devices, are classified after FDA has: (1) Received a recommendation from a device panel (an FDA advisory committee); (2) published the panel's recommendation for comment, along with a proposed regulation classifying the device; and (3) published a final regulation classifying the device. FDA has classified most preamendments devices under these procedures.

Devices that were not in commercial distribution prior to May 28, 1976, generally referred to as postamendments devices, are classified automatically by statute (section 513(f) of the act) into class III without any FDA rulemaking process. A postamendment device remains in class III and requires premarket approval, unless and until the device is reclassified into class I or II or FDA issues an order finding the device substantially equivalent, under section 513(i) of the act, to a predicate device that does not require premarket approval. The agency determines whether new devices are substantially equivalent to previously offered devices by means of premarket notification procedures in section 510(k) of the act (21 U.S.C. 360(k)) and 21 CFR part 807 of the regulations.

Reclassification of classified postamendments devices is governed by section 513(f)(3) of the act. This section allows FDA to initiate reclassification of a postamendments class III device under section 513(f)(1) of the act, or a manufacturer or importer of a device may petition the Secretary of Health and Human Services (the Secretary) for the issuance of an order reclassifying the device in class I or class II.

FDA's regulations in 21 CFR 860.134 set forth the procedures for the filing and review of a petition for reclassification of such postamendment class III devices. To change the classification of the device, it is necessary that the proposed new class have sufficient regulatory controls to provide reasonable assurance of the safety and effectiveness of the device for its intended use.

Under section 513(f)(3)(B)(i) of the act, the Secretary may, for good cause shown, refer a reclassification petition to a device panel for a recommendation on the subject device's classification. The panel shall make a recommendation to the Secretary respecting approval or denial of the petition. Any such recommendation shall contain: (1) A summary of the reasons for the recommendation, (2) a summary of the data upon which the recommendation is based, and (3) an identification of the risks to health (if any) presented by the device with respect to which the petition was filed.

II. Regulatory History of the Device

The totally implanted SCS intended for treatment of chronic intractable pain of the trunk or limbs is a postamendments device classified into class III under section 513(f)(2) of the act. Therefore, the device cannot be placed in commercial distribution for treatment of chronic intractable pain of the trunk or limbs unless it is reclassified under section 513(f)(2) of the act, or subject to an approved PMA under section 515 of the act.

On June 16, 1999, ANS submitted a petition to FDA that requested reclassification of the totally implanted SCS intended for treatment of chronic intractable pain of the trunk or limbs from class III into class II. Consistent with the act and the regulation, FDA referred the petition to the Panel for its recommendation on the requested reclassification.

III. Device Description

The following device description is based on the Panel's recommendations and the agency's review: The totally implanted spinal control stimulator consists of an implanted pulse generator (IPG), leads, and electrodes. The IPG contains the internal power source that is implanted in the patient. The electrodes are placed on the patient's spinal cord and the leads from the electrodes are connected subcutaneously to the IPG.

IV. Recommendation of the Panel

At a public meeting held on September 16 and 17, 1999, the Panel recommended that the totally implanted SCS intended for aid in the treatment of chronic intractable pain of the trunk or limbs be reclassified from class III into class II. In the **Federal Register** of September 6, 2000 (65 FR 54053), FDA published for public comment a notice of the Panel's recommendation and FDA's tentative findings on the Panel recommendation. FDA invited interested persons to comment by October 6, 2000. In response to a request, FDA later extended the comment period to November 4, 2000.

V. FDA's Decision

FDA received 22 comments in response to the September 6, 2000, notice of panel recommendation. The comments are discussed in detail in the order denying the reclassification petition and in an attachment to that order. Although FDA's earlier tentative findings supported reclassification, the agency has now concluded that class II controls are not adequate to address the risks associated with the device. The most serious risk to health presented by the device is the risk of device failure. Device failure is frequently the result of improper device design. Device failure always requires reoperation with all of the attendant risks of secondary surgery. Many of the comments suggested that general controls and special controls could not adequately control the risk of device failure.

After carefully reviewing the information in the petition, the information presented at the Panel meeting, the Panel's deliberations, the published literature, the Medical Device Reports, and the comments on the notice of panel recommendation, FDA has completed its evaluation of the risks to health associated with the use of the totally implanted SCS intended for treatment of chronic intractable pain of the trunk or limbs.

FDA determined that the petitioner had not demonstrated that special controls would provide reasonable assurance of the safety and effectiveness of the device. Specifically, FDA determined that special controls, such as bench and animal testing, cannot substitute for actual clinical trials designed to demonstrate the safety and effectiveness of these devices. FDA also determined that the risks to health associated with the manufacturing process could only be addressed through the degree of regulatory oversight applied to class III devices. Therefore, on February 23, 2001, FDA issued an order to the petitioner denying the petition for reclassification.

FDA has placed a copy of the order denying the petition on display at the Dockets Management Branch (address above) in the above referenced docket. A copy of the order may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

Dated: April 18, 2001.

Linda S. Kahan,

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

[FR Doc. 01–10619 Filed 4–27–01; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

Technical Electronic Product Radiation Safety Standards Committee; Notice of Meeting

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

This notice announces a forthcoming meeting of a public advisory committee of the Food and Drug Administration (FDA). The meeting will be open to the public.

Name of Committee: Technical Electronic Product Radiation Safety Standards Committee.

General Function of the Committee: To provide advice on technical feasibility, reasonableness, and practicality of performance standards for electronic products to control the emission of radiation under 21 U.S.C. 360kk(f).

Date and Time: The meeting will be held on May 17, 2001, 8:30 a.m. to 5 p.m..

Location: Corporate Bldg., conference room 020B, 9200 Corporate Blvd., Rockville, MD.

Contact Person: Orhan H. Suleiman, Center for Devices and Radiological Health (HFZ–240), Food and Drug Administration, 1350 Piccard Dr., Rockville, MD 20850, 301–594–3332, or FDA Advisory Committee Information Line, 1–800–741–8138 (301–443–0572 in the Washington, DC area), code 12399. Please call the Information Line for up-to-date information on this meeting.

Agenda: The committee will hear an informal review of ongoing activities associated with electronic products. Following the overview, FDA will specifically discuss its concern about radiation doses associated with x-ray computed tomography, digital x-ray imaging systems, and its current thinking about amending the U.S. performance standard for these systems. In the afternoon, FDA will briefly review the history and current program for products for which performance standards exist. This review will include discussion of microwave ovens, television receivers, and laser products. Following this review, FDA will discuss current research and public health concerns associated with cellular telephones.

Procedure: Interested persons may present data, information, or views, orally or in writing, on issues pending before the committee. Written submissions may be made to the contact person by May 10, 2001. On May 17, 2001, oral presentations from the public will be scheduled between approximately 10:30 a.m. and 11 a.m., and between 2 p.m. and 2:30 p.m. Time allotted for each presentation may be limited. Those desiring to make formal oral presentations should notify the contact person before May 10, 2001, and submit a brief statement of the general nature of the evidence or arguments they wish to present, the names and addresses of proposed participants, and an indication of the approximate time requested to make their presentation.

Notice of this meeting is given under the Federal Advisory Committee Act (5 U.S.C. app. 2).

Dated: April 23, 2001.

Linda A. Suydam,

Senior Associate Commissioner.

[FR Doc. 01–10625 Filed 4–27–01; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Care Financing Administration

[HCFA–3067–N]

Medicare Program; Request for Nominations for Members for the Medicare Coverage Advisory Committee (MCAC)

AGENCY: Health Care Financing Administration (HCFA), HHS.

ACTION: Notice.

SUMMARY: This notice requests nominations for consideration for members of the Medicare Coverage Advisory Committee.

DATES: Nominations will be considered if we receive them at the designated address, as provided below, no later than 5 p.m. on May 30, 2001.

ADDRESSES: You may mail or deliver nominations for membership to the following address: Health Care Financing Administration, Attention: Constance Conrad, 7500 Security Blvd., Mail Stop: South Building 3–02–01, Baltimore, MD 21244.

A request for a copy of the Secretary's Charter for the Medicare Coverage Advisory Committee (MCAC) should be submitted to Maria Ellis, Office of Clinical Standards and Quality, Health Care Financing Administration, 7500 Security Blvd., Mail Stop: South Building 3–02–01, Baltimore, MD 21244, or by e-mail to mellis@hcfa.gov. The charter is also posted on the web at www.hcfa.gov/coverage, and can be readily printed from that site.

FOR FURTHER INFORMATION CONTACT: Constance A. Conrad, Health Care Financing Administration, 7500 Security Blvd., Baltimore, MD 21244, 410–786–4631.

SUPPLEMENTARY INFORMATION:

Background

The Medicare Coverage Advisory Committee (MCAC) is governed by provisions of the Federal Advisory Committee Act, Public Law 92–463, as amended (5 USC Appendix 2), which sets forth standards for the formulation and use of advisory committees, and authorized by section 222 of the Public Health Service Act as amended (42 U.S.C. 217A).

The MCAC consists of no more than 120 appointed members from among authorities in clinical and administrative medicine, biologic and physical sciences, public health administration, health care data and information management and analysis, the economics of health care, medical ethics, and other related professions. A maximum of 9 members are standard voting members, and 24 are nonvoting members, 12 of which are representatives of consumer interests, and 12 of which are representatives of industry interests.

The MCAC functions on a panel basis. The panels review and evaluate medical literature, review technical assessments, and examine data and information on the effectiveness and appropriateness of medical items and services that are covered or eligible for coverage under Medicare. Panel meetings generally follow an agenda that we provide that lists specific issues. The panels develop technical advice to aid us in determining reasonable and necessary applications of medical services and technology when we make national coverage decisions for Medicare.

A few vacancies exist on the current MCAC panel rosters, and terms for some members currently serving will expire before January 1, 2002. Accordingly, we are requesting nominations for both voting and nonvoting members to serve on the MCAC. Nominees are selected based upon their individual qualifications and not as representatives of professional associations or societies. We have a special interest in ensuring that women, minority groups, and physically challenged individuals are adequately represented on the MCAC. Therefore, we encourage nominations of qualified candidates from these groups.

All nominations and curricula vitae for the MCAC should be sent to Constance Conrad at the address above.

Criteria for Members

Nominees should have expertise in one or more of the following fields: clinical and administrative medicine, biologic and physical sciences, public health administration, health care data and information management and analysis, the economics of health care, medical ethics, and other related professions.

We are also seeking nominations for nonvoting consumer and industry representatives. Nominees for these positions must possess appropriate qualifications to understand and contribute to the MCAC's work.

Nominations must state that the nominee is willing to serve as a member of the MCAC and appears to have no conflict of interest that would preclude membership. Potential candidates will be asked to provide detailed information concerning such matters as financial holdings, consultancies, and research grants or contracts in order to permit evaluation of possible sources of conflict of interest.

Members are invited to serve for overlapping 4-year terms; terms of more than 2 years are contingent upon the renewal of the MCAC by appropriate action before its termination on November 23, 2002. A member may serve after the expiration of the member's term until a successor has taken office.

Any interested person may nominate one or more qualified persons. Self-nominations are also accepted.

Authority: 5 U.S.C. App. 2, section 10(a)(1) and (a)(2).

(Catalog of Federal Domestic Assistance Program No. 93.774, Medicare—Supplementary Medical Insurance Program)

Dated: April 6, 2001.

Jeffrey L. Kang,

Director, Office of Clinical Standards and Quality, Health Care Financing Administration.

[FR Doc. 01–10639 Filed 4–27–01; 8:45 am]

BILLING CODE 4120–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Care Financing Administration

[HCFA–3066–N]

Medicare Program; Meeting of the Diagnostic Imaging Panel of the Medicare Coverage Advisory Committee—June 19, 2001

AGENCY: Health Care Financing Administration (HCFA), HHS.

ACTION: Notice of meeting.

SUMMARY: This notice announces a public meeting of the Diagnostic Imaging Panel (the Panel) of the Medicare Coverage Advisory Committee. The Panel provides advice and recommendations to the agency about clinical issues. The Panel will hear and discuss presentations from interested persons regarding FDG Positron Emission Tomography imaging for breast cancer diagnosis and staging.

Notice of this meeting is given under the Federal Advisory Committee Act (5 U.S.C. App. 2, section 10(a)(1) and (a)(2)).

DATES: *The Meeting:* The meeting will be held on June 19, 2001 from 8 a.m. until 4:30 p.m., E.D.T.

Deadline for Presentations and Comments: June 5, 2001, 5 p.m., E.D.T.

Special Accommodations: Persons attending the meeting who are hearing or visually impaired, or have a condition that requires special assistance or accommodations, are asked to notify the Executive Secretary by May 26, 2001.

ADDRESSES: *The Meeting:* The meeting will be held at the Baltimore Convention Center, Room 321 and 322, One West Pratt Street, Baltimore, MD 21201.

Presentations and Comments: Submit formal presentations and written comments to Janet A. Anderson, Executive Secretary; Office of Clinical Standards and Quality; Health Care Financing Administration; 7500 Security Boulevard; Mail Stop S3–02–01; Baltimore, MD 21244.

Website: You may access up-to-date information on this meeting at *www.hcfa.gov/coverage.*

Hotline: You may access up-to-date information on this meeting on the HCFA Advisory Committee Information Hotline, 1–877–449–5659 (toll free) or in the Baltimore area (410) 786–9379.

FOR FURTHER INFORMATION CONTACT: Janet A. Anderson, Executive Secretary, 410–786–2700.

SUPPLEMENTARY INFORMATION: On August 13, 1999, we published a notice (64 FR

44231) to describe the Medicare Coverage Advisory Committee (MCAC), which provides advice and recommendations to us about clinical issues. This notice announces the following public meeting of the Diagnostic Imaging Panel (the Panel) of MCAC.

Current Panel Members

Frank Papatheofanis, MD, PhD; Barbara McNeil, MD, PhD; Carole Flamm, MD, MPH; Jeffrey Lerner, PhD; Michael Manyak, MD; Donna Novak, BA; Manuel Cerqueira, MD; Kim Burchiel, MD; Steven Guyton, MD; Sally Hart, JD; Michael Klein, MBA

Meeting Topic

The Panel will hear and discuss presentations from interested persons regarding FDG Positron Emission Tomography imaging for breast cancer diagnosis and staging.

Procedure and Agenda

This meeting is open to the public. The Panel will hear oral presentations from the public for approximately 1.5 hours. The Panel may limit the number and duration of oral presentations to the time available. If you wish to make formal presentations, you must notify the respective Executive Secretary listed in the **FOR FURTHER INFORMATION CONTACT** section of this notice, and submit the following by the Deadline for Presentations and Comments date listed in the **DATES** section of this notice: A brief statement of the general nature of the evidence or arguments you wish to present, and the names and addresses of proposed participants. A written copy of your presentation must be provided to each panel member prior to offering your public comments. We will request that you declare at the meeting whether or not you have any financial involvement with manufacturers of any items or services being discussed (or with their competitors).

After the public and HCFA presentations, the Panel will deliberate openly on the topic. Interested persons may observe the deliberations, but the Panel will not hear further comments during this time except at the request of the chairperson. The Panel will also allow approximately a 30-minute open public session for any attendee to address issues specific to the topic. At the conclusion of the day, the members will vote and the Panel will make its recommendation.

Authority: 5 U.S.C. App. 2, section 10(a)(1) and (a)(2).

(Catalog of Federal Domestic Assistance Program No. 93.774, Medicare—Supplementary Medical Insurance Program)

Dated: April 6, 2001.

Jeffrey L. Kang,

Director, Office of Clinical Standards and Quality, Health Care Financing Administration.

[FR Doc. 01–10638 Filed 4–27–01; 8:45 am]

BILLING CODE 4120–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Proposed Collection; Comment Request; Extended Lung Cancer Incidence Follow-Up for the Mayo Lung Project Participants

SUMMARY: In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, for opportunity for public comment on proposed data collection projects, the National Center Institute (NCI), the National Institutes of Health (NIH) will publish periodic summaries of proposed projects to be submitted to the Office of Management and Budget (OMB) for review and approval.

Proposed Collection

Title: Extended Lung Cancer Incidence Follow-Up for the Mayo Lung Project Participants. Type of Information Collection Request: NEW. Need and Use of Information Collection: The Mayo Lung Project (MLP) was an NCI-funded randomized collection trial (RCT) of lung cancer screening conducted among 9,211 male smokers from 1971 to 1983. No reduction in lung cancer mortality was observed in the MLP with an intense regimen of x-ray and sputum cytology screening. Recent analysis of updated mortality and case survival data (through 1996) suggests that lesions with little-to-no clinical relevance (over-diagnosis) may have been detected through screening in the MLP intervention arm. Over-diagnosis leads to unnecessary medical interventions, including diagnostic and treatment procedures that carry with them varying degrees of risk. Consequently, over-diagnosis can result in considerable harm, including premature death, which would not have occurred in the absence of screening. The persistence, after screening ends, of an excess of lung cancer cases in the intervention arm is the strongest evidence in support of over-diagnosis, but this information cannot be adequately obtained with available MLP data. Therefore, we propose to re-contact the MLP participants and/or their next-of-kin to determine the participants who were diagnosed with lung cancer after the formal end of the Project. These data will allow the NCI to either more-convincingly state or perhaps refute the possibility of over-diagnosis in lung cancer screening, and may be used to guide future research agendas and lung cancer screening policies. Frequency of response: Once. Affected public: Individuals. Type of respondents: MLP participants or their next-of-kin. The annual reporting burden is as follows: Maximum number of respondents: 9200; Estimated number of Responses per Respondent: 1. Average Burden Hours Per Response: 0.25; Estimated Maximum Total Annual Burden Hours Requested: 2300. The annualized cost to respondents is estimated at zero. There are no Capital Costs to report. There are no Operating or Maintenance Costs; to report.

Request for Comments

Written comments and/or suggestions from the public and affected agencies should address one or more of the following points: (1) Evaluate whether the proposed collection of information is necessary for the proper performance of the function of the agency, including whether the information will have practical utility; (2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) Enhance the quality, utility, and clarity of the information to be collected; and (4) Minimize the burden of the collection of information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

FOR FURTHER INFORMATION CONTACT: To request more information on the proposed project or to obtain a copy of the data collection plans and instruments, contact: Dr. Pamela Marcus, Epidemiologist, Biometry Research Group, Division of Cancer Prevention, National Cancer Institute, Suite 344 EPN, 6130 Executive Blvd, Bethesda, MD 20892–7354; or call non-tool free 301–496–7468; or email *pm145q@nih.gov.*

Comments due date: Comments regarding this information collection are best assured of having their full effect if received on or before June 29, 2001.

Dated: April 20, 2001.

Reesa L. Nichols,

NCI Project Clearance Liaison.

[FR Doc. 01–10582 Filed 4–27–01; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Government-Owned Inventions; Availability for Licensing

AGENCY: National Institutes of Health, Public Health Service, DHHS.

ACTION: Notice.

SUMMARY: The inventions listed below are owned by agencies of the U.S. Government and are available for licensing in the U.S. in accordance with 35 U.S.C. 207 to achieve expeditious commercialization of results of federally-funded research and development. Foreign patent applications are filed on selected inventions to extend market coverage for companies and may also be available for licensing.

ADDRESSES: Licensing information and copies of the U.S. patent applications listed below may be obtained by writing to the indicated licensing contact at the Office of Technology Transfer, National Institutes of Health, 6011 Executive Boulevard, Suite 325, Rockville, Maryland 20852–3804; telephone: 301/496–7057; fax: 301/402–0220. A signed Confidential Disclosure Agreement will be required to receive copies of the patent applications.

Enhanced Homologous Recombination Mediated by Lambda Recombination Proteins

Drs. E. Lee, N. Copeland, N. Jenkins, and D. Court (NCI)
DHHS Reference No. E–077–01/0 filed Feb 26, 2001
Licensing Contact: John Rambosek; 301/496–7056 ext. 270; e-mail: rambosej@od.nih.gov

The present invention concerns a method to enhance homologous recombination in bacteria using the Red recombination system derived from a defective lambda prophage. This lambda system, like the RecET system, uses homologous recombination proteins to protect and recombine the electroporated linear DNA. However, the lambda system is at least 50 to 100 times more efficient than the RecET system. The high recombination efficiency offered by this system makes it possible to manipulate DNA without drug selection. Point mutations, deletions, or insertions can be engineered into any gene on plasmids or bacterial artificial chromosomes (BACs) for gene functional analysis. This recombination system also can be used to subclone DNA fragments as large as 80 kb from BACs by gap repair. Targeting vectors for embryonic stem cells or transgenic constructs by BAC engineering can now be subcloned with ease, and virtually any region of the engineered BAC may be included in the final subclone. The ability to efficiently and precisely modify genes or regulatory sequences on BACs, combined with the ability to include or exclude them during the subcloning process, should make it possible to dissect the function of these sequences in the whole animal at a high-through-put level not previously possible.

This lambda recombination system has been used to introduce a Cre recombinase gene into the coding region of the mouse neural-specific enolase gene carried on a 250 kb mouse BAC after transfer of the mouse BAC into DY380 E. coli cells which carry the lambda recombination system. Transgenic mice that were subsequently generated which carry this modified BAC specifically expressed Cre in all mature neurons and Cre expression mirrored that of the mouse neural-specific enolase gene.

This abstract modifies an abstract for this technology published in the **Federal Register** on Thursday, April 5, 2001 (66 FR 18098).

Use of Endogenous Vertebrate Phytase to Increase Capacity To Utilize Phytic Acid in Livestock Feed

Stephen Shears (NIEHS), Paul Reynolds, Jim Petitte
DHHS Reference No. E–139–00/0 filed Aug 11, 2000
Licensing Contact: John Rambosek; 301/496–7056 ext. 270; e-mail: rambosej@od.nih.gov

This invention discloses the concept of creating transgenic farm animals that secrete a native phytase enzyme into their digestive tracts. It has long been recognized that monogastric animals (e.g. pigs and chickens) do not utilize dietary phosphorus as efficiently as possible. This is because a high percentage of total phosphorus (70% in cereals, 50% in legume seeds) is present as phytic acid and its salts—phytate. Monogastric animals utilize phytate inefficiently because they lack the enzyme phytase in their digestive systems. Phytase liberates the phosphorus from phytate, thereby making dietary phosphorus available to the animals. This has the dual effect of both promoting more efficient growth of the animals, as well as imposing less of an environmental burden in the form of excess phosphorus in water streams.

Use of phytase as a growth feed supplement is well known. However, in the past the focus has always been on adding exogenous phytase to animal feed, or to increase the level of phytase expression in the seeds making up the feed. The inventors' novel concept is to redirect expression of a naturally occurring phytase gene so that the enzyme will be secreted into the intestinal lumen. This will create farm animals that can more efficiently utilize unsupplemented feeds. Another problem with existing phytases that the present invention overcomes is that phytase tends to be unstable during the heat treatment used to process feed. This invention overcomes this limitation because the phytase does not have to incorporated into feed at all.

Cloning of the Human Nuclear Receptor Co-Repressor Gene

Dr. Johnson M. Liu (NHLBI)
DHHS Reference Number E–088–99/0 filed Aug 3, 1999
Licensing Contact: John Rambosek; 301/496–7056 ext. 270; e-mail: rambosej@od.nih.gov

Alteration in the expression of human genes is critical to the development and progression of many diseases. These include, among others, cancer, inflammation, cardiovascular disease, hypercholesterolemia, blood pressure, and diabetes. The Human Nuclear Receptor Co-Repressor (HuN-Cor) gene represents a technology that may be used to alter the transcription of genes. It provides a general mechanism by which many genes may be modulated throughout the entire range of being turned on to being completely turned off. The HuN-Cor gene encodes for a ubiquitously expressed protein that silences other genes. It does this by specifically recruiting an enzyme complex that causes local folding of chromatin, not allowing other transcription factors to access the DNA. HuN-Cor represents a powerful research tool that can be used to study gene expression and characterization of many different genes. It may ultimately have great utility in controlling gene expression via gene therapy technology, and may also be useful as a target for the isolation of pharmaceutical compounds that enhance or inhibit expression of genes. For example, it may be possible to engineer mutations of the HuN-Cor gene that dominantly inhibit its function; these mutants could then be expressed in appropriate target tissues or cells in order to control gene expression. Finally, the gene product may have utility in the discovery of therapeutic compounds that modulate gene expression via HuN-Cor.

Antibodies That Selectively Detect the Human Nestin Protein

Conrad Messam et al. (NINDS)

DHHS Reference Nos. E–145–99/0 and E–009–01/0

Licensing Contact: Norbert Pontzer; 301/496–7736, ext. 284; e-mail: pontzern@od.nih.gov

Nestin is an intermediate filament protein first described in early embryonic neuroepithelial stem cells. Although not found in most cells of the mature CNS, nestin is the predominant marker used to detect the small population of undifferentiated cells. The presence of nestin identifies stem, progenitor and some tumor cells in the CNS, and also labels areas of reactive gliosis in the CNS. Available methods to detect nestin use antibodies generated against rat nestin protein. Since rat and human nestin have only about fifty percent sequence homology, these antibodies may not be optimal for detecting nestin in human cells.

NIH scientists used a novel human nestin immunogen to generate polyclonal and monoclonal antibodies that bind with high affinity and specificity to human nestin. The immunogen was expressed from a 450 base-pair segment of human nestin mRNA, which has 11 nucleotide differences from previously published human nestin. These antibodies increase the specificity to accurately detect human nestin in all stages of brain development and will increase our understanding of glial differentiation. In addition, this technology may be useful for detecting glioblastomas or other early stage neuroectodermal tumors and for following transplanted stem cells.

Dated: April 20, 2001.

Jack Spiegel,

Director, Division of Technology Development and Transfer, Office of Technology Transfer, National Institutes of Health.

[FR Doc. 01–10580 Filed 4–27–01; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Statement of Organization, Functions, and Delegations of Authority

Part N, National Institutes of Health, of the Statement of Organization, Functions, and Delegations of Authority for the Department of Health and Human Services (40 FR 22859), May 27, 1975, as amended most recently at 66 FR 6617, January 22, 2001, and redesignated from Part HN as Part N at 60 FR 56605, November 9, 1995), is amended as set forth below to reorganize the Office of the Director, NIH, as follows: (1) Abolish the Office of Bioengineering, Bioimaging, and Bioinformatics.

Section N–B, Organization and Functions, under the heading Office of the Director (NA, formerly HNA), is amended as follows:

(1) Immediately following the statement for the Executive Office (NAR, formerly HNAR), the title and functional statement of the Office of Bioengineering, Bioimaging, and Bioinformatics (NAC, formerly HNAC) as deleted in their entirety.

DELEGATIONS OF AUTHORITY STATEMENT: All delegations and redelegations of authority to officers and employees of NIH which were in effect immediately prior to the effective date of this reorganization and are consistent with this reorganization shall continue in effect, pending further redelegation.

Dated: March 6, 2001.

Ruth L. Kirschstein,

Acting Director, National Institutes of Health.

[FR Doc. 01–10581 Filed 4–27–01; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Prospective Grant of Exclusive License: Bacteriophage Having Multiple Host Range

AGENCY: National Institutes of Health, Public Health Service, DHHS.

ACTION: Notice.

SUMMARY: This is notice, in accordance with 35 U.S.C. 209(c)(1) and 37 CFR 404.7(a)(1)(i), that the National Institutes of Health (NIH), Department of Health and Human Services, is contemplating the grant of a an exclusive license to practice the invention embodied in: United States Patent Application 60/220,987 entitled ''Bacteriophage Having Multiple Host Range'' filed on July 25, 2000, to BioPhage, Inc., having a place of business in Montreal, Quebec. The patent rights in this invention have been assigned to the United States of America.

DATES: Only written comments and/or application for a license which are received by the NIH Office of Technology Transfer on or before June 29, 2001 will be considered.

ADDRESSES: Requests for a copy of the patent applications, inquiries, comments and other materials relating to the contemplated license should be directed to: Peter Soukas, Office of Technology Transfer, National Institutes of Health, 6011 Executive Boulevard, Suite 325, Rockville, MD 20852–3804; Email: ps193c@nih.gov; Telephone: (301) 496–7056, ext. 268; Facsimile: (301) 402–0220.

SUPPLEMENTARY INFORMATION: This invention concerns bacteriophage with specificity to more than one bacterial species and the ability to make such bacteriophages. The specificity is broadened and/or changed by genetic engineering of the phage tail proteins. The phage can be used to kill pathogenic bacteria in both animals and humans. The use of phages as antibacterials may be one answer to the problem of antibiotic resistant bacteria.

The prospective exclusive license will be royalty bearing and will comply with the terms and conditions of 35 U.S.C. 209 and 37 CFR 404.7. The prospective exclusive license may be granted unless, within 60 days from the date of this published Notice, NIH receives written evidence and argument that establishes that the grant of the license would not be consistent with the requirements of 35 U.S.C. 209 and 37 CFR 404.7.

The field of use may be limited to prophylaxis and/or treatment of bacterial infections in non-human animals and treatment and/or prophylaxis of antibiotic resistant bacteria in humans.

Properly filed competing applications for a license filed in response to this notice will be treated as objections to the contemplated license. Comments and objections submitted in response to this notice will not be made available for public inspection, and, to the extent permitted by law, will not be released under the Freedom of Information Act, 5 U.S.C. 552.

Dated: April 20, 2001.

Jack Spiegel,

Director, Division of Technology Development and Transfer, Office of Technology Transfer.

[FR Doc. 01–10576 Filed 4–27–01; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Prospective Grant of Exclusive License: MHC Class II Restricted Melanoma Antigens and Their Use in Therapeutic Methods

AGENCY: National Institutes of Health, Public Health Service, DHHS.

ACTION: Notice

SUMMARY: This is notice, in accordance with 35 U.S.C. 209(c)(1) and 37 CFR 404.7(a)(1)(i), that the National

Institutes of Health, Department of Health and Human Services, is contemplating the grant of an exclusive license to practice the inventions embodied in U.S. Patent Application S/N 08/533,895, filed on September 26, 1995, entitled ''MHC Class II Restricted Melanoma Antigens and Their Use in Therapeutic Methods'', to Therion Biologics Corporation of Cambridge, Massachusetts. The patent rights in these inventions have been assigned to the United States of America.

The prospective exclusive license territory will be worldwide and the field of use may be limited to recombinant poxvirus-based vaccines for human cancer immunotherapy, said poxviruses encoding Class II-restricted melanoma antigens, or modifications, derivatives, or immunogenic peptides thereof, and vaccination protocols comprising the administration of one or more Class II-restricted melanoma peptides in addition to a recombinant poxvirus-based vaccine (for example, in a prime and boost protocol), but specifically excluding the use of these peptides in any context other than a recombinant poxvirus-based vaccination protocol.

DATES: Only written comments and/or license applications which are received by the National Institutes of Health on or before June 29, 2001 will be considered.

ADDRESSES: Requests for copies of the patent application, inquiries, comments and other materials relating to the contemplated exclusive license should be directed to: Elaine White, M.B.A., Technology Licensing Specialist, Office of Technology Transfer, National Institutes of Health, 6011 Executive Boulevard, Suite 325, Rockville, MD. 20852–3804. Telephone: (301) 496–7056, X282; Facsimile (301) 402–0220; E-mail eg46t@nih.gov.

SUPPLEMENTARY INFORMATION: The prospective exclusive license will be royalty-bearing and will comply with the terms and conditions of 35 U.S.C. 209 and 37 CFR 404.7. The prospective exclusive license may be granted unless within sixty (60) days from the date of this published notice, the NIH receives written evidence and argument that establish that the grant of the license would not be consistent with the requirements of 35 U.S.C. 209 and 37 CFR 404.7.

Applications for a license in the field of use filed in response to this notice will be treated as objections to the grant of the contemplated exclusive license. Comments and objections submitted to this notice will not be made available for public inspection and, to the extent permitted by law, will not be released under the Freedom of Information Act, 5 U.S.C. 552.

Dated: April 23, 2001.

Jack Spiegel,

Director, Division of Technology Development and Transfer, Office of Technology Transfer.

[FR Doc. 01–10578 Filed 4–27–01; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Prospective Grant of Exclusive License: Human Papilloma Inhibition by Antisense Oligonucleotides

AGENCY: National Institutes of Health, Public Health Service, DHHS.

ACTION: Notice.

SUMMARY: This is notice, in accordance with 35 U.S.C. 209(c)(1) and 37 CFR 404.7(a)(1)(i), that the National Institutes of Health (NIH), Department of Health and Human Services, is contemplating the grant of an exclusive license to practice the invention embodied in: Korean Patent Application 10–2000–7002392 entitled ''Human Papilloma Inhibition by Antisense Oligonucleotides'' filed on June 30, 2000, to Gyn-Gen Bio, Inc., having a place of business in Seoul, Korea. The patent rights in this invention have been assigned to the United States of America.

DATES: Only written comments and/or application for a license which are received by the NIH Office of Technology Transfer on or before June 29, 2001 will be considered.

ADDRESSES: Requests for a copy of the patent applications, inquiries, comments and other materials relating to the contemplated license should be directed to: Peter Soukas, Office of Technology Transfer, National Institutes of Health, 6011 Executive Boulevard, Suite 325, Rockville, MD 20852–3804; Email: ps193c@nih.gov; Telephone: (301) 496–7056, ext. 268; Facsimile: (301) 402–0220.

SUPPLEMENTARY INFORMATION: The present invention relates to the use of antisense oligonucleotides to inhibit Human Papilloma Virus (HPV). The antisense oligonucleotides have a phosphorothioate backbone structure and sequences complimentary to portions of the human papilloma virus 16 E6 gene. See the equivalent United States patent number 6,084,090 and Alvarez-Salas et al., ''Growth inhibition of cervical tumor cells by antisense oligodeoxynucleotides directed to the human papillomavirus type 16 E6 gene,'' Antisense Nucleic Acid Drug Dev 1999 Oct;9(5):441–50 for further details.

The prospective exclusive license will be royalty bearing and will comply with the terms and conditions of 35 U.S.C. 209 and 37 CFR 404.7. The prospective exclusive license may be granted unless, within 60 days from the date of this published Notice, NIH receives written evidence and argument that establishes that the grant of the license would not be consistent with the requirements of 35 U.S.C. 209 and 37 CFR 404.7.

The field of use may be limited to treatment and prevention of Human Papilloma Virus infection with antisense oligonucleotides. The licensed territory is expected to be limited to Korea, China, Malaysia and Thailand.

Properly filed competing applications for a license filed in response to this notice will be treated as objections to the contemplated license. Comments and objections submitted in response to this notice will not be made available for public inspection, and, to the extent permitted by law, will not be released under the Freedom of Information Act, 5 U.S.C. 552.

Dated: April 20, 2001.

Jack Spiegel,

Director, Division of Technology Development and Transfer, Office of Technology Transfer

[FR Doc. 01–10577 Filed 4–27–01; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Prospective Grant of Exclusive License: Identification of TRP–2 as a New Human Tumor Antigen Recognized by Cytotoxic T Lymphocytes

AGENCY: National Institutes of Health, Public Health Service, DHHS.

ACTION: Notice.

SUMMARY: This is notice, in accordance with 35 U.S.C. 209(c)(1) and 37 CFR 404.7(a)(1)(i), that the National Institutes of Health, Department of Health and Human Services, is contemplating the grant of an exclusive license to practice the inventions embodied in U.S. Patent Applications S/N 08/725,736, filed on October 4, 1996, and now U.S. Patent 5,831,016 which issued on November 3, 1998; S/N 09/161,877 (DIV of 08/725,736), filed on September 28, 1998, and now U.S. Patent 6,132,980 which issued on October 17, 2000; S/N 09/162,368 (DIV of 08/725,736), filed on September 28,

1998, and now U.S. Patent 6,083,703 which issued on July 4, 2000; and S/N 09/651,210 (DIV of 08/725,736), filed on August 30, 2000, all entitled ''Identification of TRP–2 as a New Human Tumor Antigen Recognized by Cytotoxic T Lymphocytes'; and PCT Patent Application PCT/US97/02186 (based upon U.S. Patent Applications S/N 08/599,602 and 08/725,736) filed on February 6, 1997, entitled ''Human Cancer Antigen of Tyrosinase-Related Protein 1 and 2 and Genes Encoding Same'', to Therion Biologics Corporation of Cambridge, Massachusetts. The patent rights in these inventions have been assigned to the United States of America.

The prospective exclusive license territory will be worldwide and the field of use may be limited to recombinant poxvirus-based vaccines for human cancer immunotherapy, said poxviruses encoding TRP–2 or modifications, derivatives, or immunogenic peptides thereof, and vaccination protocols comprising the administration of one or more immunogenic TRP–2 peptides in addition to a recombinant poxvirus-based vaccine (for example, in a prime and boost protocol), but specifically excluding the use of TRP–2 peptides in any context other than a recombinant poxvirus-based vaccination protocol.

DATES: Only written comments and/or license applications which are received by the National Institutes of Health on or before June 29, 2001 will be considered.

ADDRESSES: Requests for copies of the patents/patent applications, inquiries, comments and other materials relating to the contemplated exclusive license should be directed to: Elaine White, M.B.A., Technology Licensing Specialist, Office of Technology Transfer, National Institutes of Health, 6011 Executive Boulevard, Suite 325, Rockville, MD. 20852–3804. Telephone: (301) 496–7056, X282; Facsimile (301) 402–0220; E-mail eg46t@nih.gov.

SUPPLEMENTARY INFORMATION: The prospective exclusive license will be royalty-bearing and will comply with the terms and conditions of 35 U.S.C. 209 and 37 CFR 404.7. The prospective exclusive license may be granted unless within sixty (60) days from the date of this published notice, the NIH receives written evidence and argument that establish that the grant of the license would not be consistent with the requirements of 35 U.S.C. 209 and 37 CFR 404.7.

Applications for a license in the field of use filed in response to this notice will be treated as objections to the grant of the contemplated exclusive license. Comments and objections submitted to this notice will not be made available for public inspection and, to the extent permitted by law, will not be released under the Freedom of Information Act, 5 U.S.C. 552.

Dated: April 23, 2001.

Jack Spiegel,

Director, Division of Technology Development and Transfer, Office of Technology Transfer.

[FR Doc. 01–10579 Filed 4–27–01; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Substance Abuse and Mental Health Services Administration

Fiscal Year (FY) 2001 Funding Opportunities

AGENCY: Substance Abuse and Mental Health Services Administration, HHS.

ACTION: Notice of Funding Availability.

SUMMARY: The Substance Abuse and Mental Health Services Administration (SAMHSA) Center for Substance Abuse Treatment (CSAT) announces the availability of FY 2001 funds for cooperative agreements for the following activity. This notice is not a complete description of the activity; potential applicants *must* obtain a copy of the Guidance for Applicants (GFA), including Part I, Cooperative Agreements for Addiction Technology Transfer Centers, and Part II, General Policies and Procedures Applicable to all SAMHSA Applications for Discretionary Grants and Cooperative Agreements, before preparing and submitting an application.

Activity	Application deadline	Est. funds FY 2001	Est. No. of awards	Project period
Addiction Technology Transfer Centers	June 19, 2001	$7 million*	14*	5 years.

*See the text below for more detailed information on the estimated funds available and the estimated number of awards. The actual amount available for the awards may vary, depending on unanticipated program requirements and the number and quality of applications received. FY 2001 funds for the activities discussed in this announcement were appropriated by the Congress under Public Law No. 106–310. SAMHSA's policies and procedures for peer review and Advisory Council review of grant and cooperative agreement applications were published in the **Federal Register** (Vol. 58, No. 126) on July 2, 1993.

GENERAL INSTRUCTIONS: Applicants must use application form PHS 5161–1 (Rev. 7/00). The application kit contains the two-part application materials (complete programmatic guidance and instructions for preparing and submitting applications), the PHS 5161–1 which includes Standard Form 424 (Face Page), and other documentation and forms. Application kits may be obtained from: National Clearinghouse for Alcohol and Drug Information (NCADI), P.O. Box 2345, Rockville, MD 20847–2345, Telephone: 1–800–729–6686.

The PHS 5161–1 application form and the full text of the activity are also available electronically via SAMHSA's World Wide Web Home Page: *http://www.samhsa.gov*

When requesting an application kit, the applicant must specify the particular activity for which detailed information is desired. All information necessary to apply, including where to submit applications and application deadline instructions, are included in the application kit.

Purpose

The Substance Abuse and Mental Health Services Administration (SAMHSA), Center for Substance Abuse Treatment (CSAT) announces the availability of Fiscal Year 2001 funds for cooperative agreements to support the creation or continuation of Addiction Technology Transfer Centers. This program, referred to as ''ATTCs,'' solicits applications to:

(1) develop and maintain an interdisciplinary consortium of health care and related professionals, educators, organizations, and State and local governments knowledgeable about research-based, effective, culturally appropriate approaches to substance abuse treatment and recovery;

(2) shape systems of care by replicating and testing science and translating substance abuse treatment research into clinical practice;

(3) develop a workforce of competent health care and related professionals reflective of the treatment population

and who are prepared to function in managed care settings; and,

(4) upgrade standards of professional practice for addictions workers in various settings.

The ATTC program is comprised of 13 regions that together form a national resource. (**Note:** This 13 region organization is a new feature of the ATTC Program.) Each ATTC Site applicant must focus its services on the region it proposes to serve. Each ATTC Site may work with other ATTC Sites and with other organizations within or outside of the region. The ATTC regions are listed in an Appendix in the full funding announcement.

This is a modified reissuance of SAMHSA/CSAT's Fiscal Year 1998 GFA No. TI 98–009, entitled ''Addiction Technology Transfer Centers (ATTCs). This announcement solicits applications for two types of awards: (1) ATTC Sites, and (2) an ATTC National Office.

Eligibility

Applications may be submitted by public and domestic private non-profit entities such as units of State or local government, recovery and other community-based organizations, faith-based organizations, and State or private, non-profit universities, colleges, and hospitals. Current CSAT ATTC grantees with a project period that ends on or before September 30, 2001, excluding extensions in time without additional funds and who meet the above requirements, are also eligible to apply.

An organization may submit an application for an ATTC Site and/or the ATTC National Office. A separate application is required for each function. Although the ATTC National Office may be established by an organization which also has an ATTC Site, it must be set up as a separate entity with dedicated staff, a separate and independent project director, a separate budget, audit, and specific responsibilities.

Availability of Funds

Approximately $7,000,000 will be available to fund 13 ATTC Sites and one National Office. The average award for an ATTC Site is expected to range from $450,000 to $550,000 per year in total costs (direct and indirect). The award for the ATTC National Office is expected to be approximately $500,000 in total costs (direct and indirect).

Period of Support

Cooperative agreements will be awarded for a period of 5 years. Annual awards will be made subject to continued availability of funds to SAMHSA/CSAT and progress achieved by the grantee.

Criteria for Review and Funding

General Review Criteria: Competing applications requesting funding under this activity will be reviewed for technical merit in accordance with established PHS/SAMHSA peer review procedures. Review criteria that will be used by the peer review groups are specified in the application guidance material.

Award Criteria for Scored Applications: Applications will be considered for funding on the basis of their overall technical merit as determined through the peer review group and the appropriate National Advisory Council review process. Availability of funds will also be an award criteria. Additional award criteria specific to the programmatic activity may be included in the application guidance materials.

Catalog of Federal Domestic Assistance Number

93.230.

Program Contact

For questions concerning program issues, contact: Susanne R. Rohrer, RN, Office of Evaluation, Scientific Analysis, and Synthesis, CSAT/SAMHSA, Rockwall II, Suite 840, 5600 Fishers Lane, Rockville, MD 20857, (301) 443–8521, E-Mail: srohrer@samhsa.gov

For questions regarding grants management issues, contact: Kathleen Sample, Division of Grants Management, OPS/SAMHSA, Rockwall II, 6th floor, 5600 Fishers Lane, Rockville, MD 20857, (301) 443–9667, E-Mail: ksample@samhsa.gov

Public Health System Reporting Requirements

The Public Health System Impact Statement (PHSIS) is intended to keep State and local health officials apprised of proposed health services grant and cooperative agreement applications submitted by community-based nongovernmental organizations within their jurisdictions.

Community-based nongovernmental service providers who are not transmitting their applications through the State must submit a PHSIS to the head(s) of the appropriate State and local health agencies in the area(s) to be affected not later than the pertinent receipt date for applications. This PHSIS consists of the following information:

a. A copy of the face page of the application (Standard form 424).

b. A summary of the project (PHSIS), not to exceed one page, which provides:

(1) A description of the population to be served.

(2) A summary of the services to be provided.

(3) A description of the coordination planned with the appropriate State or local health agencies.

State and local governments and Indian Tribal Authority applicants are not subject to the Public Health System Reporting Requirements. Application guidance materials will specify if a particular FY 2001 activity is subject to the Public Health System Reporting Requirements.

PHS Non-Use of Tobacco Policy Statement

The PHS strongly encourages all grant and contract recipients to provide a smoke-free workplace and promote the non-use of all tobacco products. In addition, Public Law 103–227, the Pro-Children Act of 1994, prohibits smoking in certain facilities (or in some cases, any portion of a facility) in which regular or routine education, library, day care, health care, or early childhood development services are provided to children. This is consistent with the PHS mission to protect and advance the physical and mental health of the American people.

Executive Order 12372

Applications submitted in response to the FY 2001 activity listed above are subject to the intergovernmental review requirements of Executive Order 12372, as implemented through DHHS regulations at 45 CFR Part 100. E.O. 12372 sets up a system for State and local government review of applications for Federal financial assistance. Applicants (other than Federally recognized Indian tribal governments) should contact the State's Single Point of Contact (SPOC) as early as possible to alert them to the prospective application(s) and to receive any necessary instructions on the State's review process. For proposed projects serving more than one State, the applicant is advised to contact the SPOC of each affected State. A current listing of SPOCs is included in the application guidance materials. The SPOC should send any State review process recommendations directly to: Division of Extramural Activities, Policy, and Review, Substance Abuse and Mental Health Services Administration, Parklawn Building, Room 17–89, 5600 Fishers Lane, Rockville, Maryland 20857.

The due date for State review process recommendations is no later than 60

days after the specified deadline date for the receipt of applications. SAMHSA does not guarantee to accommodate or explain SPOC comments that are received after the 60-day cut-off.

Dated: April 24, 2001.

Richard Kopanda,

Executive Officer, SAMHSA.

[FR Doc. 01–10635 Filed 4–27–01; 8:45 am]

BILLING CODE 4162–20–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4650–N–30]

Notice of Submission of Proposed Information Collection to OMB; Public Housing Development and Mixed-Finance Development of Units; Proposal, Financial Feasibility, Site Information Turnkey Method, Evidentiary Materials

AGENCY: Office of the Chief Information Officer, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below has been submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting pubic comments on the subject proposal.

DATES: *Comments Due Date:* May 30, 2001.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB approval number (2577–0033) and should be sent to: Joseph F. Lackey, Jr., OMB Desk Officer, Office of Management and Budget, Room 10235, New Executive Office Building, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Wayne Eddins, Reports Management Officer, Q, Department of Housing and Urban Development, 451 Seventh Street, Southwest, Washington, DC 20410; e-mail Wayne_Eddins@HUD.gov; telephone (202) 708–2374. This is not a toll-free number. Copies of the proposed forms and other available documents submitted to OMB may be obtained from Mr. Eddins.

SUPPLEMENTARY INFORMATION: The Department has submitted the proposal for the collection of information, as described below, to OMB for review, as required by the Paperwork Reduction Act (44 U.S.C. Chapter 35). The Notice lists the following information: (1) The title of the information collection proposal; (2) the office of the agency to collect the information; (3) the OMB approval number, if applicable; (4) the description of the need for the information and its proposed use; (5) the agency form number, if applicable; (6) what members of the public will be affected by the proposal; (7) how frequently information submissions will be required; (8) an estimate of the total number of hours needed to prepare the information submission including number of respondents, frequency of response, and hours of response; (9) whether the proposal is new, an extension, reinstatement, or revision of an information collection requirement; and (10) the name and telephone number of an agency official familiar with the proposal and of the OMB Desk Officer for the Department.

This Notice also lists the following information:

Title of Proposal: Public Housing Development and Mixed-Finance Development of Units; Proposal, Financial Feasibility, Site Information Turnkey Method, Evidentiary Materials.

OMB Approval Number: 2577–0033.

Form Numbers: HUD–51971–I, HUD–51971–II, HUD–54282, HUD–52483–A, HUD–52485, HUD–52651–A.

Description of the Need for the Information and Its Proposed Use: Public Housing Agencies (PHAs) must provide information to HUD before a proposal can be approved for development or mixed-finance development. Information on HUD-prescribed forms provides HUD with sufficient information to enable a determination that funds should or should not be reserved or a contractual commitment made.

Respondents: Business or other for-profit, State, Local or Tribal Government.

Frequency of Submission: Annually.

	Number of respondents	×	Frequency of response	×	Hours per response	=	Burden hours
Reporting burden	334		1		22		7,595

Total Estimated Burden Hours: 7,595.

Status: Extension of a currently approved collection.

Authority: Section 3507 of the Paperwork Reduction Act of 1995, 44 U.S.C. 35, as amended.

Dated: April 23, 2001.

Wayne Eddins,

Department Reports Management Officer, Office of the Chief Information Officer.

[FR Doc. 01–10598 Filed 4–27–01; 8:45 am]

BILLING CODE 4210–01–M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4650–N–29]

Notice of Submission of Proposed Information Collection to OMB; Requirements for Designating Housing Projects Plan

AGENCY: Office of the Chief Information Officer, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below has been submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

DATES: *Comments Due Date:* May 30, 2001.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB approval number (2577–0192) and should be sent to: Joseph F. Lackey, Jr., OMB Desk Officer, Office of Management and Budget, Room 10235, New Executive Office Building, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Wayne Eddins, Reports Management Officer, Q, Department of Housing and Urban Development, 451 Seventh Street, Southwest, Washington, DC 20410; e-mail Wayne_Eddins@HUD.gov; telephone (202) 708–2374. This is not a toll-free number. Copies of the proposed forms and other available documents

submitted to OMB may be obtained from Mr. Eddins.

SUPPLEMENTARY INFORMATION: The Department has submitted the proposal for the collection of information, as described below, to OMB for review, as required by the Paperwork Reduction Act (44 U.S.C. Chapter 35). The Notice lists the following information: (1) The title of the information collection proposal; (2) the office of the agency to collect the information; (3) the OMB approval number, if applicable; (4) the description of the need for the information and its proposed use; (5) the agency form number, if applicable; (6) what members of the public will be affected by the proposal; (7) how frequently information submissions will be required; (8) an estimate of the total number of hours needed to prepare the information submission including number of respondents, frequency of response, and hours of response; (9) whether the proposal is new, an extension, reinstatement, or revision of an information collection requirement; and (10) the name and telephone number of an agency official familiar with the proposal and of the OMB Desk Officer for the Department. This Notice also lists the following information:

Title of Proposal: Requirements for Designation Housing Projects Plan.

OMB Approval Number: 2577–0192.

Form Numbers: None.

Description of the Need for the Information and Its Proposed Use: This information collection is required by the Housing and Community Development Act of 1992. Public Housing Agencies (PHAs) will submit an application which is composed of an Allocation Plan and a Supportive Services Plan to designate a project for occupancy by elderly and disabled families. HUD will use the information in the Plans to evaluate a PHA's request for designated housing.

Respondents: State, Local or Tribal Government.

Frequency of Submission: On occasion.

	Number of respondents	X	Frequency of response	X	Hours per response	=	Burden hours
Reporting burden	176		1		19.0		3,358

Total Estimated Burden Hours: 3,358.

Status: Reinstatement, with change.

Authority: Section 3507 of the Paperwork Reduction Act of 1995, 44 U.S.C. 35, as amended.

Dated: April 20, 2001.

Wayne Eddins,

Departmental Reports Management Officer, Office of the Chief Information Officer.

[FR Doc. 01–10597 Filed 4–27–01; 8:45 am]

BILLING CODE 4210–01–M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4655–N–12]

Submission for OMB Review: Review of Health Care Facility Portfolios

AGENCY: Office of Assistant Secretary for Housing, HUD.

ACTION: Notice of proposed information collection requirement.

SUMMARY: The Department of Housing and Urban Development (HUD) will be publishing a Notice which establishes classifications of owners and or operators of health care facilities: owners of large portfolios of health care facilities; owners of mid-size portfolios, and owners of small portfolios. The mid-size and large owners who intend to finance or refinance 11 or more health care facilities, with a combined estimated mortgage amount equal to or in excess of $75 million, in an 18-month period of time are required to submit additional information to a rating agency for evaluation and submission to HUD. The additional information, covering a variety of corporate-related information such as a strategic management plan, is designed to enable HUD to determine the financial and management strength of the proposed sponsor.

DATES: *Comments Due Date:* May 7, 2001.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB Control Number and should be sent to: Joseph F. Lackey, Jr., HUD Desk Officer, Office of Management and Budget, New Executive Office Building, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Wayne Eddins, reports Management Officer, Department of Housing and Urban Development, 451 Seventh Street, SW, Washington, DC 20410, telephone (202) 708–2374 (This is not a toll-free number) or e-mail to Wayne_Eddins@HUD.gov. Copies of the available documents submitted to OMB may be obtained from Mr. Eddins.

SUPPLEMENTARY INFORMATION: The Department has submitted the proposal for the collection of information, as described below, to OMB for review as required by the Paperwork Reduction Act (44 USC Chapter 35). HUD has requested OMB approval by May 7, 2001.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless collection displays a valid control number.

This notice contains the following information:

(1) The title for the collection of information;

(2) A summary of the collection of information;

(3) A brief description of the need for the information and proposed use of the information;

(4) A description of the likely respondents, including the estimated number of likely respondents, and proposed frequency of response to the collection of information;

(5) An estimate of the total annual reporting and recordkeeping burden that will result from the collection of information;

Title: Review of Health Care Facility Portfolios

OMB Control Number: 2502–

Type of submission: An owner and/or an operator of health care facilities (nursing homes, intermediate care facilities, board and care facilities, or assisted living facilities) may wish to finance or refinance large groups of those facilities. If it intends to seek FHA mortgage insurance for loans for these facilities, and it is planning to finance or refinance a minimum of 11 health care facilities, with combined estimated mortgage amount of $75 million or more, during an 18 month period, then the owner/operator must furnish information that has not been previously required with the application for mortgage insurance. The owner and/or operator will be acting with an FHA-approved lender, or, if the application is to be processed with Multifamily Accelerated Processing (MAP), the lender must be MAP-approved.

The information includes a Corporate Credit Analysis, to be submitted to a credit rating agency (Standard & Poor's, Moody's Investor Services, Fitch IBCA, Duff & Phelps) and the Analysis

includes detailed financial information, management policies, and corporate strategy. Owners/operators with 50 or more projects, with estimated combined mortgage amount of $250 million or more must file, in addition to the Corporate Credit Analysis, more detailed information that is required for non-Portfolio owners in connection with the site visit. These large-size owners/operators must also provide information on their other properties and lines of business not being financed with FHA mortgage insurance.

Need and Use of the information

The information is collected and evaluated, first by a rating agency and then by HUD. The purpose is to determine the financial strength and management reliability of the owner/operator. If the owner and/or the operator should go into bankruptcy or be unable to continue management of its large group of properties, the ability of the individual properties to keep operating successfully would be severely jeopardized. The failure of the owner/operator could lead to assignments to HUD of large numbers of health care facilities, and a serious resulting charge to the mortgage insurance fund.

Respondents:

Reporting Burden:

Number of respondents	X	Frequency of response	X	Hours per response	=	Total burden hours

Contact: Eric Stevenson, HUD (202) 708–0614, ext. 2544), Joseph Lackey, OMB, (202) 395–7316

Authority: Section 3507 of the Paperwork Reduction Act of 1995, 44 U.S.C. Chapter 35, as amended.

Dated: April 20, 2001.

Wayne Eddins,

Reports Management Officer, Office of the Chief Information Officer.

[FR Doc. 01–10599 Filed 4–27–01; 8:45 am]

BILLING CODE 4210–27–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[ES–030–01–1610–DO]

Notice of Intent To Prepare the Lower Potomac River Coordinated Management Plan/Environmental Assessment

AGENCY: Bureau of Land Management, Milwaukee Field Office, DOI.

ACTION: Notice of intent to prepare a coordinated management plan.

SUMMARY: Notice is hereby given that the Bureau of Land Management (BLM), Milwaukee Field Office, intends to prepare a coordinated management plan (CMP) for the purpose of determining whether and where to acquire land in the Lower Potomac River project area located in Charles County, Maryland. No specific tracts have been targeted for acquisition.

The planning efforts will follow the procedures set forth in title 43 of the Code of Federal Regulations, Subpart 1600. The EA will be prepared under the National Environmental Policy Act of 1969 regulations (40 CFR 1500, et seq.).

The public has 30 days from the date of publication of this notice to send its ideas regarding the proposal described below in the ''Supplementary Information'' and in the preliminary planning criteria sections. These comments should be written to help focus the plan on substantive issues and develop appropriate management alternatives. These comments may include specific resource data or information or locations where these data or information may be found.

DATES: The public scoping period commences with the publication of this notice. Comments must be postmarked no later than May 30, 2001 to ensure the issues they raise are considered in the plan.

ADDRESSES: Comments may be mailed to the following addresses: James W. Dryden, Field Office Manager, Milwaukee Field Office, P.O. Box 631, Milwaukee, Wisconsin 53201–0631 or Ed Ruda, Project Leader Manager, Eastern States Office, 7450 Boston Boulevard, Springfield, Virginia 22153.

FOR FURTHER INFORMATION CONTACT: Ed Ruda, Project Leader at (703) 440–1663, or by electronic mail at ed_ruda@es.blm.gov, or Howard Levine, Planning and Environmental Coordinator at (414) 297–4463, or by electronic mail at howard_levine@es.blm.gov.

SUPPLEMENTARY INFORMATION: Congress has appropriated a total of $3 million in Land and Water Conservation Funds (LWCF) for the acquisition of lands by the BLM in the ''Douglas Point'' region of southwestern Charles County, Maryland. The planning area has been renamed Lower Potomac River Project Area.

Prior to expending Federal money for acquisition, BLM must fulfill the requirements of Sections 202 and 205(b) of the Federal Land Policy and Management Act of 1976, as amended (43 U.S.C. 1701, *et seq.*) (FLPMA). Under these requirements, any land acquisitions by BLM must conform with applicable land use plans. Currently, BLM has no land use plans in the State of Maryland. The Lower Potomac River Coordinated Management Plan/Environmental Assessment will fulfill that requirement. The plan will not identify any specific tracts for acquisition by the Federal Government, but will instead develop a set of criteria to evaluate proposals for acquisition in the future.

The Lower Potomac River CMP will be developed cooperatively with Maryland Department of Natural Resources (MDNR) and Charles County. By preparing a single plan, each agency's needs will be met and potential acquisitions can be evaluated within an overall conservation strategy for the region.

The planning regulations require that BLM release for review a list of planning criteria that will guide development of the land use plan. The public is invited to review, comment and propose amendments to any of the following planning criteria:

1. The plan will be completed in compliance with FLPMA and other applicable laws.

2. The plan will include an Environmental Assessment (EA) prepared under the National Environmental Policy Act. If scoping reveals the potential for significant impact, BLM will prepare an environmental impact statement.

3. The final plan will include a set of acquisition criteria that will be used to evaluate specific proposals either by Bureau motion or raised by willing sellers. Although land acquisition can be defined as fee title acquisition criteria, conservation easement acquisition, or mineral estate acquisition (less than fee), the terms of BLM's LWCF proposal, as approved by Congress, envision full fee acquisition.

4. The economic benefits and costs of potential Federal acquisitions will be evaluated in the plan.

5. Potential Federal acquisitions will be evaluated in the context of other land acquisitions made by the State of Maryland or not-for-profit groups.

6. Any lands acquired by BLM will be managed consistent with objectives

developed as a result of the plan and FLPMA.

7. Lands purchased with LWCF money will be managed consistent with the BLM policies guiding such acquisitions, which includes limiting development. The construction of capital improvements (such as visitor centers, pavilions, and electricity, water or phone lines) are not anticipated at this time.

8. Decisions in the plan will be consistent, to the maximum extent possible, with the policies, plans and programs of local Governments, State agencies and other Federal agencies, and the goals of the Chesapeake Bay Program.

In addition, the Maryland State legislature has required certain information and analyses in any plans prepared for potential State acquisitions in the region. Given the fact that this will be a CMP, it will include the following items: Purchase Plan, Management Oversight Plan, Operating Plan, Public Access Plan, Forestry Management Plan, Wildlife Management Plan, and Water Management Plan.

Complete records of all phases of the planning process will be available at the Milwaukee Field Office and are available upon request.

Dated: April 9, 2001.

Chris Hanson,

Acting Milwaukee Field Manager.

[FR Doc. 01–10611 Filed 4–27–01; 8:45 am]

BILLING CODE 4310–PN–P

INTERNATIONAL TRADE COMMISSION

[Investigation No. 1205–5]

Proposed Modifications to the Harmonized Tariff Schedule of the United States

AGENCY: International Trade Commission.

ACTION: Additional proposed amendments.

EFFECTIVE DATE: April 23, 2001.

SUMMARY: On November 18, 1999, the Commission instituted investigation No. 1205-5, Proposed Modifications to the Harmonized Tariff Schedule for the United States, pursuant to section 1205 of the Omnibus Trade and Competitiveness Act of 1988. Section 1205 directs the Commission to keep the Harmonized Tariff Schedule of the United States (HTS) under continuous review and to recommend modifications to the HTS (1) when amendments to the International Convention on the Harmonized Commodity Description and Coding System (Harmonized System), and the Protocol thereto, are recommended by the World Customs Organization (Harmonized System), and the Protocol thereto, are recommended by the World Customs Organization (WCO) (formerly known as the Customs Cooperation Council) for adoption, and (2) as other circumstances warrant. The Commission's final report will set forth the proposed changes and indicate the necessary changes in the HTS that would be needed to conform the HTS to the international nomenclature structure; the report will also include other appropriate explanatory information on the proposed changes. A preliminary report was submitted to the Office of the United States Trade Representative in March 2000. Since that time, the Commission has been informed of additional proposed amendments to the HTS that should be included in the final report.

FOR FURTHER INFORMATION CONTACT: Eugene A. Rosengarden, Director (202–205–2592), Office of Tariff Affairs and Trade Agreements, U.S. International Trade Commission, Washington, DC 20436. Hearing impaired individuals are advised that information on this investigation can be obtained by contacting the TDD terminal on (202) 205–1810.

Background

The majority of the changes proposed in the Commission's preliminary report are the result of the work of the WCO and its Harmonized System Committee (HSC) to update and clarify the Harmonized System nomenclature, as part of the WCO's long-term program to review the nomenclature structure on a formal basis. These proposed changes, which are to become effective in January 2002, are available in the Office of the Secretary, Room 112, United States International Trade Commission, 500 E Street SW., Washington, DC 20436 (telephone 202–205–2000) and are posted on the Commission's website (*http://www.usitc.gov*). These changes encompass all decisions taken by the HSC since the implementation of the last set of WCO modifications to the Harmonized System, which were effective as of January 1, 1996.

Other proposed changes included in this investigation have been requested by the U.S. Customs Service, in order to clarify the proper tariff classification and duty treatment of particular goods due to decisions of the Court of International Trade, the HSC, or the U.S. Customs Service. These changes, including those which are the subject of this notice, will be treated separately in the Commission's final report.

The Commission prepared non-authoritative cross-reference tables in its preliminary report to provide guidance to potentially affected parties and to show the likely existing and future tariff classifications of the goods concerned. The Customs Service has domestic legal authority for tariff classification and may provide information, both during the course of the investigation and after the Commission's report is submitted, that indicates different or additional tariff classifications of some goods. Moreover, the WCO has recently issued a cross-reference table under Article 16 of the Harmonized System Convention, indicating the international classifications (existing and future) of the goods affected by the proposed changes. Thus, the classifications shown in the Commission's preliminary cross-reference tables may be subject to change in the final report in light of WCO's cross-reference table.

Additional Proposed Amendments to the HTS

In addition to the changes to the HTS already proposed in the Commission's preliminary report and in the **Federal Register** of December 29, 2000 (65 F.R. 83032), February 16, 2001 (66 FR 10743) and March 8, 2001 (66 FR 13963), the following changes are proposed to clarify proposals already set forth in the Commission's preliminary report to the U.S. Trade Representative, Proposed Modifications to the Harmonized Tariff Schedule of the United States, Investigation No. 1205–5 (Preliminary) (USITC Publication 3295). These new proposed changes are set out below.

Chapter 8

Subheadings 0805.30, 0805.30.20 and 0805.30.40 are superseded by the following:

	[Citrus fruit, fresh or dried:]			
''0805.50	Lemons (*Citrus limon, Citrus limonum*) and limes (*Citrus aurantifolia, Citrus latifolia*):			
0805.50.20	Lemons	2.2¢/kg	Free (A+,CA,E,IL,J) 0.2¢/kg (MX)	5.5¢/kg
	Limes:.			

0805.50.30	Tahitian limes, Persian limes and other limes of the *Citrus latifolia* variety.	0.8%	Free (A*,CA,E,IL,J,MX)	35%
0805.50.40	Other	1.8¢/kg	Free (A,CA,E,IL,J) 0.2¢/kg (MX)''	4.4¢/kg

[This proposed amendment replaces item 08–1 in Appendix B of USITC Pub. 3295.]

Chapter 85

Note 6 to chapter 85 is superseded by the following:

''6. Records, tapes and other media of heading 8523 or 8524 remain classified in those headings, when entered with the apparatus for which they are intended.

This note does not apply to such media when they are entered with articles other than the apparatus for which they are intended.

For the purposes of this note, the term ''apparatus for which they are intended'' refers to apparatus which reads or plays the media or which records or writes on the media.''

[This proposed amendment replaces item 85–3 in Appendix B of USITC Pub. 3295.]

Chapter 98

The following new heading 9817.64.01 is inserted in numerical sequence:

''9817.64.01	Footwear, other than goods of heading 9021, of a kind for supporting or holding the foot following an illness, operation or injury, provided that such footwear is (1) made to measure and (2) presented singly and not in pairs and designed to fit either foot equally.	Free	The rate applicable in the absence of this heading.''

Written Submissions

Interested parties are invited to submit written statements concerning the proposed changes outlined above. Commercial or financial information that a submitter desires to treat as confidential must be submitted on separate sheets of paper, each clearly marked ''Confidential Business Information'' at the top. All submissions requesting confidential treatment must conform with the requirements of § 201.6 of the Commission's rules of practice and procedure (19 CFR 201.6). All written submissions, except for confidential business information, will be made available in the Office of the Secretary of the Commission for inspection by interested parties. To be assured of consideration by the Commission, written statements relating to the proposed changes above should be submitted to the Commission at the earliest practical date and should be received no later than the close of business on May 11, 2001. All submissions should be addressed to the Secretary, United States International Trade Commission, 500 E Street SW., Washington, DC 20436. The Commission's rules do not authorize filing submissions with the Secretary by facsimile or by electronic means.

Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000. General information concerning the Commission may also be obtained by accessing its Internet server (http://www.usitc.gov). The public record for these investigations may be viewed on the Commission's electronic docket (EDIS–ON–LINE) at http://dockets. usitc.gov/eol/public.

List of Subjects

Tariffs/HTS, Harmonized System, WCO, and imports.

By order of the Commission.

Issued: April 24, 2001.

Donna R. Koehnke,

Secretary.

[FR Doc. 01–10697 Filed 4–27–01; 8:45 am]

BILLING CODE 7020–02–M

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

[Docket No. ICR–1218–0132(2001)]

Standard on Specifications for Accident Prevention Signs and Tags; Extension of the Office of Management and Budget's (OMB) Approval of Information-Collection (Paperwork) Requirements

AGENCY: Occupational Safety and Health Administration (OSHA), Labor.

ACTION: Notice of an opportunity for public comment.

SUMMARY: OSHA solicits comments concerning its proposal to decrease the existing burden-hour estimates, and to extend OMB approval of the collection-of-information requirements, of the standard on Specifications for Accident Prevention Signs and Tags; this standard regulates the design, working and application of signs and tags that inform employees of workplace safety and health hazards.

DATES: Submit written comments on or before June 29, 2001.

ADDRESSES: Submit written comments to the Docket Office, Docket No. ICR–1218–0132(2001), OSHA, U.S. Department of Labor, Room N–2625, 200 Constitution Avenue, NW., Washington, DC 20210; telephone: (202) 693–2350. Commenters may transmit written comments of 10 pages or less by facsimile to (202) 693–1648.

FOR FURTHER INFORMATION CONTACT: Theda Kenney, Directorate of Safety Standards Programs, OSHA, U.S. Department of Labor, Room N–3609, 200 Constitution Avenue, NW., Washington, DC 20210; telephone: (202) 693–2222. A copy of the Agency's Information-Collection Request (ICR) supporting the need for the information collections contained in the standard on Specifications for Accident Prevention Signs and Tags (29 CFR 1910.145) is available for inspection and copying in the Docket Office or by requesting a copy from Theda Kenney at (202) 693–2222. For electronic copies of the ICR contact OSHA on the Internet at http://www.osha.gov/comp-links.html and select ''Information Collection Requests.''

SUPPLEMENTARY INFORMATION:

I. Background

The Department of Labor, as part of its continuing effort to reduce paperwork and respondent (i.e., employer) burden, conducts a preclearance consultation program to provide the public with an opportunity to comment on proposed and continuing information-collection requirements in accordance with the Paperwork Reduction Act of 1995 (PRA–95) (44 U.S.C. 3506(c)(2)(A)). This program ensures that information is in the desired format, reporting burden (time and cost) is minimal, collection instruments are clearly understood, and OSHA's estimate of the information-collection burden is correct.

In determining the paperwork requirements specified in the standard on Specifications for Accident Prevention Signs and Tags (§ 1910.145; hereafter the ''Standard''), the Agency finds that paragraph (a)(2) requires employers to use signs and tags that conform to the design and wording specifications contained in paragraphs (d)(1) through (d)(10), (e)(2), (f)(4)(i) through (f)(4)(iv), (f)(7), and (f)(8)(ii) of the Standard. OSHA believes that, as a usual and customary practice, employers meet this requirement by purchasing a supply of appropriate signs and tags. Therefore, the Agency concludes that no burden results from this requirement because appropriate signs and tags are readily available from commercial sources. This conclusion holds even for employers who don't make such purchases because OSHA provides them with the specific wording to use when fabricating their own signs and tags.

The Agency notes that the Standard does not contain requirements for employers to post signs and tags. Instead, other OSHA standards in part 1910 directly specify the posting requirements for the signs and tags described by this Standard. Therefore, the Agency is removing the burden hours previously attributed to posting signs or tags under this Standard, and will assign these burden hours more appropriately to the standards that directly require such posting.

OSHA is recognizing an additional paperwork requirement that it previously overlooked. The Standard requires employers to select signs and tags that are appropriate to the dangers and hazards identified in the workplace; paragraphs (c)(1)(i), (c)(2)(i), (c)(3), (e)(4), (f)(3), (f)(5) through (f)(7), and (f)(8)(i) specify the signs and tags that employers must select for these dangers and hazards. In addition, paragraphs (d)(l) through (d)(10), (e)(2), (f)(4)(i) through (f)(4)(iv), (f)(7), and (f)(8)(ii) provide the design and wording requirements for these signs and tags. Therefore, employers must ensure that the signs and tags selected are appropriate for the identified dangers and hazards and meet the design and wording requirements of the Standard. Accordingly, selecting appropriate signs and tags represents a paperwork requirement that incurs employer burden hours and cost. However, the Agency believes that this requirement imposes minimal burden on most employers because, after they initially identify workplace dangers and hazards and select the appropriate signs and tags, the types of dangers and hazards do not change significantly in most workplaces (i.e., new or additional signs and tags are necessary only for new facilities or new or additional dangers or hazards).

II. Special Issues for Comment

OSHA has a particular interest in comments on the following issues:

- Whether the proposed information-collection requirements are necessary for the proper performance of the Agency's functions, including whether the information is useful;
- The accuracy of OSHA's estimate of the burden (time and cost) of the information-collection requirements, including the validity of the methodology and assumptions used;
- The quality, utility, and clarity of the information collected; and
- Ways to minimize the burden on employers who must comply; for example, by using automated or other technological information-collection and-transmission techniques.

III. Proposed Actions

OSHA proposes to decrease the existing burden-hour estimate, and to extend OMB approval, of the collection-of-information requirements specified by the Standard. In this regard, the Agency is proposing to decrease the current burden-hour estimate from 30,225 hours to 5,600 hours, a total reduction of 24,625 hours. The Agency will summarize the comments submitted in response to this notice, and will include this summary in its request to OMB to extend the approval of these information-collection requirements.

Type of Review: Extension of currently approved information-collection requirement.

Title: Specifications for Accident Prevention Signs and Tags (29 CFR 1910.145).

OMB Number: 1218–0132.

Affected Public: Business or other for-profit; not-for-profit institutions; Federal government; State, local or tribal governments.

Number of Respondents: 112,000.

Frequency of Response: On occasion.

Average Time per Response: 3 minutes (.05 hours).

Estimated Total Burden Hours: 5,600.

Estimated Cost (Operation and Maintenance): $0.

IV. Authority and Signature

R. Davis Layne, Acting Assistant Secretary of Labor for Occupational Safety and Health, directed the preparation of this notice. The authority for this notice is the Paperwork Reduction Act of 1995 (44 U.S.C. 3506), Secretary of Labor's Order No. 3–2000 (65 FR 50017).

Signed at Washington, DC on April 24, 2001.

R. Davis Layne,

Acting Assistant Secretary of Labor.

[FR Doc. 01–10636 Filed 4–27–01; 8:45 am]

BILLING CODE 4510–26–M

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

[Docket No. ICR–1218–0113(2001)]

Cranes and Derricks Standard for Construction; Extension of the Office of Management of Budget's (OMB) Approval of Information-Collection (Paperwork) Requirements

AGENCY: Occupational Safety and Health Administration (OSHA), Labor.

ACTION: Notice of an opportunity for public comment.

SUMMARY: OSHA solicits public comment concerning its request to extend OMB approval of the information-collection requirements specified the Cranes and Derricks Standard for Construction; this paragraph requires employers to establish and maintain a record of the dates and results of the annual inspection conducted on each hoisting machine and piece of equipment.

DATES: Submit written comments on or before June 29, 2001.

ADDRESSES: Submit written comments to the Docket Office, Docket No. ICR–1218–0113(2001), OSHA, U.S. Department of Labor, Room N–2625, 200 Constitution Avenue, NW., Washington, DC 20210; telephone: (202) 693–2350. Commenters may transmit written comments of 10 pages or less by facsimile to: (202) 693–1648.

FOR FURTHER INFORMATION CONTACT: Kathleen M. Martinez, Directorate of Policy, Office of Regulatory Analysis, OSHA, U.S. Department of Labor, Room N–3609, 200 Constitution Avenue, NW., Washington, DC 20210; telephone: (202) 693–1953. A copy of the Agency's Information-Collection Request (ICR) supporting the need for the information collections specified by the Cranes and Derricks Standard is available for inspection and copying in the Docket Office, or by requesting a copy from Todd Owen at (202) 693–2444. For electronic copies of the ICR contact OSHA on the Internet at *http://www.osha.gov/comp-links.html* and select ''Information Collection Requests.''

SUPPLEMENTARY INFORMATION:

I. Background

The Department of Labor, as part of its continuing effort to reduce paperwork and respondent (i.e., employer) burden, conducts a preclearance consultation program to provide the public with an opportunity to comment on proposed and continuing information-collection requirements in accordance with the Paperwork Reduction Act of 1995 (PRA–95) (44 U.S.C. 3506(c)(2)(A)). This program ensures that information is in the desired format, reporting burden (time and cost) is minimal, collection instruments are clearly understood, and OSHA's estimate of the information-collection burden is correct.

Paragraph (a)(6) of the Standard requires employers to perform annual inspections of cranes and derricks and to establish and maintain a written record of the dates and results of these inspections. The inspections identify problems such as deterioration caused by exposure to adverse weather conditions, worn components and other flaws and defects that develop during use, and accelerated wear resulting from misalignments of connecting systems and components. A competent person or a government or private agency recognized by the U.S. Department of labor must perform the inspections.

Establishing and maintaining a written record of the annual inspections alerts the equipment mechanics to servicing or repair problems. Prior to returning the equipment to service, employers can review the records to ensure that the mechanics performed the necessary repairs and maintenance. Accordingly, by using only equipment that is in safe working order, employers will prevent severe injury and death to the equipment operators and other employees who use or work near the equipment. In addition, these records provide the most efficient means for an OSHA compliance officer to determine that an employer performed the required inspections and that the equipment is safe.

II. Special Issues for Comment

OSHA has a particular interest in comments on the following issues:

- Whether the proposed information-collection requirements are necessary for the proper performance of the Agency's functions, including whether the information is useful;
- The accuracy of OSHA's estimate of the burden (time and cost) of the information-collection requirements, including the validity of the methodology and assumptions used;
- The quality, utility, and clarity of the information collected; and
- Ways to minimize the burden on employers who must comply; for example, by using automated or other technological information-collection and -transmission techniques.

III. Proposed Actions

OSHA proposes to extend OMB's previous approval of the recordkeeping (paperwork) requirement specified in paragraph (a)(6) of the Cranes and Derricks Standard for Construction (29 CFR 1926.550). The Agency will summarize the comments submitted in response to this notice, and will include this summary in its request to OMB to extend the approval of this information-collection requirement.

Type of Review: Extension of currently approved information-collection requirements.

Title: Annual Inspection Record Specified in the Cranes and Derricks Standard for Construction.

OMB Number: 1218–0113.

Affected Public: Business or other for-profit; not-for-profit institutions; Federal government; State, local or tribal governments.

Number of Respondents: 32,900.

Frequency of Response: Annually.

Total Responses: 32,900.

Average Time per Response: Either 2.75 hours or 3.5 hours depending on the capacity of the crane/derrick.

Estimated Total Burden Hours: 115,167.

Estimated Cost (Operation and Maintenance). $3,271.894.

IV. Authority and Signature

R. Davis Layne, Acting Assistant Secretary of Labor for Occupational Safety and Health, directed the preparation of this notice. The authority for this notice is the Paperwork Reduction Act of 1995 (44 U.S.C. 3506) and Secretary of Labor's Order No. 3–2000 (65 FR 50017).

Signed at Washington, DC, on April 24, 2001.

R. Davis Layne,

Acting Assistant Secretary of Labor.

[FR Doc. 01–10637 Filed 4–27–01; 8:45 am]

BILLING CODE 4510–26–M

FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION

Sunshine Act Meeting

April 25, 2001.

TIME AND DATE: 10:00 a.m., Wednesday, May 2, 2001.

PLACE: Room 6005, 6th Floor, 1730 K Street, NW., Washington, DC.

STATUS: Closed in Part [Pursuant to 5 U.S.C. 552b(c)(10)].

MATTERS TO BE CONSIDERED: It was determined by a majority vote of the Commission that part of the Commission meeting to consider and act upon the following take place in closed session:

1. Eagle Energy, Inc., Docket No. WEVA 98–123 (Issues include whether substantial evidence supports the judge's finding that the operator violated the regulations governing preshift and onshift mine examinations by failing to observe unsupported kettle bottoms; whether the judge properly concluded that the violations found were the result of the operator's unwarrantable failure; whether the judge properly imposed penalties that were double in amounts from those initially assessed; and whether the judge's frequent questioning of witnesses improperly interfered with the operator's presentation of its case and reflected bias).

Any person attending the open portion of the meeting who requires special accessibility features and/or auxiliary aids, such as sign language interpreters, must inform the Commission in advance of those needs. Subject to 29 CFR 2706.150(a)(3) and 2706.160(d).

CONTACT PERSON FOR MORE INFO: Jean Ellen, (202) 653–5629/(202) 708–9300 for TDD Relay/1–800–877–8339 for toll free.

Jean H. Ellen,

Chief Docket Clerk.

[FR Doc. 01–10804 Filed 4–26–01; 12:32 pm]

BILLING CODE 6735–01–M

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice 01–054]

Notice of Prospective Patent License

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of prospective patent license.

SUMMARY: NASA hereby gives notice that Advanced Cybernetics Group (ACG), of Cupertino, CA has applied for an exclusive license to practice the invention disclosed in U.S. Patent No. 5,774,669 entitled ''Scalable Hierarchical Network Management System for Displaying Network Information in Three Dimensions'' which is assigned to the United States of America as represented by the Administrator of the National Aeronautics and Space Administration. Written objections to the prospective

grant of a license should be sent to Ames Research Center.

DATES: Responses to this notice must be received by June 29, 2001.

FOR FURTHER INFORMATION CONTACT: Robert Padilla, Chief Patent Counsel, NASA Ames Research Center, M/S 202A–3, Moffett Field, CA 94035–1000, telephone 650–604–5104.

Dated: April 23, 2001.

Edward A. Frankle,

General Counsel.

[FR Doc. 01–10614 Filed 4–27–01; 8:45 am]

BILLING CODE 7510–01–U

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

National Endowment for the Arts; Combined Arts Advisory Panel

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Public Law 92–463), as amended, notice is hereby given that a meeting of the Combined Arts Advisory Panel, Design Arts Section (Creativity, Organizational Capacity, and New Public Works categories) to the National Council on the Arts will be held on May 31–June 1, 2001, in Room 716 at the Nancy Hanks Center, 1100 Pennsylvania Avenue, NW, Washington, DC 20506. A portion of this meeting, from 11:00 a.m. to 12:00 p.m. on June 1st, will be for policy discussion and will be open to the public. The remaining portions of the meeting, from 9:00 a.m. to 6:00 p.m. on May 31st and from 9:00 a.m. to 11:00 a.m. and 12:00 p.m. to 5:00 p.m. on June 1st, will be closed.

The closed portions of these meetings are for the purpose of Panel review, discussion, evaluation, and recommendation on applications for financial assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including information given in confidence to the agency by grant applicants. In accordance with the determination of the Chairman of May 12, 2000, these sessions will be closed to the public pursuant to (c)(4)(6) and (9)(B) of section 552b of Title 5, United States Code.

Any person may observe meetings, or portions thereof, of advisory panels that are open to the public, and, if time allows, may be permitted to participate in the panel's discussions at the discretion of the panel chairman and with the approval of the full-time Federal employee in attendance.

If you need special accommodations due to a disability, please contact the Office of AccessAbility, National Endowment for the Arts, 1100 Pennsylvania Avenue, NW., Washington, DC 20506, 202/682–5532, TDY–TDD 202/682–5496, at least seven (7) days prior to the meeting.

Further information with reference to this meeting can be obtained from Ms. Kathy Plowitz-Worden, Office of Guidelines & Panel Operations, National Endowment for the Arts, Washington, DC 20506, or call 202/682–5691.

Dated: April 23, 2001.

Kathy Plowitz-Worden,

Panel Coordinator, Panel Operations, National Endowment for the Arts.

[FR Doc. 01–10634 Filed 4–27–01; 8:45 am]

BILLING CODE 7537–01–P

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

National Endowment for the Arts; Fellowships Advisory Panel

Pursuant to Section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), as amended, notice is hereby given that a meeting of the Fellowships Advisory Panel (American Jazz Masters category) will be held by teleconference from 3:00 p.m.—4:30 p.m. on Tuesday May 22, 2001 from Room 703 at the Nancy Hanks Center, 1100 Pennsylvania Avenue, NW, Washington, DC 20506.

This meeting is for the purpose of Panel review, discussion, evaluation, and recommendations on financial assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including information given in confidence to the agency. In accordance with the determination of the Chairman of May 12, 2000, these sessions will be closed to the public pursuant to subsection (c)(4), (6) and (9)(B) of section 552b of Title 5, United States Code.

Further information with reference to this meeting can be obtained from Ms. Kathy Plowitz-Worden, Panel Coordinator, National Endowment for the Arts, Washington, DC 20506, or call 202/682–5691.

Dated: April 23, 2001.

Kathy Plowitz-Worden,

Panel Operations, Panel Coordinator, National Endowment for the Arts.

[FR Doc. 01–10633 Filed 4–27–01; 8:45 am]

BILLING CODE 7537–01–U

NATIONAL SCIENCE FOUNDATION

Notice of Permit Applications Received Under the Antarctic Conservation Act of 1978 (P.L. 95–541)

AGENCY: National Science Foundation.

ACTION: Notice of permit modification received under the Antarctic Conservation Act of 1978, Pub. L. 95–541.

SUMMARY: The National Science Foundation (NSF) is required to publish a notice of requests to modify permits issued to conduct activities regulated under the Antarctic Conservation Act of 1978. NSF has published regulations under the Antarctic Conservation Act at Title 45 Part 670 of the Code of Federal Regulations. This is the required notice of a requested permit modification.

DATES: Interested parties are invited to submit written data, comments, or views with respect to these permit applications by June 1, 2001. Permit applications may be inspected by interested parties at the Permit Office, address below.

ADDRESSES: Comments should be addressed to Permit Office, Room 755, Office of Polar Programs, National Science Foundation, 4201 Wilson Boulevard, Arlington, Virginia 22230.

FOR FURTHER INFORMATION CONTACT: Nadene G. Kennedy at the above address or (703) 292–7405.

SUPPLEMENTARY INFORMATION: The National Science Foundation, as directed by the Antarctic Conservation Act of 1978 (Public Law 95–541), has developed regulations that implement the ''Agreed Measures for the Conservation of Antarctic Fauna and Flora'' for all United States citizens. The Agreed Measures, developed by the Antarctic Treaty Consultative Parties, recommended establishment of a permit system for various activities in Antarctica and designation of certain animals and certain geographic areas a requiring special protection. The regulations establish such a permit system to designate Specially Protected Areas and Sites of Special Scientific Interest.

Description of Permit Modification Requested

The Foundation issued a permit (2000–001) to Dr. Steven D. Emslie on September 21, 1999. The issued permit allows the applicant access to certain Antarctic Specially Protected Areas in order to conduct surveys and excavations of modern and abandoned penguin colonies by surveying ice-free areas to locate evidence of a breeding colony (pebble and/or bone

concentrations, and rich vegetation). Not all sites will be visited in single season and access depends upon research vessel cruise tracks and accessibility to the site(s). The sites visited would be sampled by placing a test pit, no more than 1x1 meter in size, in the colony and excavating in 5–10 cm level until bedrock or non-ornithogenic sediments are encountered. To minimize impacts, test pits will be placed in areas with little or no vegetation when possible. Upon completion of the excavation, test pits would be refilled and any vegetation disturbed on the surface replaced. Collected sediments will be taken to the laboratory for processing. Sediments will be washed through fine-mesh screens; all organic remains will be sorted from the sediments and preserved for identification and analysis.

The applicant proposes access additional Antarctic Specially Protected Areas only on an opportunity basis depending upon vessel cruise tracks and schedules. The additional ASPA's are listed under Location, below:

Location

ASPA 102—Rookery Islands, Holme Bay
ASPA 103—Ardery Island and Odbert Island, Budd Coast
ASPA 104—Sabrina Island, Balleny Islands
ASPA 109—Moe Island, South Orkneys
ASPA 110—Lynch Island, South Orkneys
ASPA 111—Southern Powell Island and adjacent islands, South Orkneys
ASPA 114—North Coronation Island, South Orkneys
ASPA 127—Haswell Island
ASPA 135—Bailey Peninsula, Budd Coast
ASPA 136—Clark Peninsula, Budd Coast

Nadene G. Kennedy,

Permit Officer, Office of Polar Programs.

[FR Doc. 01–10674 Filed 4–27–01; 8:45 am]

BILLING CODE 7555–01–M

NATIONAL SCIENCE FOUNDATION

Conservation Act of 1978; Notice of Permit Modification

AGENCY: National Science Foundation.

SUMMARY: The Foundation modified a permit to conduct activities regulated under the Antarctic Conservation Act of 1978 (Public Law 95–541; Code of Federal Regulation Title 45, Part 670).

FOR FURTHER INFORMATION CONTACT: Nadene G. Kennedy, Permit Officer, Office of Polar Programs, Rm. 755, National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230.

Description of Permit and Modification

On September 25, 1998, the National Science Foundation issued a permit (ACA #99–009) to Dr. William R. Fraser after posting a notice in the August 27, 1998 **Federal Register.** Public comments were not received. A request to modify the permit was posted in the **Federal Register** on March 13, 2001. No public comments were received. The modification, issued by the Foundation on April 20, 2001, allows the permit holder to capture, study and release up to 50 Emperor penguins, 100 Gentoo penguins, 100 Chinstrap penguins, and 100 each of Snow, Cape and Antarctic Petrels. The data collected will help to access how annual environmental variability affects seabird diets, breeding success, growth rates, and population trends.

Location: Antarctic Peninsula.

Nadene G. Kennedy,

Permit Officer.

[FR Doc. 01–10675 Filed 4–27–01; 8:45 am]

BILLING CODE 7555–01–M

NATIONAL SCIENCE FOUNDATION

Special Emphasis Panel in Bioengineering and Environmental Systems; Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting.

Name: Special Emphasis Panel in Bioengineering and Environmental Systems (1189).

Date/Time: May 15, 2001, 8:30 am–5 pm.

Place: National Science Foundation, 4201 Wilson Boulevard, Room 360, Arlington, VA.

Type of Meeting: Closed.

Contact Person: Fred Thompson, Program Director, Environmental Technology Program, Division of Bioengineering and Environmental Systems, National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230, Telephone: (703) 292–8320.

Purpose of Meeting: To provide advice and recommendations concerning proposals submitted to NSF for financial support.

Agenda: To review and evaluate unsolicited proposals and proposals received under the Information Technology Research (ITR) Program Solicitation (Announcement Number NSF 00–126), as part of the selection process for awards.

Reason for Closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and person information concerning individuals associated with the proposals. These matters are exempt under 5 U.S.C. 552b(c), (4) and (6) or the Government in the Sunshine Act.

Dated: April 25, 2001.

Susanne Bolton,

Committee Management Officer.

[FR Doc. 01–10676 Filed 4–27–01; 8:45 am]

BILLING CODE 7555–01–M

NATIONAL SCIENCE FOUNDATION

Special Emphasis Panel in Civil and Mechanical Systems; Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting.

Name: Special Emphasis Panel in Civil and Mechanical Systems (1205).

Date/Time: May 17 and 18, 2001, 8 a.m. to 5 p.m.

Place: NSF, 4121 Wilson Boulevard, Room 575, Arlington, VA.

Type of Meeting: Closed.

Contact Person: Dr. Alison Flatau, Program Director, Dynamic Systems and Control. National Science Foundation, 4201 Wilson Blvd., Room 545, Arlington, VA 22230. (703) 292–8360.

Purpose of Meeting: To provide advice and recommendations concerning proposals submitted to NSF for financial support.

Agenda: To review and evaluate nominations for the FY'01 IIA Control Review Panel as part of the selection process for awards.

Reason for Closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries and personal information concerning individuals associated with the proposals. These matters are exempt under 5 U.S.C. 552b(c) (4) and (6) of the Government in the Sunshine Act.

Dated: April 25, 2001.

Susanne Bolton,

Committee Management Officer.

[FR Doc. 01–10677 Filed 4–27–01; 8:45 am]

BILLING CODE 7555–01–M

NUCLEAR REGULATORY COMMISSION

[Docket No. 72–8]

Notice of Issuance of Amendment to Materials License SNM–2505, Calvert Cliffs Nuclear Power Plant Independent Spent Fuel Storage Installation

The U.S. Nuclear Regulatory Commission (NRC or the Commission) has issued Amendment 3 to Materials License No. SNM–2505 held by Calvert Cliffs Nuclear Power Plant (CCNPP) for

the receipt, possession, storage, and transfer of spent fuel at the Calvert Cliffs independent spent fuel storage installation (ISFSI), located in Calvert County, Maryland. The amendment is effective as of the date of issuance.

By application dated November 16, 2000, CCNPP requested an amendment to its ISFSI license to revise License Conditions 9, 12, and 16 and the License Technical Specifications to eliminate unnecessary regulatory requirements.

This amendment complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations. The Commission has made appropriate findings as required by the Act and the Commission's rules and regulations in 10 CFR Chapter I, which are set forth in the license amendment.

In accordance with 10 CFR 72.46(b)(2), a determination has been made that the amendment does not present a genuine issue as to whether public health and safety will be significantly affected. Therefore, the publication of a notice of proposed action and an opportunity for hearing or a notice of hearing is not warranted. Notice is hereby given of the right of interested persons to request a hearing on whether the action should be rescinded or modified.

The Commission has determined that, pursuant to 10 CFR 51.22(c)(11), an environmental assessment need not be prepared in connection with issuance of the amendment.

For further details with respect to this action, see the amendment application dated November 16, 2000. In accordance with 10 CFR 2.790 of the NRC's ''Rules of Practice,'' a copy of the application will be available electronically for public inspection in the NRC Public Document Room, One White Flint North Building, 11555 Rockville Pike, Rockville, Maryland 20852, or from the publicly available records component of the NRC's Agencywide Documents Access and Management System (ADAMS). ADAMS is accessible from the NRC Web site at *http://www.nrc.gov/NRC/ADAMS/index.html* (the Public Electronic Reading Room).

Dated at Rockville, Maryland, this 17th day of April 2001.

For the Nuclear Regulatory Commission.

Susan M. Frant,

Deputy Director, Spent Fuel Project Office, Office of Nuclear Material Safety and Safeguards.

[FR Doc. 01–10615 Filed 4–27–01; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 50–73]

Notice of Renewal of Facility Operating License for the General Electric Nuclear Test Reactor

The U. S. Nuclear Regulatory Commission (the Commission) has issued Amendment No. 21 to Facility Operating License No. R–33 issued to the General Electric Company (the licensee). This license amendment renews the license for the General Electric Nuclear Test Reactor in Sunol, California. The facility is a non-power reactor that has been operating at power levels not in excess of 100 kilowatts (thermal). The renewed Operating License will expire 20 years from the date of amendment issuance.

Opportunity for hearing on this amendment was afforded in the notice of the proposed issuance of this renewal in the **Federal Register** on September 22, 1999, at 64 FR 51340. No request for a hearing or petition for leave to intervene was filed following notice of the proposed action.

The amended license complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations. The Commission has made appropriate findings as required by the Act and the Commission's Rules and regulations in 10 CFR Chapter I. Those findings are set forth in the license amendment.

The Commission has prepared a safety evaluation for the renewal of the license, which is attached to the amendment. The Commission has, based on that safety evaluation, concluded that the facility can continue to be operated by the licensee without endangering the health and safety of the public.

The Commission also has prepared an environmental assessment and finding of no significant impact for the renewal of the license. The environmental assessment and finding of no significant impact was published in the **Federal Register** on April 20, 2001, at 66 FR 20339. Continued operation of the reactor will not require alteration of buildings or structures, will not lead to significant changes in effluents released from the facility to the environment, will not increase the probability or consequences of accidents, and will not involve any unresolved issues concerning alternative uses of available resources. The Commission has concluded that this action will not have a significant effect on the quality of the human environment.

For further details with respect to this action, see (1) the application for amendment dated September 30, 1997, as supplemented on June 18, 1999, August 23, 1999, June 1, 2000, and October 5, 2000, (2) the notice of the proposed issuance, (3) Amendment No. 21 to Facility Operating License R–33, (4) the Commission's related safety evaluation report, and (5) the environmental assessment and finding of no significant impact. These documents may be examined, and/or copied for a fee, at the NRC's Public Document Room, located at One White Flint North, 11555 Rockville Pike (first floor), Rockville, Maryland. Publicly available records will also be accessible electronically from the ADAMS Public Library component on the NRC Web site, *http://www.nrc.gov* (the Electronic Reading Room).

Dated at Rockville, Maryland, this April 20, 2001.

For the Nuclear Regulatory Commission.

Ledyard B. Marsh,

Chief, Events Assessment, Generic Communications, and Non-Power Reactors Branch, Division of Regulatory Improvement Programs, Office of Nuclear Reactor Regulation.

[FR Doc. 01–10616 Filed 4–27–01; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 50–336]

Northeast Nuclear Energy Company, et al., Millstone Nuclear Power Station, Unit No. 2; Notice of Consideration of Issuance of Amendment to Facility Operating License and Opportunity for a Hearing; Correction

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of issuance; correction.

SUMMARY: This document corrects a notice appearing in the **Federal Register** on April 23, 2001 (66 FR 20485), that considers issuance of an amendment to Facility Operating License No. DPR–65, issued to Northeast Nuclear Energy Company, et al. This action is necessary to correct an erroneous date.

FOR FURTHER INFORMATION CONTACT: Daniel S. Collins, Office of Nuclear Reactor Regulation, Nuclear Regulatory Commission, Washington, DC 20555–0001, telephone: 301–415–1427, e-mail: DXC1@nrc.gov.

SUPPLEMENTARY INFORMATION: On page 20485, in the third column, in the first complete paragraph, the date is changed

from ''May 21, 2001,'' to read ''May 23, 2001.''

Dated in Rockville, Maryland, this 24th day of April 2001.

For the Nuclear Regulatory Commission.

Michael T. Lesar,

Chief, Rules and Directives Branch, Division of Administrative Services, Office of Administration.

[FR Doc. 01–10617 Filed 4–27–01; 8:45 am]

BILLING CODE 7590–01–P

SECURITIES AND EXCHANGE COMMISSION

Submission for OMB Review; Comment Request

Upon written request copies available from: Securities and Exchange Commission, Office of Filings and Information Services, Washington, DC 20549.

Extension:

Notification Under Regulation E; Form 1–E; Rule 604 and Rule 605; SEC File No. 270–221; OMB Control No. 3235–0232

Notice is hereby given that, pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), (''PRA''), the Securities and Exchange Commission (''Commission'') has submitted to the Office of Management and Budget (''OMB'') a request for extension of the previously approved collections of information discussed below.

Rule 604—Filing of Notification on Form 1–E

Rule 604 of Regulation E [17 CFR 230.604] under the Securities Act of 1933 [15 U.S.C. 77a *et seq.*] (''Securities Act'') requires a small business investment company (''SBIC'') or a business development company (''BDC'') claiming an exemption from registering its securities under the Securities Act to file a notification with the Commission on Form 1–E.

Rule 605—Filing and Use of the Offering Circular

Rule 605 of Regulation E [17 CFR 230.605] under the Act requires an SBIC or BDC claiming an exemption from registering its securities under the Securities Act to file an offering circular with the Commission that must also be provided to persons to whom an offer is made.

Form 1–E—Notification Under Regulation E

Form 1–E is the form that an SBIC or BDC uses to notify the Commission that it is claiming an exemption under Regulation E from registering its securities under the Securities Act. Form 1–E requires an issuer to provide the names and addresses of the issuer, its affiliates, directors, officers, and counsel; a description of events which would make the exemption unavailable; the jurisdiction in which the issuer intends to offer its securities; information about unregistered securities issued or sold by the issuer within one year before filing the notification on Form 1–E; information as to whether the issuer is presently offering or contemplating offering any other securities; and exhibits, including copies of the offering circular and any underwriting contracts.

The Commission uses the information provided in the notification on Form 1–E and the offering circular to determine whether an offering qualifies for the exemption under Regulation E. It is estimated that approximately three issuers file with the Commission approximately two notifications on Form 1–E annually, including offering circulars. The Commission estimates that the total burden hours for preparing these notifications would be 600 hours in the aggregate. Estimates of the burden hours are made solely for the purposes of the PRA, and are not derived from a comprehensive or even a representative survey or study of the costs of Commission rules and forms.

SBICs or BDCs wishing to claim an exemption under Regulation E from registering securities under the Securities Act are required to file a notification on Form 1–E and offering circular. The information provided on Form 1–E and in the offering circular will not be kept confidential. The Commission 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.

General comments regarding the above information should be directed to the following persons: (i) Desk Officer for the Securities and Exchange Commission, Office of Information and Regulatory Affairs, Office of Management and Budget, Room 3208, New Executive Office Building, Washington, D.C. 20503; and (ii) Michael E. Bartell, Associate Executive Director, Office of Information Technology, Securities and Exchange Commission, 450 Fifth Street NW., Washington, DC 20549. Comments must be submitted to OMB within 30 days of this notice.

Dated: April 24, 2001.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 01–10642 Filed 4–27–01; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

Submission for OMB Review; Comment Request

Upon written request copies available from: Securities and Exchange Commission, Office of Filings and Information Services, Washington, DC 20549

Extension

Form U–6B–2; SEC File No. 270–169; OMB Control No. 3235–0163.

Notice is hereby given that pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 et seq.) the Securities and Exchange Commission (''Commission'') has submitted to the Office of Management and Budget a request for extension of the previously approved collection of information discussed below.

The Public Utility Holding Company Act of 1935 [15 U.S.C. Section 79A et seq.] requires the filing of an application and/or declaration on Form U–1 for prior Commission approval both for the issue and sale of a security and its acquisition by a company in a registered holding company system.[1] Section 6(b) provides that the Commission shall exempt from the requirement of filing a declaration on Form U–1, by rules and regulations or orders and subject to such terms and conditions, as it deems appropriate in the public interest or for the protection of investors or consumers, certain security issuances and sales.

Section 6(b) also contains a reporting requirement. It directs the issuer of securities exempted under section 6(b) to file with the commission within ten days of the issue or sale of a certificate notification and directs the Commission to prescribe the from of and information required in this certificate. Rule 20(d) prescribes Form U–6B–2 as the form of certificate of notification to be filed pursuant to section 6(b). Form U–6B–2 is also prescribed by Rule 52(c) (17 CFR 250.52(c)) and Rule 47(b) (17 CFR 250.47(b)) as the form of certificate of notification to be filed by a public utility subsidiary company of a registered holding company to notify the Commission of exempt issuances and sales of securities under Rule 52 Exemption of Issue and Sale of Certain Securities approved by state commissions and Rule 47 Exemption of Public Utility Subsidiaries as to Certain Securities Issued to the Rural

[1] *See* section 6(a) (requiring prior Commission approval under the standards of section 7 for the issue and sale of securities) and section 9(a)(1) (requiring prior Commission approval under the standards of section 10 for the acquisition of securities).

Electrification Administration. The Commission receives about 89 Form U–6B–2s per year from 89 respondents who each file once, which imposes an annual burden of about 89 hours.

The estimates of the average burden hours are made solely for the purposes of the Paperwork Reduction Act and are not derived from a comprehensive or even representative survey or study of the costs of Commission rules and forms.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid control number.

Written comments regarding the above information should be directed to the following persons: (i) Desk Officer for the Securities and Exchange Commission, Office of Information and Regulatory Affairs, Office of Management and Budget, Room 10102, New Executive Office Building, Washington, DC 20503; and (ii) Michael E. Bartell, Associate Executive Director, Office of Information Technology, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Comments must be submitted to OMB within 30 days of this notice.

Dated: April 23, 2001.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 01–10643 Filed 4–27–01; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–44211; File No. SR–AMEX–2001–14]

Self-Regulatory Organizations; Notice of Filing of a Proposed Rule Change by the American Stock Exchange LLC Relating to Members' Written Proposals to List Equity Option Classes

April 23, 2001.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on March 8, 2001, the American Stock Exchange LLC (''Amex'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Exchange submitted an amendment to the proposed rule change on April 17, 2001.[3] The Commission is publishing this notice to solicit comments on the proposed rule change, as amended, from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Amex proposes to adopt Commentary .08 to Amex Rule 915 to provide procedures for members to submit written proposals requesting the listing for trading on the Amex of any equity option class. The text of the proposed rule change is set forth below. All language is being added.

* * * * *

Rule 915 Criteria for Underlying Securities

* * * * *

Commentary

* * * * *

.08 Members or member organizations may submit written proposals requesting the Exchange to review listing and trading any equity option class. The written proposal should include a discussion of how the proposed option and its underlying security comply with the criteria set forth in paragraph (a) below and with the considerations set forth in paragraph (b). Written proposals received prior to 1:00 p.m. will be considered to be received on that business day and proposals received after 1:00 p.m. will be deemed to have been received on the next business day.

(a) Listing Criteria—To be eligible to be considered for listing on the Exchange, the underlying security must meet the criteria and guidelines set forth in Rule 915 and its Commentary for options on equity securities.

(b) Listing Considerations—In determining whether to list and trade an option class proposed pursuant to Commentary, the Exchange may consider any or all of the following factors:

(i) If the proposed option is already traded on another exchange, the consolidated trading volume and trends in such volume over near and long-term;

(ii) The level and nature of the share and/or trade volume for the underlying security and trends in such volume over near and long-term;

(iii) If the underlying security is listed (or is a prospective listed security) on the Amex, or an affiliated of the Amex, the views of the issuer of such security;

(iv) The price, price volatility, and spread of the underlying security, its ''short interest'' (i.e., the total amount of the underlying equity security that has been sold short and has not yet been repurchased to close out short positions in the security) and the ability of members and investors to borrow the underlying security;

(v) The industry the underlying security represents in order to: (i) maintain diversity among various industries and issuers selected for options trading; or (ii) provide investors with the ability to use standardized options in industry sectors with growing and developing investor interest; and

(vi) The impact the listing could have on bona fide strategies or businesses of the Exchange or any of its affiliates.

The Exchange shall review and make a determination regarding a member's listing proposal within twenty-five days of receipt of the proposal. If the determination is not to list the proposed option class or to limit or condition the listing of the option in any way, then the Exchange shall, in writing within the twenty-five day period, inform the member submitting the proposal the basis for denial of the proposal or the basis for any limitation or condition put on its acceptance. If the Exchange relies upon the impact the listing could have on bona fide strategies or businesses of the Exchange or its affiliates as a factor for denying, limiting or conditioning the proposed listing, the Exchange shall maintain a record of the bona fide business or strategic considerations supporting its decision.

These procedures will not alter or have any impact on the Exchange's rules, procedures or decisions for allocating and/or reallocating to a specialist unit those options the Exchange determines to list and trade.

In addition, the Exchange's interpretation regarding threats, harassment and retaliation set forth in Rule 16, Commentary .01 shall apply to the listing proposals made by members pursuant to this Commentary .08.

* * * * *

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Amex included statements concerning the purpose of, and statutory basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these

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[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* letter from Claire P. McGrath, Vice President and Special Counsel, Derivative Securities, Amex, to Elizabeth King, Associate Director, Division of Market Regulation, Commission, dated April 16, 2001 (''Amendment No. 1''). Amendment No. 1 revises proposed Commentary .08 to Amex Rule 915 to require the Amex to maintain a record of any bona fide business considerations it relies upon in denying or placing limitations or conditions upon a proposed listing.

statements may be examined at the places specified in Item IV below. The Amex has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to adopt Commentary .08 to Amex Rule 915 to provide procedures for members to submit written proposals requesting the listing for trading on the Exchange of any equity option class.[4] Commentary .08 would require the underlying security to meet the criteria and guidelines set forth in Amex Rule 915 and its Commentary before it can be considered for listing on the Exchange. The written proposal would be required to include a discussion of how the proposed listing complies with the criteria set forth in Amex Rule 915 and its Commentary and the factors set forth below. If a proposal is submitted after 1:00 p.m. on a business day, it would be considered submitted on the following business day. If the underlying security meets the eligibility criteria and guidelines, the Exchange would consider the following factors in determining to list the proposed option:

- If the proposed option is already traded on another exchange, the consolidated trading volume and trends in such volume over the near and long-term;
- The level and nature of the share and/or trade volume for the underlying security and trends in such volume over the near and long-term;
- If the underlying security is listed (or is a prospective listed security) on the Exchange, or on an affiliate of the Exchange, the views of the issuer of such security;
- The price, price volatility, and spread of the underlying security, its ''short interest'' (*i.e.,* the total amount of the underlying equity security that has been sold short and has not yet been repurchased to close out short positions in the security) and the ability of members and investors to borrow the underlying security.
- The industry the underlying security represents in order to: (i) Maintain diversity among various industries and issuers selected for options trading; or (ii) provide investors with the ability to use standardized options in industry sectors with growing and developing investor interest; and
- The impact the listing could have on bona fide strategies or businesses of the Exchange or any of its affiliates. The Amex would be required to maintain a record of any bona fide business considerations it relies upon in denying or placing limitations or conditions upon a proposed listing.[5]

The Exchange would be required to review and make a determination regarding a member's listing proposal within 25 days of receipt of the proposal. If the Exchange decides not to list the proposed option class or to limit or condition the listing of the option in any way, the Exchange would be required, in writing and within the 25 day period, to inform the member of the basis for denial of the proposal or the basis for any limitation or condition put on its acceptance.

The proposed rule change would not limit the Exchange's right on its own determination to research, identify, and propose to the Stock Selection Committee, as it does today, the listing of options on securities that meet the listing criteria set forth in Amex Rule 915 and its Commentary. The proposed procedures would not alter or have any impact on the Exchange's rules, procedures or decisions for allocating and/or reallocating to a specialist unit those options the Exchange determines to list. In addition, proposed Commentary .08 would reference the anti-harassment rule set forth in Amex Rule 16, Commentary .01, to prohibit threats, harassment, and retaliation against any person or entity making or advocating a listing proposal or beginning to make markets in any option class on any exchange or other market.

2. Statutory Basis

The Exchange believes that the proposed rule change, as amended, is consistent with section 6(b) of the Act[6] in general and furthers the objectives of section 6(b)(5)[7] in particular in that it is designed to promote just and equitable principles of trade, remove impediments to a free and open market and a national market system, and protect investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Amex does not believe that the proposed rule change, as amended, will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The Amex did not solicit or receive written comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the Amex consents, the Commission will:

(A) By order approve such proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change, as amended, is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filings will also be available for inspection and copying at the principal office of the Amex. All submissions should refer to the File No. SR–Amex–2001–14 and should be submitted by May 21, 2001.

[4] As part of a settlement of an enforcement action by the Commission, four of the five options exchanges, including the Amex, are required to adopt rules to codify listing procedures to be carried out when a member or member organization requests the exchange to list options not currently trading on the exchange. *See* Order Instituting Public Administrative Proceeding Pursuant to Section 19(h)(1) of the Securities Exchange Act of 1934, Making Findings and Imposing Remedial Sanctions, Securities Exchange Act Release No. 43268 (September 11, 2000).

[5] *See* Amendment No. 1, *supra* note 3.

[6] 15 U.S.C. 78f(b).

[7] 15 U.S.C. 78f(b)(5).

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[8]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 01–10609 Filed 4–27–01; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–44208; File No. SR–ISE–01–02]

Self-Regulatory Organizations; International Securities Exchange LLC; Order Granting Approval to Proposed Rule Change Relating to Anticipatory Hedging Activity

April 20, 2001.

On January 12, 2001, the International Securities Exchange LLC (''ISE'' or ''Exchange'') field with the Securities and Exchange Commission (''Commission''), pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'') [1] and Rule 19b–4 thereunder,[2] a proposed rule change relating to anticipatory hedging activity.

The proposed rule change would prohibit a member or a person associated with a member who has knowledge of all the terms and conditions concerning the imminent execution of (1) an order and a solicited order, (2) an order being facilitated, or (3) two orders being crossed, to enter, based on that knowledge, an order to buy or sell an option of the same class, shares in the underlying security, or any related instrument, before the same information is disclosed to the trading crowd.

The proposed rule change was published for comment in the **Federal Register** on February 27, 2001.[3] The Commission received no comments on the proposal.

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange [4] and, in particular, the requirements of section 6 of the Act [5] and the rules and regulations thereunder. The Commission finds specifically that the proposed rule change is consistent with section 6(b)(5) of the Act,[6] because it is designed to maintain the integrity of the ISE's market by preventing the misuse of non-public information and affording the trading crowd a fair and full opportunity to make informed trading decisions. It also conforms to similar rules at other options exchanges relating to anticipatory hedging.[7]

It is therefore ordered, pursuant to section 19(b)(2) of the Act,[8] that the proposed rule change (File No. SR–ISE–01–02) be, and it hereby is, approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[9]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 01–10608 Filed 4–27–01; 8:45 am]

BILLING CODE 8010–01–M

[8] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 43983 (February 20, 2001), 66 FR 12576 (February 27, 2001).

[4] In approving this proposed rule change, the Commission notes that it has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[5] 15 U.S.C. 78f.

[6] 15 U.S.C. 78f(b)(5).

[7] *See, e.g.,* American Stock Exchange Rule 950(d), Commentary .04., Chicago Board Options Exchange Rule 6.9(e).

[8] 15 U.S.C. 78s(b)(2).

[9] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–44214; File No. SR–NASD–2001–21)

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by National Association of Securities Dealers, Inc., Relating to Amendments to the Fee Structure of the Code of Arbitration Procedure

April 24, 2001.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 19b–4 thereunder, [2] notice is hereby given that on March 23, 2001, the National Association of Securities Dealers, Inc. (''NASD''), through its wholly owned subsidiary, NASD Dispute Resolution, Inc. (''NASD Dispute Resolution'') filed with the Securities and Exchange Commission (''SEC'' or ''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by NASD Dispute Resolution. On April 20, 2001, the NASD filed Amendment No. 1 to the proposal.[3] The Commission is publishing this notice to solicit comments on the proposed rule change, as amended, from interested persons.

I. Self–Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

NASD Dispute Resolution is proposing to amend the Code of Arbitration of Procedure (''Code'') to clarify or simplify several fee-related provisions of the Code. Proposed new language is in italics; proposed deletions are in brackets.

* * * * *

10306. Settlements

[All settlements upon any matter shall be at the election of the parties.]

(a) *Parties to an arbitration may agree to settle their dispute at any time.*

(b) *The terms of a settlement agreement do not need to be disclosed to NASD Dispute Resolution. However, the parties will remain responsible for payment of fees incurred, including fees for previously scheduled hearing sessions. If the parties fail to agree on the allocation of outstanding fees, the fees shall be divided equally among all parties.*

* * * * *

10319. Adjournments

(a) The arbitrator(s) may, in their discretion, adjourn any hearing(s) either upon their own initiative or upon the request of any party to the arbitration.

(b) [Unless waived by the Director of Arbitration upon a showing of financial need,] *If an adjournment requested by a party is granted after arbitrators have been appointed, the* [a] party requesting the adjournment [after arbitrators have been appointed shall deposit with the request for an adjournment,] *shall pay* a fee equal to the initial deposit of hearing session fees for the first adjournment and twice the initial deposit of hearing session fees, not to exceed [$1,000] *1,500* for a second or subsequent adjournment requested by that party. [If the adjournment is granted, the arbitrator(s) may direct the return of the adjournment fee.] *The arbitrators may waive these fees in their discretion. If more than one party requests the adjournment, the arbitrators shall allocate the fees among the requesting parties.*

(c) Upon receiving a third request consented to by all parties for an adjournment, the arbitrator(s) may dismiss the arbitration without prejudice to the Claimant filing a new arbitration.

* * * * *

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* letter from Laura Gansler, Counsel, NASD Dispute Resolution, to Florence Harmon, Senior Special Counsel, Division of Market Regulation, Commission, dated April 19, 2001 (''Amendment No. 1''). In Amendment No. 1, the NASD changed the first sentence of NASD Rule 10306 to indicate that the terms of a settlement agreement do not need to be disclosed to NASD Dispute Resolution, rather than the NASD as originally proposed.

10328. Amendments

(a) After the filing of any pleadings, if a party desires to file a new or different pleading, such change must be made in writing and filed with the Director of Arbitration with sufficient additional copies of each arbitrator. The party filing a new or different pleading shall serve on all other parties, a copy of the new or different pleading in accordance with the provisions set forth in Rule 10314(b). The other parties may, within ten (10) business days from the receipt of service, file a response with all other parties and the Director of Arbitration in accordance with Rule 10314(b).

(b) *If a new or amended pleading increases the amount in dispute, all filing fees, surcharges, and process fees required under Rules 10332 and 10333 will be recalculated based on the amended amount in dispute.*

(c) After a panel has been appointed, no new or different pleading may be filed except for a responsive pleading as provided for in (a) above or with the panel's consent.

* * * * *

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, NASD Dispute Resolution 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. NASD Dispute Resolution has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

NASD Dispute Resolution has identified several provisions of the Code relating to the assessment or payment of fees that have generated confusion for the staff and parties, or otherwise require simplification or clarification. The general purpose of the proposed rule change is to clarify or simplify these provisions. The proposed amendment to Rule 10319 would also harmonize the rule with recent changes to other parts of the Code.

a. *Settlement Default for the Allocation of Forum Fees.* Rule 10306 of the Code provides that parties to arbitrations may settle their dispute at any time. The terms of any settlement agreement need not be disclosed to the NASD Dispute Resolution.[4] However, settling parties remain responsible for payment of outstanding fees, including fees for previously held hearing sessions. NASD Dispute Resolution encourages parties to agree on how any outstanding fees shall be divided among the parties as part of the settlement agreement. Unfortunately, this often does not happen.

When the parties fail to allocate fees in settlements, the staff must present this issue to the arbitrator(s) for resolution. This is a time-consuming process that is an unnecessary burden to the arbitrator(s) and can result in surprises to the parties. To eliminate any ambiguity in this area, the proposed rule change would amend Rule 10306 to provide that if settling parties fail to agree on the allocation of outstanding fees, the fees will be divided equally among all parties by default.

b. *Adjournment Fees.* The proposed rule change would modify the timing of the payment of adjournment fees. Rule 10319 of the Code currently requires parties requesting adjournment of an arbitration hearing to deposit a fee at the time the adjournment is requested. If the adjournment is not granted, the deposit is returned; if it is granted, the arbitrators may return the deposit in their direction.

The proposed rule change would minimize the burden this rule places on parties, arbitrators, and staff by providing that payment of the adjournment fee is required only if an adjournment is granted, rather than requiring a deposit of fees when a request for adjournment is made. This would eliminate the need for parties to deposit funds that may be returned to them, as well as the need for the staff to track the deposits and issue refunds if necessary. It would also help to expedite the resolution of adjournment requests.

The proposed rule change would also address a technical imperfection in the current adjournment fee rule. The current rule provides that, for initial adjournment requests, the fee is equal to the amount of the initial hearing session fee; for second or subsequent adjournment requests, the amount is twice the initial hearing session fee, but not more than $1,000. The intent of the portion of the current rule is to discourage repeat adjournments, by having second and subsequent adjournments cost substantially more than the first adjournment. When the NASD's new fee schedule went into effect in March 1999, hearing session fees were generally increased.[5] For several claim categories, the hearing session fee now exceeds $1,000, meaning that the rule as presently written can result in a *lower* fee for second and subsequent adjournments. To address this anomaly, the proposed rule change would increase the current $1,000 cap to $1,500.

c. *Recalculating Fees When Amount in Dispute is Amended.* Finally, the proposed rule change would amend Rule 10328 of the Code, governing amendments to pleadings, to clarify that when a claim is amended to increase the amount in dispute, NASD Dispute Resolution will recalculate filing fees, hearing session deposits, surcharges, and process fees based on the new, increased claim. This will present parties from avoiding higher filing fees and surcharges by initially claiming an artificially low amount in dispute in their statement of claim.

2. Statutory Basis

NASD Dispute Resolution believes that the proposed rule change is consistent with the provisions of Section 15A(b)(6) of the Act,[6] which requires, among other things, that the Association's rules must be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and, in general, to protect investors and the public interest. NASD Dispute Resolution believes that the proposed rule change will protect investors and the general public by simplifying and clarifying various fee-related provisions of the Code.

B. Self-Regulatory Organization's Statement on Burden on Competition

NASD Dispute Resolution does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act, as amended.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i)

[4] *See* Amendment No. 1, *supra* note 3.

[5] *See* Securities Exchange Act Release No. 41056 (February 16, 1999), 64 FR 10041 (March 1, 1999) (File No. SR–NASD–97–79).

[6] 15 U.S.C. 78*o*A(b)(6).

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 organization consents, the Commission will:

A. by order approve such proposed rule change, or

B. institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the NASD. All submissions should refer to SR–NASD–2001–21 in the caption above and should be submitted by May 21, 2001.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[7]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 01–10641 Filed 4–27–01; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–44212; File No. SR–OCC–2001–05]

Self-Regulatory Organizations; The Options Clearing Corporation; Notice of Filing of Proposed Rule Change Relating to Clearing Security Futures

April 23, 2001.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] notice is hereby given that on March 21, 2001, The Options Clearing Corporation (''OCC'') filed with the Securities and Exchange Commission (''Commission'') and on April 16, 2001, amended the proposed rule change as described in Items I, II, and III below, which items have been prepared primarily by OCC. The Commission is publishing this notice to solicit comments on the proposed rule change from interested parties.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The proposed rule change would amend OCC's By-Laws to provide that OCC may clear transactions in security futures effected on any national securities exchange or association registered under section 6(a) or 15A(a) of the Act, as amended, or any ''designated contract market'' (as that term is used in the Commodity Exchange Act (''CEA'') that is registered as a national securities exchange under section 6(g) of the Act.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, OCC included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. OCC has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of these statements.[2]

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

The Commodity Futures Modernization Act (''CFMA''), which became law on December 21, 2000, eliminated the preexisting ban on trading in future contracts on individual securities and narrow-based stock indices. Such ''security futures'' will be permitted to be traded on a principal to principal basis between ''eligible contract participants'' on August 21, 2001, and by other classes of customers on December 21, 2001. The purpose of this proposed rule change is to identify the kinds of markets from which OCC will accept transactions in security futures for clearance.

OCC anticipates that some or all of OCC's five participant exchanges will trade security futures, either on the participant exchange itself or on an affiliated futures exchange. OCC expects that it will therefore enter into the business of clearing security futures. However, the types of entities that can provide a marketplace for security futures include markets in addition to the options exchanges that are OCC's participant exchanges. These include other national securities exchanges and national securities associations as well as any ''board of trade'' that has been designated as a ''contract market'' under the CEA. An SEC-regulated market that wishes to trade security futures is required to obtain a limited-purpose registration as a marketplace under the CEA through a notice filing with the Commodity Futures Trading Commission (''CFTC''). A CFTC-regulated market trading security futures is required to obtain a limited-purpose registration with the Commission as a national securities exchange under a similar procedure. Each market will be regulated primarily by the agency (*i.e.,* the Commission or the CFTC) with which it is fully registered.

OCC believes that it is in a uniquely favorable position to clear security futures for any of these types of markets. OCC's role as the common clearinghouse for equity options offers opportunities for margin offsets and other efficiencies that would not be available if positions in security futures were carried with other clearinghouses. OCC's settlement interface with the National Securities Clearing Corporation gives OCC the ready ability to effect delivery of underlying stocks with respect to physically settled security futures. Because of OCC's experience and expertise in adjusting equity option contracts to compensate for various corporate actions, OCC is uniquely prepared to perform the same necessary function for security futures. Finally, OCC is legally able to clear security futures transactions originating on any type of market whereas a futures clearinghouse cannot clear security futures transactions originating on national securities exchanges that are registered with the Commission pursuant to section 6(a) of the Act without registering as a securities clearing agency.

Clearing members have conveyed to OCC their desire to consolidate clearance, settlement, and collateralization of similar or hedgeable products. This need grows in urgency with the sale of the collateral necessary to support the growing security derivatives markets.

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[7] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] The Commission has modified the text of the summaries prepared by OCC.

OCC believes that the interests of minimizing the scale and cost of collateral, maximizing the efficiency of clearance and settlement, reducing systemic risk, providing the best possible service to clearing members at the lowest possible price, and ultimately reducing costs to investors all argue that OCC's policy should be to clear stock futures transactions for any national securities exchange or association registered under section 6(a) or 15(A)(a) of the Act or any ''designated contract market'' (as that term is used in the CEA) that is registered as a national securities exchange under section 6(g) of the Act.

OCC will, of course, need to adopt additional rules governing security futures. Additionally, as described below, OCC proposed to cover security futures under separate clearing agreements between it and the markets desiring to clear security futures transactions through OCC rather than to incorporate security futures in the Restated Participant Exchange Agreement (''RPEA''). Because these products and the systems and other infrastructure needed to clear them are still being designed and developed, it is too early for OCC to be able to file a complete set of rules for clearing security futures. These rules, including a proposed form of clearing agreement for security futures, will be the subject of one or more future filings under Rule 19b-4. However, it is important to resolve now the question of which markets OCC will clear for in order that both those markets and OCC can prepare for the start of security futures trading, which can begin in less than six months.

Considerations of fairness dictate that markets other than participant exchanges and their affiliates be required to market some form of ''investment'' in OCC analogous to the redeemable equity investments required of participant exchange, However, such markets should not be offered OCC common stock. Increasing the number of OCC's common stockholders would dilute the interest of OCC's existing stockholders and unnecessarily complicate issues of corporate governance.

Accordingly, the proposed amendment to Article I of OCC's By-Laws would define a separate category of market—a ''security futures market—''—from which OCC would accept transactions in security futures for clearance. The definition of ''security futures market'' would include certain entities, other than participant exchanges, that can be marketplaces for security futures under the provisions of the CFMA.[3] A security futures market would not be defined as an ''exchange,'' and OCC would be simply a provider of clearing services to such markets. For convenience, however, the terms ''exchange transaction,'' ''exchange rules,'' and ''exchange member'' would be redefined to include transactions on the rules and members of, as the case may be, a security futures market.

OCC anticipates that it would clear security futures transactions on security futures markets on the same terms and subject to the same clearing fees that will apply to security futures transactions originating on the exchanges. OCC proposes to create a new Article XII of its By-Laws that will be applicable to security futures. For the reasons stated, the present filing contains only the first section of Article XII, which establishes the conditions on which OCC will clear transactions in security futures for an exchange or a security futures market. Section 1 distinguishes between participant exchanges and security futures markets that are affiliated with an exchange, on the one hand, and non-affiliated security futures markets on the other hand.

For the sake of fairness to its participant exchanges, which are required to purchase and hold shares of OCC stock and to provide additional capital to OCC to support the preparation for clearing transactions for new security futures markets, OCC proposes that non-affiliated security futures markets be required to make a ''good faith'' deposit with OCC of $250,000. That deposit will be refunded to the security futures market in whole or in part if it ceases clearing security futures through OCC. OCC is considering a formula that would fix the amount of the refund at the lesser of the full amount of the original deposit or 50% of the amount of clearing fees received by OCC from clearing members as a result of transactions on that market (*i.e.*, a kind of ''earn out'' provision).

OCC would not be obligated to undertake security futures clearing for any non-affiliated security futures market if it determined that to do so would tax OCC's resources in a way that would jeopardize OCC's ability to fully perform its other responsibilities.

The proposed By-Law provision would also require an exchange or security futures market that wishes OCC to clear its transactions in security futures to enter into a clearing agreement with OCC that would define the business relationship between OCC and such market with respect to security futures. OCC anticipates that there will be separate but uniform (except for provisions relating to the good faith deposit required of non-affiliated security futures market) clearing agreements with each exchange and security futures market that clears security futures through OCC. These agreements would cover some of the same matters covered in the RPEA but would omit inapplicable provisions relating to the registration statement on which OCC registers options, registration under state securities laws, and the options disclosure document. The clearing agreement would also contain appropriate indemnification of OCC and its officers and directors. The clearing agreement would terminate if the exchange or security futures market is no longer eligible to list security futures, no longer lists security futures despite being eligible to do so, or is in material breach of the clearing agreement.

The proposed rule change is consistent with the purposes and requirements of section 17A of the Act[4] and the rules and regulations thereunder applicable to OCC because it fosters cooperation and coordination with persons engaged in the clearance and settlement of securities transactions, removes impediments to and perfects the mechanism of a national system for the prompt and accurate clearance and settlement of securities transactions, and in general protects investors and the public interest.

(B) Self-Regulatory Organization's Statement on Burden on Competition

OCC does not believe that the proposed rule change would impose any burden on competition.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

Written comments were not and are not intended to be solicited with respect

[3] The term ''security futures market'' does not include an ''alternative trading system'' or a ''derivatives transaction execution facility'' even though such markets may also trade security futures under provisions of the CEMA. Under section 6(h) of the Act, alternative trading systems would be permitted to trade only those security futures that are listed on a national securities exchange or national securities association and even then not until certain additional action is taken by such an exchange or association as provided in section 6(h)(5) of the Act. ''Derivatives transaction facility'' is a newly created regulatory category under the CEA. OCC believes that clearance of transactions for either of these types of entities could involve additional considerations not raised by its current proposal.

[4] 15 U.S.C. 78q–1.

to the proposed rule change, and none have been received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within thirty-five days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to ninety days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve such proposed rule change or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC 20549. Copies of such filing also will be available for inspection and copying at the principal office of OCC. All submissions should refer to File No. SR–OCC–2001–05 and should be submitted by May 21, 2001.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[5]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 01–10607 Filed 4–27–01; 8:45 am]

BILLING CODE 8010–01–M

[5] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–44203; File No. SR–Phlx–2001–10]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change and Amendment No. 1 by the Philadelphia Stock Exchange, Inc. To Amend Phlx Rule 237 To Expand the Securities Eligible for eVWAP Trading

April 19, 2001.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on April 5, 2001, the Philadelphia Stock Exchange, Inc. (''Phlx'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'' or ''SEC'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. On April 13, 2001, the Exchange amended the proposal.[3] The Exchange has designated this proposal as one affecting a change in an existing order entry or trading system of the Phlx that (i) does not significantly affect the protection of investors or the public interest; (ii) does not impose any significant burden on competition; and (iii) does not have the effect of limiting the access to or availability of the system under Section 19(b)(3)(A) of the Act,[4] which renders the proposal effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change, as amended, from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend Phlx Rule 237, eVWAP Morning Session,[5] to expand the securities eligible for eVWAP trading to include additional exchange traded component issues of the Standard and Poor's (''S&P'') 500 index. Specifically, the Exchange proposes to adopt paragraph (b), which states the following:

(b) Eligible Securities. The following securities will be eligible for execution in the System:

(i) Exchange listed component issues of the Standard & Poor's 500 index and any exchange listed issue that has been designated by the compiler of such index for inclusion in such index.

(ii) Any of 300 New York Stock Exchange (NYSE) issues selected as follows: the 400 NYSE issues with the highest market capitalization excluding the 100 issues that have the lowest average daily dollar trading volume over 20 days preceding the eligibility determination, with eligibility determined at least semiannually.

The Exchange also proposes technical amendments to Phlx Rule 237 relating to decimal reporting and a minor change to the calculation methodology, as described further below. The complete text of the proposal is available at the Phlx and at the Commission.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of the proposed rule change is to expand the number of highly capitalized and actively traded securities eligible to participate in eVWAP pursuant to Phlx Rule 237. The eVWAP is a pre-opening order matching session for the electronic execution of large-sized stock orders at a standardized volume weighted average price (''eVWAP Price'').

The proposed expansion of eligible securities would include those exchange

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* April 12, 2001 letter and attachments from Murray L. Ross, Phlx to Nancy Sanow, Division of Market Regulation, SEC (''Amendment No. 1''). In Amendment No. 1, the Phlx limited the new securities eligible for eVWAP to exchange traded component issues of the Standard & Poor's 500 index, and made other technical, non-substantive changes to the original proposal. For purposes of calculating the 60-day abrogation period, the Commission considers the period to commence on April 13, 2001, the date the Phlx filed Amendment No. 1.

[4] 15 U.S.C. 78s(b)(3)(A).

[5] eVWAP was developed by Universal Trading Technologies Corporation, and was approved by the Commission to operate as a facility of the Exchange. *See* Securities Exchange Act Release No. 41210 (March 24, 1999), 64 FR 15857 (April 1, 1999)(SR–Phlx–96–14). The original pilot program was extended until November 30, 2001. *See* Securities Exchange Act Release No. 43477 (October 23, 2000), 65 FR 64734 (October 30, 2000)(SR–Phlx–00–84).

listed and Consolidated Tape Association (''CTA'') reported securities that are component issues of the S&P 500 index. This expansion would increase the number of securities available for eVWAP participation by 169 exchange listed securities that are not presently eVWAP eligible, but are component issues of the S&P 500 index. A number of eVWAP participants have requested that the Exchange make these issues eligible for inclusion in the system pursuant to Phlx Rule 237 issue eligibility procedures.

The Exchange notes that the additional eligible securities may not be securities that the Exchange otherwise trades on its equity floor. These securities may instead only be traded through the eVWAP System; thus, they would be traded on an unlisted trading privileges basis, but without trading during regular trading hours pursuant to regular trading rules and thus without the concomitant quoting obligations. Nevertheless, these eVWAP trades will be reported pursuant to the applicable reporting channel, the CTA Tape.

The Exchange notes that the additional securities that it has requested to be eligible for eVWAP matching are all high capitalization issues, enjoying active trading volume. The S&P 500 index is a key benchmark of large capitalization securities followed actively by institutional money managers and investment fiduciaries that seek to trade component issues relative to their index weightings. Certain of these market participants, among others, have indicated that they see considerable utility in extending the benefits now afforded to a limited group of listed issues to a more expansive eVWAP eligibility list, including all exchange listed component issues of the S&P 500 index. Additionally, the eligibility of these additional issues is critical to developing eVWAP order flow connected with certain index-linked stock basket transactions.

The Exchange also notes that it has eliminated the exclusion of issues that have a market price of $200 or more per share in determining eligibility for listed issues. Originally the $200 market price exclusion was designed to eliminate very highly priced issues such as Washington Post and Berkshire Hathaway. The Exchange believes that the existing dollar volume criteria has and will continue to eliminate very highly priced issues which possess limited trading activity outside of the system while permitting certain actively traded high priced issues to be eVWAP eligible.

The Exchange notes that several major broker-dealers sponsor alternative trading systems, which currently provide crossing networks that offer the opportunity to trade any listed or Nasdaq reported securities. For example, ITG (POSIT) and Instinet operate crossing systems that offer trade matching in thousands of reported securities without regard to capitalization or dollar volume. As a competitive matter, the Phlx believes that eVWAP needs to offer, at a minimum, the component securities of the S&P 500 index and those issues among the largest NYSE securities by market capitalization weight.

The Exchange also has amended paragraph (g) of Phlx Rule 237 to reflect decimalization of price reporting as well as the ability to recognize and include only those trades occurring during the regular primary market trading session in the eVWAP calculation. In this regard, recent modifications to the CTA Networks A and B now distinguish trade reports reflective of executions during regular trading hours as differentiated from those occurring in after hours trading sessions, which are reported with ''T'' indicators. The latter trades are not intended to be included in the eVWAP calculation. Additionally minor technical amendments to Phlx Rule 237 to eliminate references to UTS and insert eVWAP have been made.[6]

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with section 6(b)[7] of the Act in general, and Section 6(b)(5)[8] in particular in that it is designed to promote just and equitable principles of trade, prevent fraudulent and manipulative acts and practices and protect investors and the public interest by expanding the number of highly capitalized, actively traded securities eligible for eVWAP trading.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any inappropriate burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were either solicited or received.

[6] Previously all references to UTS were to be eliminated and replaced by eVWAP, however, two references were not changed. *See* Securities Exchange Act Release No. 42702 (April 19, 2000), 65 FR 24528 (April 26, 2000)(SR–Phlx 00–19).

[7] 15 U.S.C. 78f(b).

[8] 15 U.S.C. 78f(b)(5).

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act[9] and subparagraph (f)(5) of Rule 19b–4 thereunder,[10] because it effects a change in an existing order entry or trading system of the Phlx that (i) does not significantly affect the protection of investors or the public interest; (ii) does not impose any significant burden on competition; and (iii) does not have the effect of limiting the access to or availability of the system. At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposal is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the Exchange. All submissions should refer to file number SR–Phlx 2001–10, and should be submitted by May 21, 2001.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[11]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 01–10606 Filed 4–27–01; 8:45 am]

BILLING CODE 8010–01–M

[9] 15 U.S.C. 78s(b)(3)(A).

[10] 17 CFR 240.19b–4(f)(5).

[11] 17 CFR 200.30–3(a)(12).

SMALL BUSINESS ADMINISTRATION

[Declaration of Disaster #3320, Amendment #5]

State of Washington

In accordance with a notice received from the Federal Emergency Management Agency, dated April 19, 2001, the above-numbered Declaration is hereby amended to include Chelan and Kittitas counties in the State of Washington as disaster areas due to damages caused by the earthquake beginning on February 28, 2001 and continuing through March 16, 2001. In addition the Declaration is hereby amended to extend the deadline for filing applications for physical damages as a result of this disaster to May 31, 2001.

In addition, applications for economic injury loans from small businesses located in Douglas County in the State of Washington may be filed until the specified date at the previously designated location. Any counties contiguous to the above named primary counties and not listed here have been previously declared.

All other information remains the same, i.e., the deadline for filing applications for economic injury the deadline is November 30, 2001.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008)

Dated: April 19, 2001.

James E. Rivera,

Acting Associate Administrator for Disaster Assistance.

[FR Doc. 01–10672 Filed 4–27–01; 8:45 am]

BILLING CODE 8025–01–P

SOCIAL SECURITY ADMINISTRATION

Privacy Act of 1974 as Amended; Computer Matching Program (SSA/Department of Health and Human Services, Administration on Children and Families, Office of Child Support Enforcement (OCSE) Match Number 1074

AGENCY: Social Security Administration (SSA).

ACTION: Notice of computer matching program.

SUMMARY: In accordance with the provisions of the Privacy Act, as amended, this notice announces a computer matching program that SSA plans to conduct with the Department of Health and Human Services, Administration on Children and Families, Office of Child Support Enforcement (OCSE).

DATES: SSA will file a report of the subject matching program with the Committee on Governmental Affairs of the Senate, the Committee on Government Reform and Oversight of the House of Representatives, and the Office of Information and Regulatory Affairs, Office of Management and Budget (OMB). The matching program will be effective as indicated below.

ADDRESSES: Interested parties may comment on this notice by either telefax to (410) 966–2935 or writing to the Associate Commissioner, Office of Program Support, 2–Q–16 Operations Building, 6401 Security Boulevard, Baltimore, MD 21235. All comments received will be available for public inspection at this address.

FOR FURTHER INFORMATION CONTACT: The Associate Commissioner for Program Support as shown above.

SUPPLEMENTARY INFORMATION:

A. General

The Computer Matching and Privacy Protection Act of 1988 (Pub. L. (Public Law) 100–503), amended the Privacy Act (5 U.S.C. 552a) by describing the manner in which computer matching involving Federal agencies could be performed and adding certain protections for individuals applying for and receiving Federal benefits. Section 7201 of the Omnibus Budget Reconciliation Act of 1990 (Pub. L. 101–508) further amended the Privacy Act regarding protections for such individuals. The Privacy Act, as amended, regulates the use of computer matching by Federal agencies when records in a system of records are matched with other Federal, State, or local government records.

It requires Federal agencies involved in computer matching programs to:

(1) Negotiate written agreements with the other agency or agencies participating in the matching programs;

(2) Obtain the Data Integrity Boards' approval of the match agreements;

(3) Furnish detailed reports about matching programs to Congress and OMB;

(4) Notify applicants and beneficiaries that their records are subject to matching; and

(5) Verify match findings before reducing, suspending, terminating, or denying an individual's benefits or payments.

B. SSA Computer Matches Subject to the Privacy Act

We have taken action to ensure that all of SSA's computer matching programs comply with the requirements of the Privacy Act, as amended.

Dated: April 11, 2001.

Glenna Donnelly,

Acting Deputy Commissioner for Disability and Income Security Programs.

Notice of Computer Matching Program, (OCSE) With the Social Security Administration (SSA)

A. Participating Agencies

SSA and OCSE.

B. Purpose of the Matching Program

To identify Title XVI recipients who have quarterly wages, new hire, or unemployment insurance information.

The matching program is designed to assist SSA in establishing or verifying eligibility and/or payment amounts under the Supplemental Security Income (SSI) program, as authorized by the Social Security Act and by the Privacy Act.

Under the matching program, SSA will obtain data provided by OCSE.

C. Categories of Records and Individuals Covered by the Matching Program

On the basis of certain identifying information as provided by SSA to OCSE, OCSE will provide SSA with electronic files containing Quarterly Wage, New Hire and Unemployment Insurance information in National Directory of New Hires of its' Federal Parent Locator Service system of records. SSA will then match the OCSE data with Title XVI payment information maintained in Supplemental Security Record system of records.

D. Inclusive Dates of the Match

The matching program shall become effective no sooner than 40 days after notice for the program is sent to Congress and OMB, or 30 days after publication of this notice in the **Federal Register**, whichever date is later. The matching program will continue for 18 months from the effective date and may be extended for an additional 12 months thereafter, if certain conditions are met.

[FR Doc. 01–10631 Filed 4–27–01; 8:45am]

BILLING CODE 4191–02–P

DEPARTMENT OF STATE

[Public Notice 3651]

Bureau of Oceans and International Environmental and Scientific Affairs (OES); Public Meeting To Discuss Progress on International Harmonization of Chemical Hazard Classification and Labeling Systems

SUMMARY: The United States Government is preparing for a series of

international meetings to further develop a globally harmonized system (GHS) of chemical hazard classification and labeling. The Department of State will hold a public meeting to report on recent activities and preview upcoming meetings.

The public meeting will take place on Tuesday, May 8, 2001, from 1:00–3:00 PM in Room N4437 A,B&C at the Department of Labor, 200 Constitution Avenue NW., Washington, DC. Attendees should use the entrance at C and Third Streets NW. and should bring picture identification with them. No advance registration is necessary. For further information, please contact Marie Ricciardone, Department of State, Office of Environmental Policy; telephone (202)736–4660; fax (202)647–5947; email *ricciardonemd@state.gov.*

SUPPLEMENTARY INFORMATION: The Department of State is issuing this notice to help ensure that interested organization and individuals are aware of and knowledgeable about the effort to internationally harmonize chemical hazard classification and labeling, and have an opportunity to offer comments. Agencies participating in the U.S. Government interagency group include: Department of State, Environmental Protection Agency, Department of Transportation, Occupational Safety and Health Administration, Consumer Product Safety Commission, Food and Drug Administration, Department of Commerce, Department of Agriculture, Office of the U.S. Trade Representative, and National Institute of Environmental Health Sciences. For more complete information on the GHS process, please refer to State Department Public Notice 2526, pages 15951–15957 of the **Federal Register** of April 3, 1997.

This public meeting will provide an update on GHS activities and international meetings since the previous public meeting on October 24, 2000 (see Department of State Public Notice 3341 on pages 61019–61020 of the **Federal Register** of October 13, 2000), including:

- Sixth Meeting of the International Labor Organization Working Group for the Harmonization of Chemical Hazard Communication, October 30–November 2, 2000, Rome, Italy.
- Seventeenth Consultation of the Inter-Organization Program for the Sound Management of Chemicals (IOMC) Coordinating Group for the Harmonization of Chemical Classification Systems, November 2–3, 2000, Rome, Italy.
- Twenty-first Session of the United Nations Committee of Experts on the Transport of Dangerous Goods, December 5–14, 2000, Geneva, Switzerland.
- Activities of the Organization for Economic Cooperation and Development (OECD) Task Force on Harmonization of Classification and Labeling. The Task Force is completing classification criteria for aquatic toxicity and skin/eye irritation/corrosion for chemical mixtures. It is also initiating work on aspiration hazards, water-activated toxicity, and respiratory irritation.

Members of the interagency group will also provide an overview of the U.S. preparations for upcoming international meetings, including:

- Seventh Meeting of the International Labor Organization Working Group for the Harmonization of Chemical Hazard Communication, May 21–24, 2001, Geneva, Switzerland. At this group's final meeting, participants will try to achieve consensus on GHS hazard communication, including standardized label elements (*e.g.,* symbols and signal words) and a standardized format for material safety data sheets used in the workplace.
- Eighteenth Consultation of the Inter-Organization Program for the Sound Management of Chemicals (IOMC) Coordinating Group for the Harmonization of Chemical Classification Systems, May 24–25, 2001, Geneva, Switzerland. The IOMC will develop GHS guidance and try to achieve consensus on the initial GHS package. The group will also discuss plans for the first organizational meeting of the GHS subcommittee of experts, under the UN Economic and Social Council, July 9–11, 2001, in Geneva, Switzerland.
- Nineteenth Session of the United Nations Subcommittee of Experts on the Transport of Dangerous Goods, July 2–6, Geneva, Switzerland. This meeting will focus on classification criteria for aerosol flammability.

Interested organizations and individuals are invited to present their views orally and/or in writing at the public meeting. Those organization/individuals that cannot attend the May 8 meeting may submit written comments to Marie Ricciardone, Department of State, OES/ENV Room 4325, 2201 C Street NW., Washington, DC 20520. Comments will be placed in the OSHA public docket (H–022H), which is open from 10 AM until 4 PM, at the Department of Labor, Room 2625, 200 Constitution Avenue NW., Washington, DC. (Telephone: (202) 219–7894; Fax: (202) 219–5046). Interested organizations/individuals that wish to receive future notifications of GHS-related developments by email should contact Mary Frances Lowe at *lowe.maryfrances@epa.gov.*

Dated: April 24, 2001.

Daniel T. Fantozzi,

Director, Office of Environmental Policy, Department of State.

[FR Doc. 01–10665 Filed 4–27–01; 8:45 am]

BILLING CODE 4710–06–P

DEPARTMENT OF STATE

[Public Notice #3605]

Advisory Committee on Labor Diplomacy; Notice of Meeting

The Advisory Committee on Labor Diplomacy (ACLD) will hold a meeting from 9:30 a.m. to 4:00 p.m. on May 9, 2001, in room 1105, U.S. Department of State, 2201 C Street, NW, Washington, DC 20520. Committee Chairman Thomas Donahue, former President of the AFL–CIO, will chair the meeting.

The ACLD is comprised of prominent persons with expertise in the area of international labor policy and labor diplomacy. The ACLD advises the Secretary of State and the President on the resources and policies necessary to implement labor diplomacy programs efficiently, effectively and in a manner that ensures U.S. leadership before the international community in promoting the objectives and ideals of U.S. labor policies in the 21st century. The ACLD will make recommendations on how to strengthen the Department of State's ability to respond to the many challenges facing the United States and the federal government in international labor matters. These challenges include the protection of worker rights, the elimination of exploitative child labor, and the prevention of abusive working conditions.

The agenda for the May 9 meeting includes discussion of the interagency process on international labor policy formulation.

Members of the public are welcome to attend the meeting as seating capacity allows. As access to the Department of State is controlled, persons wishing to attend the meeting must be pre-cleared by calling or faxing the following information, by open of business May 8, to Eric Barboriak at (202) 647–3664 or fax (202) 647–0431 or email barboriakem@state.gov: name; company or organization affiliation (if any); date of birth; and social security number. Pre-cleared persons should use the C Street entrance to the State Department and have a driver's license with photo, a passport, a U.S. Government ID or other valid photo identification.

Members of the public may, if they wish, submit a brief statement to the Committee in writing. Those wishing further information should contact Mr. Barboriak at the phone and fax numbers provided above.

Dated: April 16, 2001.

Michael E. Parmly,

Acting Assistant Secretary, Bureau of Democracy, Human Rights and Labor, U.S. Department of State.

[FR Doc. 01–10825 Filed 4–27–01; 8:45 am]

BILLING CODE 4710–18–P

DEPARTMENT OF TRANSPORTATION

Coast Guard

[USCG–2001–9516]

Secretarial Authorization for Certain Members and Employees of the U.S. Coast Guard To Serve on the Board of Control, Coast Guard Mutual Assistance

AGENCY: Coast Guard, DOT.

ACTION: Notice.

SUMMARY: The Commandant of the Coast Guard, exercising authority delegated by the Secretary of Transportation, has authorized certain military members and employees to serve, without compensation, on the Board of Control of Coast Guard Mutual Assistance, a non-federal military-welfare entity. He has so authorized them for the purpose of providing coordination, oversight, and advice to the management of the Coast Guard's Mutual Assistance Program. Participation of the designated officials in the activities of Coast Guard Mutual Assistance will not extend to participation in day-to-day operations.

Discussion

The Secretary of Transportation, through the Commandant, has authorized the following members and employees of the Coast Guard to serve, without compensation, on the Board of Control of Coast Guard Mutual Assistance [see 10 U.S.C. 1033 and 1589]. Officers: Commandant of the Coast Guard, Admiral James M. Loy, USCG (President); Assistant Commandant for Human Resources, Rear Admiral Fred L. Ames, USCG (Executive Vice President); Captain James E. Evans, USCG (Second Vice President); Lieutenant Commander Anthony J. Vogt, USCG (Treasurer); Chief Warrant Officer Jeffrey M. Alm, USCG (Secretary). Members: Commander Pat Hannifin USCG (Commissioned Officer); Lieutenant Commander Anthony J. Vogt USCG (Commissioned Officer); Petty Officer First Class Jay H. Fowler, USCG (RET), (Retired Member); Master Chief Petty Officer Vincent W. Patton, USCG (Master Chief Petty Officer of the Coast Guard); Chief Warrant Officer Christine B. Figueroa, USCG (Chief Warrant Officer); Senior Chief Petty Officer Mark A. Lewack, USCG (Enlisted, E–7 or above); Petty Officer First Class Petra A. Wolford, USCG (Enlisted, E–6 or below); Petty Officer Third Class Craig E. Trusevitch, USCG (Enlisted, E–6 or below); Ms. Maureen Melton (Civilian employee); Mrs. Jennifer Rechsteiner (Enlisted Person's Spouse); Lieutenant Commander Charles E. Martin, USCG (RET) (USCG Auxiliary); Lieutenant Commander Kevin M. Pratt, USCGR (Reserve); Chief Warrant Officer Jeffrey M. Alm, USCG (Medical and TRICARE Specialist); Lieutenant Carla J. Grantham, USCG (Family Support Specialist); Mrs. Kathleen M. B. Gibson (Commissioned Officer's Spouse), Chief Petty Officer Rockwood Ennis, USCG (Alternate: MCPO–CG); Master Chief Petty Officer Alex Keenan, USCG (Alternate: CPO); Petty Officer First Class Marie F. G. Hope, USCG (Alternate: Enlisted, E–6 or below).

FOR FURTHER INFORMATION CONTACT: For information concerning this notice, contract Mr. Carl Mursch, Coast Guard Mutual Assistance, (202) 267–1566.

Authority: 10 U.S.C. 1033 and 1589; 49 CFR 1.46(ooo)

Dated: March 29, 2001.

F.L. Ames,

Rear Admiral, U.S. Coast Guard, Assistant Commandant for Human Resources.

[FR Doc. 01–10573 Filed 4–27–01; 8:45 am]

BILLING CODE 4910–15–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Public Notice for Waiver of Aeronautical Land-Use Assurance Manchester Airport, Manchester, NH

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Request for Public Comments. Notice of intent of waiver with respect to land.

SUMMARY: The FAA is considering a proposal that a portion of airport property (approximately .854 acres located in the approach to Runway 17) is no longer needed for aeronautical use, as shown on the Airport Layout Plan. There appear to be no impacts to the airport by allowing the disposal of the property. The land was acquired under FAA Project No. 3–33–0011–29 (portion of Parcel 98 as shown on the Exhibit ''A'' Property Map) on October 27, 1995.

In accordance with Section 47107(h) of title 49, United States Code, this notice is required to be published in the **Federal Register** thirty (30) days before modifying the land-use assurance which requires that the property be used for an aeronautical purpose. The land will be utilized by the U.S. Postal Service for an access road and employee parking. In return the U.S. Postal Service will deed an amount of land equal in area and value to the Airport in the Runway 17 Runway Protection Zone (RPZ). The swap will guarantee compatible land use on the land to be disposed of and the Airport will gain fee title to land in the RPZ.

DATES: Comments must be received on or before May 30, 2001.

FOR FURTHER INFORMATION CONTACT: Donna R. Witte, Airports Division, 12 New England Executive Park, Burlington, Massachusetts 01803. Telephone No. 781–238–7624/Fax 781–238–7608. Documents reflecting the proposed FAA action may be reviewed in person at 16 New England Executive Park, Burlington, Massachusetts or the office of the Assistant Director of Aviation, Engineering and Planning at Manchester Airport, Manchester, New Hampshire.

SUPPLEMENTARY INFORMATION: This notice announces that the FAA in considering the release of the subject airport property at Manchester Airport, Manchester, New Hampshire.

Issued in Burlington, Massachusetts on April 20, 2001.

Vincent A. Scarano,

Manager, Airports Division, New England Region.

[FR Doc. 01–10668 Filed 4–27–01; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[Summary Notice No. PE–2001–33]

Petitions for Exemption; Summary of Petition Received

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of petition 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 May 21, 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–2000–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 9:00 a.m. and 5:00 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, Sandy Buchanan-Sumter (202) 267–7271, 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 24, 2001.

Donald P. Byrne,

Assistant Chief Counsel for Regulations.

Petitions for Exemption

Docket No.: FAA–2001–9101.

Petitioner: Associated Air Center.

Section of 14 CFR Affected: 14 CFR 25.813(e).

Description of Relief Sought: To provide AAC with relief from the requirements of 14 CFR 25.813(e) pertaining to the installation of interior doors between passenger compartments on a Boeing Model 737–2H4 airplane.

Docket No.: FAA–2001–9283.

Petitioner: Atlantic Coast Airlines.

Section of 14 CFR Affected: 14 CFR 121.434, 121.440, and 121.441.

Description of Relief Sought: To allow ACA to employ and use pilots currently employed by ACA's sister air carrier, Atlantic Coast Jet, Inc. (ACJet) without requiring these pilots to repeat the 328Jet checking and experience requirements, which they already have accomplished at ACJet.

[FR Doc. 01–10569 Filed 4–27–01; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Transit Administration

Environmental Impact Statement on Transit Improvements in Miami, Florida

AGENCY: Federal Transit Administration, DOT.

ACTION: Notice of intent to prepare an environmental impact statement.

SUMMARY: The Federal Transit Administration (FTA), the Florida Department of Transportation (FDOT), and Miami-Dade Transit (MDT) in issuing this notice to advise that an Environmental Impact Statement (EIS) is being prepared on the proposed Airport/Earlington Heights Connector Project in Miami-Dade County, Florida. The EIS will be prepared in accordance with the National Environmental Policy Act of 1969 (NEPA), as amended.

The EIS will evaluate the following alternatives: a no build alternative; a transportation systems management alternative; three Metrorail extension alternatives from Earlington Heights to the Airport, and a People Mover extension alternative. Scoping will be accomplished through meetings and correspondence with interested persons, organizations, the general public, Federal, State and local agencies.

DATES: *Comment Due Date:* Written comments on the scope of the alternatives and impacts to be considered should be sent to Aurelio Rodriguez, Project Manager by May 30, 2001. See **ADDRESSES** below.

Scoping Meetings: Miami-Dade Transit public scoping meetings will be held on Tuesday May 15, 2001 at 12 p.m. and at 7 p.m. at the Miami-Dade Transit office located at 3300 NW 32nd Avenue, First Floor Conference Room, Miami, Florida.

ADDRESSES: Written comments on the project scope should be sent to Mr. Aurelio Rodriguez, Director, Miami-Dade Transit, 111 NW First Street, Suite 910, Miami, Florida 33128–1970. See **DATES** section above for the location of scoping meeting.

FOR FURTHER INFORMATION CONTACT: Ms. Elizabeth Martin, Community Planner, Federal Transit Administration, (404) 562–3509.

SUPPLEMENTARY INFORMATION:

I. Scoping

The MDT and FTA invite interested individuals, organizations, and federal, state, and local agencies to participate in refining the Airport/Earlington Heights Connector DEIS, including alignment and project locations. Comments should focus on identifying any significant social, economic, or environmental issues related to the alignments. Specific suggestions related to additional alternatives to be examined and issues to be addressed are welcome and will be considered in the final scope for the project. Scoping comments should focus on the issues and alternative for analysis, and not on preference for particular alternatives. Individual preference for particular alternatives should be communicated during the comment period for Draft EIS. Comments may be made at the meeting or in writing no later than May 30, 2001 (see **DATES** and **ADDRESSES** above for meeting times and locations and the address for written comments). A scoping information packet is available from Mr. Aurelio Rodriguez of MDT at the address given above in the **ADDRESS** section or on the MDT internet webpage at http://www.co.miami-dade.fl.us/mdta.

II. Description of Study Area and Project Need

The project area is located in central Miami-Dade County. The limits for the project area extend from NW 42nd Avenue (LeJeune Road) eastward to NW 22nd Avenue and from NW 46th Street southwards to NW 20th Street. The study area is traversed diagonally by the Miami River, in a northwest to southeast direction.

The project proposes a 2.5-mile elevated heavy rail connection from the existing Earlington Heights Metrorail station to the MIC–MIA connector in the proposed MIC transfer station. The project involves planning and environmental investigations, travel demand forecasting, traffic impact analysis, operations and maintenance planning, and financial assessments for the alignment alternatives.

Steady growth in South Florida in recent years has led to increasingly congested streets and highways in Miami-Dade County. Heavy congestion is especially significant during travel destined to MIA and the large employment centers surrounding the airport. Vehicles traveling from south

and west Miami-Dade County heading to downtown Miami must travel the same route as vehicles bound for the airport. This traffic congestion will steadily worsen as the streets and highways of Miami-Dade County surpass their carrying capacity. Based on this traffic condition, there is a need to provide an alternative transportation mode between downtown Miami and the airport that offers convenient, rapid and safe travel in place of the automobile.

This project was developed as a means to ease severe congestion on area expressways resulting from increasing passenger travel to and from MIA. The specific goal of the Airport/Earlington Heights Connector project is to provide a public transit connection between the existing Earlington Heights Metrorail station and MIA. The alignments under consideration would connect to the airport via the intermodal transfer center being proposed under the Miami Intermodal Center (MIC) project.

This new connection to the Metrorail system will provide a critical link in passenger travel throughout Miami-Dade County. Passengers traveling to and from MIA will be able to avoid highway congestion through use of the new Airport Connector. By connecting to the Earlington Heights Metrorail Station, passengers will then be able to travel to northern and southern portions of Miami-Dade County. This critical link will also allow passengers to travel directly between MIA and downtown Miami by rail.

The MIA area is one of the largest employment centers in Miami-Dade County. The Earlington Heights connector to the MIC will provide critical access to employment opportunities for transit dependent populations in adjacent residential areas and the cities of Hialeah, Brownsville and Liberty City.

III. Alternatives

The transporation alternatives proposed for consideration in this project area include:

No-Project Alternative—The No-Project Alternative includes the existing street, highway, and transit facilities and services and those transit and highway improvements planned and programmed to be implemented by 2020. This alternative provides the baseline for establishing the environmental impacts of the project, and assumes the following projects will be completed:

- Extension of the Stage 1 Metrorail Line to a new station just west of the Palmetto Expressway, a new park-and-ride facility at that location, and access ramps to and from the north on the Palmetto expressway.
- Increase in Tri-Rail frequencies to 20-minute headways during peak periods between MIA and Mangonia Park Station in West Palm Beach.

Transportation System Management Alternative—The Transportation Systems Management (TSM) Alternative is defined as low cost, operationally oriented improvements to address the identified transportation problems in the corridor. It also provides a baseline against which all of the Build alternatives are evaluated.

- Additional Metrorail service from Dadeland South to the Palmetto Station. The additional service would decrease headways on that segment of the line from 7.5 minutes to 3.75 minutes in peak periods and from 20 minutes to 7.5 minutes in off-peak periods.
- Increased Tri-Rail Service between the MIC and the Tri-Rail/Metrorail Transfer station at NW 79th Street. The train would operate every 15 minutes during peak periods and every 20 minutes during off-peak periods.
- The operation of a bus service between the MIC and the Earlington Heights Metrorail station.

The TSM alternative also includes all improvements identified under the No-Project alternative.

Three Metrorail extension Alternatives—The Metrorail Extension option consists of extending the Stage 1 Metrorail line from the Earlington Heights Station to the Airport. The existing Stage 1 line heads westward from the Earlington Heights Station to NW 27th Avenue at which point it turns northwards and continues along NW 27th Avenue to the Brownsville Station.

Three potential alignments have been proposed to connect the Earlington Heights Station to MIA via the MIC hub:

NW 27th Avenue Alignment—The branch would start from the existing Stage 1 line at Earlington Heights and begin a gradual turn to the south at approximately NW 25th Avenue. The line crosses over SR 112 at NW 26th Avenue and follow a southward path in the median of NW 27th Avenue. The line begins a westerly turn at NW 26th Street and runs westward along NW 24th Street. The line crosses the Miami River in the 3100 block of North River Drive, continues westward north of NW 21st Street, and terminates at the MIC.

NW 32nd Avenue Alignment—This branch would commence at the existing Metrorail line at Earlington Heights, continue westward across NW 27th Avenue, and cross SR 112 at approximately NW 31st Avenue. The line continues southward along NW 32nd Avenue and turn in a southwesterly direction at approximately NW 28th Street. The line crosses the Miami River in the 3200 block of NW North River Drive, heads westwards along NW 22nd Street, and terminates at the MIC.

South Florida Rail Corridor (SFRC) Alignment—The extension of this branch heads westwards from Earlington Heights over NW 27th Avenue, and crosses SR 112 between NW 27th and NW 28th Avenues. The line parallels SR 112 and the proposed SR 112/SR 836 Interconnector to the south and begins its southward path just west of NW 37th Avenue. The line would cross the Miami River just downstream of the existing SFRC Bridge continuing its southward path and terminating at the MIC.

One People Mover Extension Alternative

The People Mover Extension alternative involves the extension of the MIC/MIA Interconnecter Automatic People Mover (APM) system. The alignment would proceed northbound from the MIC, following the alignment that was previously described for the SFRC Metrorail Extension alternative. However, this alternative features the option to terminate at either the Earlington Heights or the Brownsville Metrorail Stations. In the Brownsville Station alternative, the line would turn northwards just west of NW 27th Avenue and follow the existing line to the station.

IV. Probable Effects

The FTA, FDOT, and MDT will evaluate all significant environmental, social, and economic impacts of the alternatives analyzed in the EIS. Primary Structural environmental issues include: environmental justice, neighborhood protection, aesthetics, the bridge crossing over the Miami River, flight path clear zones and glide slopes, recreational greenways, alternative modes of transportation, hydrology and storm water management, archaeological and historic resources, ecological issues. Environmental and social impacts proposed for analysis include land use, zoning, and economic development; secondary development; land acquisition, displacements, and relocation of existing uses; historic; visual and aesthetic qualities; neighborhoods and communities; environmental justice; air quality; noise and vibration; hazardous materials; ecosystems; water resources; energy; safety and security; utilities; traffic and transportation impacts. Impacts on natural areas, rare and endangered species, ground water and potentially contaminated sites, wetlands, and

floodplain areas. Potential impacts will be assessed for the long-term operation of each alternative and the short-term construction period. Measures to avoid, minimize, or mitigate any significant adverse impacts will be identified.

V. FTA Procedures

The EIS process will be performed in accordance with applicable laws and Federal Transit Administration regulations and guidelines for preparing an Environmental Impact Statement. The impacts of the project will be assessed, and, if necessary, the scope of the project will be revised or refined to minimize and mitigate any adverse impacts. After its publication, the draft EIS will be available for public review and comment. One or more public hearings will be held during the draft EIS public comment period. On the basis of the draft EIS and comments received, the project will be revised or further refined as necessary and the final EIS prepared.

Issued On: April 24, 2001.

Jerry Franklin,

Regional Administrator.

[FR Doc. 01–10670 Filed 4–27–01; 8:45 am]

BILLING CODE 4910–57–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

Innovative Grants To Support Increased Seat Belt Use Rates

AGENCY: National Highway Traffic Safety Administration, DOT.

ACTION: Announcement of grants to support innovative and effective projects designed to increase seat belt use rates.

SUMMARY: The National Highway Traffic Safety Administration (NHTSA) announces the third year of a grant program under Section 1403 of the Transportation Equity Act for the 21st Century (TEA–21) to provide funding to States for innovative projects to increase seat belt use rates. Consistent with last year, the goal of this program is to increase seat belt use rates across the nation in order to reduce the deaths, injuries, and societal costs that result from motor vehicle crashes. This notice solicits applications from the States, the District of Columbia and Puerto Rico, through their Governors' Representatives for Highway Safety, for funds to be made available in FY 2002. Detailed application instructions are provided in the Application Contents and Grant Criteria section of this Notice. The Section 157 Innovative grants will be awarded to States that comply with the criteria set out in the Application Contents and Grant Criteria Section of this Notice.

DATES: Applications must be received by the office designated below on or before June 29, 2001.

ADDRESSES: Applications must be submitted to the National Highway Traffic Safety Administration, Office of Traffic Injury Control Programs, Occupant Protection Division, (NTS–12), ATTN: Janice Hartwill-Miller, 400 Seventh Street, SW., Room 5118, Washington, DC 20590.

FOR FURTHER INFORMATION CONTACT: Questions relating to this grant program should be directed to Janice Hartwill-Miller, Office of Traffic Injury Control Programs, Occupant Protection Division (NTS–12), NHTSA, 400 Seventh Street, SW., Room 5118, Washington, DC 20590, by e-mail at jhartwill-miller@nhtsa.dot.gov, or by phone at (202) 366–2684. For legal issues contact Mr. John Donaldson, Office of Chief Counsel, NCC–30, NHTSA, 400 Seventh Street, SW., Room 5118, Washington, DC 20590, by phone at (202) 366–1834. Interested applicants are advised that no separate application package exists beyond the contents of this announcement.

SUPPLEMENTARY INFORMATION:

Background

The Transportation Equity Act for the 21st Century (TEA–21), Pub.L. 105–178, was signed into law on June 9, 1998. Section 1403 of TEA–21 contained a safety incentive grant program regarding seat belt usage rates in the States. Under this program, funds are allocated each fiscal year from 1999 until 2003 to States that exceed the national average seat belt use rate or that improve their State seat belt use rate, based on certain required determinations and findings. Section 1403 provided that, beginning in fiscal year 2000, any funds remaining unallocated in a fiscal year after the determinations and findings related to seat belt use rates have been made are to be used to ''make allocations to States to carry out innovative projects to promote increased seat belt use rates.'' Today's notice solicits applications for funds that will become available in fiscal year 2002 under this provision.

TEA–21 imposes several requirements under the innovative projects funding provision. Specifically, to be eligible to receive an allocation, a State must develop a plan for innovative projects to promote increased seat belt use rates statewide and submit the plan to the Secretary of Transportation (by delegation, to NHTSA). NHTSA was directed to establish criteria governing the selection of State plans that are to receive allocations and was further directed to ''ensure, to the maximum extent practicable, demographic and geographic diversity and a diversity of seat belt use rates among the States selected for allocations.'' Finally, subject to the availability of funds, TEA–21 provides that the amount of each grant under a State plan is to be not less than $100,000.

In the following sections, the agency describes the application and award procedures for receipt of funds under this provision, including requirements related to the contents of a State's plan for innovative projects and the criteria the agency will use to determine whether a State will receive an award. To assist the States in formulating plans that meet these criteria, we have provided an extensive discussion of strategies for increasing seat belt use and of the ways in which States might meet the criteria for an award.

Objective of This Grant Program

The objective of this grant program is to increase State seat belt use rates, for both adults and children, by supporting the implementation of innovative projects that build upon strategies known to be effective in increasing seat belt use rates. Because one of the best ways to ensure that children develop a habit of buckling up is for parents to properly restrain them in child safety seats, efforts to increase the use of child safety seats, in addition to seat belts, may be included among the innovative efforts in a State's plan. However, efforts to increase seat belt use rates must remain the focus of the State's plan. (For a discussion of Strategies that have proven effective in increasing seat belt use, see Appendix A.)

As in previous years, to be considered for an award of funds under this program in FY 2002, the State's innovative project plan must be based on a core component of highly visible enforcement of its seat belt use law or on a non-enforcement approach that has the potential of increasing the seat belt use rate statewide. The project plan also must have a media program designed to make the public aware of this enforcement effort and it must include a comprehensive plan to evaluate the program in terms of changes in both public awareness and observed seat belt use. In addition, the State's efforts must be statewide. If a State is already pursuing a significant and visible enforcement effort, the innovative aspects of the plan must detail components that support, expand,

complement, and evaluate the existing enforcement effort.

States submitting a proposal designed to increase seat belt use in only a limited number of jurisdictions, one that lacks a strong enforcement or media effort, or one that does not include an evaluation component designed to measure both public awareness and changes in seat belt usage will be rejected in the evaluation process, unless the non-enforcement strategy provides a strong rationale for the proposed approach, preferably research based. This alternative should address how this proposed approach can be expected to increase seat belt use. NHTSA will carefully review this rationale in its evaluation of the proposal.

A State may demonstrate innovation in its enforcement efforts in a number of ways. If a State is not currently engaged in any form of highly visible enforcement of its occupant protection laws, implementation of such a program, in and of itself, would be innovative to that State. Finding new and more effective ways to make the public aware of the enforcement effort (e.g. a paid media effort) would demonstrate innovation. Additionally, innovation may be demonstrated by using new methods for gaining essential support (e.g. of the Governor or other key officials); by establishing statewide coordination groups to plan, implement and monitor the enforcement, media, outreach, or evaluation efforts; by implementing statewide enforcement training or orientation programs; or by proposing comprehensive ways to determine the impact of the program on diverse and low use groups. For States that already are engaged in substantial enforcement efforts, innovation can be demonstrated by expanding these efforts. This might include finding more effective ways to reach rural, urban, or diverse groups with strategies designed to address the problem of low seat belt use among those groups. States that have upgraded their laws recently to allow for primary enforcement may wish to initiate innovative ways to implement, enforce, and publicize their newly enacted law. For States with secondary enforcement laws, where a motorist must be stopped for another offense before being cited for failure to buckle up, innovation may be demonstrated by integrating the enforcement of the seat belt law with enforcement of other traffic safety laws (e.g., speed limits or right-of-way violations). Many opportunities for innovation exist, regardless of the State's current seat belt use rate or its ongoing efforts to increase it.

Specific examples of various innovative activities that can be used in support of a core component of enforcement include:

—Expanding participation in the semi-annual national seat belt enforcement mobilizations (i.e., Operation ABC conducted in May and November);
—Implementing efforts to train, motivate, and recognize law enforcement officers for participation in the program;
—Implementing a training or orientation program for prosecutors and judges to make them aware of the program and of the importance of consistently prosecuting and adjudicating occupant protection law violations;
—Mounting a highly visible program to implement newly enacted legislation that upgrades the State's seat belt or child passenger safety law;
—Initiating or expanding public information and education programs designed to complement newly upgraded legislation and/or enhanced enforcement efforts;
—Strengthening public information efforts by adding a paid advertising component to support earned (i.e., news) and public service media efforts;
—Adopting a more focused message that brings attention to the ongoing enforcement effort (e.g., adopting a ''Click It or Ticket'' campaign message);
—Establishing new partnerships and coalitions to support ongoing implementation of legislation or enforcement efforts (e.g., health care and medical groups, partnerships with diverse groups, businesses and employers);
—Initiating or expanding public awareness and outreach efforts to reach specific populations that have low seat belt use (e.g., part-time users; parents of children 0–15 years old; minority populations, including Native Americans; rural communities; males 15–24 years old; occupants of light trucks and sport utility vehicles, etc.);
—Initiating or expanding standardized child passenger safety training of police officers and/or child passenger safety checks and/or clinics across broad geographical areas (e.g., statewide, in major metropolitan areas, and/or in rural areas of the State);
—Initiating or expanding enforcement of other traffic laws (e.g., driving while intoxicated laws) as a means for implementing highly visible enforcement of seat belt use laws.

Self-Evaluations of Programs, Management and Resources

Meaningful and timely self-evaluations of each State's innovative programs, management, and associated resources are essential to improving the effectiveness of programs supported by this grant program. On an annual basis, grantees and NHTSA will generate and report objective documentation of the effectiveness (or lack of effectiveness) of the various program elements (particularly enforcement, paid media, enforcement-related messaging, etc.) supported under this grant program. Proposed program evaluation and reporting will be important factors in the evaluation of each State's application for funding (See Application Contents and Grant Criteria Section of this **Federal Register** Notice.) Program evaluation should constitute 10–20 percent of requested grant funds. An overall evaluation model must include efforts to measure changes in public awareness and use rates at various stages of the program. It also must include the use of pre/post statewide observational and telephone surveys and must include the use of periodic mini-observational surveys (which constitute sub-samples of the statewide survey sampling plan) and motorist surveys (e.g., Department of Motor Vehicles (DMV) surveys) during the various program phases. These components allow for an assessment of change at each phase of the program. Protocols and templates specific to the telephone and motorist surveys are available from NHTSA, upon request. It is strongly suggested that grantees consider using the complete model, with each of the components described above, in the evaluation of their innovative programs. Other evaluation approaches will be considered, but they must be described and justified.

NHTSA Involvement

In support of the activities undertaken by this grant program, NHTSA will:

1. Provide a Regional Office Point of Contact (POC) to coordinate activities between the Grantee and NHTSA during grant performance, and to serve as a liaison between NHTSA Headquarters, NHTSA Regional offices and the grantee.

2. Provide information and technical assistance from government sources within available resources and as determined appropriate by the POC.

3. Provide suggestions, protocols, and templates for evaluation components.

Availability of Funds and Period of Support

The efforts solicited in this announcement will be supported through the award of grants to a number of States, on the basis of the Grant Criteria identified below. The number of grants awarded will depend upon the number of applications that meet the requirements of this notice. The amount of the awards available in fiscal year 2002, will be based upon the formula described below. However, the minimum amount of an individual grant award to a State will be no less than $400,000, subject to availability of funds. The $400,000 minimum is derived from experience gained over the first two years of this innovative grant program, and reflects NHTSA's best judgment of the resources needed to implement effective statewide seat belt campaigns.

In fiscal year 2001, forty-three Innovative grants were awarded and grants ranged from $204,000 to $2.9 million. At this time, neither the exact amount of funds available nor the number and proposed costs of qualifying State applications can be determined. There is no assurance that the number of grant awards in FY 2002 will be the same or similar to the number of awards in FY 2000 or FY 2001, nor is there any assurance that those States that received awards in FY 2000 and FY 2001 will receive awards in FY 2002. There is no cost-sharing requirement under this program. The period of support for a grant under this program will be a total of 15 months, with 12 months of plan implementation, and three months for evaluation and preparation of the annual report.

This year's grant proposals will be reviewed based solely on whether or not the State's proposal complies with all of the required Grant Criteria specified in this **Federal Register** Notice. Only applicants who comply with all of the required elements, will be considered for award. Once it is determined by the evaluation committee that an applicant has met all of the criteria and the State has satisfied any additional clarification questions about the proposal, a State will qualify for an award. Since this year's awards will be determined on a formula basis, a State must prepare and submit a budget, in support of the proposed plan. The dollar amount of these awards will be based on the same formula that applies to the annual award for Section 402 funds (i.e., 75% based on population and 25% on roadway miles), subject to any adjustment needed to ensure compliance with the requirement to award at least $400,000 to every qualifying State. Appendix B shows the approximate amount that is expected to be awarded to each State, assuming (1) current estimates of available funds for FY 2002 and (2) all fifty-two eligible jurisdictions apply and qualify for an award. NHTSA estimates that the award of Section 157 Innovative Grants for fiscal year 2002 will occur during January 2002.

Allowable Uses of Federal Funds

Funds provided to a State under this grant program shall be used to carry out the activities described in the State's plan for which the grant is awarded. In addition, allowable uses of Federal funds shall be governed by the relevant allowable cost section and cost principles referenced in 49 CFR part 18—Department of Transportation Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments.

Eligibility Requirements

Only the 50 States, the District of Columbia, and Puerto Rico, through their Governors' Representatives for Highway Safety, will be considered eligible to receive funding under this grant program.

Application Procedures

Each applicant must submit one original and two copies of the application package to: NHTSA, Office of Traffic Injury Control Programs, Occupant Protection Division (NTS–12), ATTN: Janice Hartwill-Miller, 400 Seventh Street, SW., Room 5118, Washington, DC 20590. An additional three copies will facilitate the review process, but are not required.

Applications must be typed on one side of the page only and adhere to the requirements of the Application Contents and Grant Criteria Section below. Only application packages submitted by a State's Governor's Representative for Highway Safety and received on or before June 29, 2001, will be considered.

Application Contents and Grant Criteria

To be eligible for a grant under the section 157 (b) statute, a State must include a description and/or documentation that all of the following elements are included, and will be implemented, as part of the State's section 157 (b) grant program. This year, each State's application must include the following information and a budget based on State estimates for award as specified in Appendix B, regardless of previous awards.

1. Introduction—

A brief general description of the State's population geographic distribution, any unique population characteristics, a short summary of the status of the seat belt use law in the State, and the pattern of estimated seat belt use rates for the State.

2. Certifications—

A signed statement by the State that: (i) It will use the funds awarded under this grant program exclusively to implement an innovative program in accordance with the requirements of Section 157(b) of Pub Law 105–178 (TEA–21); (ii) It will administer the funds in accordance with 49 CFR part 18 and OMB Circular A–87; (iii) It will provide to the NHTSA Regional Administrator no later than 15 months after the grant award a report of activities carried out with grant funds and accomplishments to date; and (iv) The State will comply with all applicable laws and regulations, financial and programmatic requirements.

3. Program Elements

(a) *Seat Belt Use Goals*—During the 12 month period (to be covered by these grant funds), set a goal to increase seat belt use by: (1) At least 8–10 percentage points, if the seat belt use rate is currently less than 75%; or (2) at least 3–5 percentage points, or higher if the seat belt use rate is currently between 75% and 85%; or (3) at least 1–3 percentage points, if the seat belt use rate is currently 85% or higher.

(b) *Law Enforcement Participation*—Obtain a commitment from the State Patrol/Police (if any) and the local and/or county law enforcement agencies that serve at least 75% of the State's population to participate actively in highly visible seat belt enforcement efforts consisting of checkpoints, saturation patrols or other enforcement tactics.

(c) *Strategies to Increase Seat Belt Use*—(Minimum of one):

(1) Conduct no fewer than 2-four week high-visibility seat belt enforcement campaigns, which include at least 7 days of aggressive enforcement during each campaign. These campaigns should complement and support the BUA/Operation ABC National Mobilizations (May and November) to the maximum extent possible;

(2) Conduct continuous high-visibility seat belt enforcement year round (i.e. 7 days week/24 hours per day model); or

(3) Implement a non-enforcement program that has the potential to reach the safety belt use goals as stated above

in Program Element 3a. If a State selects this option, it must provide a strong rationale for the proposed approach, preferably, research based rationale (e.g., a summary of evidence of effectiveness in the related areas) regarding the potential for the overall program to increase the State's seat belt use rate.

(d) *Personnel*—A full-time program coordinator to manage the planning, implementation, and evaluation of enforcement, media, outreach, training and diversity efforts and if a law enforcement strategy is proposed, one or more law enforcement liaison(s) on staff or under contract to coordinate the seat belt enforcement (or other proposed) efforts and data collection.

(e) *Public Information and Education Strategy*—A statewide public information and education (PI&E) strategy for focusing public attention on the enforcement (or other proposed) effort. A combination of paid, public service and earned media may be considered as meeting this requirement, for the overall PI&E strategy.

4. Evaluation Elements

A technically competent evaluator must be on staff or under contract to manage and coordinate the following required activities:

(a) *Observational Surveys*—a minimum of three statewide observational surveys conducted throughout the year (e.g., before the first mobilization, at mid-year, and following the last mobilization) to assess statewide changes in observed seat belt usage;

(b) *Telephone Surveys*—a minimum of three statewide telephone surveys conducted throughout the year (e.g., before the first mobilization, at mid-year, and following the last mobilization) to assess statewide changes in public awareness and acceptance of program activities;

(c) *Intermediate Measures*—Intermediate measures of observed usage and motorist awareness of the program must also be obtained or an alternative means for assessing program impact at various phases must be used. These measures must consist of conducting sub-samples of the State's observational survey and conducting motorist awareness and opinion surveys (e.g. surveys of license applicants, Appendix C) during the various phases of the program (e.g., before and after the paid media begins if paid media is being used and during the enforcement effort.) The results of the sub-sample observational surveys conducted during the program should be combined with the observations for these same sites in the pre/post statewide surveys to obtain a continuous index of changes in usage rates beginning before the program is implemented and continuing through its completion. The motorist awareness and opinion surveys, usually conducted in the same general locations (e.g. counties) as the sub-sample observational surveys, should be used to provide continuous information regarding public awareness and perceptions.

(d) *Media Analysis*—Documentation regarding the characteristics of the media component of the program including quantitative and qualitative information regarding the mix of paid, earned, and public service media employed, the message used, media markets and groups targeted, exposure levels, etc.; and

(e) *Enforcement Analysis*—Documentation regarding the characteristics of the enforcement component of the program, including quantitative and qualitative information regarding the mix of enforcement approaches employed (e.g., checkpoints, saturation patrols), the number of waves and/or enforcement events, the number and amount of mini-grants awarded, agency recognition efforts, the number of agencies actively participating; number of hours of enforcement involved; the number of contacts made; warnings and citations issued for seat belt and child passenger safety violations for each of the mobilization periods; pertinent training received by law enforcement personnel to assist in enforcing the occupant protection laws; and PI&E activities conducted by law enforcement.

(f) *Other Components (Not Required)*—Other innovative and/or key components of your overall program, most notably innovative outreach efforts to reach special lower-use groups.

5. Reporting Requirements and Deliverables

(a) *Quarterly Reports*—The quarterly reports should include a summary of enforcement and other activities and accomplishments for the preceding period, significant problems encountered or anticipated, a brief itemization of expenditures made during this 6 month time period, and proposed activities for the upcoming reporting period. Any decisions and actions required in the upcoming program period should be included in the report.

(b) *Draft Final Report*—A Draft Final Report that includes a summary of the impact of program efforts in the preceding period as well as an assessment of the year-long program. It should include a complete description of the innovative projects conducted, including partners, overall program implementation, evaluation methodology and findings from the program evaluation. In terms of information transfer, it is important to know what worked and what did not work, under what circumstances, and what can be done to avoid potential problems in future projects. The grantee shall submit the Draft Final Report to the Regional POC 60 days prior to the end of the performance period. The Regional POC will review the draft report and provide comments to the grantee within 30 days of receipt of the document.

(c) *Final Report*—A Final Report to reflect the Regional POC's comments. The final report shall be delivered to the Regional POC 15 days before the end of the performance period. The grantee shall supply the Regional POC:

—A camera ready version of the document as printed.

—A copy, on appropriate media (diskette, Syquest disk, etc.), of the document in the original program format that was used for the printing process. Note: Some documents require several different original program languages (e.g., PageMaker for the general layout and design, Power point for charts, and yet another format for photographs, etc.). Each of these component parts should be available on disk, properly labeled with the program format and the file names. For example, Power point files should be clearly identified by both a descriptive name and file name (e.g., 1994 Fatalities—chart1.ppt).

—A complete version of the assembled document in portable document format (PDF) for placement of the report on the world wide web (WWW). This will be a file usually created with the Adobe Exchange program of the complete assembled document in the PDF format that will actually be placed on the WWW. The document would be completely assembled with all colors, charts, side bars, photographs, and graphics. This can be delivered to NHTSA on a standard 1.44 diskette (for small documents) or on any appropriate archival media (for large documents) such as a CD ROM, TR–1 Mini cartridge, Syquest disk, etc.

—Four additional hard copies of the final document.

Application Review Procedures

All applications will be reviewed by an Evaluation Committee to ensure that the application contains all of the information required by the Application Contents and Grant Criteria section of

the **Federal Register** notice. This evaluation process may include submission of technical or program questions from the evaluation committee to the applicants, to determine eligibility. This process could extend over the course of several months, and applicants may expect correspondence of this nature throughout this time period. Once it has been determined which applicants have met the grant criteria, NHTSA will determine the final award amounts based on the amount of remaining funds from the general incentive portion of the Section 157 Grant program and the formula as described under the Availability of Funds and Period of Support Section. It is anticipated that awards will be made in January 2002.

Rose A. McMurray,

Associate Administrator for Traffic Safety Programs.

Appendix A

Strategies That Have Proven Effective in Increasing Seat Belt Use

In previous years, the **Federal Register** Notice for the Section 157 Innovative Grants provided a history of programs that have been documented to increase seat belt usage in the United States and Canada over the past two decades (for copies of those **Federal Register** notices contact person listed below). In those summaries of the seat belt history, the agency explained that nearly every example of significant increases in statewide usage rates since 1984 resulted from: (a) Enactment and implementation of a State seat belt usage law; (b) a legislative upgrade from a secondary to a primary (i.e., standard) enforcement law; or (c) a highly visible effort to enforce such laws.

The intent of the section 157 innovative grant legislation was to provide support for innovative programs that would be effective in increasing seat belt usage rates in the States. Since all States but one already have enacted seat belt use laws, and since the intent of this legislation was not to support lobbying efforts to obtain primary enforcement laws, the focus of this grant program has been on innovative and effective ways to develop, implement, support, and evaluate highly visible enforcement programs.

Again, aside from the implementation of seat belt use laws, these programs are the only efforts that have consistently been shown to be effective in increasing seat belt usage rates statewide (e.g., as in the national 70% by '92 program and in specific statewide efforts undertaken in North Carolina, Georgia, Maryland, New York, Michigan, and several other States). These documented successes generally have involved Special Traffic Enforcement Programs (or STEPs), in which waves of enforcement and media are carefully scheduled to gain maximum public awareness. The potential effectiveness of these STEP programs recently has been enhanced as a result of the ability of States to use paid media, in addition to news stories and public service announcements, to increase public awareness. Their potential for success has also been increased by the national enforcement mobilizations (i.e. Operation ABC) conducted twice annually by the private-sector funded Air Bag & Seat Belt Safety Campaign (AB&SBSC), in cooperation with NHTSA. These mobilizations involve extensive efforts to contact and obtain the participation of State and local police agencies in all of the States and to initiate focused media efforts in major markets to make the public aware of the mobilizations. This innovative grant program greatly increases the potential effectiveness of the national enforcement mobilizations and the overall Buckle Up America program, and vice versa.

Since 1999, there have been several notable successes in which large States, such as Michigan and New York, have significantly increased seat belt usage. In Michigan, the increases resulted from a combination of enacting a primary seat belt usage law and implementing a highly visible program to enforce that law. In New York, which already had a primary seat belt law, significant increases in seat belt usage resulted from a highly visible statewide enforcement program, funded in part by the AB&SBSC and coordinated by the New York State Police. Maryland enacted a primary seat belt law and following a 3 month Chiefs' Challenge enforcement program, experienced a major increase in seat belt use. Oklahoma enacted a primary seat belt law and experienced a modest increase in seat belt usage. Later, a paid media program resulted in an additional increase. Florida, which has introduced but failed to enact primary seat belt legislation, has enhanced its statewide seat belt enforcement program and its use of law enforcement liaisons (LELs). As a result, Florida recently experienced a 5 percentage point increase in usage statewide. These examples represent some of the most significant recent increases in usage in the States and they represent a mixture of private sector, Section 402, and Section 157 funded efforts.

One of the clearest examples of a fully-implemented, innovative and effective statewide program is the South Carolina ''Click It or Ticket'' program, implemented in November 2000. The term ''fully implemented'' refers to the fact that the combination of enforcement and media efforts was sufficient to make 75–80 percent of the public aware of the program. The South Carolina program included several innovative and effective components, including statewide management of more than 3,000 enforcement events (i.e., checkpoints) over a two-week period, use of an explicit enforcement message (i.e., Click It or Ticket) delivered by means of a combination of earned and paid media, full coordination with the Operation ABC mobilization periods, a diversity outreach program that reached African Americans via churches and schools to make them aware of the enforcement effort, and a comprehensive evaluation program, which included measurement of both the public awareness of the program and changes in observed seat belt usage at each phase of the program (e.g. during the kickoff and news media phase, the paid media phase), and the enforcement phase, as well as before and after the program was implemented. As a result of this effort, South Carolina was able to document a 9 percentage point increase in seat belt usage statewide. Further, it was able to show that the paid media effort contributed significantly to public awareness and changes in seat belt usage. The State was able to document the extent to which groups with traditionally lower seat belt usage rates (e.g., male, rural, and African American motorists) were impacted.

Currently, more than a dozen States are using Section 157 Innovative grant funds, each in slightly different ways, to fully implement and evaluate similar STEP programs during the May 2001 mobilization period. These States are establishing statewide coordinating committees for enforcement, media, outreach, and evaluation efforts; making selective use of paid media efforts; using unambiguous enforcement messages; finding innovative ways to reach high risk groups such as young males and occupants of light trucks to make them aware of the planned enforcement activity; and implementing comprehensive evaluation efforts, similar to those used in the South Carolina program, to measure impact at each phase of the program. This evaluation model consists of statewide observational and telephone surveys conducted before and after the program, as well as mini-observational surveys and motorist surveys during each phase of the program. NHTSA will provide, upon request, protocols and templates for both the telephone surveys and the motorist surveys, as well as descriptions of how these surveys are being used in conjunction with the State's approved observational surveys to evaluate Section 157 program efforts. You may contact Janice Hartwill-Miller, Office of Traffic Injury Control Programs, Occupant Protection Division (NTS–12), NHTSA, 400 7th Street, S.W., Room 5118, Washington, DC 20590, by e-mail at jhartwill-miller@nhtsa.dot.gov, or by phone at (202) 366–2684, for this information.

The dramatic recent successes in the States add further credibility to NHTSA's position that highly visible enforcement is an important foundation upon which any effective program funded under Section 157 should be based. In addition, the recent examples of States focusing on fully-implemented enforcement and public information efforts, designed to reach 75–80 percent of the populace and selectively using paid media to make the public aware of the enforcement activity are very encouraging. Also encouraging is the recent focus in the States on developing a comprehensive evaluation effort to measure changes in both public awareness and seat belt use at various stages of the program.

Appendix B

FY2002 STATE ESTIMATES FOR SECTION 157 INNOVATIVE AWARDS

State	FY2002 estimates
Alabama	$810,000
Alaska	400,000
Arizona	650,000
Arkansas	595,000
California	4,480,000
Colorado	685,000
Connecticut	500,000
Delaware	400,000
District of Columbia	400,000
Florida	2,070,000
Georgia	1,195,000
Hawaii	400,000
Idaho	400,000
Illinois	1,930,000
Indiana	1,015,000
Iowa	695,000
Kansas	715,000
Kentucky	710,000
Louisiana	740,000
Maine	400,000
Maryland	730,000
Massachusetts	910,000
Michigan	1,600,000
Minnesota	965,000
Mississippi	555,000
Missouri	1,040,000
Montana	400,000
Nebraska	480,000
Nevada	400,000
New Hampshire	400,000
New Jersey	1,140,000
New Mexico	400,000
New York	2,740,000
North Carolina	1,175,000
North Dakota	400,000
Ohio	1,790,000
Oklahoma	745,000
Oregon	575,000
Pennsylvania	1,940,000
Rhode Island	400,000
South Carolina	655,000
South Dakota	400,000
Tennessee	905,000
Texas	3,140,000
Utah	400,000
Vermont	400,000
Virginia	1,035,000
Washington	885,000
West Virginia	400,000
Wisconsin	980,000
Wyoming	400,000
Puerto Rico	515,000

Appendix C

The Division of Motor Vehicles is assisting in a study about seat belts in (insert State name). Your answers to the following questions are voluntary and anonymous. Please complete the survey and then put it in the drop box.

1. Your sex: ☐ Male ☐ Female
2. Your age: ☐ Under 21 ☐ 21–25 ☐ 26–39 ☐ 40–49 ☐ 50–59 ☐ 60 Plus
3. Your race: ☐ White ☐ Black ☐ Asian ☐ Native American ☐ Other
4. Are you of Spanish/Hispanic origin? ☐ Yes ☐ No
5. Your Zip Code: _____
6. About how many miles did you drive last year?
   ☐ Less than 5,000 ☐ 5,000 to 10,000 ☐ 10,001 to 15,000 ☐ More than 15,000
7. What type of vehicle do you drive most often?
   ☐ Passenger car ☐ Pickup truck ☐ Sport utility vehicle ☐ Mini-van ☐ Full-van ☐ Other
8. How often do you use seat belts when you drive or ride in a car, van, sport utility vehicle or pick up?
   ☐ Always ☐ Nearly always ☐ Sometimes ☐ Seldom ☐ Never
9. What do you think the chances are of getting a ticket if you don't wear your seat belt?
   ☐ Always ☐ Nearly Always ☐ Sometimes ☐ Seldom ☐ Never
10. Do you think the Highway Patrol enforce the seat belt law:
    ☐ Very strictly ☐ Somewhat strictly ☐ Not very strictly ☐ Rarely ☐ Not at all
11. Do you think local police enforce the seat belt law:
    ☐ Very strictly ☐ Somewhat strictly ☐ Not very strictly ☐ Rarely ☐ Not at all
12. Have you ever received a ticket for not wearing your seat belt?
    ☐ Yes ☐ No
13. In the past month, have you seen or heard about a checkpoint where police were looking at seat belt use?
    ☐ Yes ☐ No
14. In the past month, have you gone through a checkpoint where police were looking at seat belt use?
    ☐ Yes ☐ No
15. Have you recently read, seen or heard anything about seat belts in (insert State name)?
    ☐ Yes
    If *yes,* where did you see or hear about it? (Check *all* that apply):
    ☐ Newspaper ☐ Radio ☐ TV ☐ Poster ☐ Brochure ☐ Police checkpoint ☐ Other
    If *yes,* what did it say?_____
    ☐ No
16. Do you know the name of any seat belt enforcement program(s) in (insert State name)? (check *all* that apply):
    ☐ No Excuses, Buckle Up ☐ Buckle Up (insert State Name) ☐ Click It or Ticket ☐ Operation 35, Buckle Up Stay Alive

[FR Doc. 01–10667 Filed 4–27–01; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF TRANSPORTATION

Research and Special Programs Administration

Office of Hazardous Materials Safety; Notice of Applications for Exemptions

AGENCY: Research and Special Programs Administration, DOT.

ACTION: List of applicants for exemptions.

SUMMARY: In accordance with the procedures governing the application for, and the processing of, exemptions from the Department of Transportation's Hazardous Materials Regulations (49 CFR part 107, subpart B), notice is hereby given that the Office of Hazardous Materials Safety has received the applications described herein. Each mode of transportation for which a particular exemption is requested is indicated by a number on the ''Nature of Application'' portion of the table below as follows: 1—Motor vehicle, 2—Rail freight, 3—Cargo vessel, 4—Cargo aircraft only, 5—Passenger-carrying aircraft.

DATES: Comments must be received on or before May 30, 2001.

Address Comments to: Records Center, Research and Special Programs Administration, U.S. Department of Transportation, Washington, DC 20590.

Comments should refer to the application number and be submitted in triplicate. If confirmation of receipt of comments is desired, include a self-addressed stamped postcard showing the exemption application number.

FOR FURTHER INFORMATION CONTACT: Copies of the applications (See Docket Number) are available for inspection at the New Docket Management Facility, PL–401, at the U.S. Department of Transportation, Nassif Building, 400 7th Street, SW., Washington, DC 20590 or at http://dms.dot.gov.

This notice of receipt of applications for new exemptions is published in accordance with part 107 of the Federal hazardous materials transportation law (49 U.S.C. 5117(b); 49 CFR 1.53(b)).

Issued in Washington, DC, on April 24, 2001.

J. Suzanne Hedgepeth,

Director, Office of Hazardous Materials Exemptions and Approval.

NEW EXEMPTIONS

Application No.	Docket No.	Applicant	Regulation(s) affected	Nature of exemption thereof
12668–N	RSPA–01–9385	Tri-Wall, Butler, IN	49 CFR 173.12(b)(2)(i)	To authorize the manufacture, mark, sale and use of certain UN 11G flexible intermediate bulk container for use as the outer packaging for lab pack applications in accordance with 49 CFR 173.12(b)(2)(i) as well as 49 CFR 173.240–243. (Mode 1)
12669–N	RSPA–01–9386	Aristech Chemical Corporation, Pittsburgh, PA.	49 CFR 177.834(i)(4)	To authorize an alternative attendance requirement of cargo tanks during loading and unloading of Class 9 material. (Mode 1)
12670–N	RSPA–01–9387	Taylor-Wharton, Theodore, AL.	49 CFR 178.57(l)(1)(2)(3), 178.57, (f).	To manufacture, mark, sale and use DOT–4L specification cylinders using an alternative lot size at the time of manufacturing. (Mode 1)
12671–N	RSPA–01–9370	Carleton Technologies Inc., Orchard Park, NY.	49 CFR 173.302(a)(4), 175.3, 178.65.	To authorize the transportation in commerce of non-DOT specification cylinders for use in transporting helium. (Modes 1, 2, 4)
12672–N	RSPA–01–9372	Safety-Kleen Corp., Columbia, SC.	49 CFR 173.28(b)(7)(iv)(B)	To authorize the transportation in commerce of 30 gallon open-head plastic drums without performing leakproofness test prior to reuse. (Modes 1, 2)
12674–N	RSPA–01–9373	G&S Aviation, Donnelly, ID	49 CFR 172.101(Col. 9A), 175.75(a)(1) & (a)(2).	To authorize the transportation in commerce of propane in 4BA/4BW type cylinders aboard small passenger-carrying aircraft to remote locations. (Mode 5)
12675–N	RSPA–01–9383	Toyota Motor Manufacturing, North America, Inc., Erlanger, KY.	49 CFR 173.166(e)(4)	To authorize the transportation in commerce of non-specification reusable high-strength plastic or metal containers or other dedicated handling devices for use in transporting air bag modules and seat-belt pretensioners. (Mode 1)
12676–N	RSPA–01–9376	Environmental Management, Inc., Guthrie, OK.	49 CFR 173.201, 173.202, 173.203, 173.302, 173.304, 173.309.	To authorize the transportation in commerce of non-DOT specification full open head, steel salvage cylinder for use in transporting damaged or leaking cylinders containing certain hazardous materials. (Modes 1, 3)
12677–N	RSPA–01–9375	Austin Powder Co., Cleveland, OH.	49 CFR 173.202, 177.835(c)(3), 177.848(e)(2).	To authorize the transportation in commerce of certain Division 1.1D, 1.4B, 1.4S, and 1.5D explosives with certain Division 5.1 oxidizers, combustible liquids, and certain Class 8 corrosive liquids on a specially designed motor vehicle. (Mode 1)
12679–N	RSPA–01–9416	Applied Companies, Santa Clarita, CA.	49 CFR 173.302(a), 178.65	To authorize the transportation in commerce of non-DOT specification cylinders comparable to Specification 39 non-reusable for use in transporting oxygen. (Mode
12680–N	RSPA–01–9414	GATX Rail Corporation, Chicago, IL.	49 CFR 180.509(1)(2)	To authorize alternative retest/qualification criteria for DOT Specification 111A100W6 in glacial acetic acid service. (Mode 2)
12686–N	RSPA–01–9481	Carleton Technologies Inc., Orchard Park, NY.	49 CFR 173.302(a), 175.3	To authorize the manufacture, marking, sale and use of a nonrefillable non-DOT specification cylinder conforming to DOT specification 39 cylinder for use in transporting Division 2.2 non-flammable compressed gas. (Modes 1, 2, 4)

[FR Doc. 01–10571 Filed 4–27–01; 8:45 am]
BILLING CODE 4910–60–M

DEPARTMENT OF TRANSPORTATION

Research and Special Programs Administration

Office of Hazardous Materials Safety; Notice of Applications for Modification of Exemption

AGENCY: Research and Special Programs Administration, DOT.

ACTION: List of applications for modification of exemptions.

SUMMARY: In accordance with the procedures governing the application for, and the processing of, exemptions from the Department of Transportation's Hazardous Materials Regulations (49 CFR part 107, subpart B), notice is hereby given that the Office of Hazardous Materials Safety has received the applications described herein. This notice is abbreviated to expedite docketing and public notice. Because the sections affected, modes of transportation, and the nature of application have been shown in earlier Federal Register publications, they are not repeated here. Requests for modifications of exemptions (e.g. to provide for additional hazardous materials, packaging design changes, additional mode of transportation, etc.) are described in footnotes to the application number. Application numbers with the suffix ''M'' denote a modification request. These applications have been separated from the new applications for exemptions to facilitate processing.

DATES: Comments must be received on or before May 15, 2001.

Address Comments to: Records Center, Research and Special Programs Administration, U.S. Department of Transportation, Washington, DC 20590.

Comments should refer to the application number and be submitted in triplicate. If confirmation of receipt of comments is desired, include a self-addressed stamped postcard showing the exemption number.

FOR FURTHER INFORMATION CONTACT: Copies of the applications are available for inspection in the Records Center, Nassif Building, 400 7th Street SW., Washington, DC or at http://dms.dot.gov.

This notice of receipt of applications for modification of exemptions is published in accordance with Part 107 of the Federal hazardous materials transportation law (49 U.S.C. 5117(b); 49 CFR 1.53(b)).

Issued in Washington, DC, on April 23, 2001.

J. Suzanne Hedgepeth,

Director, Office of Hazardous Materials, Exemptions and Approvals.

Application No.	Docket No.	Applicant	Modification of exemption
8308–M		American Courier Express Corporation, Miramar, FL (See Footnote 1).	8308
10441–M		Battelle, Richland, WA (See Footnote 2)	10441
11226–M		E.R. Carpenter, L.P. Pasadena, TX (See Footnote 3)	11226
11344–M		E.I. DuPont de Nemours and Company, Inc., Wilmington, DE (See Footnote 4).	11344
11473–M		Astaris, LLC, St. Louis, MO (See Footnote 5)	11473
12003–M	RSPA–97–3231	Degussa Corporation, Parisippany, NJ (See Footnote)	12003
12084–M	RSPA–98–3941	Honeywell International, Inc., Morristown, NJ (See Footnote 7)	12084
12606–M	RSPA–01–8608	Toyota Motor Sales, U.S.A., Inc., Torrance, CA (See Footnote 8).	12606
12663–M	RSPA–01–9381	Skolnik Industries, Chicago, IL (See Footnote 9)	12663
12664–M	RSPA–01–9474	Myers Container Corporation, Huntington, Park, CA (See Footnote 10).	12664
12665–M	RSPA–01–9475	Packaging Specialties, Inc., Medina, OH (See Footnote 11)	12665

(1) To modify the exemption to authorize a change to the reporting requirements which assess radiation exposure to employees working under the exemption.

(2) To modify the exemption to allow for the transportation of Class 3, 8, 9, Division 4.1, 4.2, 4.3, and 5.1 materials in lab-packs on the same vehicle with non-lab packed acidic materials.

(3) To modify the exemption to authorize tank cars to be unloaded using an alternative monitoring system.

(4) To modify the exemption to allow for the transportation of Division 4.3, Class 9 and additional Class 3, 8 and Division 6.1 materials in tank cars.

(5) To modify the exemption to remove language for tank cars with a safety relief device having a start-to-discharge pressure of 44.1 percent of the tank test pressure.

(6) To modify the exemption to authorize the inclusion of four additional DOT specification IM 101 steel portable tanks for the transportation of hydrogen peroxide, stabilized, that exceeds the 72 percent maximum concentration.

(7) To modify the exemption to allow for the transportation of Division 2.1 and 2.3 materials in DOT Specification 4B, 4BA and 4BW cylinders that have alternative retest requirements.

(8) To reissue the exemption originally issued on an emergency basis for the one-way transportation of certain Class 9 materials by motor vehicle from port of entry to a distribution facility, within 60 miles, without ''EX'' number on the shipping papers.

(9) The reissue the exemption originally issued on an emergency basis authorizing the use of UN standard steel drums that do not conform to the markeing requirements of the hazardous materials regulations.

(10) To reissue the exemption originally issued on an emergency basis authorizing the use of UN standard steel drums that do not conform to the marking requirements of the hazardous materials regulations.

(11) To reissue the exemption originally issued on an emergency basis authorizing the use of UN standard steel drums that do not conform to the marking requirements of the hazardous materials regulations.

[FR Doc. 01-10570 Filed 4–27–01; 8:45am]
BILLING CODE 4910–60–M

DEPARTMENT OF TRANSPORTATION

Research and Special Programs Administration

Office of Hazardous Materials Safety; Notice of Delays in Processing of Exemption Applications

AGENCY: Research and Special Programs Administration, DOT.

ACTION: List of applications delayed more than 180 days.

SUMMARY: In accordance with the requirements of 49 U.S.C. 5117(c), RSPA is publishing the following list of exemption applications that have been in process for 180 days or more. The reason(s) for delay and the expected completion date for action on each application is provided in association with each identified application.

FOR FURTHER INFORMATION CONTACT: J. Suzanne Hedgepeth, Director, Office of Hazardous Materials, Exemptions and Approvals, Research and special Programs Administration, U.S. Department of Transportation, 400 Seventh Street, SW, Washington, DC 20590–0001, (202) 366–4535.

Key to ''Reasons for Delay''

1. Awaiting additional information from applicant
2. Extensive public comment under review
3. Application is technically complex and is of significant impact or precedent-setting and requires extensive analysis
4. Staff review delayed by other priority issues or volume of exemption applications

Meaning of Application Number Suffixes

N—New application

M—Modification request

PM—Party to application with modification request

Issued in Washington, DC, on April 24, 2001.

J. Suzanne Hedgepeth,

Director, Office of Hazardous Materials Exemptions and Approvals.

NEW EXEMPTION APPLICATIONS

Application	Applicant	Reason for delay	Estimated date of completion
11862–N	The BOC Group, Murray Hill, NJ	4	05/31/2001
11927–N	Alaska Marine Lines, Inc., Seattle, WA	4	05/31/2001
12142–N	Aristech Chemical Corp., Pittsburgh, PA	4	05/31/2001
12158–N	Hickson Corporation, Conley, GA	4	05/31/2001
12181–N	Aristech, Pittsburgh, PA	4	05/31/2001
12248–N	Ciba Specialty Chemicals Corp., High Point, NC	1, 4	05/31/2001
12290–N	Savage Industries, Inc., Pottstown, PA	4	05/31/2001
12339–N	BOC Gases, Murray Hill, NJ	4	05/31/2001
12353–N	Monson Companies, South Portland, ME	4	05/31/2001
12355–N	Union Tank Car Company, East Chicago, IN	4	05/31/2001
12381–N	Ideal Chemical & Supply Co., Memphis, TN	4	05/31/2001
12406–N	Occidental Chemical Corporation, Dallas, TX	4	05/31/2001
12412–N	Great Western Chemical Company, Portland, OR	4	05/31/2001
12422–N	Connecticut Yankee Atomic Power Co., East Hampton, CT	1, 4	06/29/2001
12434–N	Salmon Air, Salmon, ID	4	05/31/2001
12440–N	Luxfer Inc., Riverside, CA	4	06/29/2001
12454–N	Ethyl Corp., Richmond, VA	4	06/29/2001
12456–N	Baker Hughes, Houston, TX	4	06/29/2001
12476–N	Fisher-Rosemount Petroleum, Tulsa, OK	4	06/29/2001
12497–N	Henderson International Technologies, Inc., Richardson, TX	4	06/29/2001
12516–N	Poly-Coat Systems, Inc., Houston, TX	4	05/31/2001
12518–N	Air Products & Chemicals, Inc., Allentown, PA	4	05/31/2001
12544–N	LKQ Corporation, Lecanto, FL	4	05/31/2001
12566–N	General Atomics, San Diego, CA	4	06/29/2001
12571–N	Air Products & Chemicals, Inc., Allentown, PA	4	06/29/2001
12574–N	Weldship Corporation, Bethlehem, PA	4	06/29/2001
12590–N	US Airways, Pittsburgh, PA	4	06/29/2001
12591–N	SGL Carbon, LLC, Morgantown, NC	1	06/29/2001
12592–N	Matson Navigation Co., San Francisco, CA	4	06/29/2001

MODIFICATIONS TO EXEMPTIONS

Application No.	Applicant	Reason for delay	Estimated date of completion
7060–M	Federal Express, Memphis, TN	4	05/31/2001
8013–M	Praxair, Inc., Danbury, CT	4	05/31/2001
8086–M	The Boeing Co (Mil Aircraft & Missiles Sys Group), Seattle, WA	4	05/31/2001
8308–M	Tradewind Enterprises, Inc., Hillsboro, OR	4	05/31/2001
8554–M	Orica USA Inc., Englewood, CO	4	05/31/2001
9884–M	Mallinckrodt, Inc. (Puritan Bennett Corp), Indianapolis, IN	4	06/29/2001
10656–M	Conf. of Radiation Control Program Directors, Inc., Frankfort, KY	4	06/29/2001
10915–M	Luxfer Gas Cylinders (Composite Cylinder Div), Riverside, CA	4	05/31/2001
11202–M	Newport News Shipbuilding & Dry Dock Co, Newport News, VA	4	06/29/2001
11316–M	TRW Automotive, Queen Creek, AZ	4	05/31/2001

MODIFICATIONS TO EXEMPTIONS—Continued

Application No.	Applicant	Reason for delay	Estimated date of completion
11526–M	BOC Gases, Murray Hill, NJ	4	05/31/2001
11237–M	JCI Jones Chemicals, Inc., Milford, VA	4	05/31/2001
11769–M	Great Western Chemical Company, Portland, OR	4	05/31/2001
11769–M	Great Western Chemical Company, Portland, OR	4	05/31/2001
11769–M	Hydrite Chemical Company, Brookfield, WI	4	05/31/2001
11798–M	Air Products and Chemicals, Inc., Allentown, PA	4	05/31/2001
11798–M	Anderson Development Company, Adrian, MI	4	06/29/2001
11911–M	Transfer Flow, Inc., Chico, CA	4	06/29/2001
12178–M	STC Technologies, Inc., Bethlehem, PA	1	06/29/2001

[FR Doc. 01–10572 Filed 4–27–01; 8:45 am]

BILLING CODE 4910–60–M

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Finance Docket No. 34016]

Livonia, Avon & Lakeville Railroad Corporation-Continuance in Control Exemption-Western New York & Pennsylvania Railroad, LLC

Livonia, Avon & Lakeville Railroad Corporation (LAL), a Class III rail carrier, has filed a verified notice of exemption to continue in control of Western New York & Pennsylvania Railroad, LLC (WNYP), upon WNYP's becoming a carrier.

This transaction is related to STB Finance Docket No. 34017, *Western New York & Pennsylvania Railroad, LLC—Lease and Operation Exemption—Norfolk Southern Railway Company and Pennsylvania Lines LLC,* wherein WNYP seeks to sublease and operate a line of railroad approximately 145.2 miles long in Steuben, Allegany, Cattaraugus and Chautauqua Counties, NY, and Erie County, PA.

According to the verified notice of exemption, LAL expects to continue in control of WNYP once WNYP becomes a rail carrier after approval or exemption of that transaction. The earliest the transaction could have been consummated was April 19, 2001, the effective date of the exemption (7 days after the exemption was filed).

At the time it filed the notice, LAL owned and controlled one existing Class III rail carrier: Ontario Central Railroad Corporation, which operates in New York.

LAL states that: (i) LAL will not connect with the rail lines of any existing carrier in the LAL family; (ii) the continuance in control is not part of a series of anticipated transactions that would result in such a connection; and (iii) the transaction does not involve a Class I carrier. Therefore, the transaction is exempt from the prior approval requirements of 49 U.S.C. 11323. *See* 49 CFR 1180.2(d)(2).

Under 49 U.S.C. 10502(g), the Board may not use its exemption authority to relieve a rail carrier of its statutory obligation to protect the interests of its employees. Section 11326(c), however, does not provide for labor protection for transactions under sections 11324 and 11325 that involve only Class III rail carriers. Because this transaction involves Class III rail carriers only, the Board, under the statute, may not impose labor protective conditions for this transaction.

If the notice contains false or misleading information, the exemption is void *ab initio*. Petitions 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. 34016, 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 Kevin M. Sheys, Esq., Kirkpatrick & Lockhart LLP, 1800 Massachusetts Avenue, Second Floor, Washington, DC 20036.

Board decisions and notices are available on our website at ''www.stb.dot.gov.''

Dated: April 23, 2001.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. 01–10552 Filed 4–27–01; 8:45 am]

BILLING CODE 4915–00–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Finance Docket No. 34017]

Western New York & Pennsylvania Railroad, LLC—Lease and Operation Exemption—Norfolk Southern Railway Company and Pennsylvania Lines LLC

Western New York & Pennsylvania Railroad, LLC (WNYP), a noncarrier, has filed a verified notice of exemption under 49 CFR 1150.31 to sublease (except for a 0.3-mile segment over which it will have trackage rights as described below) from Norfolk Southern Railway Company (NS) and operate a rail line in Steuben, Allegany, Cattaraugus and Chautauqua Counties, NY, and Erie County, PA (subject line).[1] The subject line extends between approximately milepost 332, at Hornell, NY, and approximately milepost 60.5, at Corry, PA, a total distance of approximately 145.2 route miles.[2] WNYP will acquire incidental trackage rights on the 0.3-mile portion of the subject line between approximately milepost 394.9 and approximately milepost 395.2. In addition, WNYP will acquire incidental trackage rights over 2.7 additional miles of passing track between milepost 395.1 and approximately milepost 397.8.

The parties report that they intend to consummate the transaction on the effective date of the exemption. The earliest the transaction could have been consummated was April 19, 2001 (7 days after the exemption was filed).

This transaction is related to STB Finance Docket No. 34016, *Livonia, Avon & Lakeville Railroad—*

[1] The subject line is owned by the Chautauqua, Cattaraugus, Allegany and Steuben Southern Tier Extension Railroad Authority, currently leased by Pennsylvania Lines LLC, and operated by NS.

[2] According to the verified notice, the portions of the rail line east of Olean, NY, approximately milepost 394.9, and west of Lakewood, NY, approximately milepost 36.9, are presently out of service.

Continuance in Control Exemption—Western New York & Pennsylvania Railroad, LLC, wherein Livonia, Avon & Lakeville Railroad has concurrently filed a verified notice to continue in control of WNYP upon its becoming a Class III rail carrier.

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. 34017, 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 Kevin M. Sheys, Kirkpatrick & Lockhart, LLP, 1800 Massachusetts Avenue, NW., Second Floor, Washington, DC 20036.

Board decisions and notices are available on our website at ''www.stb.dot.gov.''

Decided: April 23, 2001.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. 01–10551 Filed 4–27–01; 8:45 am]

BILLING CODE 4915–00–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Docket No. AB–55 (Sub–No. 586X)]

CSX Transportation, Inc.—Abandonment Exemption—in McMinn County, TN

On April 10, 2001, CSX Transportation, Inc. (CSXT) filed with the Surface Transportation Board (Board) a petition under 49 U.S.C. 10502 for exemption from the provisions of 49 U.S.C. 10903 to abandon a portion of its line of railroad known as the Athens & Tellico Branch,[1] extending from milepost OKW 333.40 to milepost OKW 334.24 in Athens, McMinn County, TN, a distance of .84 mile. The line traverses U.S. Postal Service Zip Code 37303. There are no stations on the line.

The line does not contain federally granted rights-of-way. Any documentation in UP's possession will be made available promptly to those requesting it.

The interest of railroad employees will be protected by the conditions set forth in *Oregon Short Line R. Co.—Abandonment—Goshen,* 360 I.C.C. 91 (1979).

By issuance of this notice, the Board is instituting an exemption proceeding pursuant to 49 U.S.C. 10502(b). A final decision will be issued by July 27, 2001.

Any offer of financial assistance (OFA) under 49 CFR 1152.27(b)(2) will be due no later than 10 days after service of a decision granting the petition for exemption. Each OFA must be accompanied by a $1,000 filing fee. *See* 49 CFR 1002.2(f)(25).

All interested persons should be aware that, following abandonment of rail service and salvage of the line, the line may be suitable for other public use, including interim trail use. Any request for a public use condition under 49 CFR 1152.28 or for trail use/rail banking under 49 CFR 1152.29 will be due no later than May 21, 2001. Each trail use request must be accompanied by a $150 filing fee. *See* 49 CFR 1002.2(f)(27).

All filings in response to this notice must refer to STB Docket No. AB–55 (Sub-No. 586X) and must be sent to: (1) Surface Transportation Board, Office of the Secretary, Case Control Unit, 1925 K Street, NW., Washington, DC 20423–0001; and (2) Natalie S. Rosenberg, 500 Water Street, Jacksonville, FL 32202. Replies to the CSXT petition are due on or before May 21, 2001.

Persons seeking further information concerning abandonment procedures may contact the Board's Office of Public Services at (202) 565–1592 or refer to the full abandonment or discontinuance regulations at 49 CFR part 1152. Questions concerning environmental issues may be directed to the Board's Section of Environmental Analysis (SEA) at (202) 565–1545. (TDD for the hearing impaired is available at 1–800–877–8339.)

An environmental assessment (EA) (or environmental impact statement (EIS), if necessary) prepared by SEA will be served upon all parties of record and upon any agencies or other persons who commented during its preparation. Other interested persons may contact SEA to obtain a copy of the EA (or EIS). EAs in these abandonment proceedings normally will be made available within 60 days of the filing of the petition.

The deadline for submission of comments on the EA will generally be within 30 days of its service.

Board decisions and notices are available on our website at www.stb.dot.gov.

Decided: April 23, 2001.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. 01–10550 Filed 4–27–01; 8:45 am]

BILLING CODE 4915–00–P

[1] The line is formally designated as Central Region, Appalachian Division, Athens & Tellico Branch, KD Subdivision.

DEPARTMENT OF THE TREASURY

Departmental Offices; 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 burdens, invites the general public and other Federal agencies to comment on an information collection that is due for reinstatement approval by the Office of Management and Budget. The Office of Program Services within the Department of the Treasury is soliciting comments concerning the Survey of U.S. Ownership of Foreign Securities as of December 31, 2001.

DATES: Written comments should be received on or before June 29, 2001.

ADDRESSES: Direct all written comments to: Dwight Wolkow, Administrator, International Portfolio Investment Data Systems, Department of the Treasury, Room 5205 MT, 1500 Pennsylvania Ave. NW, Washington DC 20220.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the forms and instructions should be directed to Dwight Wolkow, Administrator, International Portfolio Investment Data Systems at the above address, or by emailing dwight/wolkow@do.treas.gov, or by faxing (202) 622–7448, or by calling (202) 622–1276.

SUPPLEMENTARY INFORMATION:

Title: Survey of U.S. Ownership of Foreign Securities as of December 31, 2001.

OMB Number: 1505–0146.

Abstract: These forms are used to conduct periodic surveys of holdings by U.S. residents of foreign securities for portfolio investment purposes. These data are used by the U.S. Government in the formulation of international and financial policies and for the computation of the U.S. balance of payments and U.S. international investment position. The last such survey was conducted as of December 31, 1997, and clearly demonstrated the need for such periodic surveys by significantly altering the previously estimated level of U.S. holdings of foreign long-term securities.

This survey is also part fon an internationally coordinated effort under

the auspices of the International Monetary Fund to improve data on securities worldwide. These data are believed to be in serious error on a worldwide basis. Most of the major industrial and financial countries will be participating in this survey.

Current Actions: Data will be collected on short-term securities as well as long-term securities to conform to IMF survey standards. The exemption level for reporting will be raised from $20 million to $50 million of holdings by U.S. residents of foreign securities. Financial derivatives will be excluded. The exchange rate item will be replaced with requests for some items valued both in U.S. dollars and in foreign currency to improve data quality without significantly increasing respondent burden. The forms and instructions will be restructured to improve clarity. Data will be collected primarily from custodians of securities, and from major investors if they do not employ U.S. custodians. Investors employing U.S. custodians need only identify their custodians and the amounts entrusted to them.

Type of Review: Reinstatement with change.

Affected Public: Business/Financial Institutions.

Forms: OMB No. 1505–0146, Schedule 1, Schedule 2, and Schedule 3.

Estimated Number of Respondents: 2,360.

Estimated Time per Respondent: 384 hours on average for custodians of securities providing detailed information, 104 hours on average for end-investors providing detailed information, 40 hours on average for reporters employing U.S. custodians, and 16 hours on average for reporters claiming exemptions. Custodians with less than $50 million foreign long-term securities are exempt from reporting on the survey. The amount of time required to complete the survey will vary depending on the amount of data to report.

Estimated Total Burden: 108,300 hours.

Frequency of Response: At least once every three years.

Request for Comments

Comments submitted in response to this notice will be summarized and/or included in the request for Office of Management and Budget approval. All comments will become a matter of public record. The public is invited to submit written comments concerning: (a) Whether the Survey is necessary for the proper performance of the functions of the Office, including whether the information shall have practical uses; (b) the accuracy of the above estimate of the burdens; (c) ways to enhance the quality, usefulness and clarity of the information to be collected; (d) ways to minimize the reporting and/or record keeping burdens on respondents, including the use of information technologies to automate the collection of the data; and (e) estimates of capital or start-up costs of operation, maintenance and purchase of services to provide information.

Dwight Wolkow,

Administrator, International Portfolio Investment Data Systems.

[FR Doc. 01–10610 Filed 4–27–01; 8:45 am]

BILLING CODE 4810–25–M

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0365]

Agency Information Collection Activities Under OMB Review

AGENCY: National Cemetery Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C., 3501 *et seq.*), this notice announces that the National Cemetery Administration (NCA), Department of Veterans Affairs, has submitted the collection of information abstracted below to the Office of Management and Budget (OMB) for review and comment. The PRA submission describes the nature of the information collection and its expected cost and burden; it includes the actual data collection instrument.

DATES: Comments must be submitted on or before May 30, 2001.

FOR FURTHER INFORMATION OR A COPY OF THE SUBMISSION CONTACT: Denise McLamb, Information Management Service (045A4), Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420, (202) 273–8030, FAX (202) 273–5981 or e-mail *denise.mclamb@mail.va.gov.* Please refer to ''OMB Control No. 2900–0365'' in any correspondence.

SUPPLEMENTARY INFORMATION:

Title: Request for Disinterment, VA Form 40–4970.

OMB Control Number: 2900–0365.

Type of Review: Reinstatement, without change, of a previously approved collection for which approval has expired.

Abstract: VA Form 40–4970 allows a person who has a sincere wish and cogent reason to request removal of remains from a national cemetery for interment at another location. VA Form 40–4970 is an affidavit that requires signatories to execute the document before a notary. Interments made in national cemeteries are permanent and final. Disinterments will be permitted for cogent reasons, and then with prior written authorization only, usually by the Cemetery Director. Approval can be granted when all immediate family members of the decedent, including the person who initiated the interment, give their written consent. An order from a court of local jurisdiction can be accepted in lieu of submitting VA form 40–4970.

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 **Federal Register** Notice with a 60-day comment period soliciting comments on this collection of information was published on August 31, 2000, at pages 53090–53091.

Affected Public: Individuals or households.

Estimated Annual Burden: 55 hours.

Estimated Average Burden Per Respondent: 10 minutes.

Frequency of Response: On Occasion.

Estimated Number of Respondents: 329.

Send comments and recommendations concerning any aspect of the information collection to VA's OMB Desk Officer, OMB Human Resources and Housing Branch, New Executive Office Building, Room 10235, Washington, DC 20503, (202) 395–7613. Please refer to ''OMB Control No. 2900–0365'' in any correspondence.

Dated: April 20, 2001.

By direction of the Secretary.

Donald L. Neilson,

Director, Information Management Service.

[FR Doc. 01–10680 Filed 4–27–01; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0578]

Agency Information Collection Activities Under OMB Review

AGENCY: Veterans Health Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C., 3501 et seq.), this notice announces that the Veterans Health

Administration (VHA), Department of Veterans Affairs, has submitted the collection of information abstracted below to the Office of Management and Budget (OMB) for review and comment. The PRA submission describes the nature of the information collection and its expected cost and burden; it includes the actual data collection instrument.

DATES: Comments must be submitted on or before May 30, 2001.

FOR FURTHER INFORMATION OR A COPY OF THE SUBMISSION CONTACT: Denise McLamb, Information Management Service (045A4), Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420, (202) 273–8030, FAX (202) 273–5981 or e-mail to: *denise.mclamb@mail.va.gov.* Please refer to ''OMB Control No. 2900–0578.''

SUPPLEMENTARY INFORMATION:

Title: Provision of Health Care to Vietnam Veterans' Children with Spina Bifida.

OMB Control Number: 2900–0578.

Type of Review: Reinstatement, without change, of a previously approved collection for which approval has expired.

Abstract: The information collected will be used to determine appropriate payment for medical care rendered to Vietnam veterans' children with spina bifida. Without the information, VA will be unable to determine the correct amount to reimburse providers for their services.

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 **Federal Register** Notice with a 60-day comment period soliciting comments on this collection of information was published on January 11, 2001, at pages 2480–2481.

Affected Public: Individuals or households and Business or Other For-Profit.

Estimated Annual Burden: 1,584 hours.

Estimated Average Burden Per Respondent: 8 minutes.

Frequency of Response: On occasion.

Estimated Number of Respondents: 12,000.

Send comments and recommendations concerning any aspect of the information collection to VA's OMB Desk Officer, OMB Human Resources and Housing Branch, New Executive Office Building, Room 10235, Washington, DC 20503, (202) 395–7316. Please refer to ''OMB Control No. 2900–0578'' in any correspondence.

Dated: April 20, 2001.

By direction of the Secretary.

Donald L. Neilson,

Director, Information Management Service.

[FR Doc. 01–10681 Filed 4–27–01; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0583]

Agency Information Collection Activities Under OMB Review

AGENCY: Veterans Health Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C., 3501 *et seq.*), this notice announces that the Veterans Health Administration (VHA), Department of Veterans Affairs, has submitted the collection of information abstracted below to the Office of Management and Budget (OMB) for review and comment. The PRA submission describes the nature of the information collection and its expected cost and burden; it includes the actual data collection instrument.

DATES: Comments must be submitted on or before May 30, 2001.

FOR FURTHER INFORMATION OR A COPY OF THE SUBMISSION CONTACT: Denise McLamb, Information Management Service (045A4), Department of Veterans Affairs, 810 Vermont Avenue, NW, Washington, DC 20420, (202) 273–8030, FAX (202) 273–5981 or e-mail to: *denise.mclamb@mail.va.gov.* Please refer to ''OMB Control No. 2900–0583.''

SUPPLEMENTARY INFORMATION:

Title: Regulation for Informed Consent for Patient Care (Title 38 CFR 17.32).

OMB Control Number: 2900–0583.

Type of Review: Reinstatement, without change, of a previously approved collection for which approval has expired.

Abstract: The information collection subject to this rulemaking concerns disclosure requirements that non-VA physicians contracting to perform services for VA must follow in conducting informed consent procedures. The information provided is designed to ensure that patients (or in some cases, others) have sufficient information to provide informed consent.

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 **Federal Register** Notice with a 60-day comment period soliciting comments on this collection of information was published on January 11, 2001, at page 2481.

Affected Public: Individuals or households.

Estimated Annual Burden: 60,000 hours.

Estimated Average Burden Per Respondent: 15 minutes.

Frequency of Response: On occasion.

Estimated Number of Respondents: 240,000.

Send comments and recommendations concerning any aspect of the information collection to VA's OMB Desk Officer, OMB Human Resources and Housing Branch, New Executive Office Building, Room 10235, Washington, DC 20503, (202) 395–7316. Please refer to ''OMB Control No. 2900–0583'' in any correspondence.

Dated: April 20, 2001.

By direction of the Secretary.

Donald L. Neilson,

Director, Information Management Service.

[FR Doc. 01–10682 Filed 4–27–01; 8:45 am]

BILLING CODE 8320–01–P

Corrections

Federal Register

Vol. 66, No. 83

Monday, April 30, 2001

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

Department of the Treasury

Internal Revenue Service

26 CFR Part 1

[TD 8927]

RIN 1545-AW34

Conversion to the Euro

Correction

In rule document 01–252 beginning on page 2215 in the issue of Thursday, January 11, 2001, make the following correction:

PART 1 [CORRECTED]

On page 2217, second and third columns, *Example 1* and *Example 2* of §1.985–8 (c)(3)(ii) is reprinted to include the missing euro signs.

§1.985–8 [Corrected]

* * * * *

(c)(3)(ii) * * *

Example 1. X, a calendar year QBU on the cash method of accounting, uses the deutschmark as its functional currency. X is not described in section 1281(b). On July 1, 1998, X converts 10,000 deutschmarks (DM) into Dutch guilders (fl) at the spot rate of fl1 = DM1 and loans the 10,000 guilders to Y (an unrelated party) for one year at a rate of 10% with principal and interest to be paid on June 30, 1999. On January 1, 1999, X changes its functional currency to the euro pursuant to this section. Assume that the euro/deutschmark conversion rate is set by the European Council at 1= DM2. Assume further that the euro/guilder conversion rate is set at 1 = fl2.25. Accordingly, under the terms of the note, on June 30, 1999, X will receive 4444.44 (fl10,000/2.25) of principal and 444.44 (fl1,000/2.25) of interest. Pursuant to this paragraph (c)(3), X will realize an exchange loss on the principal computed under the principles of § 1.988–2(b)(5). For this purpose, the exchange rate used under § 1.988–2(b)(5)(i) shall be the guilder/euro conversion rate. The amount under § 1.988–2(b)(5)(ii) is determined by translating the fl10,000 at the guilder/deutschmark spot rate on July 1, 1998, and translating that deutschmark amount into euros at the deutschmark/euro conversion rate. Thus, X will compute an exchange loss for 1999 of 555.56 determined as follows: [4444.44 (fl10,000/2.25)–5000 ((fl10,000/1)/2) = – 555.56]. Pursuant to this paragraph (c)(3), the character and source of the loss are determined pursuant to section 988 and regulations thereunder. Because X uses the cash method of accounting for the interest on this debt instrument, X does not realize exchange gain or loss on the receipt of that interest.

Example 2. (i) X, a calendar year QBU on the accrual method of accounting, uses the deutschmark as its functional currency. On February 1, 1998, X converts 12,000 deutschmarks into Dutch guilders at the spot rate of fl1 = DM1 and loans the 12,000 guilders to Y (an unrelated party) for one year at a rate of 10% with principal and interest to be paid on January 31, 1999. In addition, assume the average rate (deutschmark/guilder) for the period from February 1, 1998, through December 31, 1998 is fl1.07 = DM1. Pursuant to § 1.988–2(b)(2)(ii)(C), X will accrue eleven months of interest on the note and recognize interest income of DM1028.04 (fl1100/1.07) in the 1998 taxable year.

(ii) On January 1, 1999, the euro will replace the deutschmark as the national currency of Germany pursuant to the Treaty on European Union signed February 7, 1992. Assume that on January 1, 1999, X changes its functional currency to the euro pursuant to this section. Assume that the euro/deutschmark conversion rate is set by the European Council at 1 = DM2. Assume further that the euro/guilder conversion rate is set at 1 = fl2.25. In 1999, X will accrue one month of interest equal to 44.44 (fl100/2.25). On January 31, 1999, pursuant to the note, X will receive interest denominated in euros of 533.33 (fl1200/2.25). Pursuant to this paragraph (c)(3), X will realize an exchange loss in the 1999 taxable year with respect to accrued interest computed under the principles of § 1.988–2(b)(3). For this purpose, the exchange rate used under § 1.988–2(b)(3)(i) is the guilder/euro conversion rate and the exchange rate used under § 1.988–2(b)(3)(ii) is the deutschmark/euro conversion rate. Thus, with respect to the interest accrued in 1998, X will realize exchange loss of 25.13 under § 1.988–2(b)(3) as follows: [488.89 (fl1100/2.25)– 514.02 (DM1028.04/2) =– 25.13]. With respect to the one month of interest accrued in 1999, X will realize no exchange gain or loss since the exchange rate when the interest accrued and the spot rate on the payment date are the same.

(iii) X will realize exchange loss of 666.67 on repayment of the loan principal computed in the same manner as in Example 1 [5333.33 (fl12,000/2.25)– 6000 fl12,000/1)/2)]. The losses with respect to accrued interest and principal are characterized and sourced under the rules of section 988.

[FR Doc. C1–252 Filed 4–27–01; 8:45 am]

BILLING CODE 1505–01–D

Federal Register

Monday,
April 30, 2001

Part II

Department of the Interior

Fish and Wildlife Service

50 CFR Part 17

Endangered and Threatened Wildlife and Plants; Final Determination of Critical Habitat for the Bay Checkerspot Butterfly (Euphydryas editha bayensis); Final Rule

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

RIN 1018–AH61

Endangered and Threatened Wildlife and Plants; Final Determination of Critical Habitat for the Bay Checkerspot Butterfly (*Euphydryas editha bayensis*)

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Final rule.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), designate critical habitat for the bay checkerspot butterfly (*Euphydryas editha bayensis*) (bay checkerspot), pursuant to the Endangered Species Act of 1973, as amended (Act). A total of approximately 9,673 hectares (23,903 acres) in San Mateo and Santa Clara counties, California, is designated as critical habitat.

Critical habitat identifies specific areas that have the physical and biological features that are essential to the conservation of a listed species, and that may require special management considerations or protection. The primary constituent elements for the bay checkerspot are one or more of the following: stands of *Plantago erecta, Castilleja exserta,* or *Castilleja densiflora;* spring flowers providing nectar; pollinators of the bay checkerspot's food and nectar plants; soils derived from serpentinic rock; and space for dispersal between habitable areas. In addition, the following are each primary constituent elements to be conserved when present in combination with one or more of the primary constituent elements above: areas of open grassland, topography with varied slopes and aspects providing surface conditions with warm and moderate to cool temperatures during sunny spring days, stable holes or cracks in the soil and surface rocks or rock outcrops, wetlands providing moisture during times of spring drought.

In addition, the following are each primary constituent elements to be conserved when present in combination with one or more of the primary constituent elements above: areas of open grassland, topography with varied slopes and aspects, stable holes or cracks in the soil and surface rocks or rock outcrops, and wetlands providing moisture during times of spring drought.

Section 7 of the Act prohibits destruction or adverse modification of critical habitat by any activity funded, authorized, or carried out by any Federal agency. Section 4 of the Act requires us to consider economic and other impacts of specifying any particular area as critical habitat. We solicited data and comments from the public on all aspects of the proposed rule and economic analysis. We revised the proposal to incorporate or address new information received during the comment periods.

DATES: This rule becomes effective on May 30, 2001.

ADDRESSES: Comments and materials received, as well as supporting documentation used in the preparation of this final rule, will be available for public inspection, by appointment, during normal business hours at the Sacramento Fish and Wildlife Office, U.S. Fish and Wildlife Service, 2800 Cottage Way, Room W2605, Sacramento, California 95825.

FOR FURTHER INFORMATION CONTACT: David Wright or Chris Nagano at the address above (telephone 916/414–6600; facsimile 916/414–6712).

SUPPLEMENTARY INFORMATION:

Background

The bay checkerspot is a medium-sized butterfly with a wingspan of about 5 centimeters (2 inches (in.)). The forewings have black bands along all the veins on the upper wing surface, contrasting sharply with bright red, yellow, and white spots. The bay checkerspot is 1 of about 20 subspecies of *Euphydryas editha* (Miller and Brown 1981), and differs in physical appearance from other subspecies in a variety of size, wing coloration, larval, and pupal characteristics (Howe 1975; Mattoni *et al.* 1997). It differs from LuEsther's checkerspot (*Euphydryas editha luestherae*), (a later-flying, *Pedicularis*-feeding subspecies of Inner Coast Range chaparral in central California), by being darker, and lacking a relatively uninterrupted red band demarcating the outer third of the wing. The black banding on the forewings of the bay checkerspot gives a more checkered appearance than the smaller quino checkerspot butterfly (*Euphydryas editha quino*) of southern California (Service 1998).

Recent publications have advocated renaming the bay checkerspot, *Euphydryas editha bayensis,* as *Euphydryas editha editha* for reasons of historical precedence (Mattoni *et al.* 1997; Emmel *et al.* 1998). Mattoni and co-authors (1997) have also suggested that *Euphydryas editha editha* ranges from the San Francisco Bay area south to northern Santa Barbara County in California, and includes both the populations commonly known as the bay checkerspot and several populations south of Santa Clara County whose subspecific status has been uncertain. If this expanded subspecific assignment is accepted by the scientific community, it would represent a range extension for the bay checkerspot. Until such time as we make any new or revised determination on the taxonomy, in this final rule, we treat the threatened bay checkerspot as occurring in San Francisco Bay area counties, notably the counties of San Mateo and Santa Clara, as described in the final rule for the subspecies (52 FR 35378).

The bay checkerspot formerly occurred around San Francisco Bay, from Twin Peaks and San Bruno Mountain (west of the Bay) and Contra Costa County (east of the Bay), south through Santa Clara County. Before the introduction of invasive Eurasian grasses and other weeds in the 1700s, its distribution may have been wider (Service 1998). In the decades preceding listing, the decline of the bay checkerspot was primarily attributed to loss of habitat and fragmentation of habitat due to increasing urbanization. Drought and other extremes of weather have also been implicated in bay checkerspot population declines (Ehrlich *et* al. 1980; Service 1998). Recent research has identified excess nitrogen deposition from polluted air as a threat to bay checkerspot habitats, due to its fertilizing effect enhancing the growth of invasive nonnative plants even in serpentine soil areas (Weiss 1999).

Habitat of the bay checkerspot most commonly is found on shallow, serpentine-derived or similarly droughty or infertile soils, which support the butterfly's larval food plants and also includes nectar sources for adults that may also occur on other adjacent soil types. Serpentine soils are high in magnesium and low in calcium, and are a strong indicator of habitat value for the bay checkerspot. The primary larval host plant of the bay checkerspot is *Plantago erecta* (dwarf plantain), an annual, native plantain. The bay checkerspot usually is found associated with *Plantago erecta* in grasslands on serpentine soils, such as soils in the Montara series. In Santa Clara County, the Inks and Climara soil series are related soils and often have inclusions of Montara (U.S. Soil Conservation Service 1974). Henneke and other serpentine soils also occur within the range of the bay checkerspot. Populations of the bay checkerspot formerly occurred on San Bruno Mountain and other locations with soils that are not serpentine. We believe this

indicates that, with otherwise suitable habitat conditions, the bay checkerspot is capable of living in nonserpentine soil areas.

Serpentine soils are well known for harboring rare and endemic plant species, and because the bay checkerspot inhabits serpentine areas, our critical habitat designation for the bay checkerspot overlaps habitat of several federally listed plant species: the San Mateo thornmint (*Acanthomintha obovata* ssp. *duttonii*), Santa Clara Valley dudleya (*Dudleya setchellii*), Coyote ceanothus (*Ceanothus ferrisae*), Tiburon paintbrush (*Castilleja affinis* ssp. *neglecta*), fountain thistle (*Cirsium fontinale* var. *fontinale*), Marin dwarf flax (*Hesperolinon congestum*), white-rayed pentachaeta (*Pentachaeta bellidiflora*), and Metcalf Canyon jewelflower (*Streptanthus albidus* ssp. *albidus*) (Service 1998). However, bay checkerspot critical habitat does not include all the habitat essential to any of these plant species. Bay checkerspot critical habitat is also coincident with habitat for a number of rare plants and animals that are not federally listed (Service 1998).

In many years, bay checkerspot larvae may use a secondary host plant species, for instance, when dwarf plantain dries up while prediapause larvae are still feeding. *Castilleja* (*Orthocarpus*) *densiflora* (purple owl's-clover) and *Castilleja exserta* (*Orthocarpus purpurascens*) (exserted paintbrush) are known secondary host plants that often remain edible later in the season than dwarf plantain. Bay checkerspot adults also visit flowers for nectar. Nectar plants commonly visited include *Lomatium* spp. (desert parsley), *Lasthenia californica* (= *chrysostoma*) (California goldfields), *Layia platyglossa* (tidy-tips), *Muilla maritima,* and others. Moderate grazing is normally compatible with habitat for the bay checkerspot, since grazing can reduce the density and height of nonnative plants that compete with the native plants supporting the butterfly.

The bay checkerspot's life cycle is closely tied to host plant biology. Host plants germinate anytime from early October to late December, and senesce (dry up and die) from early April to mid May. Most of the active parts of the bay checkerspot life cycle also occur during this period. Adults emerge from pupae (a transitional stage between caterpillar and adult butterfly) in early spring, and feed on nectar, mate, and lay eggs during a flight season that typically lasts for 4 to 6 weeks in the period between late February to early May. The eggs hatch and the tiny larvae feed for about 2 to 3 weeks before entering diapause (a temporary cessation of development) in mid to late spring. The postdiapause larvae emerge after winter rains stimulate germination of *Plantago,* and feed and bask until they are large enough to pupate and emerge as adults (Service 1998). If insufficient food is available, a post-diapause checkerspot larva can re-enter diapause and emerge again one year or more later (Singer and Ehrich 1979; Mattoni *et al.* 1997).

Most *Euphydryas editha* subspecies exhibit generally sedentary behavior, with adults frequently remaining in the same habitat patch in which they developed as larvae (Ehrlich 1961, 1965; Boughton 1999, 2000). Female bay checkerspots were found to be more likely to emigrate than males (Ehrlich *et al.* 1984). When female *Euphydryas editha* butterflies fail to encounter preferred host plants, the likelihood of emigration to other suitable habitat patches increases (Thomas and Singer 1987). Adult dispersal by the bay checkerspot is typically less than 150 meters (490 feet) between recaptures (Ehrlich 1961, Ehrlich 1965, Gilbert and Singer 1973). However, Harrison (1989) recaptured bay checkerspots greater than 1 kilometer (0.6 mile) from the point of release in 5 percent of cases. Long-distance dispersal in bay checkerspot butterflies has been documented as far as 7.6 km (4.7 miles) (D. Murphy pers. comm.), 5.6 km (3.5 miles) (1 male), and 3 km (2 miles) (1 female) (Harrison 1989). The butterflies are likely to be capable of dispersing even longer distances. In all dispersal observations and experiments, long-distance movements are hard to detect, and thus their frequency and importance are difficult to quantify. Qualitative observations suggest that bay checkerspots move readily over suitable grassland habitat, but are more reluctant to cross scrub, woodland or other unsuitable habitat. Roads, especially, those traveled more heavily and at higher speeds, present a risk of death or injury to dispersing butterflies. Where corridors that facilitate dispersal exist, they may support the persistence of bay checkerspot populations.

Long-distance habitat patch colonization may be achieved within a single season through long-distance dispersal of individual butterflies, or over several seasons through stepping-stone habitat patch colonization and dispersal events. In one study of the Santa Clara County bay checkerspot metapopulation, no colonizations of unoccupied habitat patches farther than 4.5 kilometers (2.8 miles) from the source population were detected over a 10-year period (Harrison *et al.* 1988). A mathematical model of unknown accuracy predicted satellite habitat patches at a distance greater than 7 to 8 kilometers (4 to 5 miles) from a primary source population were not likely to support populations (Harrison *et al.* 1988).

The known range of the bay checkerspot is now reduced to Santa Clara and San Mateo counties, and it is patchily distributed in these locales. Studies of the bay checkerspot have described its distribution as an example of a metapopulation (see literature cited in Service 1998). A metapopulation is a group of spatially separated populations that can occasionally exchange dispersing individuals. The populations in a metapopulation are usually thought of as undergoing interdependent extinction and colonization, where individual populations may go extinct, but later recolonize from another population. That is, although member populations may change in size independently, their probabilities of existing at a given time are not independent of one another because they are linked by processes of extinction and mutual recolonization, processes that occur on the order of every 10 to 100 generations (Harrison *et al.* 1988). The ability and propensity of larvae to undergo multiple-year diapause in the field, and survival rates during repeated diapause, all currently unquantified, will also affect the persistence time of local populations. Bay checkerspot populations may also exhibit "'pseudo-extinction,'" where the species is not found, but nonetheless continues to inhabit a site and reappears in a subsequent year. Since the early stages of the bay checkerspot are extremely difficult or impossible to locate in surveys (White 1987), the failure to discover caterpillars that diapause for more than 1 year may be responsible for pseudo-extinctions. Because of pseudo-extinction and metapopulation dynamics, even sites that in some years apparently lack the bay checkerspot are important to the survival and recovery of the species.

The timescale of bay checkerspot metapopulation dynamics, which includes boom and bust fluctuations of site populations, effects of California's variable climate, extirpations (loss of local populations) and recolonizations, is on the scale of decades to centuries, much longer than typical human planning efforts. Adequacy of designated critical habitat lands for conservation of the bay checkerspot depends on long-term persistence of the species' Santa Clara and San Mateo metapopulations, through conservation of many habitat patches and opportunity for dispersal/

recolonization /gene flow events that link populations in the metapopulations. Such dispersal events must include long-distance colonizations that are rare because they occur during unusually favorable years or sequences of years for the bay checkerspot, resulting in population booms and many more dispersing butterflies.

Bay checkerspot populations vary greatly from year to year. Many or most individuals of the species live only a single year, and with high fecundity (fertility), high mortality, and sensitivity to weather and perhaps other ecological conditions, large population swings are common for the bay checkerspot. Fluctuations of more than 100-fold have been observed. These fluctuations are not always in synchrony among populations at different sites.

Weiss *et al.* (1988) and Murphy and Rehm (1992) found that the populations of the bay checkerspot butterfly take refuge during dry years largely on cool north- and northeast-facing serpentine grassland slopes. However, they reported that during years of above-average rainfall the species expands its population on warmer slopes, including more xeric south- and west-facing slopes. Although infrequent and short-term, such expansions can contribute to the long-term metapopulation persistence, especially for a species like the bay checkerspot, whose numbers are regulated more by environmental factors than population density. Murphy and White (1984) stated that long-distance dispersal events associated with population outbreaks may contribute significantly to colonization or recolonization of unoccupied areas and hence to long-term survival of the checkerspot butterflies.

Habitat areas that appear to be low quality or are temporarily low quality, therefore, can be essential to the long-term persistence of bay checkerspot populations, which reside in habitats vulnerable to highly variable or catastrophic environmental phenomena, such as drought, or habitat destruction caused by urban development. Patches of habitat, whether of high or marginal quality, can serve as ''stepping stones'' for regional metapopulations. These patches can facilitate gene flow between small populations and can provide routes for individuals to colonize surrounding habitats that have been subject to local extinction. Loss of temporarily empty ''stepping stone'' habitat patches would disrupt the dynamics of the entire bay checkerspot metapopulation. According to Murphy (1990) ''* * * the necessity of protecting remnants of once extensive metapopulations will demand the protection of both presently occupied habitat patches and those which may be presently unoccupied, but which can support the bay checkerspot under certain climatic conditions.''

Previous Federal Action

On October 21, 1980, we were petitioned by Dr. Bruce O. Wilcox, Dennis D. Murphy, and Dr. Paul R. Ehrlich to list the bay checkerspot as an endangered species. We published a Notice of Status Review on February 13, 1981 (46 FR 12214). Following our status review, we found that listing the bay checkerspot was warranted but precluded by other pending listing actions (49 FR 2485). We proposed the bay checkerspot for listing as endangered with critical habitat on September 11, 1984 (49 FR 35665), and listed the subspecies as threatened on September 18, 1987 (52 FR 35366). At the time of listing, because of difficulty in resolving the value of specific habitats to the subspecies and assessing the activities being conducted in those areas, we concluded that critical habitat was not determinable. We published a Recovery Plan for Serpentine Soil Species of the San Francisco Bay Area (Recovery Plan) in September 1998 that includes the bay checkerspot (Service 1998), as required under section 4(f) of the Endangered Species Act of 1973, as amended (Act) (16 U.S.C. 1531 *et seq.*).

On June 30, 1999, the Center for Biological Diversity filed a complaint against us challenging our critical habitat findings for seven species, including the bay checkerspot butterfly. On August 30, 2000, the United States District Court for the Northern District of California (Southwest Center for Biological Diversity v. Bruce Babbitt, *et al.,* CIV 99–3202 SC) ruled on several of the species involved, including the bay checkerspot butterfly. The court ordered us to propose critical habitat within 60 days of the ruling and to finalize the designation within 120 days of the proposed designation. A subsequent settlement agreement with the Center for Biological Diversity extended the date for the final decision to April 20, 2001.

We proposed critical habitat for the bay checkerspot butterfly on October 16, 2000 (65 FR 61218). The original comment period closed on December 15, 2000. A notice of availability for the draft economic analysis and reopening of the public comment period was published in the **Federal Register** on February 9, 2001 (66 FR 9683). The second comment period closed on March 12, 2001.

Critical Habitat

Critical habitat is defined in section 3 of the Act as—(i) the specific areas within the geographic area occupied by a species, at the time it is listed in accordance with the Act, on which are found those physical or biological features (I) essential to the conservation of the species and (II) that may require special management consideration or protection; and (ii) specific areas outside the geographic area occupied by a species at the time it is listed, upon determination that such areas are essential for the conservation of the species. ''Conservation'' means the use of all methods and procedures that are necessary to bring an endangered species or a threatened species to the point at which listing under the Act is no longer necessary.

Critical habitat receives protection under section 7 of the Act through the prohibition against destruction or adverse modification of critical habitat with regard to actions carried out, funded, or authorized by a Federal agency. Section 7 also requires consultation on Federal actions that are likely to result in the destruction or adverse modification of critical habitat. In our regulations at 50 CFR 402.02, we define destruction or adverse modification as ''* * * the direct or indirect alteration that appreciably diminishes the value of critical habitat for both the survival and recovery of a listed species.'' Such alterations include, but are not limited to, alterations adversely modifying any of those physical or biological features that were the basis for determining the habitat to be critical.'' Aside from the added protection that may be provided under section 7, the Act does not provide other forms of protection to lands designated as critical habitat. Because consultation under section 7 of the Act does not apply to activities on private or other non-Federal lands that do not involve a Federal nexus, critical habitat designation would not afford any additional protections under the Act against such activities.

To be included in a critical habitat designation, the habitat must first be ''essential to the conservation of the species.'' Critical habitat designations identify, to the extent known using the best scientific and commercial data available, habitat areas that provide essential life cycle needs of the species (i.e., areas on which are found the primary constituent elements, as defined at 50 CFR 424.12(b)).

Section 4 requires that we designate critical habitat at the time of listing and based on what we know at the time of

the designation. When we designate critical habitat at the time of listing or under short court-ordered deadlines, we will often not have sufficient information to identify all areas of critical habitat. We are required, nevertheless, to make a decision and, thus, must base our designations on what, at the time of designation, we know to be critical habitat.

Within the geographic area occupied by the species, we will designate only areas currently known to be essential. Essential areas should already have the features and habitat characteristics that are necessary to sustain the species. We will not speculate about what areas might be found to be essential if better information became available, or what areas may become essential over time. If the information available at the time of designation does not show that an area provides essential life cycle needs of the species, then the area should not be included in the critical habitat designation. Within the geographic area occupied by the species, we will not designate areas that do not now have the primary constituent elements, as defined at 50 CFR 424.12(b), that provide essential life cycle needs of the species.

Our regulations state that, ''The Secretary shall designate as critical habitat areas outside the geographic area presently occupied by the species only when a designation limited to its present range would be inadequate to ensure the conservation of the species'' (50 CFR 424.12(e)). Accordingly, when the best available scientific and commercial data do not demonstrate that the conservation needs of the species require designation of critical habitat outside of occupied areas, we will not designate critical habitat in areas outside the geographic area occupied by the species.

Our Policy on Information Standards Under the Endangered Species Act, published in the **Federal Register** on July 1, 1994 (Vol. 59, p. 34271), identifies criteria, establishes procedures, and provides guidance to ensure that decisions made by the Service represent the best scientific and commercial data available. It requires Service biologists, to the extent consistent with the Act and with the use of the best scientific and commercial data available, to use primary and original sources of information as the basis for recommendations to designate critical habitat. When determining which areas are critical habitat, a primary source of information is the listing package for the species. Additional information may be obtained from a recovery plan, articles in peer-reviewed journals, conservation plans developed by States and counties, scientific status surveys and studies, biological assessments, unpublished materials, and expert opinion or personal knowledge.

Habitat is often dynamic, and species may move from one area to another over time. Furthermore, because of the information available for us at the time of designation, we recognize that designation of critical habitat may not include all of the habitat areas that may eventually be determined to be necessary for the recovery of the species. For these reasons, critical habitat designations do not signal that habitat outside the designation is unimportant or may not be required for recovery. Areas outside the critical habitat designation will continue to be subject to conservation actions that may be implemented under section 7(a)(1), and to the regulatory protections afforded by the section 7(a)(2) jeopardy standard and the take prohibitions of section 9 of the Act, as determined on the basis of the best available information at the time of the action. We specifically anticipate that federally funded or assisted projects affecting listed species outside their designated critical habitat areas may still result in jeopardy findings in some cases. Similarly, critical habitat designations made on the basis of the best available information at the time of designation will not control the direction and substance of future recovery plans, habitat conservation plans, or other species conservation planning efforts if new information available to these planning efforts calls for a different outcome.

Methods

In identifying areas that are essential to conserve the bay checkerspot, we used the best scientific information available. This included habitat suitability and site-specific species information. We have emphasized areas of current and historical bay checkerspot occurrences, especially larger sites in proximity to known occurrences. To maintain genetic and demographic interchange that will help maintain the viability of a regional metapopulation, we included corridor areas that allow movement between populations. Dispersal is a crucial function for a species with metapopulation dynamics like the bay checkerspot.

We used data on known and historic locations and maps of serpentine soils to identify potentially important areas. Then, through the use of 1990s digital orthophotos available through the Bay Area Digital GeoResource (BADGER) website (http://badger.parl.com), and limited ground checking, we estimated the current extent of suitable breeding habitat. We included in critical habitat both suitable habitat and areas that link suitable breeding habitat, since these links facilitate movement of individuals between habitat areas and are important for dispersal and gene flow and, thus, to the conservation of the subspecies. For the final rule, we checked the critical habitat boundaries we proposed for the subspecies against 1999 SPOT satellite imagery and removed identifiable developed areas.

Our 1984 proposal to list the bay checkerspot with critical habitat (49 FR 35665) proposed five critical habitat zones. Four of the five are included in this designation, with modifications based on improved knowledge of the biology and habitat of the subspecies. Since publication of the original proposal, the fifth zone (Woodside Zone) has been mostly converted to housing. Therefore, it is not included in the critical habitat designation. Since 1984, a great deal of literature on the bay checkerspot butterfly, both published and unpublished, has added to our understanding of the subspecies (see literature cited in Service 1998; Weiss 1999; Weiss and Launer 2000). Based on this expanded information and other information in the Recovery Plan (Service 1998), we have been able to identify habitats and populations that were poorly documented before the mid-1980s, and assess their significance. Besides the four previously identified critical habitat zones, this final rule identifies 11 additional habitat units essential to the conservation of the bay checkerspot, for a total of 15 critical habitat units. Further, information provided in comments on the proposed designation and draft economic analysis were evaluated and taken into consideration in the development of this final designation.

Primary Constituent Elements

In accordance with section 3(5)(A)(i) of the Act and regulations at 50 CFR 424.12(b), in determining which areas to designate as critical habitat, we must consider those physical and biological features (primary constituent elements) essential to the conservation of the species and that may require special management considerations and protection. These include, but are not limited to, space for individual and population growth and for normal behavior; food, water, or other nutritional or physiological requirements; cover or shelter; sites for breeding, reproduction, or rearing of

offspring; and habitats that are protected from disturbance or are representative of the historic geographical and ecological distributions of a species.

The primary constituent elements of critical habitat for the bay checkerspot are those habitat components that are essential for the primary biological needs of foraging, sheltering, breeding, maturation, and dispersal. The areas we are designating as critical habitat provide some or all of the known primary constituent elements for the subspecies, which include: stands of *Plantago erecta*, *Castilleja exserta*, or *Castilleja densiflora*; spring flowers providing nectar; pollinators of the bay checkerspot's food and nectar plants; soils derived from serpentinic rock; and space for dispersal between habitable areas. In addition, the following are each primary constituent elements to be conserved when present in combination with one or more of the primary constituent elements above: areas of open grassland, topography with varied slopes and aspects providing surface conditions with warm and moderate to cool temperatures during sunny spring days, stable holes or cracks in the soil and surface rocks or rock outcrops, wetlands providing moisture during times of spring drought.

Appropriate grassland vegetation provides cover for larvae, pupae and adults, egg-laying stimuli and sites for females, and adequate open ground for larvae to be able to crawl efficiently in search of foraging, basking, diapause, or pupation sites (Service 1998). Stands of food plants, including nectar plants, are important in the bay checkerspot's life cycle. The bay checkerspot's primary larval food plant is *Plantago erecta*, an annual, native plantain. The larvae also often use a secondary food plant species, usually either *Castilleja (Orthocarpus) densiflora* (purple owl's-clover) or *Castilleja exserta (Orthocarpus purpurascens)* (exserted paintbrush). These secondary food plants tend to remain edible later in the season than the plantain. Bay checkerspot adults benefit from visiting flowers for nectar. Nectar plants commonly visited include *Lomatium* spp. (desertparsley), *Lasthenia californica* (= chrysostoma) (California goldfields), *Layia platyglossa* (tidy-tips), *Muilla maritima* (sea muilla), and others.

Adequate native pollinators to sustain populations of *Castilleja* and nectar species, including, but not limited to, such groups as bumblebees and solitary bees, are important to the value of critical habitat because these plants are dependent on pollinators to reproduce and perpetuate their populations in the area. *Plantago erecta* is thought to be self-pollinating.

The bay checkerspot usually is found associated with grasslands on serpentine soils, such as the Montara soil series. In Santa Clara County, the Inks and Climara soil series are related soils and often have inclusions of Montara (U.S. Soil Conservation Service 1974). Henneke and other serpentine soils also occur within the range of the bay checkerspot. Serpentine soils often support other primary constituent elements, but they are not limited to serpentine soils. Soil structure with stable holes or cracks and surface rocks or rock outcrops provide cover and shelter for bay checkerspot larvae seeking diapause sites and basking sites.

Bay checkerspot adults have been observed to fly considerable distances during drought conditions to draw water or solutes from moist soils around wetlands (''puddling,'' Launer *et al.* 1993). Triggering of the puddling behavior by drought conditions suggests it is a directed, adaptive behavior, and that the butterflies are seeking out moist areas during times of water or heat stress to obtain essential nutrients or water (Launer *et al.* 1993).

Adult bay checkerspots are capable of dispersing over long distances. Movements of more than 5.6 kilometers (km) (3.5 miles (mi)) have been documented (see Service 1998), and longer movements are possible. Adult dispersal, especially by fertilized females carrying eggs, is vital to the maintenance of natural bay checkerspot metapopulation structure, which requires reestablishment or replenishment of populations that are at or near local extinction. Roads, especially those traveled more heavily and at higher speeds, present a risk of death or injury to dispersing bay checkerspots. Where open spaces exist that facilitate dispersal, they support the persistence of bay checkerspot populations and metapopulations. Some habitats or land uses are thought to be more suitable for dispersal than others; for example, grassland may be more readily crossed than woodland or landscaped areas. But documented long-distance movements demonstrate that the bay checkerspot is sometimes capable of crossing a variety of substrates (Service 1998).

Topographic diversity provides opportunities for early season warmth as well as cool north-and east-facing slopes that are a refuge for the subspecies during droughts. Bay checkerspot larvae develop more rapidly when they can bask in sunlight that penetrates short-statured grassland vegetation. Adults also use warm exposures for basking, and find early-season nectar plants on warm south-and west-facing slopes (Weiss *et al.* 1988).

Criteria Used To Identify Critical Habitat

In an effort to map areas that have the features essential to the conservation of the subspecies, we used data on known bay checkerspot locations, and conservation planning areas that were identified in the Recovery Plan (Service 1998) as essential for the recovery of the subspecies.

We also considered the existing status of lands in designating areas as critical habitat. The bay checkerspot is known to occur on State, county, and private lands. The range of critical habitat extends in the south from the San Martin area, in Santa Clara County, north to San Bruno Mountain in San Mateo County. We could not depend on Federal lands for critical habitat designation because we are not currently aware of any Federal lands within the range of the bay checkerspot that can be inhabited by the butterfly. We are also not aware of any Tribal lands in or near the critical habitat units for the bay checkerspot.

Section 10(a) of the Act authorizes us to issue permits to take listed species incidental to otherwise lawful activities. An incidental take permit application must be supported by a habitat conservation plan (HCP) that identifies conservation measures that the permittee agrees to implement for the species to minimize and mitigate the impacts of the requested incidental take. One small, short-term HCP covers the bay checkerspot on about 4 hectares (ha) (10 acres (ac)) of critical habitat through November 2001. This HCP permits temporary project-related impacts from electric transmission line work. To date, project construction anticipated to affect the bay checkerspot is substantially complete (see the Relationship to Habitat Conservation Plans section below for additional information on the relationship between HCPs and critical habitat designation).

In selecting areas of critical habitat, we made an effort to avoid developed areas, such as towns and other similar lands, that are unlikely to contribute to bay checkerspot conservation. However, the information available to us did not allow us to exclude all recently developed areas, such as towns, housing developments, or other lands unlikely to contain the primary constituent elements essential for conservation of the bay checkerspot. Existing features and structures within the boundaries of the mapped units, such as buildings, roads, aqueducts, railroads, airports,

other paved areas, lawns, and other urban landscaped areas are not likely to contain primary constituent elements essential for the conservation of the bay checkerspot. Federal actions limited to those areas, therefore, would not trigger a section 7 consultation, unless they affect the species and/or primary constituent elements in adjacent critical habitat.

Critical Habitat Designation

The areas we are designating as critical habitat currently provide some or all of those habitat components necessary to meet the primary biological needs of the bay checkerspot butterfly. Table 1 shows the approximate area of critical habitat by county and land ownership. Lands designated are under private and State and local ownership. The subspecies is not known to occur, or to have historically occurred, on Federal lands. Lands designated as critical habitat have been divided into 15 Critical Habitat Units. Critical habitat designated for the bay checkerspot includes 9,673 ha (23,903 ac), with 806 ha (1,992 ac) in San Mateo County and 8,867 ha (21,911 ac) in Santa Clara County. Because the bay checkerspot is nearly confined to island-like patches of habitat, its critical habitat is easily categorized into separate areas or units (see maps). We present brief descriptions of each unit, and our reasons for designating it as critical habitat, below.

Conserving the bay checkerspot includes the need to reestablish historic populations of the subspecies to areas within several of the units, in order to secure the butterfly in representative sites in its former range, and in a range of habitat and climate conditions. Returning the bay checkerspot to good representatives of its former diversity of sites and habitat and climate conditions is necessary to reduce the long-term risk of range-wide extinction of the subspecies (Service 1998).

The long-term probability of the survival and recovery of the bay checkerspot butterfly is dependent on the maintenance of its metapopulation dynamics through the protection of existing serpentine habitat, the movement of individuals between these sites, and the ability of the butterflies to recolonize habitat where they have become extirpated. Recolonization of sites with suitable habitat that contained populations that have become extinct and the maintenance of genetic diversity within existing populations is dependent upon ''stepping stones'' of habitat, including habitat that may appear marginal, that the bay checkerspot can colonize and disperse from during rare periods of very favorable climatic conditions.

TABLE 1.—APPROXIMATE CRITICAL HABITAT IN HECTARES (HA) AND ACRES (AC) BY COUNTY AND OWNERSHIP

[Area estimates reflect critical habitat unit boundaries; however, not all the areas within those broad boundaries, such as cities, towns, or other developments, contain habitat features considered essential to the survival of the bay checkerspot]

County	Federal	Local/State	Private	Total
San Mateo	0	520 ha (1,285 ac)	286 ha (707 ac)	806 ha (1,992 ac).
Santa Clara	0	922 ha (2,278 ac)	7,945 ha (19,633 ac)	8,867 ha (21,911 ac).
Total	0	1,442 ha (3,563 ac)	8,231 ha (20,340 ac)	9,673 ha (23,903 ac).

Unit 1. Edgewood Park/Triangle Unit

Occurring in San Mateo County, this unit comprises 217 ha (535 ac) in T.5 S., R.4 W. (Mount Diablo meridian/base line). Included is most of Edgewood Natural Preserve, a county park southeast of the junction of Edgewood Road, and I–280, and watershed lands of the San Francisco Public Utilities Commission, Water Supply and Treatment Division, within the triangle formed by I–280, Edgewood Road, and Canada Road, as well as a small additional area of serpentine soil on the west side of Canada Road. Much of this area also falls within the San Francisco State Fish and Game Refuge. The area supports the Edgewood population of the bay checkerspot discussed in the subspecies' Recovery Plan, which is the main population of the San Mateo metapopulation of the bay checkerspot (Service 1998). Without the Edgewood population the San Mateo metapopulation would almost certainly go extinct, resulting in the loss of one of only two metapopulations of the bay checkerspot and a significant range reduction for the subspecies. This population is also the northernmost remaining population of the subspecies. The unit contains considerable areas of good habitat, although additional management attention may be needed for the bay checkerspot to thrive here. The unit is 7 km (4 mi) northwest of the Jasper Ridge unit.

Unit 2. Jasper Ridge Unit

Occurring within San Mateo County, the unit covers 287 ha (709 ac) in Stanford University's Jasper Ridge Biological Preserve, in T.6 S., R.3 W. (Mount Diablo meridian/base line). Decades of data and dozens of published scientific papers about the Jasper Ridge population of the bay checkerspot exist. The population has severely declined in recent years, and may now be extirpated (Service 1998). However, we are confident that a stable population of the subspecies can be restored to Jasper Ridge because the area is protected and managed as a biological preserve by Stanford University and suitable habitat continues to be present. The Jasper Ridge population is essential as a supporting element of the San Mateo metapopulation, and a backup to the Edgewood and prospective San Bruno Mountain populations. The unit is 34 km (21 mi) west-northwest of the Communications Hill unit, the closest connection to units in the Santa Clara County metapopulation.

Unit 3. San Bruno Mountain Unit

This unit also occurs in San Mateo County, with approximately 303 ha (748 ac) in T.3 S., R.5 W. (Mount Diablo meridian/base line), above the 152 m (500 ft) elevation contour, and east of the western Pacific Gas and Electric transmission corridor on San Bruno Mountain. This unit is mostly within San Bruno Mountain State and County Park, and is inside the boundaries of the San Bruno Mountain Area Habitat Conservation Plan area. The bay checkerspot formerly inhabited this area, but is believed to have been extirpated around 1986 by a combination of factors, including over-collection and a fire that burned its habitat. However, this unit has supported a substantial bay checkerspot population in the past, and it is reasonable to expect that the butterfly can be reestablished here.

San Bruno Mountain represents the most northerly part of the subspecies' former range on the San Francisco peninsula with reasonably good conditions to support the bay checkerspot. The San Bruno Mountain

unit is essential as a supporting element of the San Mateo metapopulation, and a backup to the Edgewood and Jasper Ridge populations. The unit lies 25 km (16 mi) north-northwest of the Edgewood Park/Triangle unit.

Unit 4. Bear Ranch Unit

The Bear Ranch unit, totaling 250 ha (617 ac), lies west of Coyote Lake (Coyote Reservoir) in the eastern hills of the Santa Clara Valley, in southern Santa Clara County (T.9 S., R.4 E. and T.10 S., R.4 E., Mount Diablo meridian/base line). The unit is named for a ranching property that partly occurs in the unit. The ranch and lands, including and surrounding the unit, are now owned and managed by the Santa Clara County Parks and Recreation Department. This location represents one of the most recent population discoveries of the bay checkerspot, and has been documented for several years as a persistent population. The population is also one of the most southerly occurrences of the bay checkerspot. It lies about 10 km (6 mi) southeast of the Kirby core population area described in the Recovery Plan (Service 1998), with some intervening habitable areas and adequate dispersal corridors. Over 40 ha (100 ac) of mapped and an unquantified acreage of unmapped serpentine soils in several large to small patches occur within the unit. In addition to the significance of its position establishing the outer perimeter of the range of the subspecies, the Recovery Plan makes the protection of large, good-quality habitat areas near core populations, such as this, a high priority (Service 1998).

Unit 5. San Martin Unit

This unit includes 237 ha (586 ac) west of San Martin, in the western foothills of the Santa Clara Valley in southern Santa Clara County (T.9 S., R.3 E). Included in the designated critical habitat are extensive areas of serpentine soils and intervening areas that support habitat or are used for dispersal. Regular occupation of the unit by the bay checkerspot has been documented, although no quantitative surveys are available of this population. The unit lies entirely on private lands in unincorporated Santa Clara County, about 6.4 km (4 mi) west-southwest of the Bear Ranch unit and 11 km (7 mi) south of the Kirby core area. This is the second population at the southern periphery of the range. The Recovery Plan makes the protection of large, good-quality habitat areas near core populations, such as this, a high priority (Service 1998). We are not aware of any public lands in the unit.

Unit 6. Communications Hill Unit

Communications Hill, and adjacent hilltops in south-central San Jose, are formed by outcroppings of serpentine rock, with grasslands capable of supporting the bay checkerspot. This unit occurs in Santa Clara County and covers 179 ha (443 ac) of mostly undeveloped land. It also crosses a major road and railroad tracks, and includes a quarry that we believe, after appropriate reclamation, could be restored to bay checkerspot habitat. The bay checkerspot has been documented on Communications Hill in the past. A survey of a limited portion of the hill conducted in the spring of 2000, but which missed the early weeks of the butterflies' flight season, did not detect the subspecies (Arnold 2000). Whether the unit is currently occupied is not known. We believe this unit functions as habitat of the species, functions in its regional metapopulations dynamics, and functions as a ''stepping stone'' for bay checkerspot dispersal. The Recovery Plan (Service 1998) calls for conservation of larger habitat areas currently or historically occupied by the bay checkerspot. Conservation of habitat at Communications Hill is identified in the Recovery Plan as a priority 2 action, i.e., a recovery action that must be taken to prevent decline or other negative impact short of extinction (Table IV–1, task 2.1.19 in the Recovery Plan). This location also represents the northwestern-most remnant of the Santa Clara County metapopulation. The unit is surrounded by Curtner Avenue, Almaden Expressway, Hillsdale Avenue, and Monterey Road (T.7 S., R.1 E., Mount Diablo meridian/base line), and lies 3 km (2 mi) west of the Silver Creek unit.

Much of this unit lies on private lands within unincorporated lands, with a smaller area in the City of San Jose. Portions of a Santa Clara County communications facility, a San Jose water company facility, and recently developed lands may fall within the unit. Only currently undeveloped areas supporting the primary constituent elements of habitat for the bay checkerspot would be subject to regulatory oversight of any Federal actions.

Unit 7. Kalana Hills Unit

The Kalana Hills unit in Santa Clara County comprises 99 ha (244 ac) on the southwest side of the Santa Clara Valley between Laguna Avenue and San Bruno Avenue (T.9 S., R.2 E, Mount Diablo meridian/base line). Four serpentine outcrops form hills or hillsides in this area. At least one population of the bay checkerspot has been documented on one or all of these outcrops in recent surveys. This unit also includes some intervening areas that connect the closer outcrops. The Coyote Ridge unit lies about 3.2 km (2 mi) to the northeast, the Santa Teresa unit about 2 km (1.2 mi) to the northwest, the San Vicente-Calero unit about 3.2 km (2 mi) to the west, and the Morgan Hill unit about 3.2 km (2 mi) to the southeast. Because of its proximity to several other, large population centers for the bay checkerspot, we expect the Kalana Hills unit to be regularly occupied by the subspecies. If, as is possible given the bay checkerspot's large population swings, the butterfly's population in the unit were to die out, it is likely to be quickly reestablished by bay checkerspots immigrating from adjacent sites. We are not aware of any public lands in the unit. A portion of the largest and northernmost serpentine outcrop is within the limits of the City of San Jose; the remainder of the unit is on private lands in unincorporated Santa Clara County.

Unit 8. Kirby Unit

The Kirby critical habitat unit includes 2,797 ha (6,912 ac) along the southern portion of ''Coyote Ridge'' in Santa Clara County (T.8 S., R.2 E., T.8 S., R.3 E., and T.9 S., R.3 E., Mount Diablo meridian/base line). It contains the Kirby area for the bay checkerspot discussed in the subspecies' Recovery Plan (Service 1998). The ridge, informally known as Coyote Ridge, runs northwest to southeast, parallel to and east of Highway 101 from Yerba Buena Road to Anderson Reservoir in Santa Clara County, and forms the eastern slope of the Santa Clara Valley (U.S. Geological Survey (USGS) 7.5 minute quadrangles San Jose East, Lick Observatory, Santa Teresa Hills, and Morgan Hill. The ridge is not named on these maps). Coyote Ridge also parallels the Silver Creek Fault and Silver Creek itself. Extensive serpentine soil areas, and four population areas for the bay checkerspot (Kirby, Metcalf, San Felipe, and Silver Creek Hills) lie on, or adjacent to, this ridge and fault system (Service 1998). Metcalf Canyon, Silver Creek, and nonserpentine soil areas create natural divisions among these four population areas. The Kirby unit is the southernmost of four critical habitat units corresponding to the four population areas along Coyote Ridge, and runs along this ridge east of Highway 101 and Coyote Creek from Metcalf Canyon south to Anderson Lake. The northern boundary of the Kirby unit abuts the Metcalf unit. The northwest tip of the Kirby unit also

connects to the Tulare Hill Corridor unit.

The Kirby critical habitat unit regularly supports one of the largest populations of the bay checkerspot, and is considered one of the centers of the subspecies' Santa Clara County metapopulation. The Recovery Plan (Service 1998) considers protection of the area of the highest priority for conservation of the subspecies. The unit contains several hundred acres of diverse serpentine grassland habitat as well as nectaring areas, seasonal wetlands, and dispersal areas. The unit includes lands within the limits of the City of San Jose, private lands in unincorporated Santa Clara County, and small areas in the City of Morgan Hill. Public lands in this unit include the Santa Clara County Field Sports Park and portions of Santa Clara County Motorcycle Park, Anderson Lake County Park, Coyote Creek Park, and lands of the Santa Clara Valley Water District. A 101 ha (250 ac) reserve, leased by Waste Management Inc. on behalf of the Kirby Conservation Trust to further conservation of the bay checkerspot, also falls within the unit. The Kirby Conservation Trust has funded extensive research on the bay checkerspot for more than a decade at the lease site, greatly improving our understanding of the ecology, population dynamics, and conservation needs of the subspecies (see literature cited in Service 1998). We removed approximately 57 ha (141 ac), all nonserpentine lands, from the unit as it was proposed on October 16, 2000.

Unit 9. Morgan Hill Unit

The Morgan Hill unit in Santa Clara County includes 293 ha (724 ac) northwest of the City of Morgan Hill in Santa Clara County (T.9 S., R.2 E., T.9 S., R.3 E., Mount Diablo meridian/base line). It lies less than 3.2 km (2 mi) southwest of the Coyote Ridge unit and about 3.2 km (2 mi) southeast of the Kalana Hills unit. This is the area described as ''north of Llagas Avenue'' in our 1998 Recovery Plan. The unit is partly within the limits of the City of Morgan Hill and partly on private lands in unincorporated Santa Clara County. Murphy Springs Park, a small city park, is within the unit. The Morgan Hill unit has large areas of serpentine soils and grassland with a variety of slope exposures, suitable for the bay checkerspot. The unit has been documented to be occupied by the bay checkerspot in the past, as well as in more recent surveys in the past 2 to 3 years. Because of its large habitat area and proximity to core populations of the bay checkerspot, the Recovery Plan considers protection of this area essential to the conservation of the subspecies (Service 1998). We removed approximately 81 ha (201 ac), mostly residential development, from the unit as it was proposed.

Unit 10. Metcalf Unit

This unit includes 1,356 ha (3,351 ac) in Santa Clara County, east of Highway 101, south of Silver Creek Valley Road, north of Metcalf Canyon, and west of Silver Creek (T.8 S., R.2 E., Mount Diablo meridian/base line). The unit contains the Metcalf area for the bay checkerspot, one of the four largest habitat areas and three largest current population centers for the bay checkerspot (Service 1998). As of the spring of 2000, this area supported the bay checkerspot's densest population (Weiss *in litt.* 2000). Hundreds of acres of serpentine soils, and thousands of bay checkerspot butterflies, occur within the unit. This area is considered one of the centers of the subspecies' Santa Clara County metapopulation. The Recovery Plan (Service 1998) considers protection of the area of the highest priority for conservation of the bay checkerspot. This unit adjoins the Kirby unit to the south, San Felipe unit to the east, Silver Creek Hills unit to the north, and Tulare Hill Corridor unit to the west, and provides crucial habitat connectivity for bay checkerspot dispersal among these areas. The Metcalf unit lies in the City of San Jose and on private lands in unincorporated Santa Clara County. Portions of Santa Clara County Motorcycle Park, Coyote Creek Park, and lands of Santa Clara Valley Water District fall within the unit. We removed approximately 260 ha (643 ac), mostly commercial and residential development, from the unit as it was proposed.

Unit 11. San Felipe Unit

This unit includes 404 ha (998 ac) in Santa Clara County, southwest of San Felipe Road and north of Metcalf Road (T.8 S., R.2 E., Mount Diablo meridian/base line), primarily on private lands in unincorporated county lands, but also within San Jose city limits. The unit contains the San Felipe population area for the bay checkerspot, one of the four largest habitat areas and three largest current population centers for the bay checkerspot (Service 1998). This area is considered one of the centers of the subspecies' Santa Clara County metapopulation. The Recovery Plan (Service 1998) considers protection of the area of the highest priority for conservation of the bay checkerspot. Several hundred acres of serpentine soils occur within the unit with nectaring and dispersal areas. We are not aware of any public lands in the unit.

Unit 12. Silver Creek Unit

The Silver Creek unit comprises 318 ha (787 ac), primarily within the limits of the City of San Jose, but with some area on private lands in unincorporated Santa Clara County (T.7 S., R.1 E., T.7 S., R.2 E., T.8 S., R.2 E., Mount Diablo meridian/base line). This unit is surrounded by Highway 101 and Coyote Creek on the west, Yerba Buena Road on the north, Silver Creek on the east and northeast, and Silver Creek Valley Road on the south. The unit includes the Silver Creek Hills population area for the bay checkerspot (Service 1998). It includes nearly 405 ha (1,000 ac) of contiguous serpentine soils, other scattered serpentine outcrops, and also habitat less suitable for breeding but needed for nectar-feeding or dispersal. Approximately 382 ha (943 ac) of developed areas and graded lands permitted for development have been removed from the unit as it was proposed. Included in our final designation for this unit is a roughly 162 ha (400 ac) nature preserve owned by William Lyon Homes (former Presley Homes) and managed by the non-profit Silver Creek Preserve. Several electric transmission lines and two major natural gas lines cross the unit.

In the last several years, a small population of the bay checkerspot has been documented in the Silver Creek unit, and the area has a long history of much larger populations. Portions of the unit known to have been inhabited by the bay checkerspot in the past are currently in degraded condition. With the management being implemented by Lyon Homes and Silver Creek Preserve, we believe that the Silver Creek Hills population is likely to increase, and that much of the degraded area will be restored to useful breeding habitat. The Silver Creek unit has extensive, diverse, and high-quality habitat, and represents the northernmost unit of the Santa Clara County metapopulation. The Silver Creek unit provides a population reservoir critical to the survival of the Santa Clara County metapopulation of bay checkerspot—the larger and more viable of the two remaining metapopulations (Service 1998).

Unit 13. San Vicente-Calero Unit

The San Vicente-Calero unit contains 759 ha (1,875 ac) within and to the west of Calero County Park, Santa Clara County (T.8 S., R.1 E., T.8 S., R.2 E., T.9 S., R.1 E., and T.9 S., R.2 E., Mount Diablo meridian/base line). This area supports a known population of the bay

checkerspot in a large area of good-quality habitat; other areas within the unit that are suitable for the bay checkerspot have not been surveyed. The unit is also within bay checkerspot dispersal distance of the Santa Teresa Hills unit (see below), which we consider to be capable of supporting a very large population of the bay checkerspot, and the Kalana Hills unit (number 9, above), which are themselves accessible to and from other units. Therefore, we believe the San Vicente-Calero population can contribute significantly to maintaining the Santa Clara County metapopulation of the bay checkerspot. For all these reasons, the Recovery Plan (Service 1998) considers protection of this area essential to the conservation of the subspecies. The unit is south of McKean Road and east of the town of New Almaden, Almaden Road, and Alamitos Creek. It lies about 1.6 km (1 mi) south of the Santa Teresa unit and about 3.2 km (2 mi) west of the Kalana Hills unit. Portions of the unit outside the county park are within the limits of the City of San Jose.

Unit 14. Santa Teresa Hills Unit

The Santa Teresa Hills unit includes 1,821 ha (4,500 ac) in Santa Clara County (T.8 S., R.1 E. and T.8 S., R.2 E., Mount Diablo meridian/base line) with extensive areas of serpentine soils. Portions of the Santa Teresa Hills are known to support the bay checkerspot now, and have supported the subspecies in the past, but no current comprehensive survey of the bay checkerspot in the area is available. We believe that the Santa Teresa Hills could support a significant population of bay checkerspots. In addition to adding a fifth substantial population to the Santa Clara County metapopulation, conservation and management of the Santa Teresa Hills population would support development of a strong population of the bay checkerspot in a slightly cooler, moister area of the county, at a site that may experience less air pollution than the more eastern units. The Santa Teresa Hills critical habitat unit is intended to include most undeveloped habitat in the area, as well as intervening areas that are unsurveyed or less suitable but needed for dispersal among higher-quality areas. The unit lies north of Bailey Avenue, McKean Road, and Almaden Road, south of developed areas of the city of Santa Clara, and west of Santa Teresa Boulevard. The unit abuts the Tulare Hill Corridor unit.

Unit 15. Tulare Hill Corridor Unit

The Tulare Hill Corridor unit, 355 ha (876 ac) in Santa Clara County, connects the Coyote Ridge (Kirby and Metcalf, and through them, San Felipe and Silver Creek) and Santa Teresa units. Tulare Hill is a prominent serpentine hill that rises from the middle of the Santa Clara Valley in southern San Jose, west of the crossing of Metcalf Road and Highway 101 (T.8 S., R.2 E., Mount Diablo meridian/base line). Extensive habitat on the hill is currently occupied by the bay checkerspot, and is essential both as a population center and for dispersal across the valley. The Metcalf and Kirby populations of the bay checkerspot lie less than 1 km (0.6 mi) to the northeast, separated by a major highway (U.S. 101) and a narrow band of other unfavorable uses (another large road, railroad tracks, an electrical substation, a large open reservoir with artificially hardened banks, and agricultural area). The Santa Teresa Hills population area for the subspecies lies about 2 km (1.2 mi) to the southwest, with dispersal habitat in between. We believe the long-term viability of the bay checkerspot depends on the presence of a corridor for dispersal of adults to and from the Santa Teresa Hills and Coyote Ridge (Service 1998). Tulare Hill is an ideal location for such a corridor because of the narrowness of the valley at this location and the limited amount of development currently present, the presence of high elevations on the hill that may attract butterflies over busy roads and developed areas, and the presence of suitable habitat on Tulare Hill itself. Migrant butterflies from either Santa Teresa Hills or Coyote Ridge may settle on Tulare Hill, contributing individuals and genetic diversity to the population there, and adults from Tulare Hill may migrate to the adjacent habitat areas.

Public lands within the designated unit include parts of Coyote Creek Park, Metcalf Park, and Santa Teresa County Park. Roughly half of Tulare Hill itself is within the limits of the City of San Jose, the remainder on private lands in unincorporated Santa Clara County. Several major electrical transmission lines cross the unit. Some areas within the unit are not inhabited by bay checkerspot individuals but can function as dispersal corridors.

Effect of Critical Habitat Designation

Section 7 Consultation

Section 7(a)(2) of the Act requires Federal agencies, including the Service, to ensure that actions they fund, authorize, or carry out do not destroy or adversely modify critical habitat to the extent that the action appreciably diminishes the value of the critical habitat for the survival and recovery of the species. Individuals, organizations, States, local governments, and other non-Federal entities are affected by the designation of critical habitat only if their actions occur on Federal lands, require a Federal permit, license, or other authorization, or involve Federal funding.

Section 7(a) of the Act requires Federal agencies, including the Service, to evaluate their actions with respect to any species that is proposed or listed as endangered or threatened, and with respect to its critical habitat, if any is proposed or designated. Regulations implementing this interagency cooperation provision of the Act are codified at 50 CFR part 402. Section 7(a)(4) and regulations at 50 CFR 402.10 requires Federal agencies to confer with us on any action that is likely to jeopardize the continued existence of a proposed species or result in destruction or adverse modification of proposed critical habitat. Conference reports provide conservation recommendations to assist the agency in eliminating conflicts that may be caused by the proposed action. The conservation recommendations in a conference report are advisory. If a species is listed or critical habitat is designated, section 7(a)(2) requires Federal agencies to ensure that activities they authorize, fund, or carry out are not likely to jeopardize the continued existence of such a species or to destroy or adversely modify critical habitat. If a Federal action may affect a listed species or its critical habitat, the responsible Federal agency (action agency) must enter into consultation with us. Through this consultation, we would ensure that the permitted actions do not destroy or adversely modify critical habitat.

When we issue a biological opinion concluding that a project is likely to result in the destruction or adverse modification of critical habitat, we also seek to provide reasonable and prudent alternatives to the project, if any are identifiable. ''Reasonable and prudent alternatives'' are defined at 50 CFR 402.02 as alternative actions identified during consultation that can be implemented in a manner consistent with the intended purpose of the action, that are consistent with the scope of the Federal agency's legal authority and jurisdiction, that are economically and technologically feasible, and that the Director believes would avoid destruction or adverse modification of critical habitat. Reasonable and prudent alternatives can vary from slight project modifications to extensive redesign or

relocation of the project. Costs associated with implementing a reasonable and prudent alternative are similarly variable.

Regulations at 50 CFR 402.16 require Federal agencies to reinitiate consultation on previously reviewed actions in instances where critical habitat is subsequently designated, and the Federal agency has retained discretionary involvement or control over the action or such discretionary involvement or control is authorized by law. Consequently, some Federal agencies may request reinitiation of consultation or conference with us on actions for which formal consultation has been completed, if those actions may affect designated critical habitat, or adversely modify or destroy proposed critical habitat. Conference reports assist the agency in eliminating conflicts that may be caused by the proposed action, and may include recommendations on actions to eliminate conflicts with or adverse modifications to proposed critical habitat. The conservation recommendations in a conference report are advisory.

We may issue a formal conference report if requested by a Federal agency. Formal conference reports on proposed critical habitat contain an opinion that is prepared according to 50 CFR 402.14, as if critical habitat were designated. We may adopt the formal conference report as the biological opinion when the critical habitat is designated, if no substantial new information or changes in the action alter the content of the opinion (see 50 CFR 402.10(d)).

Activities on Federal lands that may affect the bay checkerspot or its critical habitat will require section 7 consultation. Activities on private or State lands requiring a permit from a Federal agency, such as a permit from the U.S. Army Corps of Engineers (Corps) under section 404 of the Clean Water Act, a section 10(a)(1)(B) permit from the Service, or some other Federal action, including funding (*e.g.,* Federal Highway Administration (FHA), Federal Aviation Administration, or Federal Emergency Management Agency (FEMA)), will also continue to be subject to the section 7 consultation process. Federal actions not affecting listed species or critical habitat and actions on non-Federal lands that are not federally funded, authorized, or permitted do not require section 7 consultation.

Section 4(b)(8) of the Act requires us to briefly evaluate and describe in any proposed or final regulation that designates critical habitat those activities involving a Federal action that may destroy or adversely modify such habitat, or that may be affected by such designation. Activities that may destroy or adversely modify critical habitat include those that appreciably reduce the value of critical habitat for both the survival and recovery of the bay checkerspot. Within critical habitat, this pertains only to those areas containing the primary constituent elements. We note that such activities may also jeopardize the continued existence of the species.

To properly portray the effects of critical habitat designation, we must first compare the section 7 requirements for actions that may affect critical habitat with the requirements for actions that may affect a listed species. Section 7 prohibits actions funded, authorized, or carried out by Federal agencies from jeopardizing the continued existence of a listed species or destroying or adversely modifying the listed species' critical habitat. Actions likely to ''jeopardize the continued existence'' of a species are those that would appreciably reduce the likelihood of the species' survival and recovery. Actions likely to ''destroy or adversely modify'' critical habitat are those that would appreciably reduce the value of critical habitat for the survival and recovery of the listed species.

Common to both definitions is an appreciable detrimental effect on both survival and recovery of a listed species. Given the similarity of these definitions, actions likely to destroy or adversely modify critical habitat would almost always result in jeopardy to the species concerned, particularly when the area of the proposed action is occupied by the species concerned. Designation of critical habitat in areas occupied by the bay checkerspot is not likely to result in a regulatory burden above that already in place due to the presence of the listed subspecies.

Activities that, when carried out, funded, or authorized by a Federal agency, may affect critical habitat and require that a section 7 consultation be conducted include, but are not limited to:

(1) Ground disturbance, including but not limited to, grading, discing, ripping and tilling;

(2) Removing, destroying, or altering vegetation (*e.g.,* altering grazing practices or seeding);

(3) Water contracts, transfers, diversion, impoundment, application, or conveyance, groundwater pumping, irrigation, or other activity that wets or inundates habitat, creates barriers or deterrents to dispersal, or results in critical habitat being converted to lower values for the bay checkerspot (*e.g.,* conversion to urban development, vineyards, landscaping, etc.);

(4) Sale, exchange, or lease of critical habitat that is likely to result in the habitat being destroyed or degraded;

(5) Recreational activities that significantly deter the use of critical habitat by bay checkerspots or alter habitat through associated maintenance activities (*e.g.,* off-road vehicle parks, golf courses, trail construction or maintenance);

(6) Construction activities that destroy or degrade critical habitat (*e.g.,* urban and suburban development, building of recreational facilities such as off-road vehicle parks and golf courses, road building, drilling, mining, quarrying and associated reclamation activities); and

(7) Application or drift onto critical habitat of pesticides, herbicides, fertilizers, or other chemicals or biological agents.

(8) Deposition or release onto critical habitat of pollutants, other chemicals or biological agents.

Any of the above activities that appreciably diminish the value of critical habitat, once established, to the degree that they affect the survival and recovery of the bay checkerspot may be considered an adverse modification of critical habitat. We note that such activities may also jeopardize the continued existence of the subspecies.

If you have questions regarding whether specific activities will constitute destruction or adverse modification of critical habitat resulting from a Federal action, contact the Field Supervisor, Sacramento Fish and Wildlife Office (see **ADDRESSES** section). Requests for copies of the regulations on listed wildlife, and inquiries about prohibitions and permits may be addressed to the U.S. Fish and Wildlife Service, Branch of Endangered Species, 911 N.E. 11th Ave, Portland, Oregon 97232 (telephone 503/231–2063; facsimile 503/231–6243).

Relationship to Habitat Conservation Plans (HCPs)

Section 4(b)(2) of the Act allows us broad discretion to exclude from critical habitat designation areas where the benefits of exclusion outweigh the benefits of designation, provided the exclusion will not result in the extinction of the species. We believe that, in most instances, the benefits of excluding HCPs from critical habitat designations will outweigh the benefits of including them.

The benefits of including HCP lands in critical habitat are normally small. Federally authorized, funded, or permitted activities in designated

critical habitat that may affect critical habitat require consultation under section 7 of the Act. This is the major benefit of designating lands as critical habitat. Consultation would ensure that adequate protection is provided to avoid adverse modification of critical habitat. However, our experience indicates that where HCPs are in place, this benefit is small or non-existent. Currently approved and permitted HCPs are designed to ensure the long-term survival of covered species within the plan area. The lands that we would find essential for the conservation of the species, and thus be considered for designation of critical habitat would, where we have approved HCPs and the species is a covered species under the HCP, normally be protected in reserves and other conservation lands. HCPs, and their associated implementation agreements, outline management measures and protections for conservation lands that are crafted to protect, restore, and enhance their value as habitat for covered species.

In addition, an HCP application must itself be consulted upon by the Service. While this consultation will not look specifically at the issue of adverse modification of critical habitat, it will look at the very similar concept of jeopardy to the listed species in the plan area. HCPs, particularly large regional HCPs, address land use within the plan boundaries; habitat issues within the plan boundaries are thoroughly addressed in the HCP and the consultation on the HCP. Our experience is that, under most circumstances, consultations under the jeopardy standard will reach the same result as consultations under the adverse modification standard. Additional measures to protect the habitat from adverse modification are not likely to be required.

Further, HCPs typically provide for greater conservation benefits to a covered species than section 7 consultations because HCPs assure the long-term protection and management of a covered species and its habitat, and funding for such management through the standards found in the 5-Point Policy for HCPs (64 FR 35242) and the HCP No Surprises regulation (63 FR 8859). Such assurances are typically not provided by section 7 consultations which, in contrast to HCPs, often do not commit the project proponent to long-term special management or protections. Thus, the lands covered by a consultation typically will not provide the extensive benefits of an HCP.

The development and implementation of HCPs provide other important conservation benefits, including the development of biological information to guide conservation efforts and assist in species recovery and the creation of innovative solutions to conserve species while allowing for development. The educational benefits of critical habitat, including informing the public of areas that are important for the conservation of the species, are essentially the same as those that would occur from the public notice and comment procedures required to establish an HCP, as well as the public participation that occurs in the development of many regional HCPs. For these reasons, then, we believe that designation of critical habitat has little benefit in areas covered by HCPs.

In contrast, the benefits of excluding HCPs from being designated as critical habitat are more significant. In response to other critical habitat proposals, we have received comments about the additional regulatory and economic burden of designating critical habitat. These include the need for additional consultation with us and the need for additional surveys and information gathering to complete these consultations. HCP applicants have also stated that they are concerned that third parties may challenge HCPs on the basis that they result in adverse modification or destruction of critical habitat.

The benefits of excluding HCPs from critical habitat include relieving landowners, communities, and counties of any additional minor regulatory review that might be imposed by critical habitat. This benefit is important given our past representations that once an HCP is negotiated and approved by us after public comment, activities consistent with the plan will satisfy the requirements of section 10(a)(1)(B) of the Act. Many HCPs, particularly large regional HCPs, take many years to develop and, upon completion, become regional conservation plans that are consistent with the recovery of covered species. Many of these regional plans benefit many species, both listed and unlisted. Imposing an additional regulatory review after HCP completion not only results in minor, if any, additional benefit to the species, it may jeopardize conservation efforts and partnerships in many areas and could be viewed as a disincentive to those developing HCPs. Excluding HCPs provides us with an opportunity to streamline regulatory compliance and confirms regulatory assurances for HCP participants.

Another benefit of excluding HCPs is that it would encourage the continued development of partnerships with HCP participants, including States, local governments, conservation organizations, and private landowners, that together can implement conservation actions we would be unable to accomplish alone. By excluding areas covered by HCPs from critical habitat designation, we preserve these partnerships, and, we believe, set the stage for more effective conservation actions in the future.

In general, then, we believe the benefits of critical habitat designation to be small in areas covered by approved HCPs. We also believe that the benefits of excluding HCPs from designation are small, but significant. We believe that the small benefits of inclusion, when weighed against the benefits of exclusion, including the benefits of relieving property owners of an additional layer of approvals and regulation, together with the encouragement of conservation partnerships, would generally result in HCPs being excluded from critical habitat designation under section 4(b)(2) of the Act.

Given this general analysis, we expect to analyze the specific benefits in each particular critical habitat designation because not all HCPs are alike with regard to species coverage and design. Within this designation, we need to evaluate completed and legally operative HCPs in the range of the bay checkerspot to determine whether the benefits of excluding these particular areas outweigh the benefits of including them.

The San Bruno Mountain Area HCP overlaps with the critical habitat designation on San Bruno Mountain. The bay checkerspot is believed to have been extirpated from the mountain since about 1986. The San Bruno Mountain Area HCP does not discuss the bay checkerspot in detail, and the Incidental Take Permit for this HCP currently does not include the subspecies. Therefore, we have not excluded the area covered by this HCP from the critical habitat designation. Any future Service or other Federal agency involvement in activities on San Bruno Mountain, such as habitat restoration, may require section 7 consultation if there are likely to be effects on bay checkerspot critical habitat.

The Pacific Gas and Electric (PG & E) Metcalf-Edenvale/Metcalf-Monte Vista HCP covers only about 4 ha (10 ac) in the Santa Teresa Hills, San Vicente-Calero, and Tulare Hill Corridor critical habitat units. Because the HCP expires in November 2001, and the permitted project is substantially complete within critical habitat areas, we are not excluding lands covered under this short-term HCP from our critical habitat proposal. We believe that no formal

consultation on any remaining work covered by the HCP will be necessary.

In the event that future HCPs covering the bay checkerspot are developed within the boundaries of designated critical habitat, we will work with applicants to ensure that the HCPs provide for protection and management of habitat areas essential for the conservation of the bay checkerspot by either directing development and habitat modification to nonessential areas, or appropriately modifying activities within essential habitat areas so that such activities will not adversely modify the primary constituent elements. The HCP development process provides an opportunity for more intensive data collection and analysis regarding the use of particular habitat areas by the bay checkerspot. The process also enables us to conduct detailed evaluations of the importance of such lands to the long-term survival of the subspecies in the context of constructing a biologically configured system of interlinked habitat blocks.

We will provide technical assistance and work closely with applicants throughout the development of future HCPs to identify lands essential for the long-term conservation of the bay checkerspot and appropriate management for those lands. Preliminary HCPs are being discussed for listed and non-listed species within the range of the bay checkerspot in areas designated herein as critical habitat. These HCPs, coupled with appropriate adaptive management, should provide for the conservation of the subspecies. If these HCPs, or others, that address the bay checkerspot are ultimately approved, we will reassess the critical habitat boundaries in light of the HCPs. We will seek to undertake this review when an HCP is approved, but funding constraints may influence the timing of such a review.

Summary of Comments and Recommendations

In the October 16, 2000, proposed rule (65 FR 61218), we requested all interested parties to submit comments on the specifics of the proposal including information, policy, treatment of HCPs, and proposed critical habitat boundaries as provided in the proposed rule. The first comment period closed on December 15, 2000. The comment period was reopened from February 9, 2001, to March 12, 2001, (66 FR 9683) to allow for additional comments on both the proposed rule and the draft economic analysis. Although not stated in the **Federal Register** notice of February 9, 2001, we accepted all comments received from October 16, 2000, to March 12, 2001, and entered them into the administrative record for the rule.

We contacted all appropriate State and Federal agencies, Tribes, county governments, elected officials, and other interested parties and invited them to comment. In addition, we invited public comment through the publication of notices and display ads to announce the public hearing in the following newspapers in California: the San Mateo County Times and the Palo Alto Weekly. These announcements were published on October 20 and October 25, 2000, respectively. In these notices and the proposed rule, we announced the date and time of one public hearing that was held on the proposed rule. This hearing was in Newark, California, on October 30, 2000. A transcript of this hearing is available for inspection (see **ADDRESSES** section).

When the comment period was re-opened, we sent out notices of the re-opening to all parties on a mailing list for the bay checkerspot. Additionally, we held one informational meeting on February 22, 2001, in San Jose, California.

We requested four professional ecologists, who have familiarity with bay checkerspot butterflies and/or butterfly metapopulation dynamics, to peer review the proposed critical habitat designation. Three of the peer reviewers submitted comments on the proposed critical habitat designation, and one did not respond.

One peer reviewer stated that the proposed rule was ''* * * formulated utilizing technically accurate and up-to-date information * * *'' about the bay checkerspot, and that ''* * * the criteria or primary constituent elements * * *'' used to identify and propose critical habitat ''* * * are appropriate to identify the large-scale boundaries of critical habitat units.'' He found that the maps and descriptions of the 15 proposed critical habitat units we prepared ''* * * accurately delimit the approximate boundaries of potential habitat at every location.''

He recommended we review the status of *Euphydryas editha* populations of uncertain subspecific status in San Benito and San Luis Obispo counties. We note that we will continue to review and consider scientific data and peer consensus on the subspecific status of uncertain *Euphydryas editha* populations as it becomes available. We believe that the best information available at this time supports proceeding with this rule substantially as proposed. The Act provides procedures under section 4 for modifying species listings and critical habitat designations as may be appropriate in light of any new information that may be developed.

The reviewer agreed with our assessment of the value of the Tulare Hill unit as a dispersal corridor for the bay checkerspot butterfly to connect populations that lie east and west of that unit. He contrasted Tulare Hill with more isolated sites such as San Bruno Mountain and Communications Hill, where the distance to existing bay checkerspot butterfly populations may be more than a butterfly normally disperses, and intervening areas are urbanized. We agree that the San Bruno Mountain site may require introduction in order to establish and perhaps to maintain a bay checkerspot population; however, we believe Communications Hill is within normal flight range of other Santa Clara Valley metapopulation units.

A second peer reviewer generally supported the rule, stating that ''* * * it does an excellent job of reviewing and interpreting bay checkerspot population biology, habitat requirements, and distribution.'' In particular, she noted that the ridge including the Kirby and Metcalf units [which we call Coyote Ridge] is very important to the persistence of the Santa Clara County metapopulation, supporting multiple demographic units. In her research Coyote Ridge appeared to be a stable ''source'' that plays a major role in sustaining the species in the region. The reviewer suggested that the Edgewood unit serves the same ''source role'' in the San Mateo County metapopulation, and stated that it is important to protect Edgewood as the last remainder of whatever unique genetic variants of the bay checkerspot may exist in that region.

The second reviewer mentioned Silver Creek, Santa Teresa Hills, and Morgan Hill as having especially good potential for strong populations of the bay checkerspot butterfly, but that the Santa Teresa Hills, such as the ungrazed Santa Teresa County Park, may need more grazing to achieve its full potential as a large block of habitat. She stated that during her field studies, the only critical habitat unit she did not think had much potential as bay checkerspot habitat was Communications Hill, recalling it as being disturbed and grassy with few native forb-dominated meadows. We note that we have received a recent host plant survey of a portion of Communications Hill that documents substantial areas of larval food plants and adult nectar plants (Arnold 2000).

The third reviewer also generally supported the rule, finding it ''carefully

constructed, comprehensive, and well justified. * * * Importantly, the critical habitat areas contain important dispersal corridors between serpentine patches, and account for the dynamic nature of bay checkerspot metapopulations, with local extinctions and recolonizations.''

This reviewer made extensive comments about nitrogen deposition, stating that the preponderance of scientific evidence and opinion is that the serpentine grasslands in question are highly sensitive to nitrogen additions, that nitrogen deposition can lead to degradation of habitat, and that excess nitrogen deposition from smog may be the single biggest immediate threat to the bay checkerspot.

The reviewer also stated that well-managed grazing is vital to the recovery of the bay checkerspot, specifically mentioning public lands in the Santa Teresa Hills unit as being in need of grazing to reverse deteriorating habitat quality. He estimated that one formerly degraded site in the Silver Creek unit recovered and greatly increased host plant and nectar plant density in about five years of grazing. We concur that recovery of habitat quality with grazing is feasible and documented.

The reviewer stated that Communications Hill in its current state is unlikely to support bay checkerspot populations, but also stated that the proposed unit boundaries ''contain the remaining habitat.'' He considers the Communications Hill habitat relatively warm and dry, with few north-facing slopes, degraded by lack of grazing, and generally of low priority relative to higher quality habitats elsewhere. The Service believes that Communications Hill is likely to be occupied by the bay checkerspot, and we discuss why in detail in our responses to public comment regarding Communications Hill, below. The reviewer suggested one additional unit in the vicinity of Canada Garcia and Manzanita Ridge (west of Chesbro Reservoir, Santa Clara County), with more than 100 ha (247 ac) of serpentine and a good mix of slopes and aspects. However, we lack adequate information about this area to justify including it in the critical habitat designation at this time. The Act provides opportunity for later revision of critical habitat designation through petition procedures under section 4(b)(3)(D). Further unit-specific comments by the third reviewer are covered below.

We received a total of 1,037 oral and written comments during the comment periods. In total, oral and written comments were received from 1 State office, 5 local governments, and 1,031 private individuals or organizations. We reviewed all comments received for substantive issues and new information regarding critical habitat and the bay checkerspot. Of the comments we received, 1,006 supported designation, 24 were opposed to it, and 7 provided information or declined to oppose or support the designation. Similar comments were grouped into four general issues relating specifically to the proposed critical habitat determination and draft economic analysis on the proposed determination. These are addressed in the following summary.

Issue 1: Biological Justification, Methodology, and Regulatory Comments

(1) *Comment:* One commenter stated that the Service should concentrate its critical habitat efforts for the bay checkerspot on those sites where the bay checkerspot exists and which, therefore, truly provide potential conservation benefits to the subspecies.

Our Response: We did concentrate on occupied sites, and have only included unoccupied sites where they are essential to the conservation of the subspecies. The unoccupied sites are essential, as described in the bay checkerspot's Recovery Plan (Service 1998), because of the metapopulation dynamics exhibited by the bay checkerspot, and because they are representative of the historic geographical and ecological distribution of the subspecies.

(2) *Comment:* A commenter was concerned that the activities described in the proposed rule that may affect critical habitat under section 7 consultation were broadly defined and, combined with other species listings and critical habitat designations, have the net effect of establishing the Service as the sole arbiter of land use decisions. It was suggested that the Service narrow the defined activities that may affect critical habitat. The commenter also stated that water contracting and operations carried out by Federal agencies are not a direct or indirect cause of loss of habitat or cause for endangerment of the subspecies and, therefore. should not require section 7 consultation. It was also stated that sale or lease of private property does not result in habitat loss and should be deleted from the rule.

Our Response: We provide the list of activities that may affect critical habitat to assist Federal agencies when they review their actions and determine whether critical habitat may be affected. The list is wide-ranging because diverse Federal agencies have broad responsibilities under the Act to protect and conserve listed species and critical habitat. The list in no way conveys land use jurisdiction to the Service. The trigger for section 7 consultation is whether a Federal action may affect a listed species or critical habitat. Federal water contracts and operations that meet this criterion are required to consult. Sales or leasing of property will only be subject to consultation on critical habitat when a Federal agency is funding, authorizing, or carrying out the action, and the sale or lease may affect critical habitat.

(3) *Comment:* One commenter said that if the Service is going to use fragmentation as a reason for designating critical habitat (Background section), it should develop a quantitative assessment of how much fragmentation has taken place. Are the urban developments replacing woodlands, chaparral, or other habitats between areas of serpentine grassland a detriment or a benefit to the bay checkerspot? These developments may be a detriment, because of reduced resting area, increased obstacles, and pesticide; however, they could be a benefit by reducing predatory birds. The commenter also asked the Service to consider and insert why butterflies may be avoiding wooded or scrub habitats, as this may be a predator avoidance behavior.

Our Response: A quantitative analysis of habitat fragmentation is not required to designate critical habitat, and is beyond the scope of this rulemaking. It is not known why bay checkerspot butterflies appear to avoid wooded or scrub habitats. We are not aware of any scientific reports of bay checkerspots exhibiting predator avoidance behavior.

(4) *Comment:* One commenter said the indirect effects of added nitrogen deposition from increased automobile traffic on plant community structure need to be addressed. Concerns about the effects of nitrogen deposition on the bay checkerspot were also expressed by a peer reviewer.

Our Response: Nitrogen oxides from increased automobile traffic contribute to excess nitrogen deposition on surrounding habitats. Nitrogen deposition and its effects are briefly addressed in the Background section. We agree that scientific studies, such as those summarized in our Recovery Plan (Service 1998), show that automobiles and many other air pollution sources produce excess nitrogen oxides. A recent study found that nitrogen deposition from air pollution on Coyote Ridge, which includes the Kirby, Metcalf, and Silver Creek units, is already likely to be at levels adversely affecting serpentine plant community

structure, with negative effects on the bay checkerspot (Weiss 1999). We have modified the list of activities that may affect critical habitat in the section 7 Consultation section to address excess nitrogen deposition more clearly, by listing deposition as well as application of fertilizers, pollutants, and other chemicals. In ongoing consultation and discussions with the Corps of Engineers, the Federal Highway Administration, the City of San Jose, and the County of Santa Clara, we are currently seeking to address the risk that excess nitrogen deposition poses to the bay checkerspot butterfly.

(5) *Comment:* One commenter said that a higher proportion of the outcrops on the peninsula than in Santa Clara County might reasonably be proposed for critical habitat.

Our Response: We are aware of, and considered, several serpentine outcrop areas on the San Francisco peninsula when developing the proposed rule. However, the remaining undeveloped area of each of these sites is small, the topographic diversity is generally poor, and most are degraded and exposed to significant threats, such as lying directly adjacent to an eight-lane freeway. All are considered to have been unoccupied by the bay checkerspot for one or more decades.

(6) *Comment:* One commenter asked what percentage of total bay checkerspot habitat is included in the critical habitat designation and how much area outside this designated area is likely to contain bay checkerspot.

Our Response: We do not currently have comprehensive figures on the total area or location of bay checkerspot habitat or the status of all bay checkerspot populations. In our estimation, this critical habitat designation includes the majority of remaining bay checkerspot habitat in Santa Clara and San Mateo counties, and an even higher proportion of currently existing bay checkerspot populations. However, bay checkerspot populations and suitable habitat do exist outside of designated critical habitat. For example, bay checkerspot butterflies exist in a locality on serpentine soils near Uvas Reservoir in Santa Clara County, and at several other serpentine outcrops west of the foothills of the Santa Clara Valley. We did not include these areas in critical habitat because available data do not indicate they are essential to the conservation of the subspecies, or because we lack sufficient information on the localities to make a determination.

(7) *Comment:* One commenter said that if assessor's parcel numbers were identified or assessor's maps were used to identify parcel ownership, then information on land use on those parcels would also be available. The designation of critical habitat appears to have skipped an important part of the analysis and this information should be included and reviewed.

Our Response: We did not use assessor's parcel maps in developing our designation. Instead, subsequent to the bay checkerspot critical habitat proposal on October 16, 2000 (65 FR 61218), the County of Santa Clara sent us a list of property owners potentially interested in the designation. We contacted these landowners by mail and provided them the opportunity to comment about the proposed rule and draft economic analysis. Several landowners commented on these two documents and provided information that helped us refine our final critical habitat designation.

(8) *Comment:* Several commenters felt that the critical habitat designation should encourage viable grazing activities.

Our Response: We agree that sustainable grazing practices are generally compatible with bay checkerspot habitat and conservation, and that in some areas or at certain times the removal of grazing may actually be a threat. The rule states this in the Background and the Effects of Critical Habitat Designation sections.

(9) *Comment:* A commenter asked what types of development would typically be allowed in critical habitat areas, what would be the threshold that would trigger a Federal permit, what Federal agencies would be involved in issuance of these permits, to which agencies would the county refer development applications, and what typical mitigation measures would be required in a development proposal to ensure adequate habitat protection.

Our Response: There is no such thing as a Federal permit for development in critical habitat units. Critical habitat identifies specific areas that have the physical and biological features that are essential to the conservation of a listed species, and that may require special management considerations or protection. Federal agencies are required to consult with us only if an action they are authorizing, funding, or carrying out, in whole or in part, may affect critical habitat. We do not believe any new county procedures for critical habitat would be required beyond what the county should already have in place to protect the threatened bay checkerspot butterfly. Refer to the section above that discusses section 7 or the Regulatory Planning and Review and Regulatory Flexibility Act sections under Required Determinations below for more information as to what potential Federal agencies may initiate a section 7 consultation and the types of activities that may be involved.

(10) *Comment:* One commenter asked why we had proposed so many contiguous units. He recommended a single unit should be proposed for the Coyote Ridge area.

Our Response: These units have distinct bay checkerspot populations and are connected by dispersal habitat. Separate units allow us to evaluate the effects resulting from any Federal actions on unit populations individually, rather than lumping them all together.

(11) *Comment:* One commenter requested that information on the distances the Edgewood Park/Triangle, Jasper Ridge, and San Bruno Mountain units are from other units be provided.

Our Response: We added distance information to the narrative discussion of these units. Please see that section.

(12) *Comment:* One commenter stated that the Service should provide quantitative or qualitative measures for the primary constituent elements. The commenter proposed additions to and omissions from the primary constituent elements, adding: minimum size areas such as at least 1.6 ha (4 ac), north-facing serpentine slopes with dense stands of *Plantago erecta*, a diversity of north and nearby south- and west-facing slopes, at least 152 m (500 ft) in elevation, and serpentine soil; and omitting pollinators, stable holes, or cracks in soil, and wetlands.

Our Response: The ''may affect'' criterion that triggers Federal agencies to consult under section 7 of the Act is a broad, qualitative standard. We believe that precise quantitative standards for habitat are unnecessary and would overstate the scientific understanding of the bay checkerspot, its environments, and its needs. For example, *Plantago erecta* densities vary greatly from year to year, and what bay checkerspot larvae need for a ''dense'' stand of *Plantago erecta* has not been documented. We have reviewed and made alterations in the wording of the primary constituent elements designation, and we believe the final language suitably captures the needs of the subspecies in a manner that will be useful to Federal agencies in determining whether actions they fund, authorize, or carry out may affect critical habitat.

(13) *Comment:* One commenter felt some of the primary constituent elements were either difficult to measure, or are considered generally

unimportant for the subspecies, such as wetlands.

Our Response: We provide justification for the primary constituent elements stated above (see Background section). We also provided citations stating the importance of wetlands to the bay checkerspot. For example, the article cited regarding occasional wetland use by bay checkerspot (Launer *et al.* 1993) is co-authored by six well-known ecologists and biologists, and states ''our observations are consistent with the hypothesis that (bay checkerspot) butterflies are visiting moist areas in order to replenish essential nutrients or water expended during mating, gamete (egg or sperm) production, or general metabolism.'' They go on to say that local population persistence may be enhanced by moist areas, and that canyon bottoms and moist areas may need to be considered in conservation planning for the bay checkerspot.

(14) *Comment:* One commenter objected that the size of patches of host plants and the average density of *Plantago erecta* are not provided for any of the units, even though data exist for many. The minimum patch size of Plantago erecta necessary to support a population of bay checkerspot should also be provided.

Our Response: While we would be interested in reviewing the data on *Plantago erecta* referred to in the comment, *Plantago erecta* is an annual plant whose year-to-year abundance is strongly affected by abiotic and biotic environmental conditions. As such, information on its present abundance is not necessarily a good indicator of conditions next year or over the long run. Regarding the minimum amount of *Plantago erecta* needed to support a population of bay checkerspot, we are not aware of any studies in the literature of what this amount might be. Also, the mobility and metapopulation dynamics of the bay checkerspot would need to be considered in evaluating the relevance of the size of any particular patch of food plants.

(15) *Comment:* One commenter asked whether the Service will require all of the proposed primary constituent elements to be present, or only one or two to qualify a site as critical habitat.

Our Response: We clarified the language regarding the primary constituent elements in the final rule (see the Primary Constituent Elements section of this rule). All areas within the legal descriptions are considered critical habitat except for existing manmade features and structures, such as buildings, roads, railroads, and urban development. All critical habitat areas contain one or more of the primary constituent elements.

(16) *Comment:* A commenter stated that many farmers and ranchers are concerned that their current agricultural practices could be impacted. They fear cropping patterns, water conservation, and other practices may be limited with the critical habitat designation because these practices may now impact the bay checkerspot.

Our Response: With the changes made from the proposed rule, very little, if any, crop land remains within the critical habitat boundaries. Normal ranching practice will be unaffected by bay checkerspot critical habitat designation.

(17) *Comment:* A commenter representing certain landowners in the area of the proposed Kalana Hills unit said substantial areas were included within the borders of the proposed critical habitat area that clearly lack any of the primary constituent elements for the bay checkerspot. For instance, the Service included area that is non-serpentine and presently in cultivation in Kalana Hills unit.

Our Response: There is no requirement that all of the area within critical habitat boundaries support the primary constituent elements; to the contrary, critical habitat regulations explicitly state that intervening or surrounding areas not capable of supporting the subspecies may be included within designated critical habitat for purposes of describing a readily identifiable boundary and providing adequate consideration to a spatially complex mix of area with and without habitat (50 CFR 424.12(c), (d)). Furthermore, space for dispersal between habitable areas is a primary constituent element of bay checkerspot critical habitat. Nevertheless, within these requirements under the Act and with more detailed information provided during the comment period, we have modified the Kalana Hills unit boundary, eliminating over 80 ha (200 ac) of agricultural lands lacking the primary constituent elements from the unit.

(18) *Comment:* Many commenters mentioned possible benefits of designating critical habitat. Items suggested include facilitating proper evaluation of development proposals and plans, helping with acquiring more lands to be protected, increasing the chances of funding of scientific projects, and furthering the development of an HCP for Santa Clara County.

Our Response: While none of these items are required by critical habitat, we acknowledge that critical habitat designation can serve as an important public information function. Non-Federal parties may also elect to use critical habitat maps to inform their decision-making, direct funding, or guide large-scale planning and conservation efforts. Critical habitat designation does not set aside lands or funds to acquire lands.

(19) *Comment:* One commenter stated that it is important that the Service use the Act to exercise control over Federal projects and analyze the direct and indirect impacts on the bay checkerspot, especially for those projects that only indirectly impact the bay checkerspot and its habitat.

Our Response: We, and other Federal agencies, are required under the Act to consider all effects, direct and indirect, to listed species and critical habitat of actions subject to Federal authorization, funding, or control, including the indirect effects of those actions.

(20) *Comment:* One commenter believed that it is important for the Service and the U.S. Department of Agriculture's Natural Resource Conservation Service (NRCS) to coordinate on use of plants for landscaping of projects.

Our Response: If the NRCS is placing, funding, or recommending the placement of plants in or near bay checkerspot critical habitat, it must consider whether its actions may affect the subspecies or critical habitat. We are prepared to consult informally or formally with NRCS on their plant recommendations.

(21) *Comment:* One commenter stated that critical habitat designation will facilitate proper evaluation of development proposals and plans. One commenter stated the Service inaccurately downplayed the difficulty of the normal regulatory process and that the critical habitat designation requires additional regulatory review and analysis under State and local laws. The commenter stated that this should be acknowledged in the rule.

Our Response: Critical habitat designation does not provide for a wholesale environmental evaluation of proposed development projects. If a Federal agency funds, authorizes, or carries out an action that may affect critical habitat for the bay checkerspot, the Act requires that the agency consult with us under section 7 of the Act. For a project to affect critical habitat, it must affect the habitat features important to the bay checkerspot, which are defined in the regulation section in this final rule. Projects lacking a Federal nexus do not require any additional regulatory review and analysis under Federal laws, and we are not aware of any additional regulatory review and analysis under

State or local laws for designated critical habitat.

(22) *Comment:* A commenter stated that the section on Relationship to Habitat Conservation Plans does not explain a benefit to the Santa Clara Valley Water District or to the subspecies if the District develops an HCP. He recommended we rewrite the section to establish good linkage to the benefits to the subspecies and the use of HCPs.

Our Response: HCPs reduce conflicts between listed species and the economic use or development activities of a particular piece of land. By developing an HCP, an individual, agency, or organization can reduce the burden of the Act by providing an efficient mechanism for compliance with it, while at the same time, providing for the conservation of one or more species. One of the great strengths of the HCP process is its flexibility, as they can vary greatly in size and scope. Each HCP is unique, with its own set of issues and objectives.

As mentioned in the Relationship to Habitat Conservation Plans section, section 4(b)(2) of the Act allows us broad discretion to exclude from critical habitat designation areas where the benefits of exclusion outweigh the benefits of designation, provided the exclusion will not result in the extinction of the species. We believe that in most instances, the benefits of excluding HCPs from critical habitat designations will outweigh the benefits of including them. For a species, an approved HCP would provide certain measures to benefit the species and its habitat. For the landowner, it would ensure that no additional land use restriction or financial compensation would be required for the term of the permit.

Our rationale for excluding HCPs is provided in the Relationship to Habitat Conservation Plans. For additional information regarding the specifics of developing an HCP, please contact our Sacramento Fish and Wildlife Office (see **ADDRESSES**) section.

Issue 2: Legal and Procedural Comments

(23) *Comment:* The Service failed to consult with citizens affected by the designation during preparation of the proposed rule and gave deference to environmental groups.

Our Response: Following the publication of the proposed critical habitat determination on October 16, 2000, we opened a 60-day comment period, which closed on December 15, 2000. We held one public hearing on October 30, 2000, and one public information meeting on February 22, 2001. We conducted outreach by notifying affected elected officials, local jurisdictions, interested groups, and property owners. We conducted much of this outreach through legal notices in regional newspapers, telephone calls, letters, and news releases faxed and/or mailed to affected officials, local jurisdictions, and interest groups, and publication of the proposed determination and associated material on our Regional Internet page. We announced the availability of the draft economic analysis in the **Federal Register** on February 9, 2001, and opened a public comment period from February 9, 2001, to March 12, 2001, to allow for comments on the draft economic analysis and additional comments on the proposed determination itself. We provided notification of the draft economic analysis through telephone calls, letters, and news releases faxed and/or mailed to affected officials, local jurisdictions, and interest groups. Due to the court ordered deadline, we were not able to reopen the comment period a third time. We prepared the proposed and final rules based upon the best scientific and commercial information available to us from all sources at the time. We reviewed and treated, with equal weight, all of the oral and written comments received from various parties, regardless of their affiliation. Also, see our response to comment 7.

(24) *Comment:* Several commenters requested that the proposal be withdrawn and reissued. One commenter stated the withdrawn proposal should be redrafted after completion of the economic analysis. Another commenter stated that withdrawal and reissuance of the proposal was needed to be in compliance with the Act and the Administrative Procedure Act (APA).

Our Response: We have complied with the APA and Act during this rulemaking. We prepared and published a proposed rule and a draft economic analysis and solicited comments from private parties and public agencies on both documents. We reviewed all comments received either in writing or at public hearings and have responded to these comments in the preparation of this final rule. Where site-specific documentation was submitted to us providing a rationale as to why an area should not be designated critical habitat, we evaluated that information in accordance with the definition of critical habitat pursuant to section 3 of the Act and made a determination as to whether modifications to the proposal were appropriate. While not actually deleting any of the proposed critical habitat areas originally proposed, we changed the boundaries of certain critical habitat areas and excluded lands from the final designation that we determined to be nonessential to the conservation of the bay checkerspot. We also complied with the District Court's order, which required us to make a final decision on critical habitat for the bay checkerspot by April 20, 2001.

(25) *Comment:* One commenter stated that the public hearing location chosen by the Service in Newark, California, limited public input compared to having a public hearing closer to property owners affected by the critical habitat designation. Another commenter requested the Service hold a public hearing in San Jose to address local comments and questions.

Our Response: We recognize that the location selected for a public hearing may be more problematic for some individuals who may want to attend than another location. In this case, we attempted to select a central location for the public hearing that was roughly equally accessible to all parties potentially interested in the proposed critical habitat designation, including parties from San Francisco and the East Bay, south to San Martin and southern Santa Clara County; so we held the public hearing in Alameda County. In addition to the public hearing, we held a public information meeting in San Jose, Santa Clara County, and the comment period was re-opened from February 9 to March 12, 2001. Due to the time constraint under the court order, we could schedule only one public hearing in Newark, California, on October 30, 2000.

(26) *Comment:* Several commenters requested the Service to reopen the comment period for a sufficient time period to allow meaningful comment on the proposed designation or the economic analysis.

Our Response: While we may have preferred to extend or reopen the comment period, if requested, we have complied with the regulations under 50 CFR 424.16(c) (2) and (3) where it states that we shall have the comment period open for at least 60 days and we shall hold one public hearing. Given the constraints imposed by the Court, we made an effort to exceed our statutory obligations. Following the publication of the proposed critical habitat determination on October 16, 2000, we opened a 60-day comment period which closed on December 15, 2000. We conducted outreach by notifying affected elected officials, local jurisdictions, interested groups, and property owners. We conducted much of this outreach through legal notices in

regional newspapers, telephone calls, letters, and news releases faxed and/or mailed to affected officials, local jurisdictions, and interest groups, and publication of the proposed determination and associated material on our Regional Internet page. We announced the availability of the draft economic analysis in the **Federal Register** on February 9, 2001, and re-opened the public comment period from February 9, 2001, to March 12, 2001, to allow for comments on the draft economic analysis as well as additional comments on the proposed determination itself. During this time, we also held one informational meeting. We provided notification of the draft economics analysis through telephone calls, letters, and new releases faxed and/or mailed to affected elected officials, local jurisdictions, property owners, and interest groups. Since this rule is under a court ordered deadline, we were not able to reopen the comment period a third time. We believe that we provided the interested parties sufficient time to comment on this rule and we conducted sufficient outreach on this notice.

(27) *Comment:* Several commenters stated that the Service violated the National Environmental Policy Act of 1969 (NEPA) by failing to prepare an Environmental Impact Statement for the designation of critical habitat for the bay checkerspot butterfly.

Our Response: We have determined that an Environmental Assessment and/or an Environmental Impact Statement as defined by NEPA need not be prepared in connection with regulations adopted pursuant to section 4(a) of the Act as amended. We published a notice outlining our reason for this determination in the **Federal Register** on October 25, 1983 (48 FR 49244).

(28) *Comment:* Three commenters said that in order to comply with the statutory definition of critical habitat, the Service should specifically exclude those portions of the proposed designation that are not essential to the conservation of the subspecies in the final rule.

Our Response: We have determined that the areas designated as critical habitat within this final rule are essential to the conservation of the bay checkerspot. With improved information since the proposed rule, however, we did exclude lands that are not essential to the conservation of the bay checkerspot in this final rule from five units.

(29) *Comment:* A commenter stated that only the four areas originally proposed as critical habitat in 1984 (Edgewood, Jasper Ridge, San Bruno Mountain, and Kirby) should be considered, because critical habitat designations should be based only on bay checkerspot occupancy, information about the subspecies and habitats, and economic considerations existing ''at the time of listing.''

Our Response: We did not designate critical habitat at the time of listing because we found that it was not determinable at that time. The courts have now ruled we must finalize a critical habitat determination for the subspecies. Restricting our consideration of critical habitat to what was known about the subspecies in 1984 (the first proposed rule) or 1987 (the time of listing) would return us to the situation in which we found critical habitat undeterminable, and would ignore the intervening 16 years of accumulation of extensive scientific data about the bay checkerspot. We are required by the Act (sections 4(b)(2) and 4(b)(6)(C)(ii)) to base our determination on the best scientific data available at the present moment of critical habitat designation.

(30) *Comment:* One commenter stated that the rule does not provide sufficient information on which a critical habitat determination can be premised. The proposed designation is not properly supported by the best scientific and commercial data available. The Service makes numerous and varied unsupported assertions regarding the biology and habitat requirements of the bay checkerspot. In proposing several ''primary constituent elements'' of critical habitat for the bay checkerspot, the Service offers no evidentiary support for the elements chosen (except in isolated instances). The Service failed to specify what lands are ''occupied'' based on best scientific data available.

Our Response: The descriptions of the primary constituent elements for the bay checkerspot are based on a compilation of data from peer reviewed published literature, unpublished or non-peer reviewed survey or research reports, the Recovery Plan (Service 1998), and biologists knowledgeable about the subspecies and its habitat. The primary constituent elements, as described, represent our best estimate of those habitat features that are essential to the subspecies. In our response to specific comments, and in other pertinent areas, we have listed citations where it is necessary or appropriate. Also, a copy of all supporting documentation used in the development of this determination is in the administrative record and available for inspection at the Sacramento Fish and Wildlife Office (see **ADDRESSES** section).

(31) *Comment:* One commenter stated the critical habitat designation for the bay checkerspot is based on the wrong standard (i.e., a ''recovery'' standard) by including suitable and potential habitat that the Service deems is useful for the subspecies' recovery. The commenter stated that this ''recovery'' standard is much broader than the standard that Congress contemplated in enacting the Act and subsequent amendments.

Our Response: We have used the correct standard for critical habitat as defined in section 3(5)(A) of the Act—(i) the specific areas within the geographic area occupied by a species, at the time of listing in accordance with the Act, on which are found those physical or biological features (I) essential to the conservation of the species and (II) that may require special management considerations or protection and; (ii) specific areas outside the geographic area occupied by a species at the time it is listed, upon a determination that such areas are essential for the conservation of the species. The term ''conservation'' as defined in section 3(3) of the Act, means ''the use of all methods and procedures which are necessary to bring any endangered species or threatened species to the point at which the measures provided pursuant to the Act are no longer necessary'' (i.e., the species is recovered and removed from the list of endangered and threatened species). The Recovery Plan for the bay checkerspot provides a description of habitat attributes that are essential to the survival and recovery of the subspecies (Service 1998).

(32) *Comment:* One commenter stated the Act requires the Service to designate adequate habitat for conservation of the subspecies. The Act defines conservation as recovery. Since the Recovery Plan (Service 1998) for the bay checkerspot identifies the need for populations in Contra Costa and Alameda Counties, the Service should add critical habitat in those counties.

Our Response: We considered proposing critical habitat in Contra Costa and Alameda Counties. However, while the Recovery Plan (Service 1998) identifies the need to reestablish populations of the bay checkerspot butterfly in the east bay to fully recover the species, it does not identify specific areas where such populations should be reestablished. We lacked sufficient information to indicate which particular areas in the east bay are essential for the conservation of the species. We believe it is not appropriate to designate critical habitat in areas without such information. The Act provides for revisions to critical habitat designations

when necessary, and we intend to continue working with the California Department of Parks and Recreation and other stakeholders on opportunities to possibly reintroduce the bay checkerspot butterfly in appropriate locations in the east bay. Should these efforts identify additional areas that may meet the definition of critical habitat (i.e., areas that are both essential to the conservation of the species and that require special management), we will consider proposing a revision to this critical habitat designation at that time or when our resources allow.

(33) *Comment:* One commenter stated that the Service failed to make findings required by law before including unoccupied areas as designated critical habitat for the bay checkerspot. The commenter said that the Service appears to have designated the entire geographical area that can be occupied by the bay checkerspot without making the findings required by law for making an exception to the statutory prohibition against making such a broad designation. Another commenter urged the Service to respect the Act's distinction between critical habitat and the geographic habitat of the bay checkerspot.

Our Response: In proposing critical habitat for the bay checkerspot, we identified those areas that are essential to the conservation of the subspecies. The areas we proposed to designate as critical habitat provide all of those habitat components essential for the primary biological needs of the bay checkerspot described in the Recovery Plan (Service 1998), and defined by the primary constituent elements.

The definition of critical habitat in section 3(5)(A) of the Act includes, ''specific areas outside the geographic area occupied by a species at the time it is listed, upon a determination that such areas are essential for the conservation of the species.'' After weighing the best available information, including the Recovery Plan (Service 1998), we conclude that the areas designated by this final rule that lie outside the geographic area occupied by the subspecies at the time it was listed are essential for the recovery of the subspecies and its subsequent removal from the List of Endangered and Threatened Species. As is stated in this final rule, we have not designated all areas currently occupied, potentially occupied, or historically occupied by the bay checkerspot as critical habitat.

(34) *Comment:* One commenter stated that the Service did not identify and discuss the cumulative impacts of critical habitat designation.

Our Response: The commenter appears to be using the term ''cumulative impacts'' in the context of NEPA. This is not appropriate in determining the critical habitat needs of the listed species. We are required to consider the effect of the proposed government action, which in this case is the designation of critical habitat for the bay checkerspot. The appropriate baseline to use in an analysis of a Federal action, which in this case is the designation of critical habitat for the bay checkerspot, is the way the world would look absent the proposed regulation. Against this baseline, we attempt to identify and measure the incremental costs and benefits associated with the government action. Because the bay checkerspot is already a federally protected species, any effect this listing has on the regulated community is considered part of the baseline scenario, which remains unaffected by our critical habitat designation.

(35) *Comment:* One commenter requested that the critical habitat proposal be withdrawn and reissued with more precisely delineated critical habitat area boundaries, including deletion of improperly proposed units, after completion of the economic analysis. The boundaries include developed areas, which are not bay checkerspot butterfly habitat. Two other commenters asserted that the proposed critical habitat boundaries were not described in sufficient detail for landowners to locate them precisely. One stated that the proposed designation failed to designate ''specific areas'' as critical habitats required by the Act. One commenter stated that the Service failed to precisely describe the lands to be designated as critical habitat and thus violated the notice and comment provisions of the Administrative Procedure Act.

Our Response: All critical habitat boundaries were specific and precisely delineated in the proposed rule and were publicly available as text descriptions and printed maps. In addition, we provided the boundaries in geographic information systems (GIS) format to anyone who requested them. All units were properly proposed and were presented in detail allowing anyone with a standard topographic map to locate the boundary (50 CFR 424.12(c)). It should be noted that the precise boundaries are given in the legal descriptions at the end of the rule, not in the narrative comments in the preamble. The draft economic analysis was made available after some of the comments were received; all earlier commenters were provided a copy of the draft economic analysis and notified of the opportunity to comment again. We believe the information that we made available and provided to the public was sufficiently detailed for informed public comment.

(36) *Comment:* Several commenters stated the Service avoided a statutory obligation to determine whether the benefits of excluding particular areas from critical habitat designation outweigh the benefits of including each area.

Our Response: Section 4(b)(2) of the Act allows us to exclude from critical habitat designation areas where the benefits of exclusion outweigh the benefits of designation, provided the exclusion will not result in the extinction of the species. We base our decision to exclude an area from critical habitat designation on the best scientific data available, and taking into consideration the economic impact of specifying any particular area as critical habitat. We completed an economic analysis, and considered the results of this analysis and comments received on the analysis and the critical habitat proposal in the section 4(b)(2) weighing process. We used the section 4(b)(2) process in evaluating whether the areas covered by the San Bruno Mountain and PG & E HCPs should be excluded from this critical habitat designation. The San Bruno Mountain HCP area was included because the HCP does not cover bay checkerspot butterfly, and the PG & E HCP area was included because the HCP is due to expire in November 2001. These HCPs are discussed further in the Relationship to Habitat Conservation Plans section.

Issue 3: Site-Specific Comments

(37) *Comment:* Several commenters felt that the bay checkerspot butterfly does not inhabit Communications Hill and, therefore, this unit should not be designated as critical habitat. They said that surveys at the site between the mid-1980s and 2000 have failed to locate any of the subspecies. Some commenters noted that, although a single bay checkerspot was observed in 1992, by a bay checkerspot butterfly specialist, they believed it was either misidentified or a transient individual. Seven commenters believed that there is no suitable habitat for the bay checkerspot on Communications Hill and it should, therefore, not be designated as critical habitat. Five commenters believed that the quarry on Communications Hill was not historic bay checkerspot butterfly habitat nor could it be restored to suitable habitat.

Our Response: We do not concur with the belief that the bay checkerspot butterfly does not inhabit

Communications Hill. In the past, the bay checkerspot has been observed at the site, as well as both of its foodplants and adult nectar plants. While a number of surveys of widely varying duration and quality were conducted between the mid-1980s to 2000, it does not appear possible to definitively conclude the subspecies is not present at Communications Hill. This is because adequate surveys have not been conducted over the entire flight season in all suitable areas on Communications Hill for an adequate time period, and thus likely would have missed the subspecies if they emerged early, late, or had a short adult flight season. The *Draft Supplemental Environmental Impact Report for the Communications Hill Kaufman Broad Residential Project,* dated November 2000, stated that ''A check with biologists monitoring the bay checkerspot butterfly during its 2000 flight season revealed that the earliest adults were observed on March 10th at other locations, with adults being most active at most locations sometime during the week of March 13th. No butterflies were seen after the week of April 17th.'' Given the tardiness in initiating the field work in 2000, the most recent survey on Communications Hill may have missed adult bay checkerspot butterflies at the site.

Populations of the bay checkerspot butterfly undergo dramatic fluctuations that may be unexpected by entomologists and other biologists. For example, based on the results of a survey conducted in 1987, an entomologist concluded that a proposed residential development at Silver Creek would not adversely affect the bay checkerspot butterfly, given its ''low'' population size (Dennis Murphy *in litt.;* D. Murphy, pers. comm.). However, in the time period from 1987 to 1990, the bay checkerspot dramatically increased the size and extent of their population at this location, and more comprehensive studies at the site determined that the serpentine habitat at that location was very important for the subspecies.

The eggs, larvae, and pupae of the bay checkerspot butterfly are difficult to locate in the field (R. White 1986 (87)). In addition, the ability of larvae of a related taxa, the endangered quino checkerspot butterfly (*Euphydryas editha quino*), to become dormant during adverse environmental conditions (aestivate) is well documented and they likely are able to survive long periods of time in this state (Mattoni *et al.* 1997). In judging whether a population of the quino checkerspot butterfly has been extirpated, it is important to know that even a robust population may generate no adults at all under poor environmental conditions (Service 2001). It is likely the bay checkerspot butterfly, a subspecies of the same species, possesses this same life-history trait (Service 1998).

There are numerous studies documenting that the bay checkerspot butterfly possesses a ''metapopulation type'' of distribution and population structure. A metapopulation is a network of semi-isolated populations with some level of regular or intermittent migration and gene flow among them, in which populations may disappear, but then are recolonized by dispersing individuals from other populations. Other populations of this subspecies are known from the immediate vicinity at Santa Teresa County Park, Tulare Hill, Silver Creek, Kirby Canyon, and the Morgan Hill area. The bay checkerspot butterfly also was intentionally released at 38 sites that contain serpentine grassland in Santa Clara County (Harrison 1989). It is not known if any of these releases resulted in the establishment of permanent populations, however, individuals were observed at four of the 38 sites two years after the releases occurred (Harrison 1989).

Communications Hill contains all of the primary constituent elements of critical habitat for the bay checkerspot butterfly: open grassland, larval foodplants, adult nectar sources, soils derived from serpentinic rock, stable holes or cracks in the soil, wetlands that may provide moisture during times of spring drought, space for dispersal, and relatively varied topography (Arnold 2000). Communications Hill is only 3.2 km (2 mi) from the Silver Creek unit and 5 km (3 mi) from the Santa Teresa Hills unit, both recently documented to be occupied by the bay checkerspot. Both are within documented dispersal distances of the subspecies. The bay checkerspot seen on Communications Hill in 1992 was identified by an experienced biologist with extensive field research on the bay checkerspot. It is much more probable that this butterfly was a member of a low-density resident population than that it was a ''transient,'' given that dispersal is a rare event and the chances of one biologist observing one transient butterfly on one day are very small, whereas the chances of seeing a member of a low-density resident population is quite reasonable.

Therefore, given the presence of suitable serpentine habitat and other primary constituent elements of critical habitat on Communications Hill, the observation of an adult bay checkerspot butterfly at the site, the lack of adequate surveys for this subspecies that may provide data conclusively demonstrating it is not present, its biology, as well as the mobility of the subspecies and the presence of nearby populations, we believe that it is highly likely that Communications Hill is inhabited by the subspecies.

In reference to the quarry, we are unaware of any specific data indicating if the quarry site was inhabited by the bay checkerspot prior or subsequent to the substantial earth-removing operations, but the area does contain some of the primary constituent elements (serpentine soils, areas of *Plantago,* and nectar plants). Efforts and experiments involving the restoration of similar, severely disturbed serpentine habitat for the bay checkerspot and plants have been underway at the sanitary landfill at Kirby Canyon for several years and are showing promising results.

(38) *Comment:* One commenter stated that Communications Hill should be analyzed in terms of its connection to other proposed critical habitat units and the ability of the bay checkerspot butterfly to disperse to it over time.

Our Response: Normal within-habitat movements by bay checkerspot butterflies are typically less than 150 meters (490 feet) between recaptures (Ehrlich 1961, 1965; Gilbert and Singer 1973). Harrison (1989) recaptured 5 percent of bay checkerspot butterflies at distances greater than 1 km (0.6 mi) from the point of release of the individuals marked/recaptured. However, long-distance dispersal has been documented as far as 7.6 km (4.7 mi) (Service 2001), and 5.6 km (3.5 mi) for one male, and 3.2 km (2 mi) for one female (Harrison 1989).

Long-distance habitat patch colonization may be achieved within a single season through the long-distance dispersal of individual butterflies, or over several seasons through stepping-stone habitat patch colonization events. In a study of the Morgan Hill bay checkerspot butterfly island-mainland type metapopulation, no colonizations of unoccupied habitat patches further than 4.5 km (2.8 m) from the source population were detected over a 10-year period (Harrison *et al.* 1988). A mathematical model, of unknown accuracy, predicted satellite habitat patches at a distance greater than 6 to 8 km (4 to 5 mi) from large source populations were not likely to support populations of the bay checkerspot butterfly (Harrison *et al.* 1988). Communications Hill is approximately 3 km (2 mi) from the Silver Creek critical habitat unit, which contains the closest known bay checkerspot butterfly population. Therefore, we believe that

this habitat is suitable, reachable, and is used by the bay checkerspot butterfly, and warrants critical habitat designation.

(39) *Comment:* Several commenters felt that Communications Hill should be deleted because the site was not mentioned in the Recovery Plan for the bay checkerspot butterfly.

Our Response: Communications Hill is ranked as ''other current or historic localities or suitable habitat areas'' on page II–203 of the Recovery Plan (Service 1998). In addition, the site is listed on Table IV–1 of the Recovery Plan as a site that is targeted for the protection of the bay checkerspot, the endangered Santa Clara Valley dudleya (*Dudleya setchellii*), and other species. Thus, we determined that this unit is essential for the conservation of the bay checkerspot butterfly.

(40) *Comment:* The area west of State Route 87, Communications Hill unit, should be deleted from critical habitat designation. The area south of the water tanks has been developed into houses.

Our Response: We requested, but did not receive, more precise information on the location of the developed area the commenter discusses. This development was begun after the 1999 SPOT satellite imagery we used to refine our proposed boundaries. We believe, based on a visit to the site vicinity, that useful habitat likely remains west of route 87. In the absence of specific data allowing us to redraw the boundary in an informed manner, and because the rule explicitly states that existing developed areas do not provide the primary constituent elements and will not be subject to consultation, we believe it is most appropriate to leave the boundary unchanged in this area.

(41) *Comment:* A commenter stated that habitat restoration is needed in the Edgewood Park/Triangle unit.

Our Response: We have sought to encourage and facilitate appropriate native habitat restoration efforts in this and other units, and will continue to do so.

(42) *Comment:* We received comments stating that the proposed Kalana Hills unit should be eliminated entirely, because it is not listed as either a ''core habitat area'' or ''potential core area'' within the Recovery Plan (Service 1998), or because it is not certain to be presently occupied. If not eliminated, the commenters requested that the boundaries of the proposed Kalana Hills Unit should be refined to conform to natural land features and to a voter-approved urban growth boundary initiative.

Our Response: We have modified the Kalana Hills unit boundary based on a site visit and specific information provided by the landowners and their consultant. The remaining critical habitat area contains substantial occupied areas of good-quality bay checkerspot habitat close to core areas and contributes to the Santa Clara County metapopulation. We, therefore, consider this area essential to the conservation of the bay checkerspot.

(43) *Comment:* One commenter suggested we expand the Kalana Hills unit southward to include an area of habitat south of San Bruno Canyon that supports *Plantago erecta* and nectar plants. Another commenter recommended that the western boundary of the San Bruno Mountain unit should extend west to just before the summit area; some of the best remaining stands of *Plantago* are in large native grassland patches west of the western transmission line. Historical records along the ridgetop may not fully describe the bay checkerspot's distribution on San Bruno Mountain. The 500-foot contour limit also needs to be investigated; some grasslands below that contour may have *Plantago* stands, especially in Owl and Buckeye canyons. Also, a commenter suggested that the southeast boundary of the San Vicente-Calero unit excludes a finger of serpentine with unknown habitat value. There is a California Department of Fish and Game Natural Diversity Data Base record for the bay checkerspot on a nearby serpentine outcrop of nearly equal size.

Our Response: We lack adequate information about these areas to allow a critical habitat designation at this time. The Act provides opportunity for later revision of critical habitat designation through petition procedures under section 4(b)(3)(D).

(44) *Comment:* Several commenters requested that the Service adjust the eastern boundary of the Kirby Unit of the critical habitat designation. The landowner provided specific, identifiable coordinates for an adjusted boundary and information confirming that the area excluded by their adjustment does not support the primary constituent elements.

Our Response: We believe the recommended boundary changes to the Kirby Unit is reasonable and would not remove any useful areas containing primary constituent elements. We have incorporated these changes in the final rule.

(45) *Comment:* A commenter requested that the Service change the Silver Creek unit, to allow development in the 340-acre portion and exclude development in the 240-acre preserve area as stated in the Service's biological opinion for the Ranch on Silver Creek project.

Our Response: We have adjusted the boundary using information provided by the commenter, information present in our files, and based on site visits. See the narrative description of the unit, above, and the map and legal description of the unit, below, for specifics.

(46) *Comment:* One commenter requested we remove approximately 365 ha (900 ac) actively being used as a golf course and a landfill in the Kirby unit from the final critical habitat designation. These properties have been the subject of previous understandings with various resource agencies including the Service. The landfill is highly disturbed, and the golf course is not high-quality bay checkerspot habitat.

Our Response: We requested but did not receive information from the commenter regarding the exact boundaries of the golf course. The final rule explicitly states that existing developed areas will not be subject to consultation on critical habitat because they do not contain the primary constituent elements, so in the absence of information we felt it was most appropriate to leave the unit boundary as proposed in this area. The landfill is ultimately to be restored to bay checkerspot habitat and still retains substantial habitat within its permitted borders, so critical habitat designation in this area would ensure that any Federal involvement considers bay checkerspot habitat. We will work with the landowner and the landfill operator to evaluate the status of prior biological opinions and complete further consultation if any is required.

(47) *Comment:* A commenter noted that the northwest boundary of the San Felipe unit excludes some serpentine, and if deemed good grassland habitat, it should be included.

Our Response: We believe, based on serpentine soils mapping, satellite imagery, and visits to the vicinity, that the excluded area referred to has been developed for housing.

(48) *Comment:* A commenter stated that it is unknown whether any part of units 7 (Kalana Hills), 13 (San Vicente-Calero), or 14 (Santa Teresa Hills) currently support bay checkerspots, let alone a large and viable persistent population. Neither the proposed rule nor economic analysis state how much area within the Kalana Hills unit is currently occupied by the bay checkerspot, and the majority of it is likely unoccupied.

Our Response: Bay checkerspots have been found in all three units. Especially

considering the dramatic population swings that are normal for this subspecies, present population size or extent are not the only relevant, or even particularly important, factors in assessing the conservation value of a given habitat area. Each of these units has extensive areas of good habitat, is close to other habitat areas, has a record of occupation, and can serve as a ''stepping stone'' in bay checkerspot metapopulation dynamics, which is why the Recovery Plan (Service 1998) and this rule consider them essential to the conservation of the subspecies.

Issue 4: Economic Comments

(49) *Comment:* Many commenters believed that we failed to properly consider the economic and other impacts of designating particular areas as critical habitat.

Our Response: We disagree. We believe that the draft economic analysis made a reasonable attempt to identify all current and future planned activities within proposed critical habitat. Our draft economic analysis assessed potential economic impacts from critical habitat designation by first identifying current and future land uses within the proposed critical habitat. Our analysis then considered whether these activities were likely to involve a Federal nexus and, if so, the likelihood that Service biologists would want to consult on the activity over concern for the activity's impact on the bay checkerspot or its critical habitat. For activities identified by Service biologists as likely to cause a concern, we attempted to differentiate between consultations that would take place because such activities could jeopardize the continued existence of a listed species versus those that would likely take place solely because of critical habitat designation.

We characterized these effects by proposed critical habitat unit and were able to estimate the number of likely incremental consultations by unit despite the uncertainties that affect generating reliable estimates for specific areas. It is difficult to estimate whether a potential future activity would require a consultation and to determine the degree to which critical habitat designation influences that outcome. Given these limitations, we were, however, able to develop a general estimate of the number of future consultations that potentially could result from the designation of the proposed rule; we assumed a worst case scenario for our analysis. We believe that this estimate, along with the characterization of activities by unit, provides us with enough information to make an informed decision concerning the designation of the final rule.

(50) *Comment:* Several commenters stated that the draft economic analysis is flawed because it is based on an improper definition of occupied lands.

Our Response: The determination of whether or not proposed critical habitat is within the geographic range occupied by the bay checkerspot is part of the biological decision-making process and lies beyond the scope of an economic analysis. For a discussion of the biological justification of why we believe the areas being designated are within the geographical areas occupied by the bay checkerspot, see our response to comments on Issue 1: Biological Justification, Methodology, and Regulatory Issues, above.

(51) *Comment:* Commenters stated that the draft economic analysis underestimated impacts to the regional housing market in relation to northern California's current housing crisis. Specifically, a few commenters believed that we failed to fully recognize the cost of project delays to homebuilders and consumers that would result from the designation due to an expected increase in section 7 consultations. One commenter also stated that the draft economic analysis ignored various other financial losses homebuilders would incur as a result of an expected reduction in the number of housing units that would be allowed to be built in designated critical habitat areas. Also, several commenters questioned why the draft economic analysis failed to provide an estimate of costs associated with potential reductions in property values.

Our Response: We are aware that some of the land that we proposed as critical habitat for the bay checkerspot butterfly faces significant development pressure. Development activities can have a significant effect on the land and the species dependent on the habitat being developed. We also recognize that many large-scale development projects are subject to some type of Federal nexus before work actually begins. As a result, we expect that future consultations, in part, will include planned and future real estate development.

However, we believe that these resulting consultations will not take place solely with respect to critical habitat issues. While some project delays may occur out of concern for a project's impact on the bay checkerspot, large real estate projects are often delayed for numerous other reasons that include compliance with various state and local ordinances and zoning regulations. It would be improper to attribute all such changes in the scope of a development project, along with associated project delay costs, to critical habitat when numerous other factors frequently contribute to these changes. While it is true that development activities can adversely affect designated critical habitat, we believe that our future consultations regarding new housing development will take place because such actions have the potential to adversely affect a federally listed species. We believe that such planned projects would require a section 7 consultation, regardless of the critical habitat designation. Again, as we have previously mentioned, section 7 of the Act requires Federal agencies to consult with us whenever actions they fund, authorize, or carry out can jeopardize a listed species or adversely modify its critical habitat.

We also recognize that in some instances, the designation of critical habitat could result in a distorted real estate market because participants may believe that land within critical habitat designation is subject to additional constraints. In truth, this is not the case because critical habitat designation for the bay checkerspot is not adding any extra protection, nor impacting landowners beyond that associated with the listing of the subspecies as threatened under the Act. As a result, we believe that any resulting distortion will be temporary and have a relatively insignificant effect on the real estate market as it should become readily apparent to market participants that critical habitat for the bay checkerspot is not imposing any additional constraints on landowner activities beyond those currently associated with the listing.

We have also found little evidence to date to support claims by some developers that critical habitat designation would have significant regional economic impacts. In areas where critical habitat has been designated, economic growth has continued to grow. For example, a study released by the Coalition for Sonoran Desert Protection examined the impact of designating habitat for the cactus ferruginous pygmy-owl in southern Arizona (McKenney 2000). Performed 1 year after the designation, the study found that dire predictions made by developers in that region have not materialized. Specifically, high-density housing development has not slowed, the value of vacant land has risen, land sales have continued, and the construction sector has continued its steady growth.

Similarly, in a study conducted by Oliver Houck, the author reviewed over

71,560 informal and 2,000 formal consultations conducted under the Act and found that only 18 projects, or 0.02 percent of the projects we consulted on, were ultimately terminated (Houck 1993, p. 318). Furthermore, of the 99 jeopardy opinions issued by the Service, the author found that we issued ''reasonable and prudent alternatives'' in nearly all of these opinions, which allowed the projects to proceed (Houck 1993, p. 319).

The economic analysis estimated, for the Communications Hill unit, that given the City of San Jose's specific plan, the unit will include between 2,500 and 4,000 new residential units, additional commercial activities, parks, and schools. Based on this plan, the economic analysis estimated that between three and five large-scale developments may take place on this unit and assumed that each of these development projects could entail a section 7 consultation. The economic analysis noted, however, that it was not clear whether planned development would require a Federal permit, which then could trigger a section 7 consultation. The economic analysis also noted that several other federally protected species inhabit the area, and as a result, could trigger section 7 consultations, assuming a Federal nexus exists, regardless of bay checkerspot critical habitat designation. As a result, the economic analysis most likely overestimated the number of section 7 consultations that would be attributable to critical habitat designation.

We believe that the economic analysis adequately considered all the potential economic costs likely to be associated with potential development and provides sufficient information for the Secretary to make a determination under section 4(b)(2) of the Act.

(52) *Comment:* Some commenters stated that they believed that we understated the cost of section 7 consultations, and that the findings in the draft economic analysis concerning potential associated real estate development costs are significant enough to warrant a withdrawal of these units.

Our Response: In preparing the economic analysis, we estimated the potential effects from critical habitat designation resulting from section 7 consultations that could be attributable to the designation. As previously stated, we believe that many of the effects perceived by the public to be attributable to critical habitat would actually occur, regardless of critical habitat designation, because the bay checkerspot is a federally protected species and other listed species occupy some of the same habitat. This would trigger consultations, regardless of bay checkerspot critical habitat designation. Because we are attempting to estimate potential future effects from critical habitat designation, our estimates are based on potential future activities that are typical for the areas proposed for designation.

In practice, the costs associated with section 7 consultations can vary widely depending on the activity, its scope, and areas actually affected. In our Addendum to the draft economic analysis, we have used some of the information provided by commenters to revise the expected section 7 consultation costs for some areas being designated. This revised estimate, however, is further adjusted in our Addendum to better estimate the allocation of the section 7 consultation cost that represents the incremental effect of this designation. Overall, we believe we have reasonably estimated the potential future impacts of critical habitat designation for the bay checkerspot.

(53) *Comment:* We received several comments stating that the costs associated with including the Dairy Hill (located on the northeast portion of the Communications Hill unit) and Communications Hill project sites significantly outweighed the benefit of designating the sites as critical habitat.

Our Response: Section 4(b)(2) of the Act requires us to designate critical habitat on the basis of the best scientific and commercial information available, and to consider the economic and other relevant impacts of designating a particular area as critical habitat. We may exclude areas from critical habitat upon a determination that the benefits of such exclusions outweigh the benefits of specifying such areas as critical habitat. We cannot exclude such areas from critical habitat when such exclusion will result in the extinction of the subspecies.

As our economic analysis indicated there are potential economic costs of including this area in the final critical habitat designation, we considered whether it should be excluded under section 4(b)(2). The benefits of excluding these areas would be the avoidance of these additional costs, which we estimate could range up to $6.5 million over the next 10 years. Actual costs are likely to be significantly lower, given the historic presence of bay checkerspot butterflies on the site, the presence of other listed species, and the expected overlap of any measures implemented to protect these species with measures necessary to protect bay checkerspot butterfly habitat. In addition, much of the potential cost associated with section 7 consultations will already be required by the presence of these other listed species. Further, this maximum cost estimate is derived from a planning assumption that no habitat would be preserved within the units; the high costs are associated with off-site mitigation. Depending on the actual extent of mitigation required, and the actual final level of residential development within the unit, we estimate that mitigation costs associated with critical habitat designation for the bay checkerspot could range between 0.07 percent and 0.6 percent of the total value of future residential development within the unit.

In contrast, the conservation benefits of including these units in the final designation are considerable. The Communications Hill critical habitat unit historically has been occupied by the bay checkerspot and contains all of the primary constituent elements essential for the conservation of the subspecies. It also represents the northwestern-most remnant of the Santa Clara metapopulation. Such warmer, lower elevation sites as this are likely to be especially important to the subspecies during rare episodes of great population increase, dispersal, gene flow, and recolonization of extirpated sites. Loss of the Communications Hill unit would likely preclude recovery and delisting of the subspecies, and could reduce or eliminate the viability of this metapopulation, ultimately diminishing or eliminating the long-term survivability of the bay checkerspot. Including the unit in this critical habitat designation will have important informational benefits, reinforcing to our Federal partners and other stakeholders the importance of this area to the conservation of the bay checkerspot butterfly in the future, with likely low overall costs. To the degree that the higher costs in our range of cost estimates are realized, we expect additional conservation benefits. That is, where increased costs result from avoidance of impacts that may destroy or adversely modify designated critical habitat, we expect real, on-the-ground benefits (in addition to these informational benefits) to the conservation of the bay checkerspot butterfly. As a result, we conclude that, even at the highest range of potential costs identified in our economic analysis, the benefits of including these areas in this final designation as critical habitat outweigh the possible benefits of excluding them.

(54) *Comment:* We received several comments stating that the draft economic analysis mis-characterized the

potential land use activities on the Kalana Hills unit by omitting future real estate development.

Our Response: According to the city of San Jose's General Plan, portions of the Kalana Hills unit are planned for future real estate development, which was overlooked in the draft economic analysis. Because this unit is occupied and because real estate development in this area lacks any clear Federal nexus, it is unlikely that critical habitat designation would have any significant effect. In this final rule, however, we significantly modified this unit to withdraw the majority of lands considered suitable for development, and we do not expect real estate development activities to be significantly impacted within this unit.

(55) *Comment:* One commenter stated that the draft economic analysis failed to consider the incremental costs associated with additional California Environmental Quality Act (CEQA) compliance as a result of the critical habitat rule.

Our Response: We disagree. Landowners in the state of California must comply with CEQA whether or not their land is within the area designated as critical habitat for a federally-listed species. The draft economic analysis discusses the effect that existing state and local regulations have on current activities in proposed critical habitat units. Specifically, CEQA requires identification of significant environmental effects of proposed projects that have the potential to harm the environment. The lead agency (typically the California State agency in charge of the oversight of a project) must determine whether a proposed project would have a ''significant'' effect on the environment.

Review of the CEQA statute, and conversations with the California Resources Agency (one of the agencies responsible for administering CEQA), revealed that when a species is known to occupy a parcel of land, the designation of critical habitat alone does not require a lead agency to pursue any incremental actions. In the case of the bay checkerspot, the Recovery Plan (Service 1998) for serpentine soil species in the San Francisco Bay area includes a description of the habitat areas needed by the bay checkerspot. Impacts to such previously identified areas would likely result in the need for compliance with CEQA by project proponents. Therefore, economic impacts generated by CEQA on bay checkerspot habitat areas are part of the baseline and not attributable to bay checkerspot critical habitat designation.

Summary of Changes From the Proposed Rule

Based on a review of public comments received on the proposed determination of critical habitat for the bay checkerspot butterfly, we reevaluated our proposed designation of critical habitat. This resulted in some changes that are reflected in this final determination. These are: (1) the exclusion of some lands where new information revealed that lands were not essential to the conservation of the bay checkerspot; (2) refining of the critical habitat boundaries; and (3) clarification of the primary constituent elements.

Based on comments received, we excluded those areas where new information revealed that lands were not essential. This included the exclusion of approximately 141 ha (348 ac) of primarily agricultural lands from unit 7, 57 ha (141 ac) of nonserpentine lands from unit 8, 81 ha (201 ac) of mostly residential development from unit 9, 260 ha (643 ac) of mostly commercial development from unit 10, and 382 ha (943 ac) of developed areas and graded lands permitted for development from unit 12.

These changes resulted in a reduction of approximately 923 ha (2,279 ac) in the critical habitat designation from the proposed rule to the final rule. We originally had proposed 10,597 ha (26,182 ac) of critical habitat for the bay checkerspot, and in this final rule, we are designating 9,673 ha (23,903 ac). Certain unit acreages have changed slightly from the proposed rule, and these reflect errors in rounding.

Economic Analysis

Section 4(b)(2) of the Act requires us to designate critical habitat on the basis of the best scientific and commercial information available and to consider the economic and other relevant impacts of designating a particular area as critical habitat. We may exclude areas from critical habitat upon a determination that the benefits of the exclusions outweigh the benefits of specifying the areas as critical habitat. We cannot exclude the areas from critical habitat when the exclusion will result in the extinction of the subspecies.

Economic effects caused by listing the bay checkerspot as a federally protected threatened species, and by other statutes, are the baseline against which the effects of critical habitat designation are evaluated. The economic analysis must then examine the incremental economic and conservation effects and benefits of the critical habitat designation. Economic effects are measured as changes in national income, regional jobs, and household income. An analysis of the economic effects of the proposed bay checkerspot critical habitat designation was prepared (Industrial Economics, Incorporated, 2001) and made available for public review (February 9 to March 12, 2001; 66 FR 9683). The final analysis, which reviewed and incorporated public comments, concluded that no significant economic impacts are expected from critical habitat designation above and beyond that already imposed by listing the bay checkerspot.

The most likely economic effects of critical habitat designation are on activities funded, authorized, or carried out by a Federal agency. The analysis examined the effects of the proposed designation on: (1) re-initiation of section 7 consultations; (2) length of time in which section 7 consultations are completed; and (3) new consultations resulting from the determination. The draft economic analysis reported that, although difficult to assess because the bay checkerspot's critical habitat overlapped with the habitat of other federally protected species, impacts could be as high as $1.2 to $6.5 million dollars over the next 10 years.

Potential impacts that were identified included consultations with Federal agencies in the Communications Hill unit regarding proposed real estate development projects. Specifically, the draft economic analysis estimated that between three and five section 7 consultations could occur based on the City of San Jose's estimate and with costs up to a total of $50,000 for all the consultations and with associated mitigation costs that could range between $0.96 and $3.74 million, based on a previous consultation recently completed in the area for another large-scale development project. However, based on comments we received on the draft analysis, we recognized that the draft may have underestimated the consultation costs on Communications Hill (due to the large scale of development planned for the hill) and thus revised the estimates of consultation costs in the final addendum to the economic analysis. The revised estimates for these consultation costs are $50,000 per consultation (estimated as 50 percent of the maximum suggested cost of $100,000 to account for the impact of additional listed species within the unit) or a total of $250,000 for the five potential consultations. However, due to the existence of other federally

protected species within the area which could trigger consultations regardless of bay checkerspot critical habitat, much of the survey work associated with the consultation, and the consultation itself would already be required. Therefore, a substantial portion of the costs associated with these consultations most likely would also be attributable to factors or species other than the bay checkerspot critical habitat designation, and thus we believe that this estimate most likely overstates the actual impacts of this critical habitat designation.

We believe that any project that would adversely modify or destroy critical habitat would also jeopardize the continued existence of the species, and that reasonable and prudent alternatives to avoid jeopardizing the species would also avoid adverse modification of critical habitat. Within the analysis, we determined there would be costs associated with the designation, however, these costs were determined to be negligible, except as discussed above. Thus, little regulatory burden or associated significant additional costs would accrue because of critical habitat above and beyond that resulting from listing. Our economic analysis does recognize that there may be costs from delays associated with reinitiating completed consultations after the critical habitat designation is made final. There may also be economic effects due to the reaction of the real estate market to critical habitat designation, as real estate values may be lowered due to perceived increase in the regulatory burden. However, we believe this impact will be short-term.

In summary, in our economic analysis, we estimate that, over the next 10 years, the total cost of this rulemaking will range between $1.2 and $6.5 million. This estimate is primarily attributable to costs associated with section 7 consultations and potential modifications to future residential and commercial real estate development projects. The high end of the estimate was a result of assuming no on-site habitat were preserved in the Communications Hill unit and 312 acres of off-site habitat would need to be purchased to mitigate this loss. However, the analysis compared this cost to the estimated value of the residential development proposed to be built within the unit. Depending on the extent of mitigation required, and the actual final level of residential development within the unit, we estimate that mitigation costs associated with critical habitat designation for the bay checkerspot could range between 0.07 percent and 0.6 percent of the total value of future residential development within the unit. A copy of the final economic analysis and description of the exclusion process with supporting documents are included in our administrative record and may be obtained by contacting the Sacramento Fish and Wildlife Office (see **ADDRESSES** section).

Required Determinations

1. Regulatory Planning and Review

In accordance with the criteria in Executive Order 12866, this rule is a significant regulatory action and has been reviewed by the Office of Management and Budget (OMB).

(a) This rule will not have an annual economic effect of $100 million or more or adversely affect an economic sector, productivity, jobs, the environment, or other units of government. The bay checkerspot butterfly was listed as a threatened subspecies in 1987. In fiscal years 1987 through 2000, the Sacramento Fish and Wildlife Office conducted, or is in the process of conducting, 4 formal section 7 consultations with other Federal agencies to ensure their actions would not jeopardize the continued existence of the bay checkerspot.

Under the Act, critical habitat may not be adversely modified by a Federal agency action; the Act does not impose any restrictions through critical habitat designation on non-Federal persons unless they are conducting activities funded or otherwise sponsored, authorized, or permitted by a Federal agency. Section 7 requires Federal agencies to ensure that they do not jeopardize the continued existence of the species. Based upon our experience with the species and its needs, we conclude that any Federal action or authorized action that could potentially cause adverse modification of designated critical habitat would currently be considered as ''jeopardy'' under the Act (see Table 2).

TABLE 2.—IMPACTS OF BAY CHECKERSPOT BUTTERFLY LISTING AND CRITICAL HABITAT DESIGNATION

Categories of activities	Activities potentially affected by species listing only	Additional activities potentially affected by critical habitat designation [1]
Federal Activities Potentially Affected [2].	Activities conducted by the Army Corps of by Engineers, Bureau of Reclamation, Environmental Protection Agency, Federal Highway Administration.	Activities by these Federal Agencies in any unoccupied critical habitat areas.
Private or other non-Federal Activities Potentially Affected [2].	Activities that require a Federal action (permit, authorization, or funding) and may remove or destroy bay checkerspot habitat by mechanical, chemical, or other means (*e.g.,* grading, discing, ripping, and tilling, water diversion, impoundment, groundwater pumping, irrigation, construction, road building, herbicide application, recreational use, etc.) or appreciably decrease habitat value or quality through indirect effects (*e.g.,* edge effects, invasion of exotic plants or animals, fragmentation of habitat).	Funding, authorization, or permitting actions by Federal Agencies in any unoccupied critical habitat areas.

[1] This column represents activities potentially affected by the critical habitat designation in addition to those activities potentially affected by listing the subspecies.
[2] Activities initiated by a Federal agency.
[3] Activities initiated by a private or other non-Federal entity that may need Federal authorization or funding.

Accordingly, the designation of areas within the geographic range occupied by the bay checkerspot butterfly has little, if any, incremental impacts on what actions may or may not be conducted by Federal agencies or non-Federal entities that receive Federal authorization or funding. Non-Federal entities that do not have a Federal ''sponsorship'' of their actions are not restricted by the designation of critical habitat (however, they continue to be bound by the provisions of the Act concerning ''take'' of the species).

Designation of areas of unknown occupancy as critical habitat may have impacts on what actions may or may not be conducted by Federal agencies or non-Federal entities that receive Federal authorization or funding. Based on our understanding of the threats to the species, the prohibition against adverse modification of critical habitat in areas of unknown occupancy is not expected to impose any additional restrictions to federally sponsored projects or activities occurring in these areas, unless we make a determination that the proposed activity would result in an appreciable reduction of the value of the critical habitat for both the survival and recovery of the bay checkerspot. As discussed in the final addendum to the economic analysis, we determined that the costs of any additional consultations and any resulting project modifications will not have an annual economic effect of $100 million or more or adversely affect an economic sector, productivity, jobs, the environment, or other units of government.

(b) This rule will not create inconsistencies with other agencies' actions. As discussed above, Federal agencies have been required to ensure that their actions do not jeopardize the continued existence of the bay checkerspot butterfly since the listing in 1987. The prohibition against adverse modification of critical habitat is not expected to impose any substantial additional restrictions to those that currently exist. Because of the potential for impacts on other Federal agencies' activities, we will continue to review this action for any inconsistencies with other Federal agencies' actions.

(c) This rule will not materially affect entitlements, grants, user fees, loan programs, or the rights and obligations of their recipients. Federal agencies are currently required to ensure that their activities do not jeopardize the continued existence of the subspecies, and as discussed above, we do not anticipate that the adverse modification prohibition (resulting from critical habitat designation) will have any significant incremental effects.

(d) OMB has determined that this rule will raise novel legal or policy issues and, as a result, this rule has undergone OMB review.

Regulatory Flexibility Act (5 U.S.C. 601 et seq.)

In the economic analysis, we determined that designation of critical habitat will not have a significant effect on a substantial number of small entities. As discussed under Regulatory Planning and Review above, and in this final determination, this rule is not expected to result in any restrictions in addition to those currently in existence. Although small entities may carry out activities within designated critical habitat, many of these activities lack a Federal nexus and therefore their impacts on critical habitat do not need to be considered. For those actions requiring federal funding or authority, we believe that the incremental impacts attributable to this rule are not significant for reasons explained above and in the draft economic analysis. Therefore, we are certifying that the designation of critical habitat for the bay checkerspot butterfly will not have a significant economic impact on a substantial number of small entities. As indicated in Table 1 (see Critical Habitat Designation section), we designated property owned by State and local governments, and private property. Within these areas, the types of Federal actions or authorized activities that we have identified as potential concerns are:

(1) Regulation of activities affecting waters of the United States by the Corps of Engineers under section 404 of the Clean Water Act;

(2) Regulation of water flows, execution of water contracts, water delivery, transfer of Federal project water, damming, diversion, and channelization by the Bureau of Reclamation or the Corps of Engineers;

(3) Pesticide and air quality regulation by the Environmental Protection Agency; and

(4) Funding and regulation of road construction by the FHWA.

Many of the activities sponsored by Federal agencies within critical habitat areas are carried out by small entities (as defined by the Regulatory Flexibility Act) through contract, grant, permit, or other Federal authorization. As discussed above, these actions are already currently required to comply with the protections of the Act, and the designation of critical habitat is not anticipated to have any additional effects on these activities.

For actions on non-Federal property that do not have a Federal connection (such as funding or authorization), the current restrictions concerning take of the subspecies remain in effect, and this final rule will have no additional restrictions.

Small Business Regulatory Enforcement Fairness Act (5 U.S.C. 804(2))

In the economic analysis, we determined that designation of critical habitat would not cause: (a) any effect on the economy of $100 million or more; (b) any increases in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; and (c) any significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises. Please refer to the final economic analysis for a discussion of the effects of this determination.

Unfunded Mandates Reform Act (2 U.S.C. 1501 et seq.)

In accordance with the Unfunded Mandates Reform Act (2 U.S.C. 1501 *et seq.*):

(a) This rule will not ''significantly or uniquely'' affect small governments. A Small Government Agency Plan is not required. Small governments will be affected only to the extent that any programs having Federal funds, permits, or other authorized activities must ensure that their actions will not adversely affect the critical habitat. However, as discussed above, these actions are currently subject to equivalent restrictions through the listing protections of the subspecies, and few, if any, further restrictions are anticipated.

(b) This rule will not produce a Federal mandate of $100 million or greater in any year, that is, it is not a ''significant regulatory action'' under the Unfunded Mandates Reform Act. The designation of critical habitat imposes no obligations on State or local governments.

Takings

In accordance with Executive Order 12630, this rule does not have significant takings implications. A takings implication assessment is not required. As discussed above, the designation of critical habitat affects only Federal actions. The rule will not increase or decrease the current restrictions on private property concerning take of the bay checkerspot butterfly. Due to current public knowledge of the subspecies' protections, the prohibition against take of the subspecies both within and outside of the designated areas, and the fact that critical habitat provides no substantial incremental restrictions, we do not anticipate that property values will be affected by the critical habitat designation. While real estate market values may temporarily decline following designation, due to the perception that critical habitat designation may impose additional regulatory burdens on land use, we expect any such impacts to be short term.

Additionally, critical habitat designation does not preclude development of HCPs and issuance of incidental take permits. Owners of areas that are included in the designated critical habitat will continue to have the opportunity to utilize their property in ways consistent with the survival of the bay checkerspot butterfly.

Federalism

In accordance with Executive Order 13132, the rule does not have significant Federalism effects. A Federalism assessment is not required. In keeping with Department of the Interior and Department of Commerce policy, we requested information from, and coordinated development of this critical habitat designation with, appropriate State resource agencies in California. The designation of critical habitat in areas currently occupied by the bay checkerspot butterfly imposes no substantial additional restrictions to those currently in place and, therefore, has little incremental impact on State and local governments and their activities. The designation may have some benefit to these governments in that the areas essential to the conservation of the subspecies are more clearly defined, and the primary constituent elements of the habitat necessary to the survival of the subspecies are specifically identified. While making this definition and identification does not alter where and what federally sponsored activities may occur, it may assist these local governments in long-range planning (rather than waiting for case-by-case section 7 consultations to occur).

Civil Justice Reform

In accordance with Executive Order 12988, the Department of the Interior's Office of the Solicitor has determined that this rule does not unduly burden the judicial system and meets the requirements of sections 3(a) and 3(b)(2) of the Order. We designated critical habitat in accordance with the provisions of the Endangered Species Act. The rule uses standard property descriptions and identifies the primary constituent elements within the designated areas to assist the public in understanding the habitat needs of the bay checkerspot butterfly.

Paperwork Reduction Act of 1995 (44 U.S.C. 3501 et seq.)

This rule references permits for HCPs which contain information collection activity. The Fish and Wildlife Service has OMB approval for the collection under OMB Control Number 1018–0094. The Service 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.

National Environmental Policy Act

We determined that we do not need to prepare an Environmental Assessment and/or an Environmental Impact Statement as defined by the National Environmental Policy Act of 1969 in connection with regulations adopted pursuant to section 4(a) of the Act as amended. We published a notice outlining our reason for this determination in the **Federal Register** on October 25, 1983 (48 FR 49244).

Government-to-Government Relationship With Tribes

In accordance with the President's memorandum of April 29, 1994, ''Government-to-Government Relations with Native American Tribal Governments'' (59 FR 22951), E.O. 13175, and 512 DM 2, we understand that federally recognized Tribes must be related to on a Government-to-Government basis. We are not aware of any Tribal lands essential for the conservation of the bay checkerspot. Therefore, we are not designating critical habitat for the bay checkerspot on Tribal lands.

References Cited

A complete list of all references cited in this final rule is available upon request from the Sacramento Fish and Wildlife Office (see **ADDRESSES** section).

Authors

The primary authors of this rule are the staff of the Sacramento Fish and Wildlife Office (see **ADDRESSES** section).

List of Subjects in 50 CFR Part 17

Endangered and threatened species, Exports, Imports, Reporting and recordkeeping requirements, Transportation.

Regulation Promulgation

Accordingly, we amend part 17, subchapter B of chapter I, title 50 of the Code of Federal Regulations as set forth below:

PART 17—[AMENDED]

1. The authority citation for part 17 continues to read as follows:

Authority: 16 U.S.C. 1361–1407; 16 U.S.C. 1531–1544; 16 U.S.C. 4201–4245; Pub. L. 99–625, 100 Stat. 3500; unless otherwise noted.

2. Amend § 17.11(h), by revising the entry for ''Butterfly, bay checkerspot,'' under ''INSECTS,'' to read as follows:

§ 17.11 Endangered and threatened wildlife.

* * * * *

(h) * * *

Species		Historic range	Vertebrate population where endangered or threatened	Status	When listed	Critical habitat	Special rules
Common name	Scientific name						
*	*	*	*	*	*		*
INSECTS							
*	*	*	*	*	*		*
Butterly, bay checkerspot.	*Euphydryas editha bayensis*.	U.S.A. (CA)	Entire	T	288	17.95(i)	NA
*	*	*	*	*	*		*

3. Amend § 17.95(i) by adding critical habitat for the bay checkerspot butterfly (*Euphydryas editha bayensis*) in the same alphabetical order as this subspecies occurs in § 17.11(h), to read as follows:

§ 17.95 Critical habitat—fish and wildlife.

* * * * *

(i) *Insects.*

Bay Checkerspot Butterfly (*Euphydryas editha bayensis*)

1. Critical habitat units are depicted for San Mateo and Santa Clara Counties, California, on the maps below.

2. Within these areas, the primary constituent elements are those habitat components that are essential for the primary biological needs of foraging, sheltering, breeding, maturation, and dispersal. The primary constituent elements are one or more of the following: stands of *Plantago erecta, Castilleja exserta,* or *Castilleja densiflora;* spring flowers providing nectar; pollinators of the bay checkerspot's food and nectar plants; soils derived from serpentinic rock; and space for dispersal between habitable areas. In addition, the following are each primary constituent elements to be conserved when present in combination with one or more of the primary constituent elements above: areas of open grassland, topography with varied slopes and aspects providing surface conditions with warm and moderate to cool temperatures during sunny spring days, stable holes or cracks in the soil and surface rocks or rock outcrops, wetlands providing moisture during times of spring drought.

3. Within these areas, existing human-constructed features and structures, such as buildings, roads, railroads, urban development, and other human-constructed features not containing any primary constituent elements, are not considered critical habitat and are not included in the designation.

Unit 1 (Edgewood Park/Triangle Unit): San Mateo County, California. Bounded as follows: beginning at the intersection of Edgewood Road and Canada Road; southwesterly, south, and southeasterly along the light-duty extension of Edgewood Road southwest of Canada Road to its intersection with an unnamed intermittent drainage tributary to Upper Crystal Springs Reservoir as shown on the USGS Woodside 7.5 minute quadrangle (1961, photorevised 1968 and 1973); then southwesterly along this drainage to its intersection with I–280; then southeasterly along the eastern edge of pavement of I–280 to a point due southwest of the southernmost corner of Edgewood Natural Preserve (this just south of a substation shown on the Woodside quadrangle, where the State Fish and Game Refuge boundary meets Canada Road and an elevation of 161 m (528 ft) is marked); then due northeast to the southernmost corner of Edgewood Natural Preserve; then northeast along the southeast boundary of Edgewood Natural Preserve to the 159 m (520 ft) elevation contour as shown on the Woodside quadrangle; then northwesterly along this contour to its intersection with Edgewood Road; then southwesterly along the south edge of pavement of Edgewood Road to the starting point.

Unit 2 (Jasper Ridge Unit): San Mateo County, California. Bounded as follows: to the east, north, and west by the 110 m (360 ft) elevation contour around Jasper Ridge (USGS Palo Alto 7.5 minute quadrangle, 1991); and to the south by the current boundary of the Jasper Ridge Biological Reserve, which is largely coincident with the northern boundary of the town of Portola Valley.

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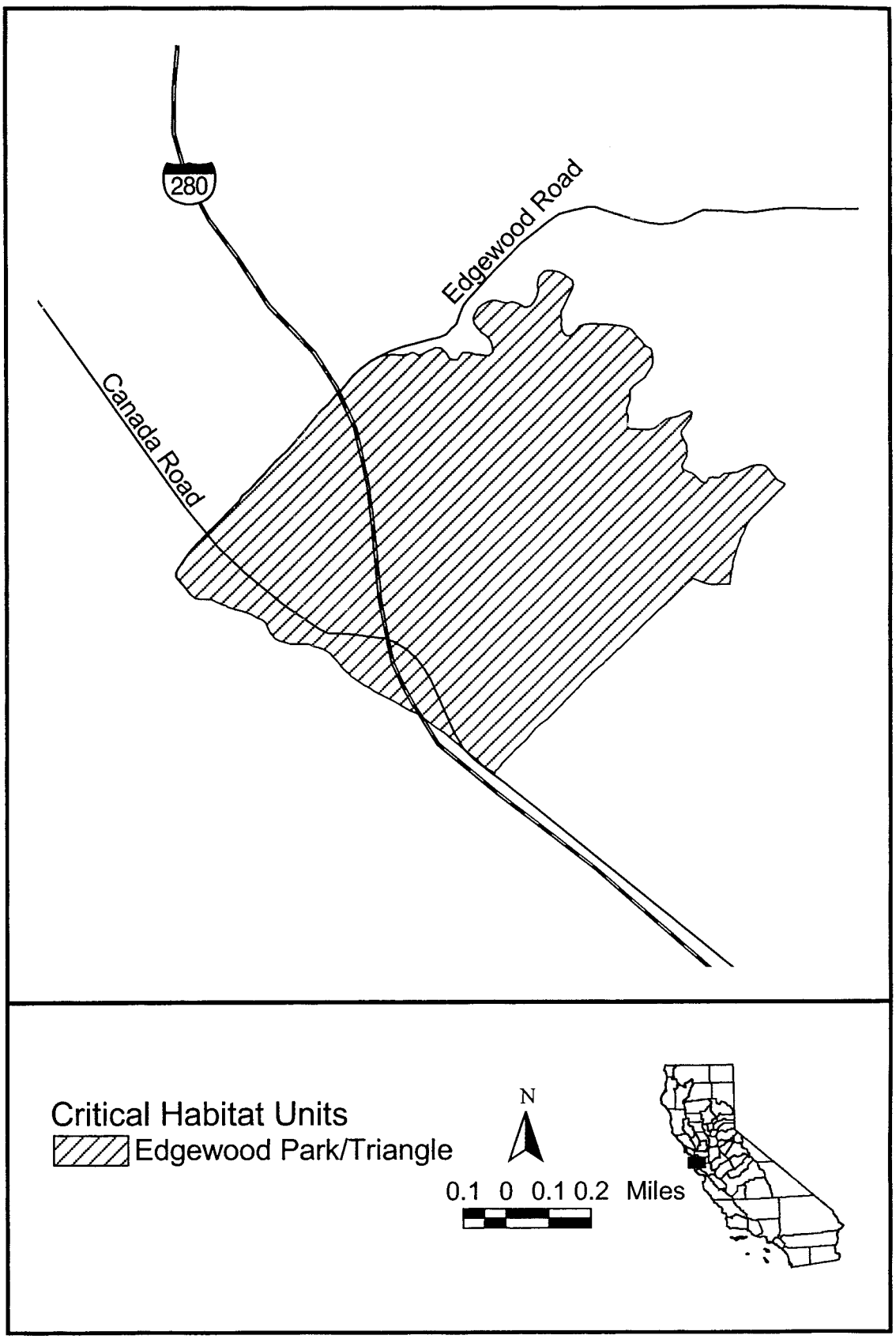
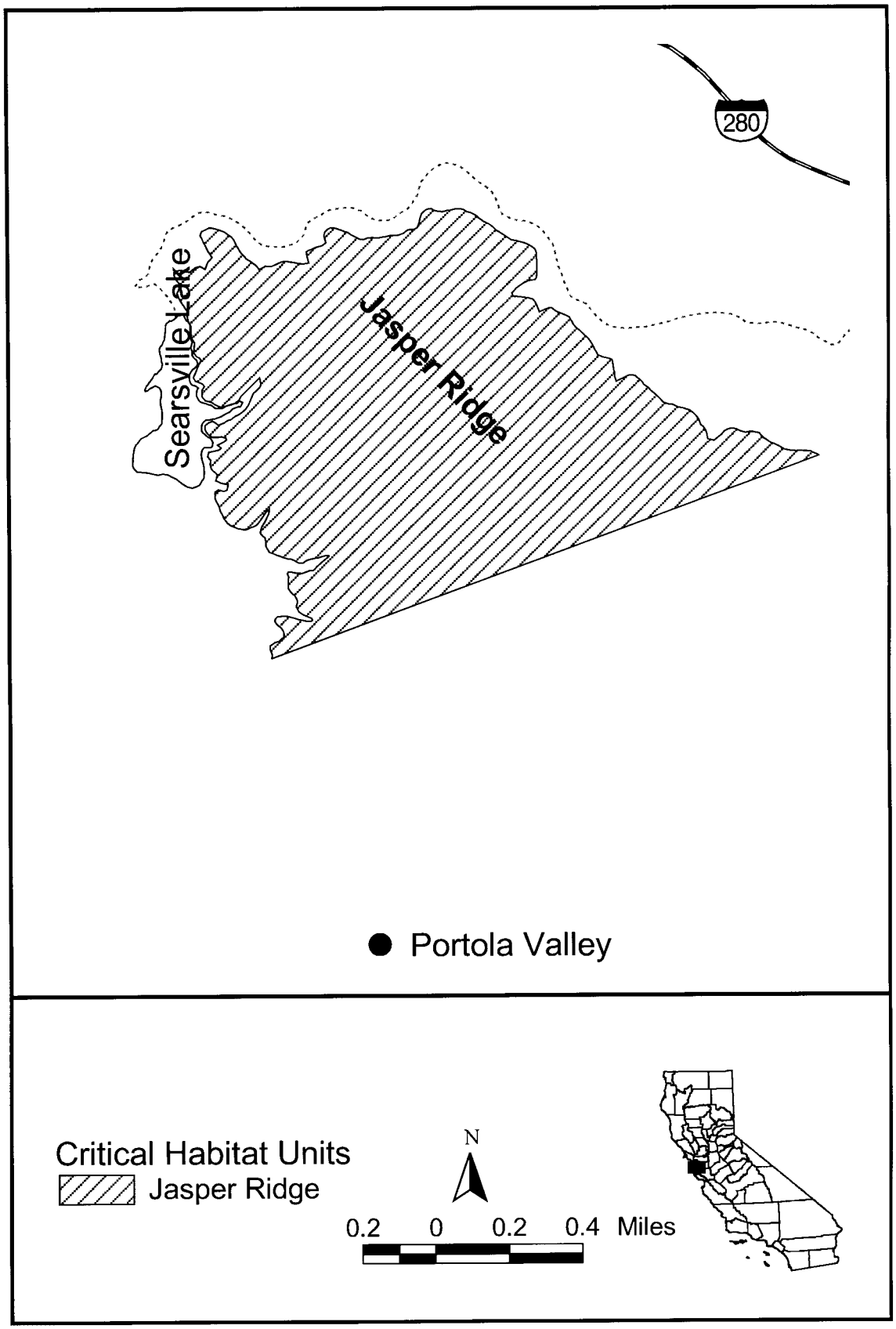

280
Edgewood Road
Canada Road
Critical Habitat Units
Edgewood Park/Triangle
N
0.1 0 0.1 0.2 Miles



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Unit 3 (San Bruno Mountain Unit): San Mateo County, California. All area on San Bruno Mountain above the 152 m (500 ft) elevation contour and east of the western Pacific Gas and Electric transmission corridor (this transmission corridor runs south to southwesterly from the west end of Guadalupe Valley to the South San Francisco/Colma City border) as shown on the USGS San Francisco South 7.5 minute quadrangle, 1956).

Unit 4 (Bear Ranch Unit): Santa Clara County, California. Those portions of section 32, T.9 S., R.4 E. and section 5, T.10 S., R.4 E., westerly of Coyote Reservoir Road—a light-duty road shown but not named on the USGS Gilroy 7.5 minute quadrangle (1955, photorevised 1968 and 1973).

Unit 5 (San Martin Unit): Santa Clara County, California. Bounded on the north by a line running due east-west through a point 305 m (1000 ft) due north of a hilltop marked 239 m (785 ft) in elevation on the USGS Mt. Madonna 7.5 minute quadrangle (1955, photorevised 1968). This hilltop is near latitude 37 degrees 4 minutes 42 seconds north, longitude 121 degrees 38 minutes 19 seconds west (Hayes Lane, not shown on the Mt. Madonna quadrangle, also runs in the vicinity of this hilltop). The north boundary runs as far east as its intersection with the 97 m (320 ft) elevation contour west of Coolidge Avenue as shown on the Mt. Madonna quadrangle. From this point the boundary runs southeasterly, southerly, and westerly following this contour, continuing onto the USGS Gilroy 7.5 minute quadrangle (1955, photorevised 1968 and 1973) and back to its intersection with longitude 121 degrees 37 minutes 30 seconds west (the junction between the two quadrangles). The unit is bounded on the south-southwest by a straight line running from this latter point for a distance of about 2,228 m (7,310 ft) slightly south of west-northwest (bearing 291.5 degrees) to a hilltop labeled 151 m (495 ft) in elevation on the Mt. Madonna quadrangle. The west boundary of the unit runs from this hilltop due north-northeast (bearing 22.5 degrees) to the north boundary.

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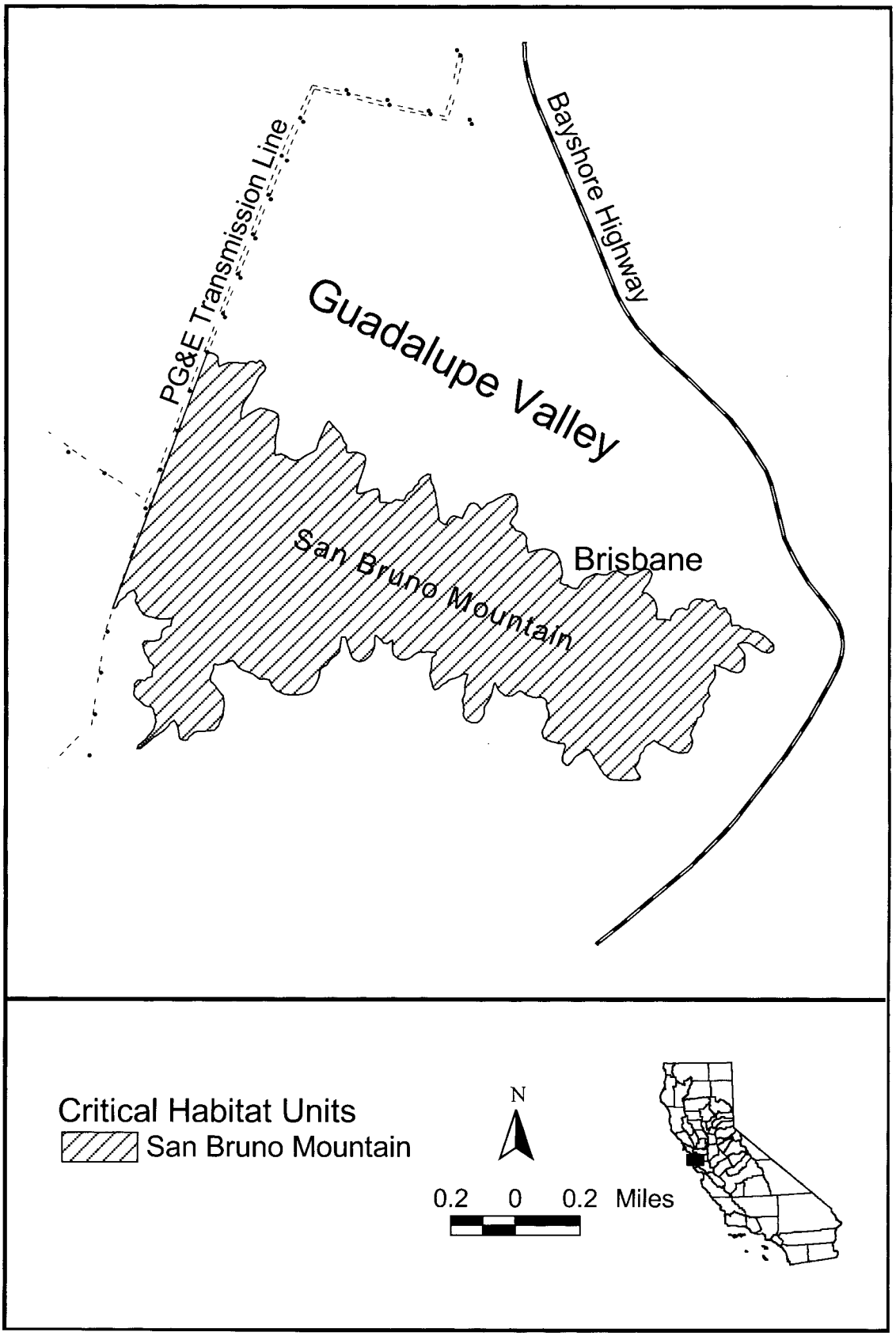
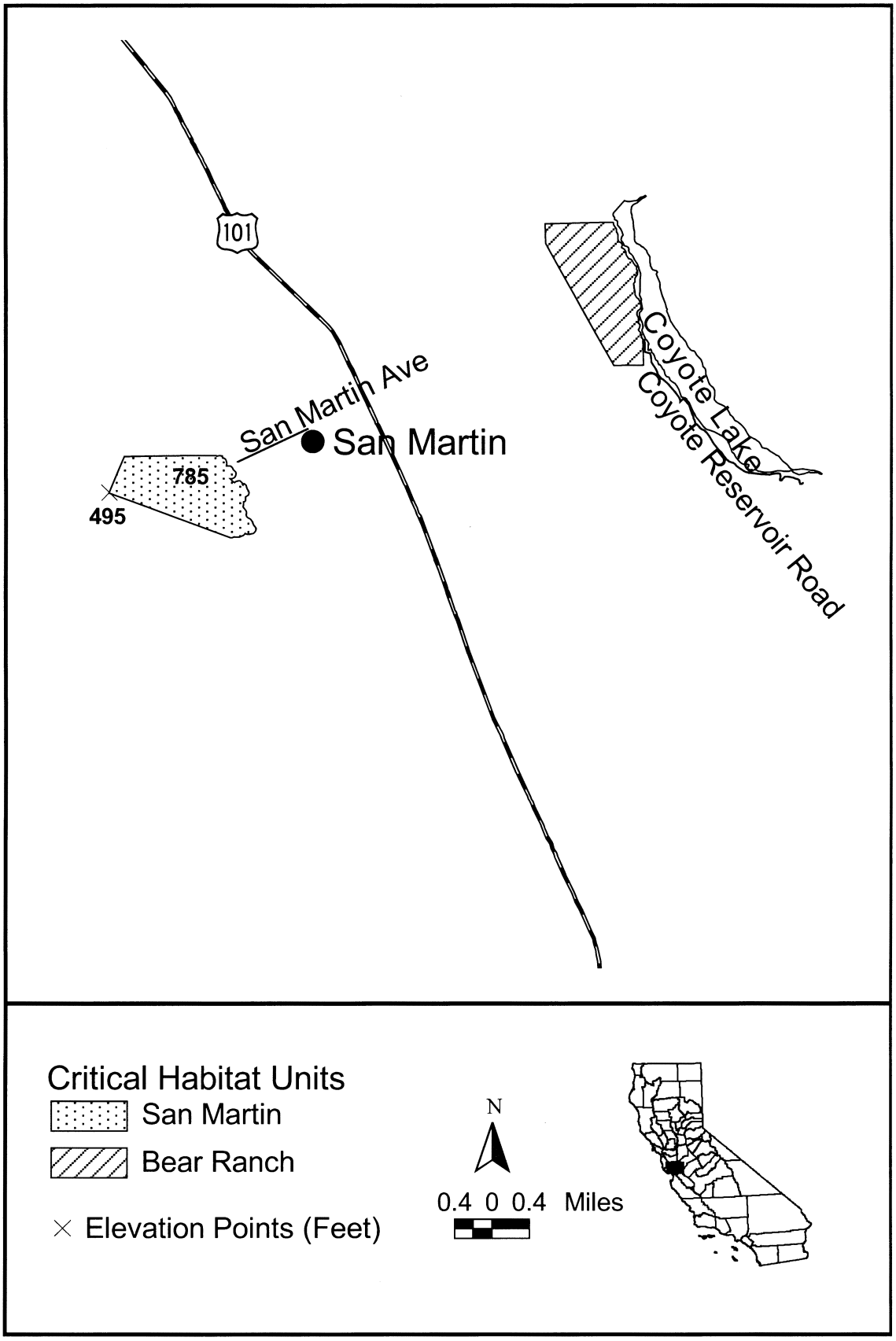

PG&E Transmission Line
Bayshore Highway
Guadalupe Valley
San Bruno Mountain
Brisbane
Critical Habitat Units
San Bruno Mountain
N
0.2 0 0.2 Miles



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Unit 6 (Communications Hill Unit): Santa Clara County, California. Starting at a point on the 73 m (240 ft) elevation contour due south of the 133 m (435 ft) summit of Communications Hill, the Communications Hill unit is bounded to the south by the 73 m (240 ft) elevation contour as shown on the USGS San Jose East 7.5 minute quadrangle map (1961, photorevised 1980; the hill is not named on this map but the county communications center is shown), as far west as its intersection with Highway 87 (this highway is not shown on the San Jose East quadrangle); then south along Highway 87 (west edge of pavement) to the 55 m (180 ft) elevation contour (all contours in this description are as shown on the San Jose East quadrangle); then south, west, and north along this contour to a point due west of the southernmost point of the southern of the two water tanks on the top of the hill west of Highway 87; then due east for a distance of about 238 m (780 ft) to a point due south of the easternmost point of the eastern of the two water tanks; then due north for about 439 m (1,440 ft) to the intersection with the 85 m (280 ft) elevation contour; then slightly north of east on a straight line to the southern corner of the property of the county communications facility; then on a line to the northern corner of this property; then due southwest to Carol Drive (not named on the San Jose East quadrangle); then slightly north of northwest (bearing 322 degrees) to the 55 m (180 ft) elevation contour; then along this contour easterly and northeasterly until it reaches the second dirt road as shown on the San Jose East quadrangle; then due northeast across the Southern Pacific railroad tracks to the 55 m (180 ft) elevation contour; then northwesterly and northeasterly along this contour to the boundary of Oak Hill Memorial Park cemetery; then following the cemetery boundary southeasterly, skirting a hill summit marked 98 m (323 ft) on the San Jose East quadrangle, to the first 67 m (220 ft) elevation contour southeast of this summit; then due southwest to the 49 m (160 ft) elevation contour immediately west of the railroad tracks; then southeasterly along this contour as shown on the 1961 San Jose East quadrangle to its intersection with Hillsdale Avenue; then southwesterly along Hillsdale Avenue (north edge of pavement) to its intersection with Vista Park Drive (not shown on the San Jose East quadrangle); then due north to the 73 m (240 ft) elevation contour; then westerly along this contour to the starting point.

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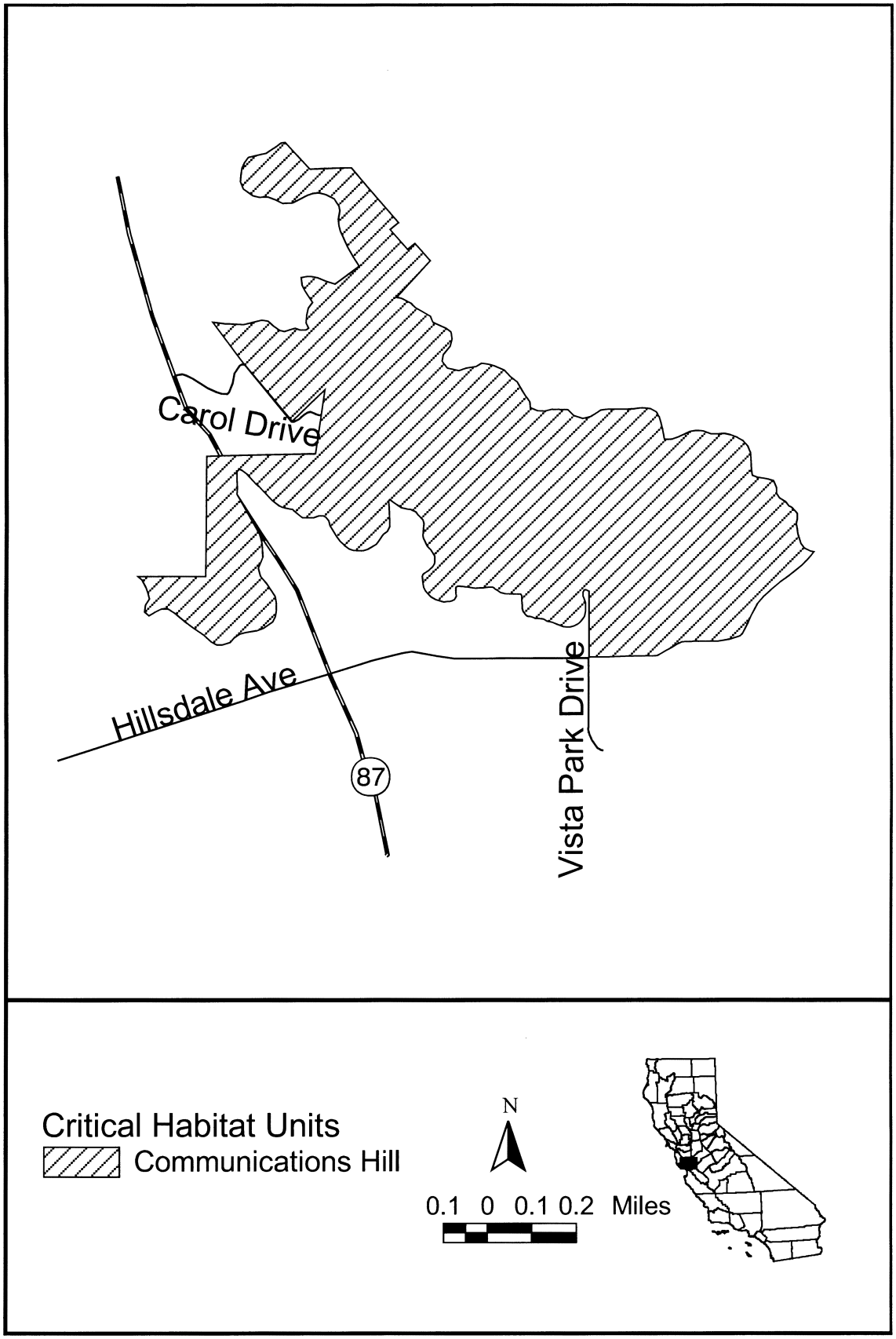

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Unit 7 (Kalana Hills Unit): Santa Clara County, California. From USGS 1:24,000 quadrangle map Morgan Hill, lands bounded by the following UTM Zone 10 NAD83 Coordinates (E,N): 612000, 4115810; 612070, 4115810; 612090, 4115790; 612170, 4115750; 612210, 4115700; 612240, 4115640; 612270, 4115590; 612270, 4115490; 612330, 4115490; 612360, 4115460; 612360, 4115370; 612430, 4115370; 612470, 4115360; 612550, 4115280; 612580, 4115190; 612630, 4115150; 612670, 4115110; 612710, 4115060; 612710, 4115050; 612730, 4115000; 612730, 4114960; 612710, 4114910; 612550, 4114910; 612550, 4114880; 612510, 4114840; 612510, 4114820; 612480, 4114790; 612450, 4114740; 612400, 4114700; 612350, 4114660; 612180, 4114660; 612130, 4114700; 612110, 4114700; 612080, 4114720; 612060, 4114720; 611960, 4114790; 611810, 4114900; 611800, 4115630; 611850, 4115680; 611880, 4115680; 611900, 4115700; 611940, 4115770; 612000, 4115810 Including lands bounded by: 612830, 4114610; 612900, 4114610; 612950, 4114590; 612950, 4114520; 612940, 4114510; 612940, 4114500; 612950, 4114490; 612950, 4114470; 612960, 4114460; 612960, 4114410; 612970, 4114410; 612970, 4114380; 612990, 4114360; 613000, 4114360; 613000, 4114370; 613040, 4114370; 613080, 4114360; 613090, 4114360; 613090, 4114410; 613080, 4114410; 613080, 4114480; 613150, 4114530; 613230, 4114530; 613280, 4114510; 613290, 4114510; 613370, 4114510; 613440, 4114470; 613460, 4114440; 613490, 4114400; 613490, 4114340; 613460, 4114300; 613460, 4114290; 613500, 4114290; 613530, 4114320; 613580, 4114320; 613610, 4114300; 613660, 4114260; 613710, 4114160; 613710, 4114090; 613700, 4114040; 613590, 4113950; 613500, 4113940; 613350, 4114030; 613350, 4114160; 613270, 4114210; 613200, 4114200; 613160, 4114140; 612630, 4114460; 612630, 4114470; 612680, 4114530; 612770, 4114560; 612830, 4114610.

Unit 8 (Kirby Unit): Santa Clara County, California. Beginning at the intersection of the intermittent creek draining Metcalf Canyon (Metcalf Canyon on the USGS Morgan Hill 7.5 minute quadrangle, 1955, photorevised 1980) with Highway 101 (current alignment, not shown on Morgan Hill quadrangle), the unit is bounded on the east, southeast, and south by Highway 101 (east edge of pavement, current alignment, not shown on the Morgan Hill quadrangle), south to where it crosses Coyote Creek. From there the boundary runs southeasterly up along Coyote Creek to the Anderson Lake dam; then east-northeasterly up the face of the dam to Anderson Lake (Anderson Reservoir). The unit is bounded on the southeast by Anderson Lake. From the northernmost tip of Anderson Lake (at latitude 37 degrees 12 minutes 15 seconds north) the boundary runs slightly north of west for a distance of about 1,097 m (3,600 ft) to a hilltop marked 379 m (1,243 ft) in elevation on the Morgan Hill quadrangle; then slightly west of northwest for a distance of about 1,707 m (5,600 ft) to a hilltop marked 411 m (1,347 ft) in elevation on the Morgan Hill quadrangle; then nearly due west for a distance of about 500 m (1,640 ft) to a hilltop marked 430 m (1,412 ft) in elevation on the Morgan Hill quadrangle; then north of northwest (bearing 325 degrees) for a distance of about 2,551 m (8,370 ft) to a hilltop marked 444 m (1,457 ft) in elevation on the Morgan Hill quadrangle; then on a line running from this hilltop south of west-southwest (bearing 237 degrees) to the intersection of the Metcalf Canyon drainage with the 354 m (1,160 ft) elevation contour as shown on the Morgan Hill quadrangle. The north boundary of the unit then continues westerly down the Metcalf Canyon drainage to the starting point.

Unit 9 (Morgan Hill Unit): Santa Clara County, California. From USGS 1:24,000 quadrangle map Morgan Hill, lands bounded by the following UTM Zone 10 NAD83 Coordinates (E,N): 617000, 4112300; 617300, 4112300; 617500, 4112000; 617600, 4112000; 617800, 4111900; 617900, 4111900; 618100, 4111800; 618100, 4111700; 618200, 4111500; 618200, 4111300; 618000, 4111100; 617700, 4110900; 617400, 4110700; 617200, 4110700; 617200, 4110900; 617000, 4111100; 616900, 4111100; 616900, 4110800; 616500, 4110800; 616300, 4110600; 616000, 4110600; 615600, 4110800; 615600, 4111000; 615700, 4111300; 615700, 4111700; 616000, 4111700; 616000, 4111800; 616200, 4111900; 616300, 4112000; 616400, 4112000; 616400, 4111900; 616500, 4111900; 616500, 4112000; 616600, 4112000; 616800, 4112200; 617000, 4112300.

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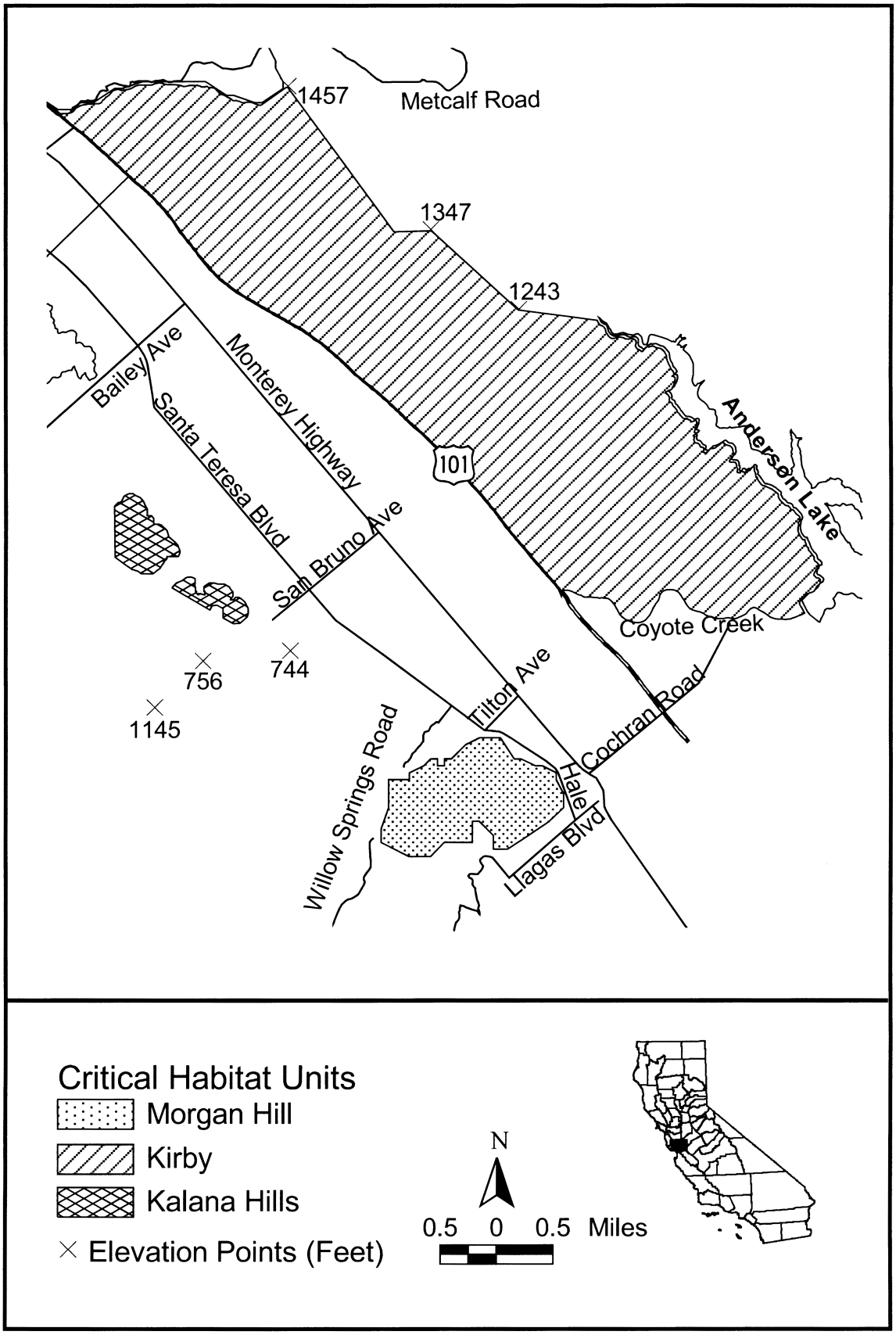

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Unit 10 (Metcalf Unit): Santa Clara County, California. From USGS 1:24,000 quadrangle maps Lick Observatory, Morgan Hill, San Jose East, and Santa Teresa Hills, lands bounded by the following zone 10 NAD83 Coordinates (E,N): 608300, 4125800; 608500, 4125800; 608900, 4125400; 609500, 4125400; 609800, 4125300; 610200, 4125600; 610300, 4125600; 610600, 4125500; 610700, 4125500; 610900, 4125300; 610900, 4125000; 611000, 4124900; 611200, 4124500; 611300, 4124500; 611400, 4124400; 611400, 4124300; 611500, 4124200; 611500, 4124100; 611800, 4123900; 612100, 4123800; 612500, 4123500; 612500, 4123400; 612800, 4123200; 613600, 4123200; 613700, 4123000; 613900, 4122500; 613900, 4122400; 614100, 4122000; 614100, 4121900; 614200, 4121700; 614200, 4121600; 613900, 4121400; 613800, 4121400; 613500, 4121500; 613400, 4121500; 613100, 4121700; 612200, 4121700; 611900, 4121600; 611800, 4121600; 611500, 4121400; 611300, 4121400; 611200, 4121300; 611000, 4121300; 610700, 4121500; 610400, 4121700; 610100, 4121900; 609900, 4122100; 609900, 4122200; 610100, 4122300; 610100, 4122400; 610000, 4122600; 610000, 4122800; 609900, 4122900; 609900, 4123000; 609800, 4123100; 609700, 4123100; 609600, 4123000; 609500, 4123000; 609500, 4123600; 609200, 4124000; 609100, 4123900; 608900, 4123900; 608000, 4124500; 608000, 4124600; 607700, 4125000; 607700, 4125300; 608300, 4125800.

Unit 11 (San Felipe Unit): Santa Clara County, California. The east boundary of the San Felipe critical habitat unit begins at the 440 m (1,445 ft) hilltop identified in the northeast boundary of the Metcalf unit (this peak is labeled on the USGS Morgan Hill 7.5 minute quadrangle (1955, photorevised 1980), near latitude 37 degrees 15 minutes north, longitude 121 degrees 43 minutes west); and proceeds from that hilltop due north to San Felipe Road at an elevation of about 296 m (970 ft) (USGS Lick Observatory 7.5 minute quadrangle, 1955, photorevised 1968); then west-northwesterly along San Felipe Road (southwest edge of pavement) for a distance of about 2.7 km (1.7 mi) to Silver Creek Road (sic). The north boundary is formed by Silver Creek Road (south edge of pavement) from San Felipe Road to Silver Creek (the creek crossing is on the USGS San Jose East 7.5 minute quadrangle, 1961, photorevised 1980). The west boundary, which abuts the Metcalf unit, runs from Silver Creek Road southeasterly along Silver Creek (mostly on Lick Observatory quadrangle). The south boundary also abuts the Metcalf unit, and runs from Silver Creek (Morgan Hill quadrangle) due east to the starting point.

Unit 12 (Silver Creek Hills Unit): Santa Clara County, California. From USGS 1:24,000 quadrangle maps San Jose East, lands bounded by the following UTM Zone 10 NAD83 Coordinates (E,N): 606600, 4128500; 606800, 4128500; 607000, 4128400; 607000, 4128200; 607100, 4128100; 606900, 4127900; 606900, 4127800; 607000, 4127600; 607300, 4127600; 607500, 4127700; 607700, 4127700; 607800, 4127600; 607800, 4127500; 607700, 4127400; 607800, 4127300; 607800, 4127100; 608000, 4127000; 608100, 4126900; 608100, 4126700; 607900, 4126600; 607900, 4126400; 608300, 4126000; 608300, 4125900; 608200, 4125800; 608000, 4125700; 607900, 4125600; 607900, 4125500; 607700, 4125400; 607600, 4125400; 606600, 4126100; 606400, 4126200; 606300, 4126300; 606200, 4126300; 606100, 4126400; 605900, 4126500; 605800, 4126600; 605600, 4127000; 605600, 4127100; 606200, 4127000; 606400, 4126800; 606800, 4126600; 607200, 4126700; 607400, 4127000; 607300, 4127200; 607100, 4127400; 606900, 4127500; 606700, 4127700; 606300, 4128200; 606600, 4128300; 606600, 4128500, including lands bounded by: 605600, 4128300; 605900, 4128300; 606000, 4128100; 605900, 4128000; 605700, 4128000; 605600, 4128100; 605600, 4128300 and lands bounded by: 606200, 4128100; 606200, 4128000; 606100, 4128000; 606100, 4127900; 606000, 4127900; 606000, 4128000; 606100, 4128100; 606200, 4128100.

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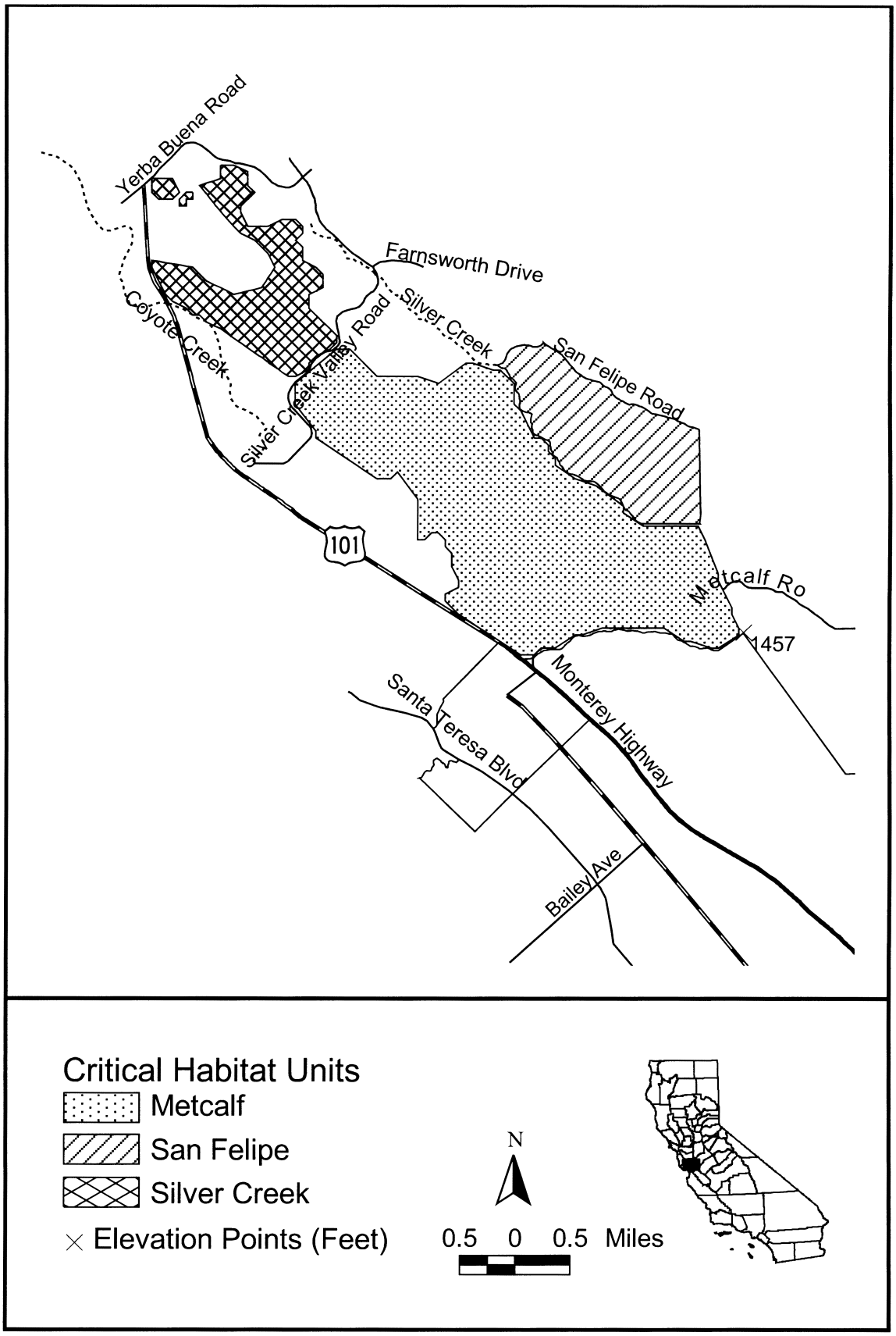

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Unit 13 (San Vicente-Calero Unit): Santa Clara County, California. Bounded on the north and northwest by Calero Reservoir, by the canal and siphon running westerly of the main reservoir dam (dam on the Arroyo Calero), and by the city boundary of the City of San Jose, which follows the canal at an elevation of roughly 152 m (500 ft), as far as its intersection with Chilanian Gulch. The boundary then runs generally southeast following Chilanian Gulch to its intersection with the R.1 E./R.2 E. (Mount Diablo meridian/base line) dividing line, then due south to the Calero County Park border. The park boundary forms the rest of the western, southern, and southeastern border of the unit. The eastern border of the unit is formed by a line running due north from the southern Calero County Park boundary through a hilltop elevation labeled 307 m (1,009 ft) on the USGS Santa Teresa Hills 7.5 minute quadrangle (1953, photorevised 1980) to Calero Reservoir. This hilltop is near latitude 37 degrees 10 minutes 15 seconds north, longitude 121 degrees 46 minutes 15 seconds west.

Unit 14 (Santa Teresa Hills Unit): Santa Clara County, California. The east and southeast boundary runs as follows, beginning at the westernmost corner of the Tulare Hill Corridor unit: due southeast and then northeast along the Tulare Hill Corridor unit boundary, to the 85 m (280 ft) elevation contour (USGS Santa Teresa Hills 7.5 minute quadrangle, 1953, photorevised 1980); then southeasterly, south, and southwesterly along this elevation contour (continues onto USGS Morgan Hill 7.5 minute quadrangle, 1955, photorevised 1980, and back) to its intersection with Bailey Avenue. The south, southwest, and western border of the unit then continues from this point, along a line running west-southwesterly (bearing 248 degrees) for a distance of about 325 m (1,065 ft) to a bench mark north of Bailey Avenue labeled 108 m (354 ft) in elevation on the Santa Teresa Hills quadrangle; then north of east (bearing 284 degrees) for a distance of about 3,030 m (9,940 ft) to the intersection of a land grant boundary with a transmission line shown on the 1980 photorevised Santa Teresa Hills quadrangle at an elevation of about 152 m (500 ft); then north-northwesterly along this land grant line to the intersection with Fortini Road; then generally west-southwest and west along Fortini Road to the intersection with San Vicente Avenue (these road names do not appear on the Santa Teresa quadrangle); then westerly along San Vicente Avenue to where it turns south south-west; then continuing westerly and northwesterly from this point along a land grant boundary shown on the Santa Teresa Hills quadrangle to its intersection with both Henwood Drive (road name does not appear on the Santa Teresa quadrangle) and an unnamed intermittent drainage (tributary to Arroyo Calero); then northeasterly and northerly up this drainage as marked on the Santa Teresa Hills quadrangle to the 183 m (600 ft) elevation contour; then due north-northeast for a distance of about 424 m (1,390 ft) to the first intersection with the 280 m (920 ft) elevation contour; then west-northwest for a distance of about 265 m (870 ft) to a hilltop over 280 m (920 ft) in elevation, then slightly north of west (bearing 276 degrees) for a distance of about 543 m (1,780 ft) to the end of a dirt road as marked on the 1980 photorevised Santa Teresa Hills quadrangle; then slightly south of west-northwest (bearing 290 degrees) for a distance of about 2,551 m (8,370 ft) to a hilltop marked 173 m (568 ft) in elevation on the Santa Teresa Hills quadrangle; then due northeast to the 73 m (240 ft) elevation contour as shown on the Santa Teresa Hills quadrangle. The northern boundary of the unit is formed by the 73 m (240 ft) elevation contour as shown on the Santa Teresa Hills quadrangle.

Unit 15 (Tulare Hill Corridor Unit): Santa Clara County, California. Bounded on the northeast by the most northeasterly edge of pavement of Highway 101 (i.e., the highway itself is included, and the unit abuts the Kirby and Metcalf units). Bounded on the northwest, west, and southwest by a line extending due southwest from the northeast boundary to the corner of Cheltenham Way and Coburn Court, then southwesterly along Cheltenham Way from Coburn Court to the intersection with Santa Teresa Boulevard, then southeasterly along Santa Teresa Boulevard to the 73 m (240 ft) elevation contour as shown on the USGS Santa Teresa Hills 7.5 minute quadrangle (1953, photorevised 1980), then southwesterly along this contour to the border of Santa Teresa County Park, then along a line due southeast to the southeast border of the unit. Bounded on the southeast by a line running due northeast-southwest through the southeastern-most point of the 85 m (280 ft) contour of Tulare Hill, as shown on the Morgan Hill quadrangle.

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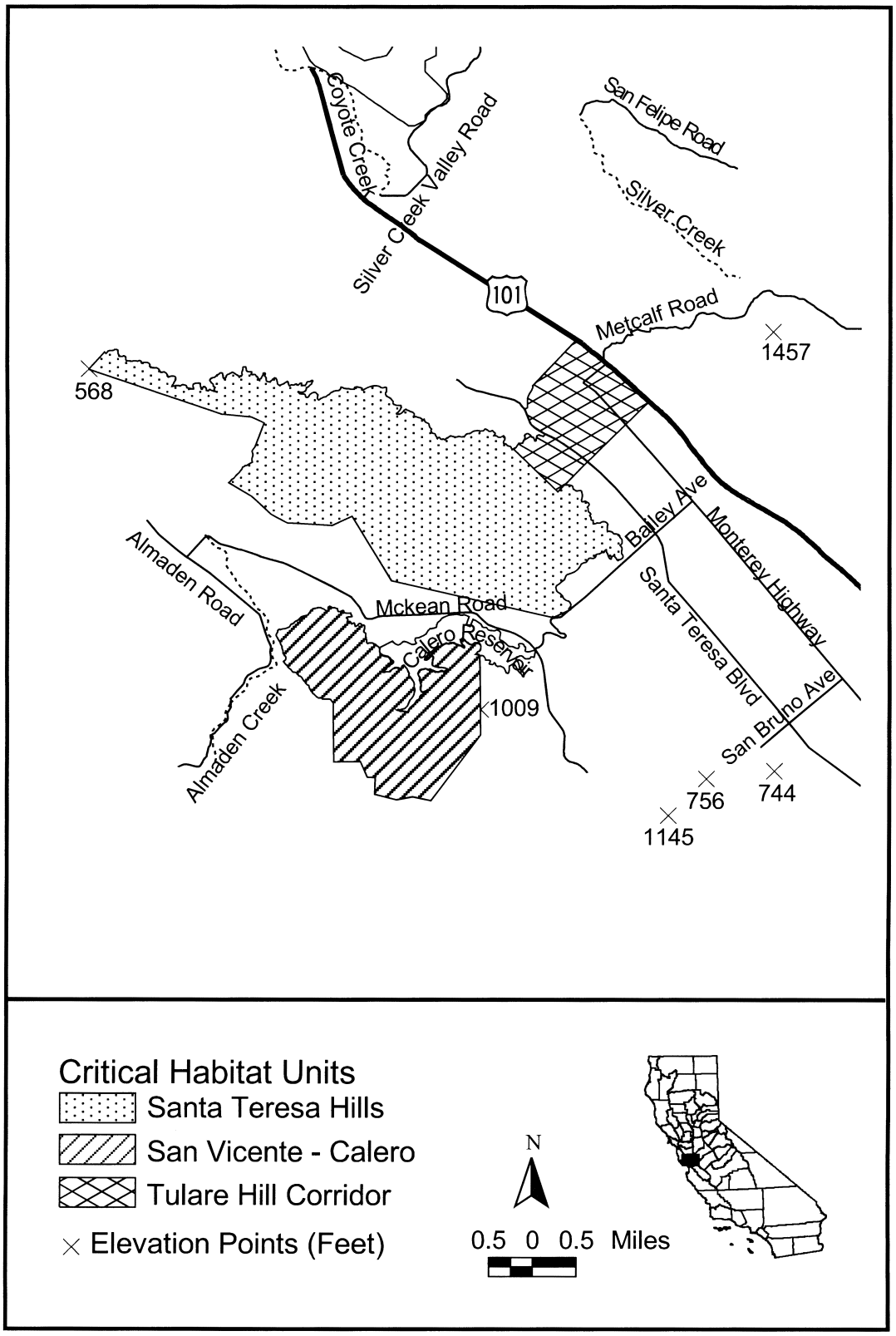

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Dated: April 20, 2001.

Joseph E. Doddridge,

Acting Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 01–10333 Filed 4–27–01; 8:45 am]

BILLING CODE 4310–55–C

Federal Register

Monday,
April 30, 2001

Part III

Department of Transportation

Federal Aviation Administration
14 CFR Part 121

Coast Guard
46 CFR Parts 4, 5, and 16

Research and Special Programs Administration
49 CFR Part 199

Federal Railroad Administration
49 CFR Part 219

Federal Motor Carrier Safety Administration
49 CFR Part 382

Federal Transit Administration
49 CFR Parts 653, 654, and 655

Workplace Drug and Alcohol Testing Programs; Amendments to DOT Agency Rules Conforming to Department of Transportation Final Rule; Proposed Rules

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 121

Coast Guard

46 CFR Parts 4, 5, and 16

Research and Special Programs Administration

49 CFR Part 199

Federal Railroad Administration

49 CFR Part 219

Federal Motor Carrier Safety Administration

49 CFR Part 382

Federal Transit Administration

49 CFR Parts 653, 654, and 655

RINs 2105–AC49, 2120–AH15, 2115–AG00, 2137–AD55, 2130–AB43, 2126–AA58, 2132–AA71

Transportation Workplace Drug and Alcohol Testing Programs; Amendments to DOT Agency Rules Conforming to Department of Transportation Final Rule

AGENCIES: Federal Aviation Administration, Coast Guard, Research and Special Programs Administration, Federal Railroad Administration, Federal Motor Carrier Safety Administration; Federal Transit Administration; Office of the Secretary, DOT.

ACTION: Notices of Proposed Rulemaking; Common Preamble.

SUMMARY: In a rule published December 19, 2000, the Department of Transportation has revised its drug and alcohol testing procedures regulation. The purposes of these proposed amendments is to make DOT agency drug and alcohol testing regulations consistent with the revised testing procedures regulation, avoid duplication and inconsistency, and make certain other changes to update and clarify the operating administration rules.

DATES: Comments should be submitted by June 14, 2001, except comments on the Coast Guard notice of proposed rulemaking, which should be submitted by June 29, 2001. Late-filed comments will be considered to the extent practicable.

ADDRESSES: See each individual DOT agency proposed rule for information on the docket number and address to use when commenting on each agency's proposed rule.

FOR FURTHER INFORMATION CONTACT: For information concerning the relationship of the proposed DOT agency amendments to the revised 49 CFR Part 40, Robert C. Ashby (400 7th St., SW., Washington DC, 20590; 202–366–9310). For information on the individual DOT agency proposed rules, see the **FOR FURTHER INFORMATION CONTACT** persons listed in each DOT agency proposed rule.

SUPPLEMENTARY INFORMATION: On December 19, 2000 (65 FR 79462), the Department of Transportation published a comprehensive revision to our drug and alcohol testing procedural rules (49 CFR part 40). The new Part 40 makes numerous changes in the way that drug and alcohol testing will be conducted in the future. While some provisions of the new rules will be made effective more quickly, as amendments to the existing Part 40, the entire revised part is scheduled to go into effect on August 1, 2001.

Part 40 is one element of a Department-wide set of regulations designed to deter and detect the use of illegal drugs and the misuse of alcohol by employees performing safety-sensitive transportation functions. It is important that the six DOT agency rules that cover specific transportation industries be consistent with the revised Part 40, to avoid duplication, conflict, or confusion among DOT regulatory requirements. For these reasons, we are proposing amendments to each of the six DOT agency drug and alcohol testing regulations connected to Part 40. We intend to issue final versions of these ''conforming amendments'' in time to be effective on August 1, 2001, the same date that the revised Part 40 takes effect.

There are several actions that all or some of the DOT agencies propose to take in order to ensure consistency with the revised Part 40. The next section of this preamble discusses each of these items in turn. In addition, there are some provisions of the proposed rules that are DOT agency-specific. These items are discussed in a subsequent section of the preamble.

Common Proposals

Substance Abuse Professionals and the Return-to-Duty Process

Currently, most of the DOT agency drug and alcohol testing rules have their own similar, but not identical, provisions concerning the return-to-duty (RTD) process for employees who have tested positive or otherwise violated the rules. These provisions also include (with the exception of the Coast Guard) material on the qualifications and role of the substance abuse professional (SAP).

The new Part 40 centralizes the material concerning the RTD process and the qualifications and role of SAPs. Among the provisions in new Part 40 are requirements for the qualification and training of SAPs, requirements for follow-up tests in all cases of violations, and clarification of the scope of the RTD process (i.e., that it applies following any violation, including a violation arising from a pre-employment test; that the RTD requirements follow an employee to subsequent employers).

To avoid potential duplication and inconsistency, we are proposing to remove RTD and SAP provisions from the six DOT agency rules. All six DOT agency programs would use the RTD and SAP provisions of Part 40 beginning August 1, 2001.

Pre-Employment Alcohol Testing

For several years, as the result of a court decision and subsequent legislation (§ 342 of the National Highway Systems Act of 1995), pre-employment alcohol testing requirements in the FTA, FMCSA, FRA, and FAA rules have been suspended. (Parallel pre-employment alcohol testing requirements did not exist in the RSPA and Coast Guard rules.) Section 342 deleted former provisions of the Omnibus Transportation Employee Testing Act of 1991 requiring pre-employment alcohol testing and substituted a sentence providing that ''The [Secretary of Transportation's] regulations shall permit [employers] to conduct pre-employment testing of such employees for the use of alcohol.''

The practical effect of the suspension of pre-employment alcohol testing requirements has been to give employers the discretion to conduct DOT pre-employment alcohol testing. However, the Department has never amended its rules to specifically reflect the legislation. In these proposed rules, we would formalize the existing situation and make the requirements consistent throughout all DOT agency rules. That is, in all six DOT agency programs, the proposed rules would authorize, but not require, employers to conduct pre-employment alcohol testing. If an employer chose to conduct pre-employment alcohol testing under Federal authority, the employer would have to conduct the testing in accordance with all Part 40 requirements.

Split Specimen Testing

At the present time, FTA, FMCSA, FRA, and FAA are required by statute to collect split specimens for drug testing. Employees have the right, within 72 hours of being notified of a verified positive test, to request a test of the split specimen at a second HHS-certified laboratory. The statute in question does not apply to the Coast Guard and RSPA programs, in which split specimen testing is currently discretionary with employers.

As noted in the Part 40 rulemaking, this situation has caused some confusion among employers, employees, and service agents. Consequently, the revised Part 40 requires split specimen testing for all DOT collections. In these proposed rules, RSPA and Coast Guard propose conforming to the Part 40 requirement to use split specimen collections in all cases. The split specimen testing rules of Part 40 (including their application to validity testing) would apply to all DOT collections, including those under RSPA and Coast Guard rules. RSPA would remove a provision allowing requests for split specimens to be made within 60 days, which is inconsistent with the 72-hour provision of Part 40 and the other operating administration rules.

Stand-Down Waivers

The new Part 40 permits employers to petition DOT agencies for a waiver allowing the employer to stand employees down following a report of a laboratory confirmed positive test or refusal, pending the outcome of the verification process. The stand-down provision contains the substantive requirements for obtaining a waiver, but does not include specific waiver procedures.

Each of the operating administrations has, or will add, its own process for granting waivers from its regulations. In each of today's proposed rules, the DOT agency involved proposes to connect its own waiver process with the stand-down waiver provision of new Part 40. Doing so will inform employers how they should frame stand-down waiver requests and to whom the requests should be sent.

Definitions

The revised Part 40 includes a number of new or altered definitions of terms. Examples of new terms are affiliate, adulterated specimen, consortium/third-party administrator (C/TPA), continuing education, designated employer representative, dilute specimen, initial and confirmatory validity test, error correction training, qualification and refresher training, service agent, stand-down, and substituted specimen. Other terms have altered definitions (e.g., employer, which now specifies that service agents are not employers).

In the interest of consistency and the convenience of having a definition in only one place, the DOT agencies are proposing to delete definitions of terms that duplicate terms defined in Part 40 (except where differences or greater specificity are needed in the agency rules). The DOT agency rules will make use of the terms defined in Part 40, and in some cases would be amended to use those terms.

Qualifications and Training

The revised Part 40 contains new or modified qualification and training requirements for testing personnel, such as collectors, breath alcohol technicians (BATs) and screening test technicians (STTs), medical review officers (MROs), and SAPs. These include requirements for qualification training, refresher training, continuing education, and error correction training.

The DOT agency rules do not need to retain provisions related to the qualifications and training of these personnel that are now covered in Part 40. Therefore, these proposed rules would delete any references to the qualifications and training of collectors, BATs and STTs, MROs, and SAPs.

Enforcement Matters

Each of the DOT agency rules incorporates Part 40 by reference. A violation of a Part 40 provision automatically becomes a violation of the DOT agency rule, and is subject to the same kinds of sanctions as other violations of the agency's rules. In some cases, the DOT agencies have predetermined sanctions for different kinds of rule violations (*e.g.*, a ''penalty table''). These agencies, as part of their proposed rules, will work Part 40 violations into their sanctions systems.

Each of the proposed rules would make clear that a violation of Part 40 is a violation of DOT agency rules. In some cases, existing DOT agency rule language says that in the event of inconsistency or conflict between Part 40 and the DOT agency rule, the latter controls. This language has created confusion about the enforceability of Part 40, and the proposed rules would delete it. Where there is a difference between Part 40 and another DOT agency rule (*i.e.*, one required by a special circumstance of a particular industry or agency program), the agency rule will state the difference explicitly.

Role of C/TPAs, MROs, and Service Agents

The new Part 40 makes a significant change in the role of C/TPAs, permitting them, for the first time, to transmit some test results and other information from MROs to employers and persons designated by an employer, as permitted by Part 40, to receive information on behalf of a specified employer. Some provisions of DOT agency rules are inconsistent with this new provision, and these proposed rules would change such provisions to be consistent with new Part 40. The new Part 40 also elaborates roles and responsibilities of service agents to a greater degree than the present Part 40, and the proposed rules, where necessary, alter DOT agency rules to be consistent with these provisions.

The new Part 40 also provides more details concerning the duties and responsibilities of MROs (*e.g.*, in the validity testing process, with respect to conflicts of interest and supervision of staff). To the extent that any DOT agency rule has provisions that are inconsistent or overlapping with these provisions, the agency proposals would make appropriate changes to ensure consistency.

Employer Checks on Test Results of Applicants and Employees

Previously, only FMCSA rules had a provision requiring employees to check on the previous drug and alcohol testing results of applicants for jobs involving safety-sensitive duties. The new Part 40 applies a requirement of this kind to all the DOT agency programs. The Part 40 provision is not identical to the current FMCSA rule. For example, the new provision requires employers to ask applicants whether there were any situations in which they tested positive on a pre-employment test for an employer that subsequently did not hire them. To ensure consistency, FMCSA would delete its current pre-employment check provision. The Part 40 provision would apply to employers by virtue of the incorporation of Part 40 in the DOT agency regulations. We seek comment on whether any additional reference to the Part 40 provision is needed in the DOT agency rules.

C/TPA Reports of Refusals

Section 40.355(i) of the revised Part 40 provides that, as a general matter, service agents, including C/TPAs, must not make a determination that an employee has refused a drug or alcohol test. Section 40.355(j)(1) creates an exception to this general prohibition, permitting a service agent to make a

determination that an employee has refused a drug or alcohol test if ''You are authorized by a DOT agency regulation to do so, you schedule a required test for an owner-operator, and the individual fails to appear for the test without a legitimate reason.''

This section was drafted in response to a situation that sometimes occurs, in which a C/TPA directs an owner-operator or other self-employed individual to appear for a random or other test and the individual is a ''no show.'' Because this individual is self-employed, there is usually no party (like an employer in a larger business) who can determine that the individual has refused to test and cause the individual to be removed from performing safety-sensitive functions. Section 40.355(j)(1) contemplates that, where DOT agency regulations permit, C/TPAs could make a refusal determination in this situation, since there basically is no one else in position to do it.

At present, DOT agency regulations do not address this issue. In some cases (*e.g.*, FRA, FTA), the provision is irrelevant, because these agencies do not regulate any owner-operators. The Department seeks comment, however, on whether DOT agencies that do regulate owner-operators or other self-employed safety-sensitive personnel should add a provision to their final conforming rules authorizing this action by C/TPAs. DOT agency rule provisions could also permit or require C/TPAs, in this situation, to report the refusals to the applicable DOT agency. The Department seeks comment on whether such a reporting authorization or requirement is advisable. Another alternative would be for Part 40 to authorize reporting of this kind on a Department-wide basis, obviating the need for amendments to individual operating administration rules.

Rulemaking Process Matters

In addition to these common provisions of the NPRMs, the individual DOT agencies, in some cases, have agency-specific provisions they wish to propose. These agency-specific provisions are discussed in the preambles to each DOT agency rule.

Each of the DOT agencies involved with this rulemaking will be reviewing one another's dockets, so that suggestions that may have been made in response to only one agency's proposed rule will be available to all the agencies. Any or all of the six agencies may make changes to their proposed rules based on comments that came into the docket of another of the agencies. In addition, in some cases one agency has proposed an idea (*e.g.*, an FMCSA proposal to issue notices concerning random testing rates only when there is a change, rather than every year) that, after reviewing the dockets, other agencies may choose to adopt.

Regulatory Analyses and Notices

These proposed rules have been designated as non-significant under Executive Order 12886 and the Department of Transportation's Regulatory Policies and Procedures. They are non-significant because they merely make conforming changes to the revised 49 CFR Part 40, which has already been subject to extensive comment and analysis. The proposed changes would not have any incremental economic impacts on their own. The economic impacts of the underlying Part 40 changes were analyzed in connection with the Part 40 rulemaking.

Because these proposals have no incremental economic impacts, the Department certifies, under the Regulatory Flexibility Act, that these proposals, if adopted, would not have a significant economic impact on a substantial number of small entities. These proposals likewise have no incremental Federalism impacts for purposes of Executive Order 13132, so no further analysis is needed for Federalism purposes. All the information collection requirements of Part 40 have been analyzed and approved by OMB. These proposed rules would impose no information collection requirements that have not already been reviewed in context of the Part 40 rulemaking, so no further Paperwork Reduction Act review is necessary.

There are a number of other Executive Orders that can affect rulemakings. These include Executive Orders 13084 (Consultation and Coordination with Indian Tribal Governments), 12988 (Civil Justice Reform), 12875 (Enhancing the Intergovernmental Partnership), 12630 (Governmental Actions and Interference with Constitutionally Protected Property Rights), 12898 (Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations), 13045 (Protection of Children from Environmental Health Risks and Safety Risks), and 12889 (Implementation of North American Free Trade Agreement). We have considered these Executive Orders in the context of this NPRM, and we believe that the proposed rules do not directly affect the matters that the Executive Orders cover.

Issued this 9th day of April 2001, at Washington, D.C.

Jon L. Jordan,

Federal Air Surgeon, Federal Aviation Administration.

R.C. North,

Rear Admiral, U.S. Coast Guard, Assistant Commandant for Marine Safety and Environmental Protection.

Stacy L. Gerard,

Associate Administrator for Pipeline Safety, Research and Special Programs Administration.

S. Mark Lindsey,

Acting Deputy Administrator, Federal Railroad Administration.

Julie Anna Cirillo,

Acting Deputy Administrator, Federal Motor Carrier Safety Administration.

Hiram J. Walker,

Acting Deputy Administrator, Federal Transit Administration.

Kenneth C. Edgell,

Acting Director, Office of Drug and Alcohol Policy and Compliance, Office of the Secretary.

[FR Doc. 01–9409 Filed 4–27–01; 8:45 am]

BILLING CODE 4910–62–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 121

[Docket No. FAA–2000–8431; Notice No. 00–14]

RIN 2120–AH15

Antidrug and Alcohol Misuse Prevention Programs for Personnel Engaged in Specified Aviation Activities

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This action proposes amendments to the industry drug and alcohol testing regulations to conform with the changes in the Department of Transportation's revision of its drug and alcohol testing procedures regulation, Procedures for Transportation Workplace Drug and Alcohol Testing Programs. We also propose to change the antidrug and alcohol misuse prevention program regulations in light of the amendments that have been made to the medical standards and certification requirements. We further propose eliminating certain requirements under reasonable suspicion and post-accident alcohol testing because these requirements are outdated and no longer valid. These

proposals are intended to update and clarify the regulations based on the Department of Transportation's revisions and previous FAA rulemakings.

DATES: Send your comments on or before June 14, 2001.

ADDRESSES: Address your comments to the Docket Management System, U.S. Department of Transportation, Room Plaza 401, 400 Seventh Street, SW., Washington, DC 20590–0001. You must identify the docket number FAA–2000–8431 at the beginning of your comments, and you should submit two copies 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 comments to these proposed regulations in person in the Dockets Office between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The Dockets Office is on the plaza level of the NASSIF Building at the Department of Transportation at the above address. Also, you may review public dockets on the Internet at *http://dms.dot.gov.*

FOR FURTHER INFORMATION CONTACT: Diane J. Wood, Manager, Drug Abatement Division, AAM–800, Office of Aviation Medicine, Federal Aviation Administration, Washington, DC 20591, telephone number (202) 267–8442.

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 relating to the environmental, energy, federalism, or economic impact that might result from adopting the proposals in this document are also invited. Substantive comments should be accompanied by cost estimates. Comments must identify the regulatory docket or notice number and be submitted in duplicate to the DOT Rules Docket address specified above.

All comments received, as well as a report summarizing each substantive public contact with FAA personnel concerning this proposed rulemaking, will be filed in the docket. The docket is available for public inspection before and after the comment closing date.

The Administrator will consider all comments received on or before the closing date before taking action on this proposed rulemaking. Comments filed late will be considered as far as possible without incurring expense or delay. The proposals in this document may be changed in light of the comments received.

Commentators wishing the FAA to acknowledge receipt of their comments submitted in response to this document must include a pre-addressed, stamped postcard with those comments on which the following statement is made: ''Comments to Docket No. FAA–2000–8431.'' The postcard will be date stamped and mailed to the commenter.

Availability of Rulemaking Documents

You can get an electronic copy of this document using the Internet by taking the following steps:

(1) Go to the search function of the Department of Transportation's electronic Docket Management System (DMS) web page (*http://dms.dot.gov/search*).

(2) On the search page type in the last four digits of the Docket number shown at the beginning of this notice. Click on ''search.''

(3) On the next page, which contains the Docket summary information for the Docket you selected, click on the document number of the item you wish to view. You can also get an electronic copy using the Internet through FAA's web page at *http://www.faa.gov/avr/arm/nprm/nprm.htm* or the **Federal Register**'s web page at *http://www.access.gpo.gov/su_docs/aces/aces140.html.*

You can also get a copy by submitting a request to the Federal Aviation Administration, Office of Rulemaking, ARM–1, 800 Independence Avenue SW., Washington, DC 20591, or by calling (202) 267–9680. Make sure to identify the docket number, notice number, or amendment number of this rulemaking.

Background

On April 29, 1996, the Department of Transportation issued an advance notice of proposed rulemaking (ANPRM) (61 FR 18713) asking for suggestions in changing 49 CFR part 40, Procedures for Transportation Workplace Drug and Alcohol Testing Programs. Subsequently, on December 9, 1999, a notice of proposed rulemaking (NPRM) (64 FR 69076) was issued proposing a comprehensive revision to 49 CFR part 40. The Department of Transportation (DOT) published its final rule on December 19, 2000 (65 FR 79462). As a consequence of the DOT's action, the FAA is proposing to amend its drug and alcohol testing regulations to integrate, as appropriate, the new DOT procedures.

In addition, on March 19, 1996, the FAA published a final rule, Revision of Airman's Medical Standards and Certification Procedures and Duration of Medical Certificates (54 FR 11238). This final rule amended requirements for 14 CFR part 67 medical certificate holders. Since the publication of this final rule the FAA has identified some inconsistencies between 14 CFR part 121 and 14 CFR part 67 that require modification. Changes in 14 CFR part 121 are being proposed at this time because the revision of 49 CFR part 40 is causing modifications to the portions of 14 CFR part 121 that are not consistent with the 1996 changes to 14 CFR part 67. Rather than reissuing inconsistent provisions in 14 CFR part 121, appendices I and J, this notice proposes to update the regulations consistent with 14 CFR part 67.

Two sections of 14 CFR part 121, appendix J, refer to a requirement for employers to submit information to the FAA on March 15, 1996, 1997, and 1998. Specifically, 14 CFR part 121, appendix J, sections III.B.2(b) and III.D.4(b) require employers to submit to the FAA notice of any post-accident test or reasonable suspicion test that was not completed within the eight hour period required for such tests. The reporting requirements were imposed only for the first three years after the final rule on alcohol misuse prevention became effective. Those requirements have expired, therefore we propose to eliminate those paragraphs.

The Common Preamble

A common preamble to all of the modal NPRMs proposing changes to the drug and alcohol testing rules is being published in the same issue of this **Federal Register** with this NPRM. This common preamble contains an overview of general issues related to drug and alcohol testing requirements in the transportation industry.

Section by Section Analysis

The following discusses only those portions of 14 CFR part 121, appendices I and J, which the FAA is proposing to change.

Appendix I

I. General

By this action FAA proposes to add a ''General'' section (I. General) and a ''Purpose'' section (A. Purpose) to the beginning of 14 CFR part 121, appendix I for clarity and organizational purposes. This section would include paragraph ''B. DOT Procedures'' and paragraph ''C. Employer Responsibility.'' These proposed changes are necessary to clarify the responsibility of employers to follow the requirements and procedures of this appendix and 49 CFR part 40. These proposed changes also reinforce that employers are responsible for all actions

of their officials, representatives, and service agents in carrying out the requirements of 14 CFR part 121, appendix I and 49 CFR part 40.

II. Definitions

This action proposes to change the definition of ''prohibited drug'' to limit the definition to the five drugs that are prohibited under 49 CFR 40.85. In addition we propose adding the phrase ''except as permitted in 49 CFR part 40.'' The current language in 14 CFR part 121, appendix I, could be misread to mean that the use of certain prohibited drugs is permitted if authorized under state law (such as medical use of marijuana that may be recommended or prescribed by physicians in certain states that have legalized its use for the treatment of some conditions). We expect that the proposed changes would eliminate any such confusion.

We propose to change the definition of ''refusal to submit'' to refer to 49 CFR part 40. This would be a clarifying change.

In addition, we propose to change the definitions in 14 CFR part 121, appendix I for ''verified negative test result'' and ''verified positive test result.'' These definitions are necessary because these terms are used in this appendix. The proposed definitions are intended to be consistent with the broader language for verified tests used in 49 CFR 40.3.

IV. Substances for Which Testing Must Be Conducted

This action proposes eliminating the second sentence of this section because it allows the employer to test for drugs in addition to those specified in 14 CFR part 121, appendix I with approval of the FAA under 49 CFR part 40 and for substances for which the Department of Health and Human Services has established an approved testing protocol. This action is proposed because 49 CFR 40.85 prohibits testing for additional drugs.

V. Types of Drug Testing

F. Return-to-Duty Testing. This action proposes to change the requirements of return to duty testing to conform with 49 CFR part 40, which requires the Substance Abuse Professional (SAP), not the Medical Review Officer (MRO), to determine that the employee has successfully complied with the prescribed education and/or treatment prior to allowing the person to perform safety-sensitive functions.

G. Follow-up Testing. This proposed action changes the requirements of follow-up testing to conform with 49 CFR part 40, which requires the SAP, instead of the MRO, to determine the number of follow-up tests an employee should have. This action also proposes language to conform with the 49 CFR part 40 requirement that an employee who tests positive is subject to at least six follow-up tests after returning to duty.

VI. Administrative and Other Matters

With regard to documents that an employer must maintain, this action proposes to alter this section to refer to 49 CFR part 40. 14 CFR part 121, appendix I would include those documents that are currently specified in this appendix, but which have not been moved to 49 CFR part 40.

We propose to delete current paragraphs A. and B. titled ''Collection, Testing, and Rehabilitation Records'' and ''Laboratory Inspections'' respectively. These requirements are now addressed in 49 CFR part 40.

This action proposes to eliminate parts of paragraph ''C. Employee Request for Test of a Split Specimen'' because 49 CFR part 40 sets out these requirements for split specimens. We propose moving paragraph C.3. to the MRO section, 14 CFR part 121, appendix I, section VII.A. because it is an MRO responsibility. This change is proposed for clarity and organizational purposes.

We propose to add a new paragraph A, ''MRO Record Retention Requirements.'' These are not new requirements but have been consolidated here from current section VII.C. because they were not included in 49 CFR part 40. Specifically, this paragraph would include two paragraphs dealing with MRO contracting services and transfer of records.

This action proposes to include paragraph B. ''Access to Records.'' This is not a new requirement and is currently in section VII.C.4. Moving the access to records requirement would consolidate the record requirements in one section.

This action proposes to include paragraph C. ''Service Agent.'' This would be a conforming change to 49 CFR part 40 and would specify when service agents must have records available for inspections and investigations of the employer's antidrug program. This action proposes to change paragraph D. ''Release of Drug Testing Information'' to conform with 49 CFR part 40.

VII. Medical Review Officer, Substance Abuse Professional, and Employer Responsibilities

We propose to rename this section from ''MRO and Substance Abuse Professional'' to ''Medical Review Officer, Substance Abuse Professional, and Employer Responsibilities.'' We also propose to rename ''A. MRO and Substance Abuse Professional Duties'' to ''A. Medical Review Officer'' and to rename ''B. MRO Determinations'' to ''B. Substance Abuse Professional.'' These changes are proposed to better organize the information in this appendix and to conform to changes to 49 CFR part 40.

We propose to delete the majority of MRO and SAP responsibilities in this appendix and instead refer the reader to 49 CFR part 40. We propose to keep the MRO and employer responsibilities for 14 CFR part 67 airman medical certificate holders because these requirements are specific to the FAA. We propose to move some responsibilities from the MRO to the SAP because 49 CFR part 40 has given SAPs some duties that formerly belonged to the MROs.

In addition, we propose keeping the provision in this appendix that prohibits the MRO from delaying the verification of the primary test result pending the outcome of the split-specimen test. It will be in the section titled ''VII. A. Medical Review Officer.''

For organizational purposes the MRO, SAP, and Employer Responsibilities regarding 14 CFR part 67 airman certificate holders have been combined under one section. We propose titling this paragraph ''C. Additional Medical Review Officer, Substance Abuse Professional, and Employer Responsibilities Regarding 14 CFR part 67 Airman Medical Certificate Holders.''

The 14 CFR part 67 final rule, dated March 1996, made a verified positive drug test result a disqualifying condition for the issuance or retention of a medical certificate. Prior to this change, the MRO was required to evaluate whether a 14 CFR part 67 airman medical certificate holder was dependent on drugs following a verified positive drug test result. If an MRO determined that an individual was dependent or could not determine drug dependency, the MRO could not recommend that the individual return to duty until the individual was found to be nondependent by, or had received a special issuance from, the Federal Air Surgeon. If the MRO determined the individual to be nondependent, the MRO could recommend that the individual be returned to duty or hired to perform safety-sensitive functions with a negative test result on a return to duty drug test.

This action proposes a change to paragraph ''VII.B. MRO Determinations'' to reflect the 1996 amendment to 14 CFR part 67. Since the March 1996 final rule on 14 CFR part 67, the MROs have not been permitted to ''make a determination of probable drug dependence or nondependence as specified in 14 CFR part 67.'' This proposed action would remove paragraphs 1 and 2. The proposal would alter paragraph 3, and move that paragraph to become paragraph C.3. The proposed new paragraph C.3. would delete any reference to the MRO determining dependency for persons holding an FAA medical certificate to ensure the current requirements are consistent with 14 CFR part 67. Clarifying language in paragraph C.3. would change the requirement from the MRO to the employer to forward SAP evaluations to the Federal Air Surgeon to reflect the changes in MRO duties in 49 CFR part 40.

Under current 14 CFR part 121, appendix I, the ability of the MRO to return an individual to duty is restricted if that individual is a 14 CFR part 67 medical certificate holder. Because of the changes to 49 CFR part 40, the SAP has now assumed the return to duty role. Therefore, in paragraph C.2. we propose to similarly restrict the SAP's ability to return a 14 CFR part 67 medical certificate holder to a safety-sensitive function if that medical certificate is necessary for the performance of those functions.

Because the requirements for employers are now divided between this appendix and 49 CFR part 40, there could be confusion for an employer about the steps to follow when dealing with an employee who is required to hold a 14 CFR part 67 airman medical certificate in order to perform safety-sensitive functions. Specifically, there might be confusion as to how to return such an employee to duty after a positive test result or a refusal to test.

The FAA would like to note that an employer would not be able to use an

employee who would be required to hold a 14 CFR part 67 airman medical certificate to perform safety-sensitive duties following a positive test result until and unless the Federal Air Surgeon has issued a special issuance medical certificate. This proposal continues the requirement that the employer ensure that the employee who is required to hold a 14 CFR part 67 medical certificate meets the return to duty and follow-up testing requirements in accordance with 49 CFR part 40, once the Federal Air Surgeon has recommended that the employee who holds a 14 CFR part 67 medical certificate be permitted to perform safety-sensitive duties. These are not new concepts, and have been implicit requirements under the existing regulations. The FAA requests comments on whether these requirements to follow both 14 CFR part 67 and 49 CFR part 40 should be made explicit for clarity purposes, or whether the concepts are clear enough as implied by 49 CFR part 40 and this appendix.

If an individual is not required to hold a 14 CFR part 67 medical certificate to perform safety-sensitive functions, the SAP may return the individual to duty. The individual's 14 CFR part 67 medical certificate is subject to review by the Federal Air Surgeon, but this review would not affect the SAP's ability to return the individual to duty as long as the individual did not need a 14 CFR part 67 medical certificate to perform his/her duties.

As indicated previously this action proposes to move ''C. MRO Records.'' Anything pertinent to MRO records can be found in section VI.D.1. ''Administrative and Other Matters.'' This proposal would place all record retention responsibilities under one section.

This action proposes to eliminate paragraph VII.D. ''Evaluations and Referrals'' and replace it with paragraph B. ''Substance Abuse Professional.'' These proposed changes to Paragraph B. would refer the reader to 49 CFR part 40, Subpart O, for SAP requirements and would conform with 49 CFR part 40, which contains the specific SAP requirements. There would be no need to list the same requirements in this appendix because they are included in 49 CFR part 40.

IX. Employer's Antidrug Program

This action proposes to eliminate the requirement for an entity seeking to operate as a consortium to first seek the approval of the FAA. The terms upon which the FAA granted its approval to consortia have now been changed by the requirements of 49 CFR part 40.

Also, in the common preamble published today by DOT, it is emphasized that the six DOT agencies that cover specific transportation industries needed to revise their rules to be consistent with 49 CFR part 40. It would be inappropriate for the FAA to separately grant consortium approvals when the DOT and the other modal administrations do not grant such approvals. Retaining the provision for consortium approvals by the FAA could cause confusion among the DOT regulated entities that DOT is trying to avoid.

If consortium approvals are eliminated within this appendix, then any reference to an ''FAA-approved consortium'' or ''consortium'' would be replaced with ''consortium/third party administrator'' as defined by 49 CFR part 40. We are seeking public comment on the elimination of the consortium approval process and the substitution of the 49 CFR part 40 term ''consortium/third party administrator'' at any point that consortia are referenced, as appropriate.

XII. Employees Located Outside the Territory of the United States

This action proposes a change to the title of the section to ''XII. Testing Outside the Territory of the United States.'' While 49 CFR part 40 authorizes laboratory and MRO functions to occur outside the United States in Canada and Mexico, we are proposing to clarify that this authorization would not apply to entities regulated by this appendix. We are proposing to change paragraph A. to make it explicit that no part of the testing process, including specimen collection, laboratory processing, and MRO actions, shall be conducted outside the territory of the United States.

It is important to note that, unlike DOT agencies that require drug testing by entities outside the United States, the FAA's regulations apply only to United States' entities and testing is confined to the soil of the United States and its territories. We acknowledge that it may be more convenient and practical for entities conducting testing outside the United States to use local laboratories and MROs, however, the situation is different in aviation because testing is prohibited outside the United States and its territories. The FAA has consistently declined to take a unilateral approach to testing outside the United States, and instead has been working productively with the International Civil Aviation Organization (ICAO) to develop a multilateral approach to drug and alcohol testing consistent with the Chicago Convention. The FAA's efforts through ICAO have been successful in supporting an aviation environment free of substance abuse. However, if the threat to aviation safety posed by substance abuse increases, or requires additional efforts and the international community has not adequately responded, the FAA will consider taking appropriate rulemaking action. The proposed change conforms to past FAA guidance on this section, to past practice, and to our commitment to continue to work with the International Civil Aviation Organization to address all aspects of international substance abuse testing.

XIII. Waivers From 49 CFR 40.21

This action proposes to add this section to address a new provision introduced in 49 CFR part 40, which would permit waivers from 49 CFR 40.21. Under 49 CFR 40.21, an employer is prohibited from temporarily removing an employee from the performance of safety-sensitive functions based only on a report from a laboratory to the MRO of a confirmed positive test for a drug or a drug metabolite, an adulterated test, or a substituted test before the MRO has completed verification of the test result. This practice is described in 49 CFR 40.21 as ''stand down.'' However, 49 CFR 40.21 (b) permits an employer to seek a waiver from 49 CFR 40.21 (a), thereby permitting the employer to stand down its employees.

In order to implement the waiver provision of 49 CFR 40.21, the FAA proposes to add a new section to this appendix. There has been no past practice of granting waivers to the FAA's drug testing regulations. Therefore, this provision is proposed to create a process to address the requests for waiver from the stand down provisions of 49 CFR 40.21. Consistent with the requirements for seeking a waiver under 49 CFR 40.21(b), this section proposes to place the responsibility upon the applicant to provide sufficient factual information, analysis and justification to obtain a waiver from the stand down provision. The FAA is given discretion, by 49 CFR 40.21(b), to grant, deny, grant with conditions, modify, and revoke waivers. Because this is detailed in 49 CFR 40.21(b), the proposed language does not address the FAA's discretion on these matters.

Appendix J

I. General

This change proposes to add a paragraph ''C. Employer Responsibility.'' The reason for this proposed change would be to ensure that employers understand that they are responsible for all applicable requirements and procedures of this appendix and 49 CFR part 40. These proposed changes would also reinforce that employers are responsible for all actions of their officials, representatives, and service agents in carrying out the requirements of the DOT agency regulations. These proposed changes would also conform to 49 CFR part 40.

This action proposes to reletter paragraph ''C. Definitions'' to paragraph ''D. Definitions.'' This action also proposes the following changes to paragraph ''D. Definitions.''

- Delete the definition of ''Consortium'' because the definition is provided in 49 CFR part 40.
- Delete the definition of ''Confirmation Test'' because the definition is provided in 49 CFR part 40. It is redundant to list it again in this appendix.
- Change the definition of ''refusal to submit to an alcohol test'' to refer to 49 CFR part 40. This would be a clarifying change.
- Delete the definition of ''Screening Test'' since the definition is provided in 49 CFR part 40. There is no need to repeat the definition in the appendix.
- The remaining paragraphs will be relettered accordingly.

III. Tests Required

A. Pre-employment Testing. In order to standardize the pre-employment alcohol testing requirements, all of the Department of Transportation modal administrations are proposing the same rule language. For a discussion of the proposal, see the Department of Transportation's common preamble that is being published concurrently with this proposal.

B. Post-accident Testing. This action proposes the elimination of paragraph 2(b) in its entirety. This paragraph requires specific data to be submitted to the FAA by March

15, 1996, 1997, and 1998. The timeframes have expired and submission of the data is no longer required.

D. Reasonable Suspicion Testing. This change proposes the elimination of paragraph 4(b) in its entirety. This paragraph requires specific data to be submitted to the FAA by March 15, 1996, 1997, and 1998. The timeframes have expired and submission of the data is no longer required.

This action also proposes to eliminate in paragraph 4(d) the words ''Except as provided in paragraph (b)'' since paragraph (b) has been eliminated.

E. Return to Duty Testing. This action proposes to change the requirements of return to duty testing to conform with 49 CFR part 40, which now requires the SAP to determine that the employee has successfully complied with the prescribed education and/or treatment prior to allowing the person to perform safety-sensitive functions.

F. Follow-up Testing. This action proposes to change the requirements of follow-up testing to conform with 49 CFR part 40, which requires the SAP to determine the number of follow-up tests an employee should have. This change would conform with the 49 CFR part 40 requirement that any employee who receives an alcohol violation is subject to at least six follow-up tests after returning to duty. In addition, this paragraph would be reorganized for clarity.

IV. Handling of Test Results, Record Retention and Confidentiality

A. Retention of Records. This action proposes to specify the records employers must continue to retain in addition to the records required by 49 CFR part 40.

Specifically, this action proposes to eliminate the reference to recordkeeping requirements, except annual reports submitted to the FAA, because these recordkeeping requirements are included in 49 CFR part 40. For clarity, we moved all existing record requirements throughout paragraphs 2 and 3 into the appropriate sections of the proposed paragraph 2 and noted the specific retention period for the records. We eliminated 2(c) because all of the 1-year requirements are included in 49 CFR part 40.

C. Access to Records and Facilities. This action proposes the elimination of most of this section because 49 CFR part 40 sets out the confidentiality and release of information requirements. We propose to retain the current paragraph number 8, which would now be renumbered as paragraph 2, because it reinforces to the employer the requirement to comply with this appendix regarding access to all facilities.

V. Consequences for Employees Engaging in Alcohol-Related Conduct

C. Notice to Federal Air Surgeon. In light of the changes to 49 CFR part 40 and the changes that were made to 14 CFR part 121, appendix I, because of the 1996 amendment to 14 CFR part 67, this action proposes to change paragraph 4 to parallel the changes to 14 CFR part 121, appendix I. In addition, this action proposes to add a new paragraph 5, which would clarify the employer's obligation to ensure that the employee met the return to duty requirements, following the recommendation of the Federal Air Surgeon. This is a current requirement that is being clarified. Also, this requirement conforms to 49 CFR part 40.

VI. Alcohol Misuse Information, Training, and Substance Abuse Professional

This action proposes to change the title from ''VI. Alcohol Misuse Information, Training, and Referral'' to ''VI. Alcohol Misuse Information, Training, and Substance Abuse Professional'' for clarity and organizational purposes.

This action proposes to change the title of ''C. Referral, Evaluation, and Treatment'' to ''C. Substance Abuse Professional Duties'' for clarity purposes and to conform to 49 CFR part 40. We propose the elimination of the majority of this paragraph because the SAP requirements are detailed in 49 CFR part 40, Subpart O. This paragraph would now refer the reader to 49 CFR part 40 for SAP requirements.

VII. Employer's Alcohol Misuse Prevention Program

This action proposes to eliminate the requirement for an entity seeking to operate as a consortium to first submit to the FAA an alcohol misuse prevention program (AMPP) certification statement. For the same reasons that we propose to eliminate consortium approvals in section IX of this appendix, we propose to eliminate the requirement for consortia to submit AMPPs to the FAA.

Also, we propose that any references to an ''FAA-approved consortium'' or ''consortium'' would be replaced with ''consortium/ third party administrator'' as defined by 49 CFR part 40, as appropriate. We propose to strike the definition of ''consortium'' in section I, paragraph C of this appendix.

Paperwork Reduction Act

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)), the FAA has determined that there are no new requirements for information collection associated with this proposed rule.

International Compatibility

In keeping with U.S. obligations under the Convention on International Civil Aviation, it is FAA policy to comply with International Civil Aviation Organization (ICAO) Standards and Recommended Practices to the maximum extent practicable. The FAA determined that there are no ICAO Standards and Recommended Practices that correspond to these proposed regulations.

Executive Order 12866 and DOT Regulatory Policies and Procedures

The DOT prepared a regulatory analysis indicating that the modal proposals due to the changes in 49 CFR part 40 would not have any incremental economic impacts on their own. DOT also indicated that the modal proposed rules have been designated as non-significant under Executive Order 12866 and the Department of Transportation's Regulatory Policies and Procedures. See the Department of Transportation's common preamble, ''Transportation Workplace Drug and Alcohol Testing Programs; Amendments to DOT Agency Rules Conforming to 49 CFR Part 40'' for the regulatory evaluation of the actions that the FAA is proposing due to 49 CFR part 40.

In addition to the FAA's proposed changes that are directly due to changes in 49 CFR part 40, the FAA is proposing certain clarifying changes to 14 CFR part 121, appendices I and J that are not directly due to 49 CFR part 40. Executive Order 12866, Regulatory Planning and Review, directs the FAA to assess both the costs and benefits of a regulatory change. The FAA is not allowed to propose or adopt a regulation unless a reasoned determination is made that the benefits of the intended regulation justify the costs. The FAA's assessment of this Notice of Proposed Rulemaking indicates that its economic impact would be minimal. Since the costs and benefits of this proposed rule do not make it a ''significant regulatory action'' as defined in the Order, the FAA has not prepared a ''regulatory evaluation,'' which is the written cost/benefit analysis ordinarily required for all rulemaking proposals under the DOT Regulatory Policies and Procedures. The FAA does not need to do the latter analysis where the economic impact of a proposal is minimal. The changes that are being proposed because of changes to 49 CFR part 40 would have no incremental economic impacts on their own, and the additional clarifying changes that are being proposed would impose no new requirements; they would merely clarify existing requirements.

Regulatory Flexibility Determination

The Regulatory Flexibility Act of 1980 (RFA) establishes ''as a principle of regulatory issuance that agencies shall endeavor, consistent with the objective of the rule and of applicable statutes, to fit regulatory and informational requirements to the scale of the businesses, organizations, and governmental jurisdictions subject to regulation.'' To achieve that principle, the RFA requires agencies to solicit and consider flexible regulatory proposals and to explain the rationale for their actions. The RFA covers a wide-range of small entities, including small businesses, not-for-profit organizations, and small governmental jurisdictions.

Agencies must perform a review to determine whether a proposed or final rule will have a significant economic impact on a substantial number of small entities. If the determination is that it will, the agency must prepare a regulatory flexibility analysis as described in the RFA.

However, if an agency determines that a proposed or final rule is not expected to have a significant economic impact on a substantial number of small entities, section 605(b) of the 1980 act provides that the head of the agency may so certify and a regulatory flexibility analysis is not required. The certification must include a statement providing the factual basis for this determination, and the reasoning should be clear.

Because the changes proposed in this action are a reworking of existing requirements and have been subject to extensive comment and analysis in the 49 CFR part 40 rulemaking or are merely clarifying changes and should not have incremental economic impacts on their own, the FAA certifies that the proposed rule would not have a significant economic impact on a substantial number of small entities.

International Trade Impact Analysis

The Trade Agreement Act of 1979 prohibits Federal agencies from engaging in any standards or related activities that create unnecessary obstacles to the foreign commerce of the United States. Legitimate domestic objectives, such as safety, are not considered unnecessary obstacles. The statute also requires consideration of international standards and where appropriate, that they be the basis for U.S. standards. In addition, consistent with the Administration's belief in the general superiority and desirability of free trade, it is the policy of the Administration to remove or diminish to the extent feasible, barriers to international trade, including both barriers affecting the export of American goods and services to foreign countries and barriers affecting the import of foreign goods and services into the United States.

In accordance with the above statute and policy, the FAA has assessed the potential effect of this proposed rule and has determined that it would have no affect on any trade-sensitive activity.

Unfunded Mandates

The Unfunded Mandates Reform Act of 1995 (the Act), enacted as Pub. L. 104–4 on March 22, 1995, is intended, among other things, to curb the practice of imposing unfunded Federal mandates on State, local, and tribal governments.

Title II of the Act requires each Federal agency to prepare a written statement assessing the effects of any Federal mandate in a proposed or final agency rule that may result in a $100 million or more expenditure (adjusted annually for inflation) in any one year by State, local, and tribal governments, in the aggregate, or by the private section; such a mandate is deemed to be a ''significant regulatory action.''

This proposed rule does not contain such a mandate. Therefore, the requirements of Title II of the Unfunded Mandates Reform Act of 1995 do not apply.

Executive Order 13132, Federalism

The FAA has analyzed this proposed rule under the principles and criteria of Executive Order 13132, Federalism. We determined that this action 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, we determined that this notice of proposed rulemaking would not have federalism implications.

Environmental Analysis

FAA order 1050.1d defines FAA actions that may be categorically excluded from preparation of a National Environmental Policy Act (NEPA) environmental assessment or environmental impact statement. In accordance with FAA Order 1050.1d, appendix 4, paragraph 4(j), regulations, standards, and exemptions (excluding those which, if implemented, may cause a significant impact on the human environment) qualify for a categorical exclusion. The FAA proposes that this action qualifies for a categorical exclusion because no significant impacts to the environment are expected to result from its finalization or implementation.

Energy Impact

The energy impact of the notice has been assessed in accordance with the Energy Policy and Conservation Act (EPCA) Pub. L. 94–163, as amended (42 U.S.C. 6362) and FAA Order 1053.1. It has been determined that the notice is not a major regulatory action under the provisions of the EPCA.

List of Subjects in 14 CFR Part 121

Air carriers, Aircraft, Aircraft pilots, Airmen, Alcohol abuse, Aviation safety, Charter flights, Drug abuse, Drug testing, Reporting and recordkeeping requirements, Safety, Transportation.

The Proposed Amendment

In consideration of the foregoing, the Federal Aviation Administration proposes to amend part 121 of Title 14, Code of Federal Regulations, as follows:

PART 121—OPERATING REQUIREMENTS: DOMESTIC, FLAG, AND SUPPLEMENTAL OPERATIONS

1. The authority citation for part 121 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 40119, 41706, 44101, 44701–44702, 44705, 44709–44711, 44713, 44716–44717, 44722, 44901, 44903–44904, 44912, 46105.

2. Amend appendix I to part 121 as follows:

A. Revise section I;

B. In section II, revise the definitions of ''Prohibited drug'' and ''Refusal to submit''; remove the definitions of ''Verified negative drug test result'' and ''Verified positive drug test result''; and add new definitions of ''Verified negative drug test'' and ''Verified positive drug test'' in alphabetical order;

C. Revise section IV;

D. In section V, revise paragraphs F. and G.2., G3., and G.4;

E. In section VI, revise paragraphs A, B, C and D.

F. In section VII, revise the heading of the section, and revise paragraphs A, B, and C;

G. In section XII, revise the heading of the section and the introductory text in paragraph A; and

H. Add section XIII.

The revisions and additions read as follows:

Appendix I to Part 121—Drug Testing Program

* * * * *

I. General

A. *Purpose.* The purpose of this appendix is to establish a program designed to help prevent accidents and injuries resulting from the use of prohibited drugs by employees who perform safety-sensitive functions.

B. *DOT Procedures.* Each employer shall ensure that drug testing programs conducted pursuant to 14 CFR parts 65, 121, and 135 of this chapter comply with the requirements of this appendix and the ''Procedures for Transportation Workplace Drug Testing Programs'' published by the Department of Transportation (DOT) (49 CFR part 40). An employer may not use or contract with any drug testing laboratory that is not certified by the Department of Health and Human Services (HHS) under the National Laboratory Certification Program.

C. *Employer Responsibility.* As an employer, you are responsible for all actions of your officials, representatives, and service agents in carrying out the requirements of this appendix and 49 CFR part 40.

II. *Definitions.* * * *

* * * * *

Prohibited drug means marijuana, cocaine, opiates, phencyclidine (PCP), and amphetamines, except as permitted by 49 CFR part 40.

* * * * *

Refusal to submit means that a covered employee engages in conduct specified in 49 CFR 40.191.

* * * * *

Verified negative drug test means a drug test result from an HHS-certified laboratory that has undergone review by an MRO and has been determined by the MRO to be a negative result.

Verified positive drug test means a drug test result from an HHS-certified laboratory that has undergone review by an MRO and has been determined by the MRO to be a positive result.

* * * * *

IV. *Substances for Which Testing Must Be Conducted.* Each employer shall test each employee who performs a safety-sensitive function for evidence of marijuana, cocaine, opiates, phencyclidine (PCP), and amphetamines during each test required by section V. of this appendix.

V. *Types of Drug Testing Required.* * * *

* * * * *

F. *Return to Duty Testing.* Each employer shall ensure that before an individual is returned to duty to perform a safety-sensitive function after refusing to submit to a drug test required by this appendix or receiving a verified positive drug test result on a test conducted under this appendix the individual shall undergo a return to duty drug test. No employer shall allow an individual required to undergo return to duty testing to perform a safety-sensitive function unless the employer has received a verified negative return to duty drug test result for the individual. The test cannot occur until after the SAP has determined that the employee has successfully complied with the prescribed education and/or treatment.

G. *Follow-up Testing.* * * *

* * * * *

2. The number and frequency of such testing shall be determined by the employer's Substance Abuse Professional, but shall consist of at least six tests in the first 12 months following the employee's return to duty.

3. The employer may direct the employee to undergo testing for alcohol in accordance with appendix J of this part, in addition to drugs, if the Substance Abuse Professional determines that alcohol testing is necessary for the particular employee. Any such alcohol testing shall be conducted in accordance with the provisions of 49 CFR part 40.

4. Follow-up testing shall not exceed 60 months after the date the individual begins to perform or returns to the performance of a safety-sensitive function. The Substance Abuse Professional may terminate the requirement for follow-up testing at any time after the first six tests have been conducted, if the Substance Abuse Professional determines that such testing is no longer necessary.

VI. *Administrative and Other Matters.* A. *MRO Record Retention Requirements.* 1. Records concerning drug tests confirmed positive by the laboratory shall be maintained by the MRO for 5 years. Such records include the MRO copies of the custody and control form, medical interviews, documentation of the basis for verifying as negative test results confirmed as positive by the laboratory, any other documentation concerning the MRO's verification process.

2. Should the employer change MROs for any reason, the MRO shall forward all records maintained pursuant to this rule to the new MRO within ten working days of receiving notice from the employer of the new MRO's name and address.

3. Any employer obtaining MRO services by contract, including a contract through a consortium, shall ensure that the contract includes a recordkeeping provision that is consistent with this paragraph, including requirements for transferring records to a new MRO.

B. *Access to Records.* The employer and the MRO shall permit the Administrator or the Administrator's representative to examine records required to be kept under this appendix and 49 CFR part 40. The Administrator may require that all records maintained by the service agent for the employer must be produced at the employer's place of business.

C. *Service Agents.* In accordance with 49 CFR part 40, service agents may maintain records for the employer. If requested by the Administrator or the Administrator's representative, all records maintained by the service agent for the employer must be produced at the service agent's place of business by the first day of a scheduled inspection or investigation of the employer's antidrug program.

D. *Release of Drug Testing Information.* An employer shall release information regarding an employee's drug testing results, evaluation, or rehabilitation to a third party in accordance with 49 CFR part 40. Except as required by law, this appendix, or 49 CFR part 40, no employer shall release employee information.

* * * * *

VII. *Medical Review Officer, Substance Abuse Professional, and Employer Responsibilities.* * * *

A. *Medical Review Officer (MRO).* The MRO must perform the functions set forth in 49 CFR part 40, Subpart G, and this appendix. The MRO shall not delay verification of the primary test result following a request for a split specimen test unless such delay is based on reasons other than the fact that the split specimen test result is pending. If the primary test result is verified as positive, actions required under this rule (e.g., notification to the Federal Air Surgeon, removal from safety-sensitive position) are not stayed during the 72-hour request period or pending receipt of the split specimen test result.

B. *Substance Abuse Professional (SAP).* The SAP must perform the functions set forth in 49 CFR part 40, Subpart O.

C. *Additional Medical Review Officer, Substance Abuse Professional, and Employer Responsibilities Regarding 14 CFR part 67 Airman Medical Certificate Holders.*

1. As part of verifying a confirmed positive test result, the MRO shall inquire, and the individual shall disclose, whether the individual is or would be required to hold a medical certificate issued under 14 CFR part 67 of this chapter to perform a safety sensitive function for the employer. If the individual answers in the negative, the MRO shall then inquire, and the individual shall disclose, whether the individual currently holds a medical certificate issued under 14 CFR part 67. If the individual answers in the affirmative to either question, the MRO must forward to the Federal Air Surgeon, at the address listed in paragraph 4, the name of the individual, along with identifying information and supporting documentation, within 12 working days after verifying a positive drug test result.

2. The SAP shall inquire, and the individual shall disclose, whether the individual is or would be required to hold a medical certificate issued under 14 CFR part 67 of this chapter to perform a safety sensitive function for the employer. If the individual answers in the affirmative, the SAP cannot recommend that the individual be returned to a safety-sensitive function that requires the individual to hold a 14 CFR part 67 medical certificate unless and until such individual has received a special issuance medical certificate from the Federal Air Surgeon. The receipt of a special issuance medical certificate does not alter any obligations otherwise required by 49 CFR part 40 or this appendix.

3. The employer must forward to the Federal Air Surgeon a copy of any report provided by the SAP, if available, regarding an individual for whom the MRO has provided a report to the Federal Air Surgeon under section VII.C.1 of this appendix, within 12 working days of the employer's receipt of the report.

4. All reports required under this section shall be forwarded to the Federal Air Surgeon, Federal Aviation Administration, Attn: Drug Abatement Division (AAM–800), 800 Independence Avenue, SW., Washington, DC 20591.

* * * * *

XII. *Testing Outside the Territory of the United States.* A. No part of the testing process (including specimen collection, laboratory processing, and MRO actions) shall be conducted outside the territory of the United States.

* * * * *

XIII. *Waivers from 49 CFR 40.21.* An employer subject to this part may petition the Drug Abatement Division, Office of Aviation Medicine, for a waiver allowing the employer to stand down an employee following a report of a laboratory confirmed positive drug test or refusal, pending the outcome of the verification process.

A. Each petition for a waiver must be in writing and include substantial facts and justification to support the waiver. Each petition must satisfy the substantive requirements for obtaining a waiver, as provided in 49 CFR 40.21.

B. Each petition for a waiver must be submitted to the Federal Aviation Administration, Office of Aviation Medicine, Drug Abatement Division (AAM–800), 800

Independence Avenue, SW., Washington, D.C. 20591.

C. The Administrator may grant a waiver subject to 49 CFR 40.21(d).

3. In appendix J to part 121:

A. In section I, redesignate paragraphs C through F as paragraphs D through G, add new paragraph C, and amend redesignated paragraph D by removing the definitions for ''Consortium'', ''*Refuse to submit*'', and by adding a definition for ''*Refusal to submit (to an alcohol test)*'' in alphabetical order;

B. In section III, revise paragraphs A, B heading, and B.2; remove paragraph D.4.(b); redesignate paragraphs D.4. (c) and D.4.(d) as paragraphs D.4. (b) and D.4. (c); revise redesignated paragraph D. 4. (c); and revise paragraphs E, and F;

C. In section IV, revise paragraphs A.1, A.2, and C.2, and remove paragraphs C.3 through C.8;

D. In section V, revise paragraph C.4 and add paragraph C.5; and

E. In section VI, revise the heading and paragraph C.

The revisions and additions read as follows:

Appendix J to Part 121—Alcohol Misuse Prevention Program

* * * * *

I. General

* * * * *

C. *Employer Responsibility.* As an employer, you are responsible for all actions of your officials, representatives, and service agents in carrying out the requirements of the DOT agency regulations.

D. *Definitions*

* * * * *

Refusal to submit (to an alcohol test) means that a covered employee engages in conduct specified in 49 CFR 40.261.

* * * * *

III. Tests Required

A. Pre-employment testing

As an employer, you may, but are not required to, conduct pre-employment alcohol testing under this part. If you choose to conduct pre-employment alcohol testing, you must comply with the following requirements:

1. You must conduct a pre-employment alcohol test before the first performance of safety-sensitive functions by every covered employee (whether a new employee or someone who has transferred to a position involving the performance of safety-sensitive functions).

2. You must treat all safety-sensitive employees performing safety-sensitive functions the same for the purpose of pre-employment alcohol testing (i.e., you must not test some covered employees and not others).

3. You must conduct the pre-employment tests after making a contingent offer of employment or transfer, subject to the employee passing the pre-employment alcohol test.

4. You must conduct all pre-employment alcohol tests using the alcohol testing procedures of 49 CFR Part 40.

5. You must not allow a covered employee to begin performing safety-sensitive functions unless the result of the employee's test indicates an alcohol concentration of less than 0.04.

B. Post-Accident Testing

* * * * *

2. If a test required by this section is not administered within 2 hours following the accident, the employer shall prepare and maintain on file a record stating the reasons the test was not promptly administered. If a test required by this section is not administered within 8 hours following the accident, the employer shall cease attempts to administer an alcohol test and shall prepare and maintain the same record. Records shall be submitted to the FAA upon request of the Administrator or his or her designee.

* * * * *

D. Reasonable Suspicion Testing

* * * * *

4. * * *

(c) No employer shall take any action under this appendix against a covered employee based solely on the employee's behavior and appearance in the absence of an alcohol test. This does not prohibit an employer with authority independent of this appendix from taking any action otherwise consistent with law.

E. Return to Duty Testing

Each employer shall ensure that before a covered employee returns to duty requiring the performance of a safety-sensitive function after engaging in conduct prohibited in § 65.46a, § 121.458, or § 135.253 of this chapter, the employee shall undergo a return to duty alcohol test with a result indicating an alcohol concentration of less than 0.02. The test cannot occur until after the SAP (See paragraph V. C. 4 of this appendix) has determined that the employee has successfully complied with the prescribed education and/or treatment.

F. Follow-up Testing

1. Each employer shall ensure that the employee who engages in conduct prohibited by § 65.46a, § 121.458, or § 135.253 of this chapter is subject to unannounced follow-up alcohol testing as directed by a substance abuse professional.

2. The number and frequency of such testing shall be determined by the employer's Substance Abuse Professional, but must consist of at least six tests in the first 12 months following the employee's return to duty.

3. The employer may direct the employee to undergo testing for drugs, if the SAP determines that drug testing is necessary for the particular employee. Any such drug testing shall be conducted in accordance with the provisions of 49 CFR part 40.

4. Follow-up testing shall not exceed 60 months after the date the individual begins to perform or returns to the performance of a safety-sensitive function. The SAP may terminate the requirement for follow-up testing at any time after the first six tests have been conducted, if the SAP determines that such testing is no longer necessary.

5. A covered employee shall be tested for alcohol under this paragraph only while the employee is performing safety-sensitive functions, just before the employee is to perform safety-sensitive functions, or just after the employee has ceased performing such functions.

* * * * *

IV. Handling of Test Results, Record Retention, and Confidentiality

A. Retention of Records

1. *General Requirement.* In addition to the records required to be maintained under 49 CFR part 40, employers must maintain records required by this appendix in a secure location with controlled access.

2. *Period of retention.*

(a) *Five years.*

(1) Copies of any annual reports submitted to the FAA under this appendix for a minimum of 5 years.

(2) Records of notifications to the Federal Air Surgeon of violations of the alcohol misuse prohibitions in this chapter by covered employees who hold medical certificates issued under part 67 of this chapter.

(3) Documents presented by a covered employee to dispute the result of an alcohol test administered under this appendix.

(4) Records related to other violations of § 65.46a, § 121.458, or § 135.253 of this chapter.

(b) *Two years.* Records related to the testing process and training required under this appendix.

(1) Documents related to the random selection process.

(2) Documents generated in connection with decisions to administer reasonable suspicion alcohol tests.

(3) Documents generated in connection with decisions on post-accident tests.

(4) Documents verifying existence of a medical explanation of the inability of a covered employee to provide adequate breath for testing.

(5) Materials on alcohol misuse awareness, including a copy of the employer's policy on alcohol misuse.

(6) Documentation of compliance with the requirements of section VI, paragraph A of this appendix.

(7) Documentation of training provided to supervisors for the purpose of qualifying the supervisors to make a determination concerning the need for alcohol testing based on reasonable suspicion.

(8) Certification that any training conducted under this appendix complies with the requirements for such training.

* * * * *

C. Access to Records and Facilities

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2. Each employer shall permit access to all facilities utilized in complying with the requirements of this appendix to the Secretary of Transportation or any DOT agency with regulatory authority over the employer or any of its covered employees.

V. Consequences for Employees Engaging in Alcohol-Related Conduct

* * * * *

C. Notice to the Federal Air Surgeon

* * * * *

4. No covered employee who is required to hold a medical certificate under part 67 of this chapter to perform a safety-sensitive duty shall perform that duty following a violation of this appendix until and unless the Federal Air Surgeon has recommended that the employee be permitted to perform such duties.

5. Once the Federal Air Surgeon has recommended under paragraph C.4. of this section that the employee be permitted to perform safety-sensitive duties, the employer cannot permit the employee to perform those safety-sensitive duties until the employer has ensured that the employee meets the return-to-duty requirements in accordance with 49 CFR part 40.

* * * * *

VI. Alcohol Misuse Information, Training, and Substance Abuse Professional

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C. Substance Abuse Professional Duties (SAP)

The SAP must perform the functions set forth in 49 CFR part 40, Subpart O and this appendix.

* * * * *

Issued in Washington, DC on April 11, 2001.

Jon L. Jordan,

Federal Air Surgeon.

[FR Doc. 01–9410 Filed 4–27–01; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Coast Guard

46 CFR Parts 4, 5, and 16

[USCG–2000–7759]

RIN 2115–AG00

Chemical Testing

AGENCY: Coast Guard, DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Coast Guard proposes to revise its chemical drug testing regulations to conform with the Department of Transportation's (DOT) final rule on drug testing procedures published in the **Federal Register** on December 19, 2000. The Coast Guard proposes to amend the regulations on Marine Casualties and Investigations and Chemical Testing by removing obsolete sections and sections duplicating the DOT regulations; adding new definitions; and modifying existing text to incorporate new terms and procedures contained in the DOT procedural requirements. This rulemaking would conform Coast Guard rules to the new requirements established by the December 19, 2000, DOT final rule.

DATES: Comments and related material must reach the Docket Management Facility on or before June 29, 2001.

ADDRESSES: To make sure that your comments and related material are not entered more than once in the docket, please submit them by only one of the following means:

(1) By mail to the Docket Management Facility (USCG–2000–7759), U.S. Department of Transportation, room PL–401, 400 Seventh Street SW., Washington, DC 20590–0001.

(2) By delivery to room PL–401 on the Plaza level of the Nassif Building, 400 Seventh Street SW., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The telephone number is 202–366–9329.

(3) By fax to the Docket Management Facility at 202–493–2251.

(4) Electronically through the Web Site for the Docket Management System at http://dms.dot.gov.

The Docket Management Facility maintains the public docket for this rulemaking. Comments and material received from the public, as well as documents mentioned in this preamble as being available in the docket, will become part of this docket and will be available for inspection or copying at room PL–401 on the Plaza level of the Nassif Building, 400 Seventh Street SW., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. You may also find this docket on the Internet at http://dms.dot.gov.

FOR FURTHER INFORMATION CONTACT: If you have questions on this proposed rule, call LT Jennifer Ledbetter, Coast Guard, telephone 202–267–0684. If you have questions on viewing or submitting material to the docket, call Dorothy Beard, Chief, Dockets, Department of Transportation, telephone 202–366–9329.

SUPPLEMENTARY INFORMATION:

Request for Comments

We encourage you to participate in this rulemaking by submitting comments and related material. If you do so, please include your name and address, identify the docket number for this rulemaking (USCG–2000–7759), indicate the specific section of this document to which each comment applies, and give the reason for each comment. You may submit your comments and material by mail, hand delivery, fax, or electronic means to the Docket Management Facility at the address under **ADDRESSES**; but please submit your comments and material by only one means. If you submit them by mail or hand delivery, submit them in an unbound format, no larger than 8½ by 11 inches, suitable for copying and electronic filing. If you submit them by mail and would like to know that they reached the Facility, please enclose a stamped, self-addressed postcard or envelope. We will consider all comments and material received during the comment period. We may change this proposed rule in view of them.

Public Meeting

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

Background and Purpose

On December 19, 2000 (65 FR 79462), the Department of Transportation (DOT) published a comprehensive revision to their drug and alcohol testing procedural rules (49 CFR Part 40). The revised Part 40 makes numerous changes in the way that drug and alcohol testing will be conducted in the future. While some provisions of the new rule will be made effective more quickly, as amendments to the existing Part 40, the entire revised part is scheduled to go into effect on August 1, 2001.

Part 40 is one element of a One-DOT set of regulations designed to deter and detect the use of illegal drugs and the misuse of alcohol by employees performing safety-sensitive transportation functions. DOT has published a summary of the major changes affecting the modal drug testing rules. These major changes include changes to the ''return to duty'' process (49 CFR 40.21); a requirement that all modes collect ''split specimens'' for drug testing (49 CFR 40.71 and subpart H); a new DOT process for employers to request waiver of the policy against stand down of employees pending completion of the test verification process (49 CFR 40.21); changes in qualifications and training requirements for testing personnel, medical review officers, and other technicians and substance abuse professionals (49 CFR 40.33,121 and 281); revised role of consortium/third-party administrators (C/TPA) (49 CFR 40.345 and 347); and a requirement that employers check

with previous employers for drug and alcohol testing results of applicants for safety sensitive jobs (49 CFR 40.25).

It is important that the six DOT agency rules that cover specific transportation industries be consistent with the revised Part 40 to avoid duplication, conflict, or confusion among DOT regulatory requirements. For these reasons, the Coast Guard is proposing revisions to our drug and alcohol testing regulations affected by Part 40. We intend to issue final versions of these ''conforming amendments'' in time to be effective on August 1, 2001, the same date that the revised Part 40 takes effect.

There are several changes that we propose to make to ensure consistency with the revised Part 40. The next section of this preamble discusses each of these items in turn.

Discussion of Proposed Rule

The Coast Guard proposes to revise its chemical drug testing regulations to conform with the Department of Transportation's (DOT) final rule on drug testing procedures published on December 19, 2000 **Federal Register** (65 FR 79462). This NPRM would conform Coast Guard rules to the new requirements established today by 49 CFR Part 40. The Coast Guard proposes to revise 46 CFR Parts 4, 5, and 16 by removing obsolete sections and sections duplicating the DOT regulations; adding new definitions; and modifying existing text to incorporate new terms and procedures contained in the DOT procedural requirements

Some new DOT requirements, such as the requirement for split specimens, can be implemented without a revision or conforming amendment to Coast Guard regulations. In this case, the requirement is in 49 CFR Part 40, and our regulations require employers to follow the procedures in that part when conducting required chemical tests for dangerous drugs.

The DOT revisions include new qualification and training requirements for Medical Review Officers (MROs) and Substance Abuse Professionals (SAPs). The Coast Guard is not proposing to change the current dual role of the MRO in the return-to-duty decision process. However, where an individual performs both SAP and MRO functions, Part 40 requires the individual to meet the qualification and training requirements for individuals performing each of these functions. We request comments on how these changes should be implemented by the Coast Guard. Should an MRO, in order to perform SAP functions, separately have to meet the SAP training requirements? Should fulfillment of the MRO training requirements satisfy the requirements for SAP training? Should the MRO, performing what are called SAP functions in Part 40, have to follow the same Part 40 procedures as SAPs in the return to duty process?

Other DOT changes, such as the minimum number of follow-up drug tests required during the first year after return to work in a safety-sensitive position, would require a conforming amendment to add this requirement to our existing regulatory text.

The following is a brief discussion of how the Coast Guard proposes to amend its regulations affected by DOT's final rule.

46 CFR Part 4

Throughout this part, we propose to update cross-references to point to the revised sections in 49 CFR Part 40 and the proposed revisions to 46 CFR Part 16.

46 CFR Part 5

Table 5.569. We propose to clarify the Table of Appropriate Orders in § 5.569 to distinguish between a Chemical test for dangerous drugs and for alcohol, because Part 40 treats them separately.

46 CFR Part 16

Definitions. We propose to change some definitions in § 16.105 by removing terms that are no longer used in 46 CFR Part 16 or 49 CFR Part 40; by revising terms to conform to the definitions in 49 CFR Part 40; and by adding terms found in 49 CFR Part 40 that are currently not found in 46 CFR Part 16.

New Sections

We would add § 16.107 *Waivers.* This section would contain existing waivers as well as the new DOT waiver for stand-down of crewmembers following a confirmed positive test.

We propose adding a § 16.109 describing DOT's new Public Interest Exclusion (PIE) in 49 CFR Part 40, subpart R.

We propose adding § 16.115 *Penalties.* to inform the public of the penalties prescribed by 46 U.S.C. 2115 for violation of dangerous drug and alcohol testing regulations.

We also propose adding § 16.203 *Employer responsibilities.* to restate DOT's general requirements for employers in 49 CFR Part 40, subpart B.

Revisions

Section 16.201 Application. In § 16.201 we propose revising paragraph (a) by requiring all chemical drug tests to be conducted as detailed in the procedures found in 49 CFR 40. We would revise paragraph (c) to require a sponsoring organization, like employers and prospective employers, to report a mariner's positive chemical drug test to the nearest Coast Guard Officer in Charge, Marine Inspection. We would update the cross-reference to § 16.370 in paragraph (e).

Section 16.207 Conflict with foreign laws. We propose to remove the section heading and paragraph (a) of this section because it is obsolete. The delayed date for testing vessels operating in foreign jurisdictions has expired and this paragraph is no longer needed.

Section 16.260 Records. We propose to revise § 16.260(a) by adding a cross-reference to DOT recordkeeping requirements in 49 CFR 40.333.

Subpart C. Most of the requirements in Subpart C are now covered in detail by the revised 49 CFR Part 40 and these sections are no longer needed in Part 16. In Subpart C, § 16.301, § 16.350(b), and § 16.370(d) are not covered in detail by 49 CFR Part 40. We propose to redesignate these paragraphs.

Section 16.370(d) currently requires an MRO to determine when an individual is ready to return to work after testing positive and allows the MRO to prescribe follow-up testing for up to 60 months as appropriate. In order to ensure intermodal consistency, DOT has prescribed a mandatory minimum number of follow-up tests after return to work. We propose to revise § 16.370(d) to include the new DOT requirement for a minimum of 6 follow-up drug tests during the first year after an individual returns to work. This new requirement would be in addition to all other Coast Guard requirements for rehabilitation and education following a positive drug test. Revised § 16.370(d) would be redesignated and we propose to remove the remaining provisions in Subpart C.

Regulatory Evaluation

DOT has assessed the economic impacts of this proposed rulemaking. Because this proposed rule makes conforming changes to align Coast Guard regulations with the revised 49 CFR Part 40, DOT determined that it has no additional costs to industry. Their analysis is published in their December 19, 2000, final rule, Procedures for Transportation Workplace Drug and Alcohol Testing Programs [OST 1999–6578].

Analyses Under Other Executive Orders

DOT also found no significant impact that would warrant further analysis of this rulemaking in accordance to the Small Business Regulatory Enforcement

Fairness Act of 1996, the Paperwork Reduction Act of 1995, Federalism impacts under Executive Order 13132, the Unfunded Mandates Reform Act of 1995, Enhancing the Intergovernmental Partnership under Executive Order 12875, Taking of Private Property under Executive Order 12630, Civil Justice Reform under Executive Order 12988, and the Protection of Children from Environmental Health Risks and Safety Risks under Executive Order 13045.

It is well settled that States are precluded from regulation in categories that are reserved for regulation by the Coast Guard. It is also well settled, now, that all of the categories covered in 46 U.S.C. 3306, 3703(a), 7101 and 8101 (design, construction, repair, alteration, maintenance, operation, equipping, personnel qualification and manning of vessels) as well as casualty reporting and any other categories where Congress intended the Coast Guard to be the sole source of a vessel's obligations are within the field foreclosed from State regulation. (See the decision of the Supreme Court in the consolidated cases of *United States* v. *Locke and Intertanko* v. *Locke, 529 U.S. 89, 120 S.Ct 1135 (March 6, 2000).* Rules regarding drug and alcohol testing for merchant marine personnel fall into the covered category of personnel certification rules, with the Coast Guard intended to be the sole source of those rules, thereby precluding States from regulation. Because States may not promulgate rules within these categories, preemption is not an issue under Executive Order 13132.

Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Public Law 104–121), we want to assist small entities in understanding this proposed rule so that they can better evaluate its effects on them and participate in the rulemaking. If the rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please consult LT Jennifer Ledbetter, Coast Guard, telephone 202–267–0684.

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

Environment

We considered the environmental impact of this proposed rule and concluded that, under figure 2–1, paragraphs (34)(a), of Commandant Instruction M16475.lC, this rule is categorically excluded from further environmental documentation. The proposed rule would be promulgated to comply with new DOT regulations. The promulgation of new regulations by the Coast Guard would be editorial or procedural in nature. A ''Categorical Exclusion Determination'' is available in the docket where indicated under **ADDRESSES.**

List of Subjects

46 CFR Part 4

Administrative practice and procedure, Alcohol abuse, Drug abuse, Drug testing, Investigations, Marine safety, National Transportation Safety Board, Nuclear vessels, Reporting and recordkeeping requirements, Safety, Transportation.

46 CFR Part 5

Administrative practice and procedure, Alcohol abuse, Drug abuse, Investigations, Seamen.

46 CFR Part 16

Drug testing, Marine safety, Penalties, Reporting and recordkeeping requirements, Safety, Transportation.

For the reasons discussed in the preamble, the Coast Guard proposes to amend 46 CFR Parts 4, 5, and 16 as follows:

PART 4—MARINE CASUALTIES AND INVESTIGATIONS

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

Authority: 33 U.S.C. 1231; 43 U.S.C. 1333; 46 U.S.C. 2103, 2306, 6101, 6301, 6305; 50 U.S.C. 198; 49 CFR 1.46. Authority for subpart 4.40: 49 U.S.C. 1903(a)(1)(E); 49 CFR 1.46.

§ 4.06 [Amended]

2. In § 4.06–1(f) remove ''and 16.207''.

3. In § 4.06–20(b) revise ''§ 16.330 of this part'' to read ''49 CFR part 40''.

4. In § 4.06–40(b) revise ''§ 16.310'' to read ''§ 16.113'' and revise ''§ 16.320'' to read ''49 CFR part 40, subpart D,''.

5. In § 4.06–50(b) in the first sentence revise ''49 CFR 40.33'' to read ''49 CFR 40.121'' and in the second sentence revise ''49 CFR 40.33'' to read ''49 CFR part 40, subpart G,''.

PART 5—MARINE INVESTIGATION REGULATIONS—PERSONNEL ACTION

6. The citation of authority for part 5 continues to read as follows:

Authority: 46 U.S.C. 2103, 7101, 7301, and 7701; 49 CFR 1.46.

7. In § 5.569 in Table 5.569 revise the entry for ''Violation of Regulation:'' to read as follows:

§ 5.569 Selection of an appropriate order.

* * * * *

TABLE 5.569.—SUGGESTED RANGE OF AN APPROPRIATE ORDER

Type of offense	Range of order (in months)
* * * * * * *	
Violation of Regulation:	
Refusal to take chemical drug test	12–24.
Refusal to take required alcohol test	12–24.
* * * * * * *	

PART 16—CHEMICAL TESTING

8. The citation of authority for part 16 continues to read as follows:

Authority: 46 U.S.C. 2103, 3306, 7101, 7301, and 7701; 49 CFR 1.46.

9. In § 16.105 remove the definition for ''Dangerous drug level'', ''Intoxicant'', and ''Medical Review Officer'', revise the definitions for ''Fails a chemical test for dangerous drugs'' and ''Refuse to submit'', and add in alphabetical order definitions for ''Consortium/Third party administrator'', ''Medical Review Officer (MRO)'', ''Service agent'', and ''Stand down'' to read as follows:

§ 16.105 Definitions of terms used in this part.

* * * * *

Consortium/Third party administrator (C/TPA) means a service agent who provides or coordinates the provision of a variety of drug and alcohol testing services to employers. C/TPAs typically perform administrative tasks concerning the operation of the employers' drug and alcohol testing programs. This term includes, but is not limited to, groups of employers who join together to administer, as a single entity, the DOT drug and alcohol testing programs of its members.

* * * * *

Fails a chemical test for dangerous drugs means that the result of a chemical test conducted in accordance with 49 CFR 40 was reported as ''positive'' by a Medical Review Officer because the chemical test indicated the presence of a dangerous drug at a level equal to or exceeding the levels established in 49 CFR part 40.

* * * * *

Medical Review Officer (MRO) means a person who is a licensed physician and who is responsible for receiving and reviewing laboratory results generated by an employer's drug testing program and evaluating medical explanations for certain drug test results.

* * * * *

Refuse to submit means you refused to take a drug test as set out in 49 CFR 40.191.

* * * * *

Service agent means any person or entity that provides services specified under this part or 49 CFR part 40 to employers and/or crewmembers in connection with DOT drug and alcohol testing requirements. This includes, but is not limited to, collectors, BATs and STTs, laboratories, MROs, substance abuse professionals, and C/TPAs. To act as service agents, persons and organizations must meet the qualifications set forth in applicable sections of 49 CFR part 40. Service agents are not employers for purposes of this part.

* * * * *

Stand-down means the practice of temporarily removing a crewmember from the performance of safety-sensitive functions based only on a report from a laboratory to the MRO of a confirmed positive test for a drug or drug metabolite, an adulterated test, or a substituted test, before the MRO has completed verification of the test result.

10. Add § 16.107 to subpart A to read as follows:

§ 16.107 Waivers.

(a) To obtain a waiver from 49 CFR 40.21 or from this part you must send your request for a waiver to the Commandant (G–MOA).

(b) Employers for whom compliance with this part would violate the domestic laws or policies of another country may request an exemption from the drug testing requirements of this part by submitting a written request to Commandant (G–MOA), at the address listed in § 16.500(a).

(c) An employer may request a waiver from the Coast Guard in order to stand-down a crewmember following the Medical Review Officer's receipt of a laboratory report of a confirmed positive test for a drug or drug metabolite, an adulterated test, or a substituted test pertaining to the crewmember. Consistent with 49 CFR 40.21, the request for a waiver must include as a minimum: information about the organization and the proposed written company policy concerning stand-down. Specific elements required in the written waiver request are contained in 49 CFR 40.21(c).

11. Add § 16.109 to subpart A to read as follows:

§ 16.109 Public Interest Exclusion (PIE).

Service agents are subject to Public Interest Exclusion (PIE) actions in accordance with 49 CFR part 40, subpart R. The PIE is an action which excludes from participation in DOT's drug and alcohol testing program any service agent who, by serious noncompliance with this part or with 49 CFR part 40, has shown that it is not currently acting in a responsible manner.

12. Add § 16.115 to subpart A to read as follows:

§ 16.115 Penalties.

Violation of this part is subject to the civil penalties set forth in 46 U.S.C. 2115. Any person who fails to implement or conduct, or who otherwise fails to comply with the requirements for chemical testing for dangerous drugs as prescribed under this part, is liable to the United States Government for a civil penalty of not more than $5,000 for each violation. Each day of a continuing violation will constitute a separate violation.

13. In § 16.201 revise paragraphs (a), (c), and (e), and add paragraph (f) to read as follows:

§ 16.201 Application.

(a) Chemical testing of personnel must be conducted as required by this subpart and in accordance with the procedures detailed in 49 CFR part 40.

* * * * *

(c) If an individual holding a license, certificate of registry, or merchant mariner's document fails a chemical test for dangerous drugs, the individual's employer, prospective employer, or sponsoring organization must report the test results in writing to the nearest Coast Guard Officer in Charge, Marine Inspection (OCMI). The individual must be denied employment as a crewmember or must be removed from duties which directly affect the safe operation of the vessel as soon as practicable and is subject to suspension and revocation proceedings against his or her license, certificate of registry, or merchant mariner's document under 46 CFR part 5.

* * * * *

(e) An individual who has failed a required chemical test for dangerous drugs may not be re-employed aboard a vessel until the requirements of paragraph (g) of this section and 46 CFR Part 5, if applicable, have been satisfied.

(f) Medical Review Officers (MRO) may report positive test results of unemployed, self-employed, or individual mariners to the Coast Guard.

14. Add § 16.203 to read as follows:

§ 16.203 Employer responsibilities.

(a) Employers must ensure that they and their crewmembers meet the requirements of this part.

(b) Employers are responsible for all the actions of their officials, representatives, and agents in carrying out the requirements of this part.

(c) All agreements and arrangements, written or unwritten, between and among employers and service agents concerning the implementation of DOT drug testing requirements are deemed, as a matter of law, to require compliance with all applicable provisions of this part and DOT agency drug testing regulations. Compliance with these provisions is a material term of all such agreements and arrangements.

§ 16.207 [Removed]

15. Remove § 16.207.

16. In § 16.260 revise paragraph (a) to read as follows:

§ 16.260 Records.

(a) Employers must maintain records of chemical tests as provided in 49 CFR 40.333 and must make these records available to Coast Guard officials upon request.

* * * * *

§ 16.301 [Redesignated as § 16.113]

17. Redesignate § 16.301 as § 16.113 and transfer it to subpart A.

§ 16.310 [Removed]

18. Remove § 16.310.

§ 16.320 [Removed]

19. Remove § 16.320.

§ 16.330 [Removed]

20. Remove § 16.330.

§ 16.340 [Removed]

21. Remove § 16.340.

22. In newly redesignated § 16.113, revise the section heading, designate the existing text as paragraph (a), and add paragraph (b) to read as follows:

§ 16.113 Chemical drug testing.

* * * * *

(b) Each specimen collected in accordance with this part will be tested, as provided in 49 CFR 40.85, for the following:

(1) Marijuana;
(2) Cocaine;
(3) Opiates;
(4) Phencyclidine (PCP); and
(5) Amphetamines.

§ 16.350 [Removed]

23. Remove § 16.350.

§ 16.360 [Removed]

24. Remove § 16.360.

25. Redesignate § 16.370(d) as § 16.201(g) and revise it to read as follows:

§ 16.201 Application.

* * * * *

(g) Before an individual who has failed a required chemical test for dangerous drugs may return to work aboard a vessel, the MRO must determine that the individual is drug-free and the risk of subsequent use of dangerous drugs by that person is sufficiently low to justify his or her return to work. In addition, the individual must agree to be subject to increased unannounced testing—

(1) For a minimum of six (6) tests in the first year after the individual returns to work as required in 49 CFR part 40; and

(2) For any additional period as determined by the MRO up to a total of 60 months.

§ 16.370 [Removed]

26. Remove § 16.370.

§ 16.380 [Removed]

27. Remove § 16.380.

28. Remove and reserve subpart C.

Dated: November 22, 2000.

Joseph J. Angelo,

Director of Standards, Acting Assistant Commandant for Marine Safety and Environmental Protection.

[FR Doc. 01–9411 Filed 4–27–01; 8:45 am]

BILLING CODE 4910–15–U

DEPARTMENT OF TRANSPORTATION

Research and Special Programs Administration

49 CFR Part 199

[Docket No. RSPA–00–8417; Notice 1]

RIN 2137–AD55

Drug and Alcohol Testing for Pipeline Facility Employees

AGENCY: Research and Special Programs Administration (RSPA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: We propose to conform the pipeline facility drug and alcohol testing regulations with corresponding DOT regulations (Procedures for Transportation Workplace Drug and Alcohol Testing Programs). We also propose miscellaneous changes to the pipeline facility drug and alcohol testing regulations to make them easier to apply and understand. The proposals are intended to ensure the pipeline facility drug and alcohol testing regulations are clear and consistent with the DOT regulations.

DATES: Persons interested in submitting written comments on the proposed rules must do so by June 14, 2001. Late filed comments will be considered so far as practicable.

ADDRESSES: You may submit written comments by mailing or delivering an original and two copies to the Dockets Facility, U.S. Department of Transportation, Room PL–401, 400 Seventh Street, SW., Washington, DC 20590–0001. The Dockets Facility is open from 10:00 a.m. to 5:00 p.m., Monday through Friday, except on Federal holidays when the facility is closed. Or you may submit written comments to the docket electronically at the following Web address: http://dms.dot.gov. See the **SUPPLEMENTARY INFORMATION** section for additional filing information.

FOR FURTHER INFORMATION CONTACT: L. M. Furrow by phone at 202–366–4559, by fax at 202–366–4566, by mail at U.S. Department of Transportation, 400 Seventh Street, SW., Washington, DC, 20590, or by e-mail at buck.furrow@rspa.dot.gov.

SUPPLEMENTARY INFORMATION:

Filing Information, Electronic Access, and General Program Information

All written comments should identify the docket and notice numbers stated in the heading of this notice. Anyone who wants confirmation of mailed comments must include a self-addressed stamped postcard. To file written comments electronically, after logging onto http://dms.dot.gov, click on ''Electronic Submission.'' You can read comments and other material in the docket at this Web address: http://dms.dot.gov. General information about our pipeline safety program is available at this address: http://ops.dot.gov.

Background

On April 29, 1996, DOT issued an advance notice of proposed rulemaking (61 FR 18713) concerning changes to its regulations called Procedures for Transportation Workplace Drug and Alcohol Testing Programs (49 CFR Part 40). These regulations prescribe requirements applicable to all employers who must conduct drug and alcohol testing under separate regulations administered by DOT agencies such as RSPA. Subsequently, on December 9, 1999, DOT issued a notice of proposed rulemaking (64 FR 69076) to change Part 40 comprehensively. The Final Rule document revising Part 40 has now been published (65 FR 79462; December 19, 2000). Consequently, we are proposing to amend the drug and alcohol testing regulations for pipeline facilities (49 CFR Part 199) to conform them to revised Part 40.

Common Preamble

Elsewhere is today's **Federal Register**, DOT is publishing a preamble related to the notices of proposed rulemaking that RSPA and other DOT agencies are publishing to conform their drug and alcohol testing regulations to revised Part 40. This common preamble provides an overview of the issues involved.

Proposed Amendments to Part 199

Structure and Organization

When the rules in Subpart B-Alcohol Misuse Prevention Program were added

to Part 199, the drug testing requirements in §§ 199.1 through 199.25 were designated as Subpart A. However, § 199.1, ''Scope and compliance,'' § 199.3, ''Definitions,'' and § 199.5, ''DOT procedures,'' are relevant to Part 199 in general. So we propose to designate § 199.1 through § 199.5 as Subpart A—General. Sections 199.7 through 199.25 would be designated as Subpart B—Drug Testing and redesignated as §§ 199.101 through 199.119, respectively. The heading ''Subpart B-Alcohol Misuse Prevention Program'' would be redesignated as ''Subpart C—Alcohol Misuse Prevention Program.''

Another section that relates to Part 199 in general is § 199.207, ''Preemption of state and local laws.'' We propose to transfer this section to Subpart A—General as § 199.7.

In § 199.1, the first sentence of paragraph (a) would be revised to state that the scope of Part 199 includes both drug and alcohol testing. And the second sentence of paragraph (a), concerning the exclusion from Part 199 of master meter and petroleum gas systems, would be clarified and transferred to new § 199.2. In view of these proposed changes concerning the scope and applicability of Part 199 in general, § 199.201, concerning the applicability of Subpart B, would be removed as superfluous.

Sections 199.1(b) and 199.213, which provide compliance dates, would be removed because the dates have expired.

The first sentence of § 199.5 now provides that the ''anti-drug program'' required by Part 199 must be conducted according to the requirements of Part 199 and DOT Procedures (or 49 CFR part 40). To make this sentence apply to the Part 199 alcohol program as well, we propose to change ''anti-drug program'' to ''anti-drug and alcohol programs.'' In view of this proposed change, § 199.203, which makes DOT Procedures applicable to alcohol tests under Part 199, would be removed as superfluous. The definition of ''DOT Procedures'' in § 199.3 would be revised similarly.

Under § 199.9(b)(2) [or redesignated § 199.103(b)(2)], a medical review officer's recommendation for return to duty is one of three conditions an employee must meet to escape the consequences of failing or refusing a drug test. We propose to make this condition consistent with § 199.11(e) [or redesignated § 199.105(e)] and DOT Procedures. First, the reference to the medical review officer's recommendation for return to duty would be deleted. Under Part 40 substance abuse professionals, not medical review officers, play the lead role in the return to duty process. Secondly, this point would be emphasized by adding that a substance abuse professional must have determined that the employee has successfully completed any required education or treatment.

Sections 199.225(a)(2)(ii) and 199.225(b)(4)(ii) require operators to submit certain post-accident and reasonable-suspicion test records for the years 1995, 1996, and 1997. Because the deadlines for compliance with these reporting requirements have expired, we propose to remove §§ 199.225(a)(2)(ii) and 199.225(b)(4)(ii).

Definitions

The definitions in Part 199 are now stated in two sections: §§ 199.3 and 199.205. To make it easier to find and use Part 199 definitions and to eliminate unnecessary repetition within Part 199 and with Part 40, we propose to transfer to § 199.3 those definitions in § 199.205 that are not duplicated in either § 199.3 or Part 40. Section 199.205 would then be removed.

Section 199.205 contains definitions of the following terms that also are defined in § 199.3: accident, administrator, covered employee, covered function, operator, and state agency. The proposed transfer would make this repetition unnecessary. In addition, § 199.205 defines the following terms that also are defined in 49 CFR 40.3: alcohol, alcohol concentration, alcohol use, confirmation test, consortium, DOT agency, employer, and screening test. Because § 199.5 provides that terms and concepts used in Part 199 have the same meaning as in Part 40, it is unnecessary to transfer these definitions to § 199.3. Consequently, only definitions of the following two terms in § 199.205 would be transferred to § 199.3: performing a covered function, and refuse to submit to an alcohol test. The definition of ''performing a covered function'' would be revised for clarity.

The definitions of ''covered employee'' and ''covered function'' included in §§ 199.3 and 199.205 may be unclear because similar terms are used in both definitions. So we propose to clarify these definitions. The term ''covered employee'' (and ''employee'' or ''individual to be tested'') would be defined as a person who performs a covered function, including persons employed by operators, contractors engaged by operators, and persons employed by such contractors. The term ''covered function'' would be defined as an operations, maintenance, or emergency-response function regulated by [49 CFR] part 192, 193, or 195 that is performed on a pipeline or LNG facility. The statement in the present definition of ''covered employee'' that covered functions do not include clerical, truck driving, accounting, or other functions not subject to part 192, 193, or 195 would be deleted as unnecessary.

The definition of ''prohibited drug'' in § 199.3 would be revised by removing the second sentence, which authorizes operators, under certain conditions, to test for drugs other than marijuana, cocaine, opiates, amphetamines, and phencyclidine. This revision is necessary because specimens collected for purposes of drug testing under Part 199 may not be tested for any other drugs (49 CFR 40.85). As indicated by 49 CFR 40.13, operators may collect other specimens to test for other drugs.

The definition of ''refuse to submit'' in § 199.3 would be clarified to explain that it applies equally to the terms ''refuse'' and ''refuse to take'' a drug test. Moreover, the definition would be revised to refer to DOT procedures on refusal to take a drug test (49 CFR 40.191(b)). Under these procedures, refusal to take a drug test includes submission of an adulterated or substituted specimen. The definition would be further revised to include a similar definition proposed to be transferred from § 199.205 regarding alcohol testing and to refer to DOT procedures on refusal to take an alcohol test (49 CFR 40.261).

Enforcing DOT Procedures

Part 199 refers to the drug and alcohol testing procedures in Part 40 as ''DOT Procedures'' and incorporates these procedures by reference (§ 199.5). Our practice is to enforce compliance with Part 40 as if it were a Part 199 regulation. To remove any uncertainty about this enforcement practice, we propose to amend § 199.5 to make it clear that a violation of Part 40 is a violation of Part 199. In addition, to further the enforceability of Part 40, we propose to remove from § 199.5 the statement that in the event of conflict with Part 40, Part 199 prevails. If there is a substantive difference between Part 40 and Part 199, we will state the difference explicitly in Part 199.

Drug Tests Required

DOT Procedures (49 CFR 40.61) cover the appropriate steps to collect urine specimens from employees who need medical attention. Moreover, § 40.61(b)(3) specifically forbids collection from an unconscious employee. Therefore, we propose to delete the following sentence from

§ 199.11(b) [or redesignated § 199.105(b)]: ''If an employee is injured, unconscious, or otherwise unable to evidence consent to the drug test, all reasonable steps must be taken to obtain a urine sample.''

Section 199.11(e) prescribes the role of a substance abuse professional in returning to duty a covered employee who refuses or fails a drug test. For consistency with Part 40, § 199.11(e) [or redesignated § 199.105(e)] would be revised to refer to DOT Procedures.

Medical Review Officers

Section 199.15(b) loosely defines the qualifications required of a medical review officer (MRO). To assure consistency and compliance with the detailed MRO qualifications stated in 49 CFR 40.121, we propose to revise § 199.15(b) [or redesignated § 199.109(b)] to refer to those qualifications.

Section 199.15(c) states a few functions of medical review officers, focusing primarily on the review of positive and negative test results. In contrast, Part 40 covers MRO functions comprehensively, including the review of reports of tests not performed for reasons including adulterated or substituted specimens. Therefore, we propose to amend § 199.15(c) [or redesignated § 199.109(c)] to state that the MRO must provide functions for the operator as required by DOT Procedures.

Section 199.15(d)(1) provides that MROs are not required to take further action if they determine there is a legitimate medical explanation for a confirmed positive test result other than the unauthorized use of prohibited drugs. However, Part 40 does require MROs to take further action in these circumstances. Under § 40.163, MROs must report all test results to employers. Also, § 199.15(d)(2) is jumbled and could be misinterpreted to require MROs to refer individuals with verified positive test results to a substance abuse professional, when under Part 40 employers make such referrals. So we propose to amend § 199.15(d) [or redesignated § 199.109(d)] to state that MROs must report all test results to operators in accordance with DOT Procedures. Because other Part 40 requirements describe what employers must do after receiving MRO reports, the existing provisions in § 199.15(d) regarding further proceedings and evaluation by a substance abuse professional would be deleted as superfluous.

Retention of Samples and Retesting

Under § 199.17(b), if an MRO determines there is no legitimate medical explanation for a confirmed positive test result other than the unauthorized use of a prohibited drug, the ''original sample'' must be retested if the employee makes a written request for retesting within 60 days of receipt of the final test result from the MRO. This provision is inconsistent with 49 CFR 40.153(b), which allows employees only 72 hours to make a timely request for an additional test, and the request need not be in writing. So we propose to revise § 199.17(b) [or redesignated § 199.111(b)] to require additional testing if the employee makes a timely request for additional testing according to DOT Procedures.

Revised Part 40 requires split specimen collections (49 CFR 40.71(a)). And the reference to DOT Procedures in §§ 199.5 and 199.7 will make split specimen collections mandatory under Part 199. Under the Part 40 split specimen collection process, employers divide each collected urine specimen into a primary specimen and a split specimen. If a covered employee requests additional testing, Part 40 requires that the test be done only on the split specimen (49 CFR 40.153).

In view of this requirement, we are concerned about the appropriateness of the term ''original sample'' in § 199.17(b). We believe ''original sample'' could be misunderstood to mean ''primary specimen.'' We propose to amend § 199.17(b) [or redesignated § 199.111(b)] to indicate that the split specimen must be tested when a covered employee requests additional testing. Also, since the concept of ''retesting'' is no longer suitable under this section, the term would be dropped and replaced by ''testing'' or ''additional testing''.

Pre-Employment Alcohol Testing

Part 199 does not require operators to conduct pre-employment tests for alcohol. However, § 199.209 makes it clear that Part 199 does not affect the authority of operators to conduct tests for alcohol that are not required by Part 199. We are proposing to amend § 199.209 to require that if operators conduct pre-employment tests for alcohol, the tests must be done according to DOT Procedures.

Stand-Down Waivers

Revised Part 40 prohibits employers from temporarily removing employees from performing safety-sensitive functions based on an unverified positive drug test result (49 CFR 40.21(a)). At the same time, Part 40 permits employers to petition DOT agencies to waive this stand-down restriction (49 CFR 40.21(b)). To facilitate this waiver process, we are proposing a new procedural rule, § 199.9, for operators to follow when seeking from RSPA a waiver of the Part 40 stand-down restriction. The proposed rule advises operators how they should prepare stand-down waiver requests and to whom the requests should be sent.

Checking Previous Test Results

Under revised Part 40, employers may not hire or use any person in a safety-sensitive position unless they seek to obtain from previous DOT-regulated employers of the person certain drug and alcohol testing information (49 CFR 40.25). To call attention to this new requirement, we propose to refer to it in new § 199.11. In addition, consistent with § 40.25, we propose to require operators to remove employees from covered functions, pending successful completion of the return-to-duty process, if after reviewing the information the operator learns the employee violated a DOT agency drug or alcohol testing rule.

Release of Information

New Part 40 authorizes employers to release employee-specific drug and alcohol testing information without the employee's consent in connection with certain legal proceedings (§ 40.323). However, § 199.23(b) does not permit releases of drug information in legal proceedings without employee consent. And although § 199.231(g) permits releases of alcohol information without employee consent in certain legal proceedings, § 199.231(g) is not consistent with § 40.323 in several respects. In addition, § 199.23(b) limits the drug test information operators must furnish RSPA or a state pipeline safety agency regardless of employee consent to information related to accident investigations. A similar limitation is not in § 199.231(d) governing the release to RSPA and state agencies of alcohol test information, nor is it in § 40.331 governing the release of name-specific alcohol and drug information to DOT and state agencies. Consequently, we propose to amend § 199.23(b) [redesignated § 199.117(b)] to provide that operators may or are required to release information without the employee's consent as provided by DOT Procedures. Section 199.231(g) would be amended to permit releases without consent in legal proceedings as provided by DOT Procedures.

Regulatory Analyses and Notices

Executive Order 12866 and DOT Policies and Procedures

RSPA does not consider this proposed rulemaking to be a significant regulatory action under Section 3(f) of Executive Order 12866 (58 FR 51735; Oct. 4, 1993). Therefore, the Office of Management and Budget (OMB) has not received a copy of this rulemaking to review. RSPA also does not consider this proposed rulemaking to be significant under DOT regulatory policies and procedures (44 FR 11034: February 26, 1979).

The proposed rules are non-significant because they would merely change Part 199 to conform it to revised 49 CFR part 40, which has already had extensive comment and analysis. The economic impacts of the underlying Part 40 changes were analyzed in connection with the Part 40 rulemaking, and the proposed rules would not have any incremental economic impacts on their own. Regarding the clarifying and organizational changes we are proposing that are not directly due to revised Part 40, our assessment of these changes is that the economic impact would be too minimal to warrant the preparation of a Regulatory Evaluation.

Regulatory Flexibility Act

The proposed rules are consistent with revised Part 40 and have no incremental economic impacts of their own. Therefore, based on the facts available about the anticipated impacts of this proposed rulemaking, I certify, pursuant to Section 605 of the Regulatory Flexibility Act (5 U.S.C. 605), that the proposed rules, if adopted as final, would not have a significant impact on a substantial number of small entities.

Paperwork Reduction Act

All the information collection requirements of Part 40 have been analyzed and approved by OMB. These proposed rules would impose no information collection requirements that have not already been reviewed in the Part 40 rulemaking. So no further Paperwork Reduction Act review is necessary.

Executive Order 12612

The proposed rules would not have a substantial direct effect on states, on the relationship between the Federal Government and the states, or on the distribution of power and responsibilities among the various levels of Government. Therefore, in accordance with Executive Order 12612 (52 FR 41685; October 30, 1987), we have determined that the proposed rules would not have sufficient federalism implications to warrant preparation of a federalism assessment.

Executive Order 13084

The proposed rules have been analyzed in accordance with the principles and criteria contained in Executive Order 13084, ''Consultation and Coordination with Indian Tribal Governments.'' Because the proposed rules would not significantly or uniquely affect the communities of the Indian tribal governments and would not impose substantial direct compliance costs, the funding and consultation requirements of Executive Order 13084 do not apply.

Executive Order 13132

Revised Part 40 has been analyzed in accordance with the principles and criteria contained in Executive Order 13132 (''Federalism''). The proposed rules have no incremental Federalism impacts for purposes of Executive Order 13132. So no further analysis is needed for Federalism purposes.

Impact on Business Processes and Computer Systems

We do not want to impose new requirements that would mandate business process changes when the resources necessary to implement those requirements would otherwise be applied to ''Y2K'' or related computer problems. The proposed rules would not mandate business process changes or require modifications to computer systems. Because the proposed rules would not affect the ability of organizations to respond to those problems, we are not proposing to delay the effectiveness of the requirements.

Unfunded Mandates Reform Act of 1995

The proposed rules would not impose unfunded mandates under the Unfunded Mandates Reform Act of 1995. The rules would not result in costs of $100 million or more to either state, local, or tribal governments, in the aggregate, or to the private sector, and would be the least burdensome alternative that achieves the objective of the rules.

National Environmental Policy Act

We have analyzed the proposed rules for purposes of the National Environmental Policy Act (42 U.S.C. 4321 *et seq.*). Because the proposed rules parallel present requirements of revised Part 40 or involve clarifying or organizational changes, we have preliminarily determined that the proposed rules would not significantly affect the quality of the human environment. A final determination on environmental impact will be made after the end of the comment period.

List of Subjects in 49 CFR Part 199

Drug testing, Pipeline safety, Reporting and recordkeeping requirements, Safety, Transportation.

In consideration of the foregoing, we propose to amend 49 CFR Part 199 as follows:

PART 199—DRUG AND ALCOHOL TESTING

1. The authority citation for part 199 continues to read as follows:

Authority: 49 U.S.C. 5103, 60102, 60104, 60108, 60117, and 60118; 49 CFR 1.53.

2. The heading for subpart A is revised to read as follows:

Subpart A—General

3. In § 199.1, paragraph (a) is revised, paragraph (b) is removed, and paragraphs (c) and (d) are redesignated as paragraphs (b) and (c), respectively, to read as follows:

§ 199.1 Scope and compliance.

(a) This part requires operators of pipeline facilities subject to part 192, 193, or 195 of this chapter to test covered employees for the presence of prohibited drugs and alcohol.

* * * * *

4. Section 199.2 is added to read as follows:

§ 199.2 Applicability.

This part does not apply to covered functions performed on—

(a) Master meter systems, as defined in § 191.3 of this chapter; or

(b) Pipeline systems that transport only petroleum gas or petroleum gas/air mixtures.

5. In § 199.3, the introductory text is revised, the definitions of ''Covered employee'' and ''Refuse to submit'' are removed, the definitions of ''Covered function,'' ''DOT Procedures,'' and ''Prohibited drug'' are revised, and definitions of ''Covered employee, employee, or individual to be tested,'' ''Performs a covered function,'' and ''Refuse to submit, refuse, or refuse *to take* are added in alphabetical order, to read as follows:

§ 199.3 Definitions.

As used in this part—

* * * * *

Covered employee, employee, or *individual to be tested* means a person who performs a covered function, including persons employed by operators, contractors engaged by

operators, and persons employed by such contractors.

Covered function means an operations, maintenance, or emergency-response function regulated by part 192, 193, or 195 of this chapter that is performed on a pipeline or LNG facility.

DOT Procedures means the Procedures for Transportation Workplace Drug and Alcohol Testing Programs published by the Office of the Secretary of Transportation in part 40 of this title.

* * * * *

Performs a covered function includes actually performing, ready to perform, or immediately available to perform a covered function.

* * * * *

Prohibited drug means any of the following substances specified in Schedule I or Schedule II of the Controlled Substances Act (21 U.S.C. 812): marijuana, cocaine, opiates, amphetamines, and phencyclidine (PCP).

* * * * *

Refuse to submit, refuse, or *refuse to take* means behavior consistent with DOT Procedures concerning refusal to take a drug test or refusal to take an alcohol test.

* * * * *

6. Section 199.5 is revised to read as follows:

§ 199.5 DOT procedures.

The anti-drug and alcohol programs required by this part must be conducted according to the requirements of this part and DOT Procedures. Terms and concepts used in this part have the same meaning as in DOT Procedures. Violations of DOT Procedures with respect to anti-drug and alcohol programs required by this part are violations of this part.

6a. Subpart B is redesignated as subpart C.

7. Existing §§ 199.7, 199.9, 199.11, 199.13, 199.15, 199.17, 199.19, 199.21, 199.23, and 199.25 are redesignated as §§ 199.101, 199.103, 199.105, 199.107, 199.109, 199.111, 199.113, 199.115, 199.117, and 199.119, respectively, in new subpart B, and a subpart B heading is added to read as follows:

Subpart B—Drug Testing

8. New § 199.9 is added to subpart A to read as follows:

§ 199.9 Stand-down waivers.

(a) Each operator who seeks a waiver under § 40.21 of this title from the stand-down restriction shall submit an application for waiver in duplicate to the Associate Administrator for Pipeline Safety, Research and Special Programs Administration, Department of Transportation, Washington, DC 20590.

(b) Each application must:

(1) Identify § 40.21 of this title as the rule from which the waiver is sought;

(2) Explain why the waiver is requested and describe the employees to be covered by the waiver;

(3) Contain the information required by § 40.21 of this title and any other information or arguments available to support the waiver requested; and

(4) Unless good cause is shown in the application, be submitted at least 60 days before the proposed effective date of the waiver.

(c) No public hearing or other proceeding is held directly on an application before its disposition under this section. If the Associate Administrator determines that the application contains adequate justification, he or she grants the waiver. If the Associate Administrator determines that the application does not justify granting the waiver, he or she denies the application. The Associate Administrator notifies each applicant of the decision to grant or deny an application.

9. New § 199.11 is added to subpart A to read as follows:

§ 199.11 Checking Previous Test Results.

(a) As required by DOT Procedures, no operator may hire or use any person to perform a covered function unless the operator has sought to obtain from previous DOT-regulated employers of the person certain drug and alcohol testing information.

(b) If, after reviewing the information, the operator learns the employee violated a DOT agency drug or alcohol testing rule, the operator shall remove the employee from covered functions, pending successful completion of the return-to-duty process.

10. In redesignated § 199.103, paragraph (a)(1) is amended by removing the term ''§ 199.15(d)(2)'' and adding ''DOT Procedures'' in its place, and by revising paragraph (b)(2) to read as follows:

§ 199.103 Use of persons who fail or refuse a drug test.

* * * * *

(b) * * *

(2) Been considered by the medical review officer in accordance with DOT Procedures and been determined by a substance abuse professional to have successfully completed required education or treatment; and

* * * * *

11. In redesignated § 199.105, paragraph (b) is revised, paragraphs (c)(3) and (c)(4) are amended by removing the term ''§ 199.25'' and adding ''§ 199.119'' in its place wherever the term appears, and paragraph (e) is revised, to read as follows:

§ 199.105 Drug tests required.

* * * * *

(b) *Post-accident testing.* As soon as possible but no later than 32 hours after an accident, an operator shall drug test each employee whose performance either contributed to the accident or cannot be completely discounted as a contributing factor to the accident. An operator may decide not to test under this paragraph but such a decision must be based on the best information available immediately after the accident that the employee's performance could not have contributed to the accident or that, because of the time between that performance and the accident, it is not likely that a drug test would reveal whether the performance was affected by drug use.

* * * * *

(e) *Return to duty testing.* A covered employee who refuses to take or has a positive drug test may not return to duty in the covered function until the covered employee has complied with DOT Procedures on return to duty and the role of a substance abuse professional.

* * * * *

12. In redesignated § 199.109, paragraphs (b), (c), and (d) are revised to read as follows:

§ 199.109 Review of drug testing results.

* * * * *

(b) *MRO qualifications.* Each MRO must be a licensed physician who has the qualifications required by DOT Procedures.

(c) *MRO duties.* The MRO shall perform functions for the operator as required by DOT Procedures.

(d) *MRO reports.* The MRO shall report all drug test results to the operator in accordance with DOT Procedures.

* * * * *

13. In redesignated § 199.111, the section heading and the first sentence of paragraph (b) are revised, the second sentence of paragraph (b) and paragraph (c) are amended by removing the term ''retesting'' and adding ''testing'' in its place wherever the term appears, and the last sentence of paragraph (b) is amended by removing the term ''retest'' and adding ''additional test'' in its place, to read as follows:

§ 199.111 Retention of samples and additional testing.

* * * * *

(b) If the medical review officer (MRO) determines there is no legitimate medical explanation for a confirmed positive test result other than the unauthorized use of a prohibited drug, and if timely additional testing is requested by the employee according to DOT Procedures, the split specimen must be tested. * * *

* * * * *

14. The first sentence of redesignated § 199.117(b) is revised to read as follows:

§ 199.117 Recordkeeping.

* * * * *

(b) Information regarding an individual's drug testing results or rehabilitation may be released only upon the written consent of the individual, except as provided by DOT Procedures. * * *

§ 199.201 [Removed and Reserved]

15. Section 199.201 is removed and reserved.

16. In § 199.202, the first sentence is revised to read as follows:

§ 199.202 Alcohol misuse plan.

Each operator shall maintain and follow a written alcohol misuse plan that conforms to the requirements of this part and DOT Procedures concerning alcohol testing programs. * * *

§§ 199.203, 199.205 [Removed and Reserved]

17. Sections 199.203 and 199.205 are removed and reserved.

18. Section 199.207 is redesignated as new § 199.7 and transferred to subpart A, and redesignated § 199.7 is amended by removing the term ''subpart'' and adding ''part'' in its place wherever the term appears.

19. In § 199.209, the existing text is designated as paragraph (a) and new paragraph (b) is added to read as follows:

§ 199.209 Other requirements imposed by operators.

* * * * *

(b) As an operator, you may, but are not required to, conduct pre-employment alcohol testing under this part. If you choose to conduct pre-employment alcohol testing, you must comply with the following requirements:

(1) You must conduct a pre-employment alcohol test before the first performance of covered functions by every covered employee (whether a new employee or someone who has transferred to a position involving the performance of covered functions).

(2) You must treat all covered employees the same for the purpose of pre-employment alcohol testing (i.e., you must not test some covered employees and not others).

(3) You must conduct the pre-employment tests after making a contingent offer of employment or transfer, subject to the employee passing the pre-employment alcohol test.

(4) You must conduct all pre-employment alcohol tests using the alcohol testing procedures in DOT Procedures.

(5) You must not allow a covered employee to begin performing covered functions unless the result of the employee's test indicates an alcohol concentration of less than 0.04.

§ 199.213 [Removed and Reserved]

20. Section 199.213 is removed and reserved.

§ 199.225 [Amended]

21. In § 199.225, paragraphs (a)(2)(ii) and (b)(4)(ii) are removed and reserved.

22. Section 199.231(g) is revised to read as follows:

§ 199.231 Access to facilities and records.

* * * * *

(g) An operator may disclose information without employee consent as provided by DOT Procedures concerning certain legal proceedings.

* * * * *

Issued in Washington, DC, on March 30, 2001.

Stacey L. Gerard,

Associate Administrator for Pipeline Safety.

[FR Doc. 01–9412 Filed 4–27–01; 8:45 am]

BILLING CODE 4910–60–P

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

49 CFR Part 219

[FRA Docket No. RSOR–6, Notice No. 48]

RIN 2130–AB43

Control of Alcohol and Drug Use: Proposed Changes To Conform With New DOT Transportation Workplace Testing Procedures

AGENCY: Federal Railroad Administration (FRA), Department of Transportation (DOT or Department).

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: On December 19, 2000, DOT published a final rule comprehensively changing its procedures for transportation workplace drug and alcohol testing programs. These amendments to the DOT drug and alcohol testing rule became effective on January 18, 2001; the revised DOT testing rule will become effective on August 1, 2001. The new DOT testing rule uses a plain language, question-and-answer format to make the Department's procedures clearer, more comprehensive, and more up-to-date.

FRA and the other DOT agencies with substance abuse programs governed by DOT testing procedures (the Federal Aviation Administration (FAA), the Federal Motor Carrier Safety Administration (FMCSA), the Federal Transit Administration (FTA), the Research and Special Programs Administration (RSPA), and the United States Coast Guard (USCG)) are publishing NPRMs in today's **Federal Register** proposing changes that would conform their individual regulations to the new DOT procedures. See the Department's Common Preamble to this NPRM for an additional discussion of the changes proposed in this NPRM.

DATES: Written comments must be received by June 14, 2001. Comments received after that date will be considered to the extent possible without incurring additional expense or delay.

ADDRESSES: Anyone wishing to file a comment should refer to the FRA docket and notice numbers (FRA Docket No. RSOR–6, Notice No. 48). You may submit your comments and related material by only one of the following methods:

By mail to the Docket Management System, U.S. Department of Transportation, room PL–401, 400 7th Street, SW., Washington, DC 20590–0001; or Electronically through the Web site for the Docket Management System at http://dms.dot.gov. For instructions on how to submit comments electronically, visit the Docket Management System Web site and click on the ''Help'' menu.

The Docket Management Facility maintains the public docket for this rulemaking. Comments, and documents as indicated in this preamble, will become part of this docket and will be available for inspection or copying at room PL–401 on the plaza level of the Nassif Building at the same address during regular business hours. You may also obtain access to this docket on the Internet at http://dms.dot.gov.

FOR FURTHER INFORMATION CONTACT: Lamar Allen, Alcohol and Drug Program Manager, FRA Office of Safety, RRS–11, 1120 Vermont Avenue, NW., Mail Stop

25, Washington, DC 20590 (telephone 202–493–6313); or Patricia V. Sun, Trial Attorney, Office of the Chief Counsel, RCC–11, 1120 Vermont Avenue, NW., Mail Stop 10, Washington, DC 20590 (telephone 202–493–6038).

SUPPLEMENTARY INFORMATION:

Background

In this NPRM, FRA proposes changes that would conform its drug and alcohol testing regulations (49 CFR part 219) to the recently published revision of DOT's procedures for transportation workplace drug and alcohol testing programs (49 CFR part 40) (December 19, 2000, 65 FR 79462). FRA (concurrently with FAA, FMCSA, FTA, RSPA, and USCG, which also have programs governed by part 40 procedures), is publishing an NPRM that would reference the new part 40 in its own drug and alcohol testing rule.

FRA will not hold a public hearing on this proposal. This NPRM is nonsignificant and proposes only changes to update this part and conform it to the new part 40. The changes in part 40 were fully discussed at three Department listening sessions held earlier this year.

FRA proposes to delete from part 219 provisions that are also covered in the new part 40. Railroad employers and employees, along with others affected by part 219, have always been required to read and understand *both* part 219 and part 40 to comply with FRA's drug and alcohol workplace requirements. Referring the reader directly to part 40 instead of duplicating part 40 rule text in part 219 would promote both drafting economy and consistency of interpretation.

Deleting part 40 material from part 219 would affect only certain subparts of FRA's rule. Part 40 procedures do not cover FRA post-accident toxicological testing (subpart C of part 219), which predates part 40, has always used separate procedures, and is explicitly exempted from the new part 40 in § 40.1. Most of the general requirements (subpart A) and prohibitions (subpart B) in part 219 would remain unchanged since they are specific to the rail industry (with the exception of the return-to-duty, follow-up testing and Substance Abuse Professional (SAP) requirements in § 219.104, which would be deleted since they now duplicate those in part 40). Employee referral and assistance (subpart E), annual report (subpart I) and recordkeeping (subpart J) requirements would remain in part 219, but most of the procedural provisions in subparts D, F, G, and H (respectively, mandatory reasonable suspicion, Federal reasonable cause, pre-employment, and random testing) would be deleted from part 219 since these types of testing use part 40 procedures.

Although the primary purpose of this NPRM is to conform part 219 with the new part 40, FRA would also make corrections to comply with **Federal Register** format requirements and delete outdated rule text references (e.g., past implementation dates, former accident reporting thresholds, old contact information) that can currently be found throughout part 219. FRA would also delete Appendix D, which reprints the Management Information System (MIS) reporting forms for railroad drug and alcohol programs; these forms have been in use since 1994 and are now available electronically. Following plain language principles, FRA would also substitute ''must'' for ''shall'' throughout this document, to make clear that FRA intends for the word ''shall,'' as currently used in part 219, to impose a requirement, not to express futurity or any other notion. Because part 40 already authorizes saliva alcohol testing, and may eventually authorize other testing methodologies, FRA would also remove the references in subparts D, F, G, and H to ''urine drug testing'' and ''breath alcohol testing'' and replace these, where appropriate, with more generic terms such as ''alcohol testing,'' ''drug testing,'' and ''breath or body fluid testing.''

Finally, part 219 contains citations to the Federal Railroad Safety Act of 1970 and the Hours of Service Act, which were repealed in 1994 as part of a broad recodification of the transportation laws and then reenacted without substantive change as positive law in title 49 of the United States Code. *See* Public Law 103–272. Throughout this document, FRA would replace these references to repealed statutes with references to the proper sections or chapters in title 49 of the United States Code. FRA does not intend to alter the substantive meaning of a provision by making technical changes to its statutory citations.

For ease of reference, FRA is publishing part 219 in its entirety with the proposed amendments discussed below. FRA intends to time publication of the final rule so that its conforming changes to part 219 become effective concurrently with most of part 40 on August 1, 2001.

Section-by-Section Analysis

Subpart A—General

Section 219.5 Definitions

Since part 219 would incorporate by reference all of part 40, FRA proposes to delete from part 219 those definitions that can now be found in § 40.3: *Alcohol, Alcohol concentration, Alcohol use, Consortium, DOT agency, Drug(s),* and *Medical Review Officer;* FRA would also delete *Refuse to submit* (to a drug test) and *Refuse to submit* (to an alcohol test), which are defined in §§ 40.191 and 40.261, respectively. Definitions specific to part 219, the rail industry, or both, such as *Covered employee* and *Railroad* would remain in this rule.

The definition of *Class I, Class II,* and *Class III* has been revised by deleting '', as those regulations may be revised and applied by order of the Board (including modifications in class thresholds based on revenue deflator adjustments).'' The purpose of this change is to conform to **Federal Register** requirements; no substantive change is intended.

FRA would also delete the outdated references to the 1991 through 1999 accident reporting thresholds from these definitions: *Impact accident, Reporting threshold,* and *Train accident.* See the discussion of § 219.201 for a further discussion of the proposed changes to these definitions.

Section 219.7 Waivers

Paragraph (b)

Section 40.21 maintains the Departmental policy of prohibiting employers from standing employees down; that is, removing employees from safety-sensitive service after the Medical Review Officer (MRO) has received a laboratory report of confirmed positive test results, adulterated test results, or substituted test results, before the results have been verified by the MRO. DOT agencies may, however, waive this prohibition if an employer can demonstrate that a waiver would effectively enhance safety while protecting employee fairness and confidentiality. FRA's Railroad Safety Board would determine each petition for stand down in accordance with § 40.21 and subpart C of 49 CFR part 211, which subpart contains the rules of practice governing petitions for waiver of FRA safety rules, regulations or standards.

Section 219.11 General Conditions for Chemical Tests

Paragraph (b)

In § 219.11, FRA would delete the last two sentences of (b)(2), which address the use of catheterization to obtain urine samples for testing, and would delete subparagraph (b)(4), which makes tampering with a sample through adulteration, dilution, or substitution a refusal to provide a sample. DOT addresses the use of catheterization in § 40.61(b)(3), what constitutes a refusal to provide a sample in § 40.191, and

what an employer must do following a verified adulterated or substituted test result in § 40.23.

Section 219.21 Information Collection

FRA would update the list of information collection requirements in this section by adding §§ 219.801, 219.803, 219.901, and 219.903 from the annual report and recordkeeping requirements found in subparts I and J, respectively, of this part; which were approved by the Office of Management and Budget before their implementation in 1994. FRA would also add an information collection requirement for § 219.502, which authorizes pre-employment alcohol testing, and would delete the requirements for §§ 219.307 and 219.309, which have already been deleted from this rule, and §§ 219.703, 219.705, 219.707, 219.709, 219.711, and 219.713, which FRA proposes to delete in this rulemaking.

Section 219.23 Railroad Policies

Paragraph (b)

FRA would add new language reiterating the prohibition in § 40.47 against the use of DOT custody and control forms for non-DOT testing. Section 219.23 would otherwise remain the same.

Subpart B—Prohibitions

Section 219.102 Prohibitions on Abuse of Controlled Substances

FRA would delete the 1989 implementation date from this section.

Section 219.104 Responsive Action

Paragraph (d)

FRA would delete its return-to-service and follow-up testing requirements, and its Substance Abuse Professional (SAP) conflict-of-interest prohibitions, and instead reference the sections in part 40 that cover these requirements (§§ 40.305, 40.307, and 40.299, respectively) in amended paragraph (d). FRA would also delete paragraphs (e) and (f) of this section, which would then be made unnecessary, and paragraph (g) of this section, which mandated a 1995 implementation date for certain requirements in this section.

Subpart C—Post-Accident Toxicological Testing

As stated above, part 40 procedures do not apply to FRA post-accident toxicological testing, which has always followed its own unique procedures. Section 40.1(c) explicitly states that nothing in part 40 supersedes or conflicts with FRA's post-accident testing program. Since this subpart does not need to be conformed to part 40, the only proposals are minor technical changes to update this subpart.

One change would streamline FRA's procedures for notification after post-accident events. One-stop notification to the National Response Center (NRC) would be sufficient for problems in obtaining samples from an injured employee (§ 219.203(d)(2)) or an employee fatality (§ 219.207(b)), although FRA would still require railroads to notify both the NRC and FRA whenever post-accident testing is conducted (§ 219.209). The remaining technical changes are discussed below.

Section 219.201 Events for Which Testing Is Required

Paragraph (a)

In its annual adjustment of the accident reporting threshold, FRA decided to leave the $6,600 accident reporting threshold unchanged for calendar year 2001 (November 21, 2000, 65 FR 69884). The reporting threshold final rule, which becomes effective January 1, 2001, amends this section and the definitions of *Impact accident, Reporting Threshold,* and *Train Accident* found in § 219.5.

In this NPRM, FRA proposes to ''clean up'' part 219 by removing the outdated references to the accident reporting thresholds listed for the years 1991–1999. To streamline this part, FRA would incorporate the accident reporting threshold set annually in § 225.19(e) of its accident reporting rule (49 CFR part 225) instead of listing the threshold for each year in this section and in the definitions listed above in § 219.5.

Section 219.211 Analysis and Follow-up

Paragraph (i)

FRA would amend this paragraph, which currently allows an employee the right to request a retest of his or her post-accident samples. This right no longer exists, since FRA incorporated split sample testing into its post-accident testing procedures in 1994; the employee would still have up to 60 days from the date of the toxicology report (instead of 72 hours from notification by the MRO as in § 40.171) to request that his or her split samples be tested.

Subpart D—Testing for Cause

Section 219.300 Mandatory Reasonable Suspicion Testing

Paragraph (a)

FRA would remove the 1995 implementation date from this paragraph.

Paragraph (d)(2)

FRA would delete this paragraph which contains reporting requirements that expired on March 15, 1998.

Section 219.303 Alcohol Test Procedures and Safeguards

FRA would delete this section, since alcohol testing conducted under this subpart now follows part 40 procedures.

Section 219.305 Urine Test Procedures and Safeguards

FRA would delete this section since it would be made unnecessary by revised § 219.701, which would combine all of the sections in the current rule that require tests conducted under part 219 authority (except for subpart C post-accident testing) to follow part 40 procedures.

Subpart E—Identification of Troubled Employees

Other than the proposed amendment to § 219.403 discussed below, this subpart would remain unchanged.

Section 219.403 Voluntary Referral Policy

Subparagraph (b)(5)

With respect to a certified locomotive engineer and a candidate for certification, § 240.119(e) of FRA's regulations on qualification and certification of locomotive engineers (49 CFR part 240) requires the railroad to waive its policy of confidentiality and suspend or revoke the engineer's certificate if the SAP reports that the engineer has failed to cooperate with a course of recommended treatment. For ease of reference, FRA would add a new subparagraph cross-referencing this requirement, which applies to all voluntary referral policies.

Subpart F—Pre-Employment Tests

Section 219.501 Pre-Employment Drug Testing

Section 219.502 Pre-Employment Alcohol Testing

FRA would revise this subpart to delete an outdated implementation schedule and separately address pre-employment drug testing and pre-employment alcohol testing. Section 219.501 would be revised to address only pre-employment drug testing requirements, which would remain unchanged. FRA would create a new § 219.502 to incorporate Departmental language reauthorizing pre-employment alcohol testing, which was suspended in May 1995 (May 10, 1995, 60 FR 24766). Pre-employment alcohol testing, unlike pre-employment drug testing, would be authorized but not mandatory.

See the Common Preamble to this NPRM for a discussion of § 40.25, which requires employers to ask applicants whether there were any situations in which they tested positive on a pre-employment test for an employer that subsequently did not hire them.

Section 219.503 Notification; Records

For the reasons discussed above, FRA proposes to remove the references in this section to ''urine and breath tests'' and replace these with more generic references to ''drug and alcohol tests.''

Subpart G—Random Alcohol and Drug Testing Programs

Section 219.601 Railroad Random Drug Testing Programs

Paragraph (a) and Subparagraph (d)(2)

FRA would delete the outdated implementation schedule from this section because random drug testing is fully implemented in the rail industry. New railroads must submit a random testing program for FRA approval within 60 days after commencing operations, and implement the program as approved within 60 days of receiving approval.

Section 219.605 Positive Drug Test Results; Procedures

Paragraph (a) of this section would be removed and reserved, since it has been superseded by the MRO verification requirements in § 40.129. FRA would also delete the now unnecessary reference to a ''retest'' from paragraph (b) of this section.

Section 219.607 Railroad Random Alcohol Testing Programs

Paragraph (a) and Subparagraph (c)(2)

As with § 219.601, FRA would delete the outdated implementation schedule and specify the implementation requirements for new railroads.

Section 219.608 Administrator's Determination of Random Alcohol Testing Rate

Subparagraph (b)(1)(i)

This subparagraph specifies the implementation requirements for new railroads.

Subpart H—Drug and Alcohol Testing Procedures

Section 219.701 Standards for Drug and Alcohol Testing

FRA would revise this section to consolidate in one section the requirement that testing under subparts B, D, F, and G of this part comply with part 40 procedures. In new paragraph (c) of this section, FRA would expand the requirement (currently found in § 219.715(a), which would be deleted) that an employee proceed to the testing site immediately upon notification of selection apply to random drug testing as well as to random alcohol testing. FRA would delete the rest of this subpart (§§ 219.703–219.715), since it has been superseded by part 40.

Subpart I—Annual Report

FRA does not propose to change the reporting requirements of its Management Information System (MIS).

Subpart J—Recordkeeping Requirements

Section 219.901 Retention of Alcohol Testing Records

Section 219.903 Retention of Drug Testing Records

FRA would streamline these sections by deleting any recordkeeping requirements that duplicate those contained in various sections of part 40. In addition to the employer recordkeeping requirements in § 40.333, part 40 now requires service agents to maintain copies of records that were formerly required to be kept by employers (e.g., SAPs are now required to maintain copies of their evaluation and follow-up reports to employers for five years), so that some of the recordkeeping responsibilities currently in §§ 219.901 and 219.903 would shift from railroads to their service agents.

Appendix A to Part 219—Schedule of Civil Penalties

FRA proposes to clarify its schedule of civil penalties by reorganizing the schedule and listing more guideline penalty amounts for violations of part 219. The examples provided are illustrative, not comprehensive, as stated in footnote 1, FRA reserves the right to assess a penalty of up to $22,000 for any violation of this rule, including violations not listed in this penalty schedule.

For the most part, FRA does not propose to raise its guideline penalty amounts above their current levels. The additional violations listed have proposed assessments equivalent to violations already listed in the penalty schedule. The only exceptions are those violations currently listed at the statutory minimum of $500 (see § 209.409 in FRA's railroad safety enforcement procedures (49 CFR part 209)); FRA would raise the penalties for these violations to $1,000.

Appendix D to Part 219—Management Information System Collection Forms

As discussed above, FRA would delete Appendix D, which reprints MIS forms that have been in use since 1994.

Regulatory Analyses and Notices

While the Department's final rule amending part 40 is significant for purposes of Executive Order 12866, this NPRM is not. Although the part 40 rule contains major policy changes, the proposed amendments in this NPRM would make policy changes only to the extent necessary to conform this rule to the changes already made in part 40. The other purpose of this NPRM is to update part 219 by deleting outdated references.

The Department's regulatory analysis of part 40 determined that the final rule is not economically significant since its reworking of existing requirements would not result in significant new costs. This NPRM, which would conform part 219 to part 40, is likewise not economically significant. FRA has therefore not prepared a Regulatory Evaluation of the costs and benefits of this proposal.

See the Department of Transportation's common preamble, ''Procedures for Transportation Workplace Drug and Alcohol Testing Programs,'' for a regulatory evaluation summary of this and the other operating administration NPRMs proposing changes to conform to the new part 40.

Paperwork Reduction Act

In accordance with the Paperwork Reduction Act of 1995, 44 U.S.C. 3501 *et seq.*, FRA has determined that there are no new requirements for information collection associated with this proposed rule.

Request for Public Comment

In accordance with Executive Order 12866, FRA is allowing members of the public 60 days to comment on this proposed rule. FRA may make changes to the final rule based on comments received in response to this NPRM.

List of Subjects in 49 CFR Part 219

Alcohol abuse, Drug abuse, Drug testing, Penalties, Railroad safety, Reporting and recordkeeping requirements, Safety, Transportation.

The Proposal

For the reasons stated above, FRA proposes to revise part 219 to read as follows:

PART 219—CONTROL OF ALCOHOL AND DRUG USE

Subpart A—General

Sec.
219.1 Purpose and scope.
219.3 Application.
219.5 Definitions.
219.7 Waivers.
219.9 Responsibility for compliance.
219.11 General conditions for chemical tests.
219.13 Preemptive effect.
219.15 [Reserved]
219.17 Construction.
219.19 [Reserved]
219.21 Information collection.
219.23 Railroad policies.

Subpart B—Prohibitions

219.101 Alcohol and drug use prohibited.
219.102 Prohibition on abuse of controlled substances.
219.103 Prescribed and over-the-counter drugs.
219.104 Responsive action.
219.105 Railroad's duty to prevent violations.
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Subpart C—Post-Accident Toxicological Testing

219.201 Events for which testing is required.
219.203 Responsibilities of railroads and employees.
219.205 Sample collection and handling.
219.206 FRA access to breath test results.
219.207 Fatality.
219.209 Reports of tests and refusals.
219.211 Analysis and follow-up.
219.213 Unlawful refusals; consequences.

Subpart D—Testing for Cause

219.300 Mandatory reasonable suspicion testing.
219.301 Testing for reasonable cause.
219.302 Prompt sample collection; time limitation.

Subpart E—Identification of Troubled Employees

219.401 Requirement for policies.
219.403 Voluntary referral policy.
219.405 Co-worker report policy.
219.407 Alternate policies.

Subpart F—Pre-employment Tests

219.501 Pre-employment drug testing.
219.502 Pre-employment alcohol testing.
219.503 Notification; records.
219.505 Refusals.

Subpart G—Random Alcohol and Drug Testing Programs

219.601 Railroad random drug testing programs.
219.602 FRA Administrator's determination of random drug testing rate.
219.603 Participation in drug testing.
219.605 Positive drug test results; procedures.
219.607 Railroad random alcohol testing programs.
219.608 FRA Administrator's determination of random alcohol testing rate.
219.609 Participation in alcohol testing.
219.611 Test result indicating prohibited alcohol concentration; procedures.

Subpart H—Drug and Alcohol Testing Procedures

219.701 Standards for drug and alcohol testing.

Subpart I—Annual Report

219.801 Reporting alcohol misuse prevention program results in a management information system.
219.803 Reporting drug misuse prevention program results in a management information system.

Subpart J—Recordkeeping Requirements

219.901 Retention of alcohol testing records.
219.903 Retention of drug testing records.
219.905 Access to facilities and records.
Appendix A to Part 219 Schedule of Civil Penalties
Appendix B to Part 219 Designation of Laboratory for Post-Accident Toxicological Testing
Appendix C to Part 219 Post-Accident Testing Sample Collection

Authority: 49 U.S.C. 20103, 20107, 20140, 21301, 21304, 21311; 28 U.S.C. 2461, note; and 49 CFR 1.49(m).

Subpart A—General

§ 219.1 Purpose and scope.

(a) The purpose of this part is to prevent accidents and casualties in railroad operations that result from impairment of employees by alcohol or drugs.

(b) This part prescribes minimum Federal safety standards for control of alcohol and drug use. This part does not restrict a railroad from adopting and enforcing additional or more stringent requirements not inconsistent with this part.

§ 219.3 Application.

(a) Except as provided in paragraphs (b) and (c) of this section, this part applies to—

(1) Railroads that operate rolling equipment on standard gage track which is part of the general railroad system of transportation; and (2) Railroads that provide commuter or other short-haul rail passenger service in a metropolitan or suburban area (as described by 49 U.S.C. 20102). (b)(1) This part does not apply to a railroad that operates only on track inside an installation which is not part of the general railroad system of transportation.

(2) Subparts D, E, F and G of this part do not apply to a railroad that employs not more than 15 employees covered by the hours of service laws at 49 U.S.C. 21103, 21104, or 21105, and that does not operate on tracks of another railroad (or otherwise engage in joint operations with another railroad) except as necessary for purposes of interchange.

(3) Subpart I of this part does not apply to a railroad that has fewer than 400,000 total manhours.

(c) Subparts E, F and G of this part do not apply to operations of a foreign railroad conducted by covered service employees whose primary place of service (''home terminal'') for rail transportation services is located outside the United States. Such operations and employees are subject to subparts A, B, C, and D of this part when operating in United States territory.

§ 219.5 Definitions.

As used in this part—

Class I, Class II, and *Class III* have the meaning assigned by regulations of the Surface Transportation Board (49 CFR part 1201; General Instructions 1–1).

Controlled substance has the meaning assigned by 21 U.S.C. 802, and includes all substances listed on Schedules I through V as they may be revised from time to time (21 CFR parts 1301–1316).

Covered employee means a person who has been assigned to perform service subject to the hours of service laws (49 U.S.C. ch. 211) during a duty tour, whether or not the person has performed or is currently performing such service, and any person who performs such service. (An employee is not ''covered'' within the meaning of this part exclusively by reason of being an employee for purposes of 49 U.S.C. 21106.) For the purposes of pre-employment testing only, the term ''covered employee'' includes a person applying to perform covered service.

Co-worker means another employee of the railroad, including a working supervisor directly associated with a yard or train crew, such as a conductor or yard foreman, but not including any other railroad supervisor, special agent, or officer.

DOT Agency means an agency (or ''operating administration'') of the United States Department of Transportation administering regulations requiring alcohol or controlled substance testing (14 CFR parts 61, 63, 65, 121 and 135; 49 CFR parts 199, 219, 382 and 655) in accordance with part 40 of this title.

Drug means any substance (other than alcohol) that has known mind- or function-altering effects on a human subject, specifically including any psychoactive substance and including, but not limited to, controlled substances.

FRA means the Federal Railroad Administration, United States Department of Transportation.

FRA representative means the Associate Administrator for Safety of FRA, the Associate Administrator's delegate (including a qualified State inspector acting under part 212 of this chapter), the Chief Counsel of FRA, or the Chief Counsel's delegate.

Hazardous material means a commodity designated as a hazardous material by part 172 of this title.

Impact accident means a train accident (i.e., a rail equipment accident involving damage in excess of the current reporting threshold (see § 225.19(e) of this chapter)) consisting of a head-on collision, a rear-end collision, a side collision (including a collision at a railroad crossing at grade), a switching collision, or impact with a deliberately-placed obstruction such as a bumping post. The following are not impact accidents:

(1) An accident in which the derailment of equipment causes an impact with other rail equipment;

(2) Impact of rail equipment with obstructions such as fallen trees, rock or snow slides, livestock, etc.; and

(3) Raking collisions caused by derailment of rolling stock or operation of equipment in violation of clearance limitations.

Independent with respect to a medical facility, means not under the ownership or control of the railroad and not operated or staffed by a salaried officer or employee of the railroad. The fact that the railroad pays for services rendered by a medical facility or laboratory, selects that entity for performing tests under this part, or has a standing contractual relationship with that entity to perform tests under this part or perform other medical examinations or tests of railroad employees does not, by itself, remove the facility from this definition.

Medical facility means a hospital, clinic, physician's office, or laboratory where toxicological samples can be collected according to recognized professional standards.

Medical practitioner means a physician or dentist licensed or otherwise authorized to practice by the state.

NTSB means the National Transportation Safety Board.

Passenger train means a train transporting persons (other than employees, contractors, or persons riding equipment to observe or monitor railroad operations) in intercity passenger service, commuter or other short-haul service, or for excursion or recreational purposes.

Positive rate means the number of positive results for random drug tests conducted under this part plus the number of refusals of random tests required by this part, divided by the total number of random drug tests conducted under this part plus the number of refusals of random tests required by this part.

Possess means to have on one's person or in one's personal effects or under one's control. However, the concept of possession as used in this part does not include control by virtue of presence in the employee's personal residence or other similar location off of railroad property.

Railroad means any form of nonhighway ground transportation that runs on rails or electromagnetic guideways, and any person providing such transportation, including—

(1) Commuter or other short-haul railroad passenger service in a metropolitan or suburban area and commuter railroad service that was operated by the Consolidated Rail Corporation on January 1, 1979; and

(2) High speed ground transportation systems that connect metropolitan areas, without regard to whether those systems use new technologies not associated with traditional railroads; but does not include rapid transit operations in an urban area that are not connected to the general railroad system of transportation.

Railroad property damage or *damage to railroad property* refers to damage to railroad property, including railroad on-track equipment, signals, track, track structures (including bridges and tunnels), or roadbed, including labor costs and all other costs for repair or replacement in kind. Estimated cost for replacement of railroad property must be calculated as described in the FRA Guide for Preparing Accident/Incident Reports. (See § 225.21 of this chapter.) However, replacement of passenger equipment is calculated based on the cost of acquiring a new unit for comparable service.

Reportable injury means an injury reportable under part 225 of this chapter.

Reporting threshold means the amount specified in § 225.19(e) of this chapter, as adjusted from time to time in accordance with appendix B to part 225 of this chapter.

Supervisory employee means an officer, special agent, or other employee of the railroad who is not a co-worker and who is responsible for supervising or monitoring the conduct or performance of one or more employees.

Train, except as context requires, means a locomotive, or more than one locomotive coupled, with or without cars. (A locomotive is a self-propelled unit of equipment which can be used in train service.)

Train accident means a passenger, freight, or work train accident described in § 225.19(c) of this chapter (a ''rail equipment accident'' involving damage in excess of the current reporting threshold), including an accident involving a switching movement.

Train incident means an event involving the movement of railroad on-track equipment that results in a casualty but in which railroad property damage does not exceed the reporting threshold.

Violation rate means the number of covered employees (as reported under § 219.801) found during random tests given under this part to have an alcohol concentration of .04 or greater, plus the number of employees who refuse a random test required by this part, divided by the total reported number of employees in the industry given random alcohol tests under this part plus the total reported number of employees in the industry who refuse a random test required by this part.

§ 219.7 Waivers.

(a) A person subject to a requirement of this part may petition the FRA for a waiver of compliance with such requirement.

(b) Each petition for waiver under this section must be filed in a manner and contain the information required by part 211 of this chapter. A petition for waiver of the part 40 prohibition against stand down of an employee before the Medical Review Officer has completed the verification must also comply with § 40.21 of this title.

(c) If the FRA Administrator finds that waiver of compliance is in the public interest and is consistent with railroad safety, the Administrator may grant the waiver subject to any necessary conditions.

§ 219.9 Responsibility for compliance.

(a) Any person (an entity of any type covered under 1 U.S.C. 1, including but not limited to the following: a railroad; a manager, supervisor, official, or other employee or agent of a railroad; any owner, manufacturer, lessor, or lessee of railroad equipment, track, or facilities; any independent contractor providing

goods or services to a railroad; and any employee of such owner, manufacturer, lessor, lessee, or independent contractor) who violates any requirement of this part or causes the violation of any such requirement is subject to a civil penalty of at least $500 and not more than $11,000 per violation, except that: Penalties may be assessed against individuals only for willful violations; where a grossly negligent violation or a pattern of repeated violations has created an imminent hazard of death or injury, or has caused death or injury, a penalty not to exceed $22,000 per violation may be assessed; and the standard of liability for a railroad will vary depending upon the requirement involved. See, e.g., § 219.105, which must be construed to qualify the responsibility of a railroad for the unauthorized conduct of an employee that violates §§ 219.101 or 219.102 (while imposing a duty of due diligence to prevent such conduct). Each day a violation continues constitutes a separate offense. See appendix A to this part for a statement of agency civil penalty policy.

(b)(1) In the case of joint operations, primary responsibility for compliance with this part with respect to determination of events qualifying for breath or body fluid testing under subparts C and D of this part rests with the host railroad, and all affected employees must be responsive to direction from the host railroad consistent with this part. However, nothing in this paragraph (b)(1) restricts the ability of the railroads to provide for an appropriate assignment of responsibility for compliance with this part as among those railroads through a joint operating agreement or other binding contract. FRA reserves the right to bring an enforcement action for noncompliance with applicable portions of this part against the host railroad, the employing railroad, or both.

(2) Where an employee of one railroad is required to participate in breath or body fluid testing under subpart C or D of this part and is subsequently subject to adverse action alleged to have arisen out of the required test (or alleged refusal thereof), necessary witnesses and documents available to the other railroad must be made available to the employee on a reasonable basis.

(c) Any independent contractor or other entity that performs covered service for a railroad has the same responsibilities as a railroad under this part, with respect to its employees who perform covered service. The entity's responsibility for compliance with this part may be fulfilled either directly by that entity or by the railroad's treating the entity's employees who perform covered service as if they were its own employees for purposes of this part. The responsibility for compliance must be clearly spelled out in the contract between the railroad and the other entity or in another document. In the absence of such a clear delineation of responsibility, FRA will hold the railroad and the other entity jointly and severally liable for compliance.

§ 219.11 General conditions for chemical tests.

(a) Any employee who performs covered service for a railroad is deemed to have consented to testing as required in subparts B, C, D, and G of this part; and consent is implied by performance of such service.

(b)(1) Each such employee must participate in such testing, as required under the conditions set forth in this part by a representative of the railroad.

(2) In any case where an employee has sustained a personal injury and is subject to alcohol or drug testing under this part, necessary medical treatment must be accorded priority over provision of the breath or body fluid sample(s).

(3) Failure to remain available following an accident or casualty as required by company rules (i.e., being absent without leave) is considered a refusal to participate in testing, without regard to any subsequent provision of samples.

(c) A covered employee who is required to be tested under subpart C or D of this part and who is taken to a medical facility for observation or treatment after an accident or incident is deemed to have consented to the release to FRA of the following:

(1) The remaining portion of any body fluid sample taken by the treating facility within 12 hours of the accident or incident that is not required for medical purposes, together with any normal medical facility record(s) pertaining to the taking of such sample;

(2) The results of any laboratory tests for alcohol or any drug conducted by or for the treating facility on such sample;

(3) The identity, dosage, and time of administration of any drugs administered by the treating facility prior to the time samples were taken by the treating facility or prior to the time samples were taken in compliance with this part; and

(4) The results of any breath tests for alcohol conducted by or for the treating facility.

(d) An employee required to participate in body fluid testing under subpart C of this part (post-accident toxicological testing) or testing subject to subpart H of this part shall, if requested by the representative of the railroad or the medical facility (including, under subpart H of this part, a non-medical contract collector), evidence consent to taking of samples, their release for toxicological analysis under pertinent provisions of this part, and release of the test results to the railroad's Medical Review Officer by promptly executing a consent form, if required by the medical facility. The employee is not required to execute any document or clause waiving rights that the employee would otherwise have against the employer, and any such waiver is void. The employee may not be required to waive liability with respect to negligence on the part of any person participating in the collection, handling or analysis of the specimen or to indemnify any person for the negligence of others. Any consent provided consistent with this section may be construed to extend only to those actions specified in this section.

(e) Nothing in this part may be construed to authorize the use of physical coercion or any other deprivation of liberty in order to compel breath or body fluid testing.

(f) Any railroad employee who performs service for a railroad is deemed to have consented to removal of body fluid and/or tissue samples necessary for toxicological analysis from the remains of such employee, if such employee dies within 12 hours of an accident or incident described in subpart C of this part as a result of such event. This consent is specifically required of employees not in covered service, as well as employees in covered service.

(g) Each supervisor responsible for covered employees (except a working supervisor within the definition of co-worker under this part) must be trained in the signs and symptoms of alcohol and drug influence, intoxication and misuse consistent with a program of instruction to be made available for inspection upon demand by FRA. Such a program shall, at a minimum, provide information concerning the acute behavioral and apparent physiological effects of alcohol and the major drug groups on the controlled substances list. The program must also provide training on the qualifying criteria for post-accident testing contained in subpart C of this part, and the role of the supervisor in post-accident collections described in subpart C and appendix C of this part. The duration of such training may not be less than 3 hours.

(h) Nothing in this subpart restricts any discretion available to the railroad to request or require that an employee

cooperate in additional body fluid testing. However, no such testing may be performed on urine or blood samples provided under this part. For purposes of this paragraph (h), all urine from a void constitutes a single sample.

§ 219.13 Preemptive effect.

(a) Under section 20106 of title 49, United States Code, issuance of the regulations in this part preempts any State law, rule, regulation, order or standard covering the same subject matter, except a provision directed at a local hazard that is consistent with this part and that does not impose an undue burden on interstate commerce.

(b) FRA does not intend by issuance of the regulations in this part to preempt provisions of State criminal law that impose sanctions for reckless conduct that leads to actual loss of life, injury or damage to property, whether such provisions apply specifically to railroad employees or generally to the public at large.

§ 219.15 [Reserved]

§ 219.17 Construction.

Nothing in this part—

(a) Restricts the power of FRA to conduct investigations under sections 20107, 20108, 20111, and 20112 of title 49, United States Code; or

(b) Creates a private right of action on the part of any person for enforcement of the provisions of this part or for damages resulting from noncompliance with this part.

§ 219.19 [Reserved]

§ 219.21 Information collection.

(a) The information collection requirements of this part have been reviewed by the Office of Management and Budget pursuant to the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 et seq.) and have been assigned OMB control number 2130–0526.

(b) The information collection requirements are found in the following sections: 219.7, 219.23, 219.104, 219.201, 219.203, 219.205, 219.207, 219.209, 219.211, 219.213, 219.303, 219.401, 219.403, 219.405, 219.407, 219.501, 219.502, 219.503, 219.601, 219.605, 219.701, 219.801, 219.803, 219.901, and 219.903.

§ 219.23 Railroad policies.

(a) Whenever a breath or body fluid test is required of an employee under this part, the railroad must provide clear and unequivocal written notice to the employee that the test is being required under FRA regulations. Use of the mandated DOT form for drug or alcohol testing satisfies the requirements of this paragraph (a).

(b) Whenever a breath or body fluid test is required of an employee under this part, the railroad must provide clear, unequivocal written notice of the basis or bases upon which the test is required (e.g., reasonable suspicion, violation of a specified operating/safety rule enumerated in subpart D of this part, random selection, follow-up, etc.). Completion of the DOT alcohol or drug testing form indicating the basis of the test (prior to providing a copy to the employee) satisfies the requirement of this paragraph (b). Use of the DOT form for non-Federal tests is prohibited.

(c) Use of approved forms for mandatory post-accident toxicological testing under subpart C of this part provides the notifications required under this section with respect to such tests. Use of those forms for any other test is prohibited.

(d) Each railroad must provide educational materials that explain the requirements of this part, and the railroad's policies and procedures with respect to meeting those requirements.

(1) The railroad must ensure that a copy of these materials is distributed to each covered employee prior to the start of alcohol testing under the railroad's alcohol misuse prevention program and to each person subsequently hired for or transferred to a covered position.

(2) Each railroad must provide written notice to representatives of employee organizations of the availability of this information.

(e) *Required content.* The materials to be made available to employees must include detailed discussion of at least the following:

(1) The identity of the person designated by the railroad to answer employee questions about the materials.

(2) The classes or crafts of employees who are subject to the provisions of this part.

(3) Sufficient information about the safety-sensitive functions performed by those employees to make clear that the period of the work day the covered employee is required to be in compliance with this part is that period when the employee is on duty and is required to perform or is available to perform covered service.

(4) Specific information concerning employee conduct that is prohibited under subpart B of this part.

(5) In the case of a railroad utilizing the accident/incident and rule violation reasonable cause testing authority provided by this part, prior notice (which may be combined with the notice required by §§ 219.601(d)(1) and 219.607(d)(1)), to covered employees of the circumstances under which they will be subject to testing.

(6) The circumstances under which a covered employee will be tested under this part.

(7) The procedures that will be used to test for the presence of alcohol and controlled substances, protect the employee and the integrity of the testing processes, safeguard the validity of the test results, and ensure that those results are attributed to the correct employee.

(8) The requirement that a covered employee submit to alcohol and drug tests administered in accordance with this part.

(9) An explanation of what constitutes a refusal to submit to an alcohol or drug test and the attendant consequences.

(10) The consequences for covered employees found to have violated subpart B of this part, including the requirement that the employee be removed immediately from covered service, and the procedures under § 219.104.

(11) The consequences for covered employees found to have an alcohol concentration of .02 or greater but less than .04.

(12) Information concerning the effects of alcohol misuse on an individual's health, work, and personal life; signs and symptoms of an alcohol problem (the employee's or a coworker's); and available methods of evaluating and resolving problems associated with the misuse of alcohol, including utilization of the procedures set forth in subpart E of this part and the names, addresses, and telephone numbers of substance abuse professionals and counseling and treatment programs.

(f) *Optional provisions.* The materials supplied to employees may also include information on additional railroad policies with respect to the use or possession of alcohol and drugs, including any consequences for an employee found to have a specific alcohol concentration, that are based on the railroad's authority independent of this part. Any such additional policies or consequences must be clearly and obviously described as being based on independent authority.

Subpart B—Prohibitions

§ 219.101 Alcohol and drug use prohibited.

(a) *Prohibitions.* Except as provided in § 219.103—

(1) No employee may use or possess alcohol or any controlled substance while assigned by a railroad to perform covered service.

(2) No employee may report for covered service, or go or remain on duty in covered service while—

(i) Under the influence of or impaired by alcohol;

(ii) Having .04 or more alcohol concentration in the breath or blood; or

(iii) Under the influence of or impaired by any controlled substance.

(3) No employee may use alcohol for whichever is the lesser of the following periods:

(i) Within four hours of reporting for covered service; or

(ii) After receiving notice to report for covered service.

(4) No employee tested under the provisions of this part whose test result indicates an alcohol concentration of .02 or greater but less than .04 may perform or continue to perform covered service functions for a railroad, nor may a railroad permit the employee to perform or continue to perform covered service, until the start of the employee's next regularly scheduled duty period, but not less than eight hours following administration of the test.

(5) If an employee tested under the provisions of this part has a test result indicating an alcohol concentration below 0.02, the test must be considered negative and is not evidence of alcohol misuse. A railroad may not use a federal test result below 0.02 either as evidence in a company proceeding or as a basis for subsequent testing under company authority. A railroad may take further action to compel cooperation in other breath or body fluid testing only if it has an independent basis for doing so.

(b) *Controlled substance.* ''Controlled substance'' is defined by § 219.5. Controlled substances are grouped as follows: marijuana, narcotics (such as heroin and codeine), stimulants (such as cocaine and amphetamines), depressants (such as barbiturates and minor tranquilizers), and hallucinogens (such as the drugs known as PCP and LSD). Controlled substances include illicit drugs (Schedule I), drugs that are required to be distributed only by a medical practitioner's prescription or other authorization (Schedules II through IV, and some drugs on Schedule V), and certain preparations for which distribution is through documented over the counter sales (Schedule V only).

(c) *Railroad rules.* Nothing in this section restricts a railroad from imposing an absolute prohibition on the presence of alcohol or any drug in the body fluids of persons in its employ, whether in furtherance of the purpose of this part or for other purposes.

(d) *Construction.* This section may not be construed to prohibit the presence of an unopened container of an alcoholic beverage in a private motor vehicle that is not subject to use in the business of the railroad; nor may it be construed to restrict a railroad from prohibiting such presence under its own rules.

§ 219.102 Prohibition on abuse of controlled substances.

No employee who performs covered service may use a controlled substance at any time, whether on duty or off duty, except as permitted by § 219.103.

§ 219.103 Prescribed and over-the-counter drugs.

(a) This subpart does not prohibit the use of a controlled substance (on Schedules II through V of the controlled substance list) prescribed or authorized by a medical practitioner, or possession incident to such use, if—

(1) The treating medical practitioner or a physician designated by the railroad has made a good faith judgment, with notice of the employee's assigned duties and on the basis of the available medical history, that use of the substance by the employee at the prescribed or authorized dosage level is consistent with the safe performance of the employee's duties;

(2) The substance is used at the dosage prescribed or authorized; and

(3) In the event the employee is being treated by more than one medical practitioner, at least one treating medical practitioner has been informed of all medications authorized or prescribed and has determined that use of the medications is consistent with the safe performance of the employee's duties (and the employee has observed any restrictions imposed with respect to use of the medications in combination).

(b) This subpart does not restrict any discretion available to the railroad to require that employees notify the railroad of therapeutic drug use or obtain prior approval for such use.

§ 219.104 Responsive action.

(a) *Removal from covered service.* (1) If the railroad determines that an employee has violated § 219.101 or § 219.102, or the alcohol or controlled substances misuse rule of another DOT agency, the railroad must immediately remove the employee from covered service and the procedures described in paragraphs (b) through (e) of this section apply.

(2) If an employee refuses to provide breath or a body fluid sample or samples when required to by the railroad under a mandatory provision of this part, the railroad must immediately remove the employee from covered service, and the procedures described in paragraphs (b) through (e) of this section apply.

(3)(i) This section does not apply to actions based on breath or body fluid tests for alcohol or drugs that are conducted exclusively under authority other than that provided in this part (e.g., testing under a company medical policy, for-cause testing policy wholly independent of subpart D of this part, or testing under a labor agreement).

(ii) This section and the information requirements listed in § 219.23 do not apply to applicants who refuse to submit to a pre-employment test or who have a pre-employment test with a result indicating the misuse of alcohol or controlled substances.

(b) *Notice.* Prior to or upon withdrawing the employee from covered service under this section, the railroad must provide notice to the employee of the reason for this action.

(c) *Hearing procedures.* (1) If the employee denies that the test result is valid evidence of alcohol or drug use prohibited by this subpart, the employee may demand and must be provided an opportunity for a prompt post-suspension hearing before a presiding officer other than the charging official. This hearing may be consolidated with any disciplinary hearing arising from the same accident or incident (or conduct directly related thereto), but the presiding officer must make separate findings as to compliance with § 219.101 and § 219.102.

(2) The hearing must be convened within the period specified in the applicable collective bargaining agreement. In the absence of an agreement provision, the employee may demand that the hearing be convened within 10 calendar days of the suspension or, in the case of an employee who is unavailable due to injury, illness, or other sufficient cause, within 10 days of the date the employee becomes available for hearing.

(3) A post-suspension proceeding conforming to the requirements of an applicable collective bargaining agreement, together with the provisions for adjustment of disputes under sec. 3 of the Railway Labor Act (49 U.S.C. 153), satisfies the procedural requirements of this paragraph (c).

(4) Nothing in this part may be deemed to abridge any additional procedural rights or remedies not inconsistent with this part that are available to the employee under a collective bargaining agreement, the Railway Labor Act, or (with respect to employment at will) at common law with respect to the removal or other adverse action taken as a consequence of a positive test result in a test authorized or required by this part.

(5) Nothing in this part restricts the discretion of the railroad to treat an employee's denial of prohibited alcohol

or drug use as a waiver of any privilege the employee would otherwise enjoy to have such prohibited alcohol or drug use treated as a non-disciplinary matter or to have discipline held in abeyance.

(d) The railroad must comply with the return-to-service and follow-up testing requirements, and the Substance Abuse Professional conflict-of-interest prohibitions, contained in §§ 40.305, 40.307, and 40.299 of this title, respectively.

§ 219.105 Railroad's duty to prevent violations.

(a) A railroad may not, with actual knowledge, permit an employee to go or remain on duty in covered service in violation of the prohibitions of § 219.101 or § 219.102. As used in this section, the knowledge imputed to the railroad must be limited to that of a railroad management employee (such as a supervisor deemed an ''officer,'' whether or not such person is a corporate officer) or a supervisory employee in the offending employee's chain of command.

(b) A railroad must exercise due diligence to assure compliance with § 219.101 and § 219.102 by each covered employee.

§ 219.107 Consequences of unlawful refusal.

(a) An employee who refuses to provide breath or a body fluid sample or samples when required to by the railroad under a mandatory provision of this part must be deemed disqualified for a period of nine (9) months.

(b) Prior to or upon withdrawing the employee from covered service under this section, the railroad must provide notice of the reason for this action, and the procedures described in § 219.104(c) apply.

(c) The disqualification required by this section applies with respect to employment in covered service by any railroad with notice of such disqualification.

(d) The requirement of disqualification for nine (9) months does not limit any discretion on the part of the railroad to impose additional sanctions for the same or related conduct.

(e) Upon the expiration of the 9-month period described in this section, a railroad may permit the employee to return to covered service only under the same conditions specified in § 219.104(d), and the employee must be subject to follow-up tests, as provided by that section.

Subpart C—Post-Accident Toxicological Testing

§ 219.201 Events for which testing is required.

(a) *List of events.* Except as provided in paragraph (b) of this section, post-accident toxicological tests must be conducted after any event that involves one or more of the circumstances described in paragraphs (a)(1) through (4) of this section:

(1) *Major train accident.* Any train accident (i.e., a rail equipment accident involving damage in excess of the current reporting threshold) that involves one or more of the following:

(i) A fatality;

(ii) A release of hazardous material lading from railroad equipment accompanied by—

(A) An evacuation; or

(B) A reportable injury resulting from the hazardous material release (e.g., from fire, explosion, inhalation, or skin contact with the material); or

(iii) Damage to railroad property of $1,000,000 or more.

(2) *Impact accident.* An impact accident (i.e., a rail equipment accident defined as an ''impact accident'' in § 219.5) that involves damage in excess of the current reporting threshold, resulting in—

(i) A reportable injury; or

(ii) Damage to railroad property of $150,000 or more.

(3) *Fatal train incident.* Any train incident that involves a fatality to any on-duty railroad employee.

(4) *Passenger train accident.* Reportable injury to any person in a train accident (i.e., a rail equipment accident involving damage in excess of the current reporting threshold) involving a passenger train.

(b) *Exceptions.* No test may be required in the case of a collision between railroad rolling stock and a motor vehicle or other highway conveyance at a rail/highway grade crossing. No test may be required in the case of an accident/incident the cause and severity of which are wholly attributable to a natural cause (e.g., flood, tornado, or other natural disaster) or to vandalism or trespasser(s), as determined on the basis of objective and documented facts by the railroad representative responding to the scene.

(c) *Good faith determinations.* (1)(i) The railroad representative responding to the scene of the accident/incident must determine whether the accident/incident falls within the requirements of paragraph (a) of this section or is within the exception described in paragraph (b) of this section. It is the duty of the railroad representative to make reasonable inquiry into the facts as necessary to make such determinations. In making such inquiry, the railroad representative must consider the need to obtain samples as soon as practical in order to determine the presence or absence of impairing substances reasonably contemporaneous with the accident/incident. The railroad representative satisfies the requirement of this section if, after making reasonable inquiry, the representative exercises good faith judgement in making the required determinations.

(ii) The railroad representative making the determinations required by this section may not be a person directly involved in the accident/incident. This section does not prohibit consultation between the responding railroad representative and higher level railroad officials; however, the responding railroad representative must make the factual determinations required by this section.

(iii) Upon specific request made to the railroad by the Associate Administrator for Safety, FRA (or the Associate Administrator's delegate), the railroad must provide a report describing any decision by a person other than the responding railroad representative with respect to whether an accident/incident qualifies for testing. This report must be affirmed by the decision maker and must be provided to FRA within 72 hours of the request. The report must include the facts reported by the responding railroad representative, the basis upon which the testing decision was made, and the person making the decision.

(iv) Any estimates of railroad property damage made by persons not at the scene must be based on descriptions of specific physical damage provided by the on-scene railroad representative.

(v) In the case of an accident involving passenger equipment, a host railroad may rely upon the damage estimates provided by the passenger railroad (whether present on scene or not) in making the decision whether testing is required, subject to the same requirement that visible physical damage be specifically described.

(2) A railroad must not require an employee to provide blood or urine specimens under the authority or procedures of this subject unless the railroad has made the determinations required by this section, based upon reasonable inquiry and good faith judgment. A railroad does not act in excess of its authority under this subpart if its representative has made such reasonable inquiry and exercised such good faith judgment, but it is later determined, after investigation, that one

or more of the conditions thought to have required testing were not, in fact, present. However, this section does not excuse the railroad for any error arising from a mistake of law (e.g., application of testing criteria other than those contained in these regulations).

(3) A railroad is not in violation of this subpart if its representative has made such reasonable inquiry and exercised such good faith judgment but nevertheless errs in determining that post-accident testing is not required.

(4) An accident/incident with respect to which the railroad has made reasonable inquiry and exercised good faith judgment in determining the facts necessary to apply the criteria contained in paragraph (a) of this section is deemed a qualifying event for purposes of sample analysis, reporting, and other purposes.

(5) In the event samples are collected following an event determined by FRA not to be a qualifying event within the meaning of this section, FRA directs its designated laboratory to destroy any sample material submitted and to refrain from disclosing to any person the results of any analysis conducted.

§ 219.203 Responsibilities of railroads and employees.

(a) *Employees tested.* (1)(i) Following each accident and incident described in § 219.201, the railroad (or railroads) must take all practicable steps to assure that all covered employees of the railroad directly involved in the accident or incident provide blood and urine samples for toxicological testing by FRA. Such employees must cooperate in the provision of samples as described in this part and appendix C to this part.

(ii) If the conditions for mandatory toxicological testing exist, the railroad may also require employees to provide breath for testing in accordance with the procedures set forth in part 40 of this title and in this part, if such testing does not interfere with timely collection of required samples.

(2) Such employees must specifically include each and every operating employee assigned as a crew member of any train involved in the accident or incident. In any case where an operator, dispatcher, signal maintainer or other covered employee is directly and contemporaneously involved in the circumstances of the accident/incident, those employees must also be required to provide samples.

(3) An employee must be excluded from testing under the following circumstances: In any case of an accident/incident for which testing is mandated only under § 219.201(a)(2) (an ''impact accident''), § 219.201(a)(3) (''fatal train incident''), or § 219.201(a)(4) (a ''passenger train accident with injury'') if the railroad representative can immediately determine, on the basis of specific information, that the employee had no role in the cause(s) or severity of the accident/incident. The railroad representative must consider any such information immediately available at the time the qualifying event determination is made under § 219.201.

(4) The following provisions govern accidents/incidents involving non-covered employees:

(i) Surviving non-covered employees are not subject to testing under this subpart.

(ii) Testing of the remains of non-covered employees who are fatally injured in train accidents and incidents is required.

(b) *Timely sample collection.* (1) The railroad must make every reasonable effort to assure that samples are provided as soon as possible after the accident or incident.

(2) This paragraph (b) must not be construed to inhibit the employees required to be tested from performing, in the immediate aftermath of the accident or incident, any duties that may be necessary for the preservation of life or property. However, where practical, the railroad must utilize other employees to perform such duties.

(3) In the case of a passenger train which is in proper condition to continue to the next station or its destination after an accident or incident, the railroad must consider the safety and convenience of passengers in determining whether the crew is immediately available for testing. A relief crew must be called to relieve the train crew as soon as possible.

(4) Covered employees who may be subject to testing under this subpart must be retained in duty status for the period necessary to make the determinations required by § 219.201 and this section and (as appropriate) to complete the sample collection procedure. An employee may not be recalled for testing under this subpart if that employee has been released from duty under the normal procedures of the railroad, except that an employee may be immediately recalled for testing if—

(i) The employee could not be retained in duty status because the employee went off duty under normal carrier procedures prior to being contacted by a railroad supervisor and instructed to remain on duty pending completion of the required determinations (e.g., in the case of a dispatcher or signal maintainer remote from the scene of an accident who was unaware of the occurrence at the time the employee went off duty);

(ii) The railroad's preliminary investigation (contemporaneous with the determination required by § 219.201) indicates a clear probability that the employee played a major role in the cause or severity of the accident/incident; and

(iii) The accident/incident actually occurred during the employee's duty tour. An employee who has been transported to receive medical care is not released from duty for purposes of this section. Nothing in this section prohibits the subsequent testing of an employee who has failed to remain available for testing as required (i.e., who is absent without leave); but subsequent testing does not excuse such refusal by the employee timely to provide the required specimens.

(c) *Place of sample collection.* (1) Employees must be transported to an independent medical facility where the samples must be obtained. The railroad must pre-designate for such testing one or more such facilities in reasonable proximity to any location where the railroad conducts operations. Designation must be made on the basis of the willingness of the facility to conduct sample collection and the ability of the facility to complete sample collection promptly, professionally, and in accordance with pertinent requirements of this part. In all cases blood may be drawn only by a qualified medical professional or by a qualified technician subject to the supervision of a qualified medical professional.

(2) In the case of an injured employee, the railroad must request the treating medical facility to obtain the samples.

(d) *Obtaining cooperation of facility.* (1) In seeking the cooperation of a medical facility in obtaining a sample under this subpart, the railroad shall, as necessary, make specific reference to the requirements of this subpart.

(2) If an injured employee is unconscious or otherwise unable to evidence consent to the procedure and the treating medical facility declines to obtain blood samples after having been acquainted with the requirements of this subpart, the railroad must immediately notify the duty officer at the National Response Center (NRC) at (800) 424–8801 or (800) 424–8802, stating the employee's name, the medical facility, its location, the name of the appropriate decisional authority at the medical facility, and the telephone number at which that person can be reached. FRA will then take appropriate measures to assist in obtaining the required sample.

(e) *Discretion of physician.* Nothing in this subpart may be construed to limit the discretion of a physician to determine whether drawing a blood sample is consistent with the health of an injured employee or an employee afflicted by any other condition that may preclude drawing the specified quantity of blood.

§ 219.205 Sample collection and handling.

(a) *General.* Urine and blood samples must be obtained, marked, preserved, handled, and made available to FRA consistent with the requirements of this subpart, and the technical specifications set forth in appendix C to this part.

(b) *Information requirements.* In order to process samples, analyze the significance of laboratory findings, and notify the railroads and employees of test results, it is necessary to obtain basic information concerning the accident/incident and any treatment administered after the accident/incident. Accordingly, the railroad representative must complete the information required by Form FRA 6180.73 (revised) for shipping with the samples. Each employee subject to testing must cooperate in completion of the required information on Form FRA F 6180.74 (revised) for inclusion in the shipping kit and processing of the samples. The railroad representative must request an appropriate representative of the medical facility to complete the remaining portion of the information on each Form 6180.74. One Form 6180.73 must be forwarded in the shipping kit with each group of samples. One Form 6180.74 must be forwarded in the shipping kit for each employee who provides samples. Forms 6180.73 and 6180.74 may be ordered from the laboratory specified in appendix B to this part; the forms are also provided to railroads free of charge in the shipping kit. (See paragraph (c) of this section.)

(c) *Shipping kit.* (1) FRA and the laboratory designated in appendix B to this part make available for purchase a limited number of standard shipping kits for the purpose of routine handling of toxicological samples under this subpart. Whenever possible, samples must be placed in the shipping kit prepared for shipment according to the instructions provided in the kit and appendix C to this part.

(2) Kits may be ordered directly from the laboratory designated in appendix B to this part.

(3) FRA maintains a limited number of kits at its field offices. A Class III railroad may utilize kits in FRA's possession, rather than maintaining such kits on its property.

(d) *Shipment.* Samples must be shipped as soon as possible by pre-paid air express or air freight (or other means adequate to ensure delivery within twenty-four (24) hours from time of shipment) to the laboratory designated in appendix B to this part. Where express courier pickup is available, the railroad must request the medical facility to transfer the sealed toxicology kit directly to the express courier for transportation. If courier pickup is not available at the medical facility where the samples are collected or for any other reason prompt transfer by the medical facility cannot be assured, the railroad must promptly transport the sealed shipping kit holding the samples to the most expeditious point of shipment via air express, air freight or equivalent means. The railroad must maintain and document secure chain of custody of the kit from release by the medical facility to delivery for transportation, as described in appendix C to this part.

§ 219.206 FRA access to breath test results.

Documentation of breath test results must be made available to FRA consistent with the requirements of this subpart, and the technical specifications set forth in appendix C to this part.

§ 219.207 Fatality.

(a) In the case of an employee fatality in an accident or incident described in § 219.201, body fluid and/or tissue samples must be obtained from the remains of the employee for toxicological testing. To ensure that samples are timely collected, the railroad must immediately notify the appropriate local authority (such as a coroner or medical examiner) of the fatality and the requirements of this subpart, making available the shipping kit and requesting the local authority to assist in obtaining the necessary body fluid or tissue samples. The railroad must also seek the assistance of the custodian of the remains, if a person other than the local authority.

(b) If the local authority or custodian of the remains declines to cooperate in obtaining the necessary samples, the railroad must immediately notify the duty officer at the National Response Center (NRC) at (800) 424–8801 or (800) 424–8802 by providing the following information:

(1) Date and location of the accident or incident;

(2) Railroad;

(3) Name of the deceased;

(4) Name and telephone number of custodian of the remains; and

(5) Name and telephone number of local authority contacted.

(c) A coroner, medical examiner, pathologist, Aviation Medical Examiner, or other qualified professional is authorized to remove the required body fluid and/or tissue samples from the remains on request of the railroad or FRA pursuant to this part; and, in so acting, such person is the delegate of the FRA Administrator under §§ 20107 and 20108 of title 49, United States Code (but not the agent of the Secretary for purposes of the Federal Tort Claims Act (chapter 171 of title 28, United States Code). Such qualified professional may rely upon the representations of the railroad or FRA representative with respect to the occurrence of the event requiring that toxicological tests be conducted and the coverage of the deceased employee under these rules.

(d) Appendix C to this part specifies body fluid and tissue samples required for toxicological analysis in the case of a fatality.

§ 219.209 Reports of tests and refusals.

(a)(1) A railroad that has experienced one or more events for which samples were obtained must provide prompt telephonic notification summarizing such events. Notification must immediately be provided to the duty officer at the National Response Center (NRC) at (800) 424–8802 and to the Office of Safety, FRA, at (202) 493–6313.

(2) Each telephonic report must contain:

(i) Name of railroad;

(ii) Name, title and telephone number of person making the report;

(iii) Time, date and location of the accident/incident;

(iv) Brief summary of the circumstances of the accident/incident, including basis for testing; and

(v) Number, names and occupations of employees tested.

(b) If the railroad is unable, as a result of non-cooperation of an employee or for any other reason, to obtain a sample and cause it to be provided to FRA as required by this subpart, the railroad must make a concise narrative report of the reason for such failure and, if appropriate, any action taken in response to the cause of such failure. This report must be appended to the report of the accident/incident required to be submitted under part 225 of this chapter.

(c) If a test required by this section is not administered within four hours following the accident or incident, the railroad must prepare and maintain on file a record stating the reasons the test was not promptly administered. Records must be submitted to FRA upon request

of the FRA Associate Administrator for Safety.

§ 219.211 Analysis and follow-up.

(a) The laboratory designated in appendix B to this part undertakes prompt analysis of samples provided under this subpart, consistent with the need to develop all relevant information and produce a complete report. Samples are analyzed for alcohol and controlled substances specified by FRA under protocols specified by FRA, summarized in appendix C to this part, which have been submitted to Health and Human Services for acceptance. Samples may be analyzed for other impairing substances specified by FRA as necessary to the particular accident investigation.

(b) Results of post-accident toxicological testing under this subpart are reported to the railroad's Medical Review Officer and the employee. The MRO and the railroad must treat the test results and any information concerning medical use or administration of drugs provided under this subpart in the same confidential manner as if subject to subpart H of this part, except where publicly disclosed by FRA or the National Transportation Safety Board.

(c) With respect to a surviving employee, a test reported as positive for alcohol or a controlled substance by the designated laboratory must be reviewed by the railroad's Medical Review Officer with respect to any claim of use or administration of medications (consistent with § 219.103) that could account for the laboratory findings. The Medical Review Officer must promptly report the results of each review to the Associate Administrator for Safety, FRA, Washington, DC 20590. Such report must be in writing and must reference the employing railroad, accident/incident date, and location, and the envelope must be marked ''ADMINISTRATIVELY CONFIDENTIAL: ATTENTION ALCOHOL/DRUG PROGRAM MANAGER.'' The report must state whether the MRO reported the test result to the employing railroad as positive or negative and the basis of any determination that analytes detected by the laboratory derived from authorized use (including a statement of the compound prescribed, dosage/frequency, and any restrictions imposed by the authorized medical practitioner). Unless specifically requested by FRA in writing, the Medical Review Officer may not disclose to FRA the underlying physical condition for which any medication was authorized or administered. The FRA is not be bound by the railroad Medical Review Officer's determination, but that determination will be considered by FRA in relation to the accident/incident investigation and with respect to any enforcement action under consideration.

(d) To the extent permitted by law, FRA treats test results indicating medical use of controlled substances consistent with § 219.103 (and other information concerning medically authorized drug use or administration provided incident to such testing) as administratively confidential and withholds public disclosure, except where it is necessary to consider this information in an accident investigation in relation to determination of probable cause. (However, as further provided in this section, FRA may provide results of testing under this subpart and supporting documentation to the National Transportation Safety Board.)

(e) An employee may respond in writing to the results of the test prior to the preparation of any final investigation report concerning the accident or incident. An employee wishing to respond may do so by letter addressed to the Alcohol/Drug Program Manager, Office of Safety, FRA, 400 Seventh Street, SW., Washington, DC 20590 within 45 days of receipt of the test results. Any such submission must refer to the accident date, railroad and location, must state the position occupied by the employee on the date of the accident/incident, and must identify any information contained therein that the employee requests be withheld from public disclosure on grounds of personal privacy (but the decision whether to honor such request will be made by the FRA on the basis of controlling law).

(f)(1) The toxicology report may contain a statement of pharmacological significance to assist FRA and other parties in understanding the data reported. No such statement may be construed as a finding of probable cause in the accident or incident.

(2) The toxicology report is a part of the report of the accident/incident and therefore subject to the limitation of 49 U.S.C. 20903 (prohibiting use of the report for any purpose in a civil action for damages resulting from a matter mentioned in the report).

(g)(1) It is in the public interest to ensure that any railroad disciplinary actions that may result from accidents and incidents for which testing is required under this subpart are disposed of on the basis of the most complete and reliable information available so that responsive action will be appropriate. Therefore, during the interval between an accident or incident and the date that the railroad receives notification of the results of the toxicological analysis, any provision of collective bargaining agreements establishing maximum periods for charging employees with rule violations, or for holding an investigation, may not be deemed to run as to any offense involving the accident or incident (i.e., such periods must be tolled).

(2) This provision may not be construed to excuse the railroad from any obligation to timely charge an employee (or provide other actual notice) where the railroad obtains sufficient information relating to alcohol or drug use, impairment or possession or other rule violations prior to the receipt to toxicological analysis.

(3) This provision does not authorize holding any employee out of service pending receipt of toxicological analysis; nor does it restrict a railroad from taking such action in an appropriate case.

(h) Except as provided in § 219.201 (with respect to non-qualifying events), each sample (including each split sample) provided under this subpart is retained for not less than three months following the date of the accident or incident (two years from the date of the accident or incident in the case of a sample testing positive for alcohol or a controlled substance). Post-mortem specimens may be made available to the National Transportation Safety Board (on request).

(i) An employee (donor) may, within 60 days of the date of the toxicology report, request that his or her split sample be tested by the designated laboratory or by another laboratory certified by Health and Human Services under that Department's Guidelines for Federal Workplace Drug Testing Programs that has available an appropriate, validated assay for the fluid and compound declared positive. Since some analytes may deteriorate during storage, detected levels of the compound shall, as technically appropriate, be reported and considered corroborative of the original test result. Any request for a retest shall be in writing, specify the railroad, accident date and location, be signed by the employee/donor, be addressed to the Associate Administrator for Safety, Federal Railroad Administration, Washington, DC 20590, and be designated ''ADMINISTRATIVELY CONFIDENTIAL: ATTENTION ALCOHOL/DRUG PROGRAM MANAGER.'' The expense of any employee-requested split sample test at a laboratory other than the laboratory designated under this subpart shall be borne by the employee.

§ 219.213 Unlawful refusals; consequences.

(a) *Disqualification.* An employee who refuses to cooperate in providing breath, blood or urine samples following an accident or incident specified in this subpart must be withdrawn from covered service and must be deemed disqualified for covered service for a period of nine (9) months in accordance with the conditions specified in § 219.107.

(b) *Procedures.* Prior to or upon withdrawing the employee from covered service under this section, the railroad must provide notice of the reason for this action and an opportunity for hearing before a presiding officer other than the charging official. The employee is entitled to the procedural protection set out in § 219.104(d).

(c) *Subject of hearing.* The hearing required by this section must determine whether the employee refused to submit to testing, having been requested to submit, under authority of this subpart, by a representative of the railroad. In determining whether a disqualification is required, the hearing official shall, as appropriate, also consider the following:

(1) Whether the railroad made a good faith determination, based on reasonable inquiry, that the accident or incident was within the mandatory testing requirements of this subpart; and

(2) In a case where a blood test was refused on the ground it would be inconsistent with the employee's health, whether such refusal was made in good faith and based on medical advice.

Subpart D—Testing for Cause

§ 219.300 Mandatory reasonable suspicion testing.

(a) *Requirements.* (1) A railroad must require a covered employee to submit to an alcohol test when the railroad has reasonable suspicion to believe that the employee has violated any prohibition of subpart B of this part concerning use of alcohol. The railroad's determination that reasonable suspicion exists to require the covered employee to undergo an alcohol test must be based on specific, contemporaneous, articulable observations concerning the appearance, behavior, speech or body odors of the employee.

(2) A railroad must require a covered employee to submit to a drug test when the railroad has reasonable suspicion to believe that the employee has violated the prohibitions of subpart B of this part concerning use of controlled substances. The railroad's determination that reasonable suspicion exists to require the covered employee to undergo a drug test must be based on specific, contemporaneous, articulable observations concerning the appearance, behavior, speech or body odors of the employee. Such observations may include indications of the chronic and withdrawal effects of drugs.

(b)(1) With respect to an alcohol test, the required observations must be made by a supervisor trained in accordance with § 219.11(g). The supervisor who makes the determination that reasonable suspicion exists may not conduct testing on that employee.

(2) With respect to a drug test, the required observations must be made by two supervisors, at least one of whom is trained in accordance with § 219.11(g).

(c) Nothing in this section may be construed to require the conduct of alcohol testing or drug testing when the employee is apparently in need of immediate medical attention.

(d)(1) If a test required by this section is not administered within two hours following the determination under this section, the railroad must prepare and maintain on file a record stating the reasons the test was not properly administered. If a test required by this section is not administered within eight hours of the determination under this section, the railroad must cease attempts to administer an alcohol test and must state in the record the reasons for not administering the test. Records must be submitted to FRA upon request of the FRA Administrator.

(2) [Reserved].

§ 219.301 Testing for reasonable cause.

(a) *Authorization.* A railroad may, under the conditions specified in this subpart, require any covered employee, as a condition of employment in covered service, to cooperate in breath or body fluid testing, or both, to determine compliance with §§ 219.101 and 219.102 or a railroad rule implementing the requirements of §§ 219.101 and 219.102. This authority is limited to testing after observations or events that occur during duty hours (including any period of overtime or emergency service). The provisions of this subpart apply only when, and to the extent that, the test in question is conducted in reliance upon the authority conferred by this section. Section 219.23 prescribes the notice to an employee that is required when an employee is required to provide a breath or body fluid sample under this part. A railroad may not require an employee to be tested under the authority of this subpart unless reasonable cause, as defined in this section, exists with respect to that employee.

(b) *For cause breath testing.* In addition to reasonable suspicion as described in § 219.300, the following circumstances constitute cause for the administration of alcohol tests under this section:

(1) [Reserved]

(2) *Accident/incident.* The employee has been involved in an accident or incident reportable under part 225 of this chapter, and a supervisory employee of the railroad has a reasonable belief, based on specific, articulable facts, that the employee's acts or omissions contributed to the occurrence or severity of the accident or incident; or

(3) *Rule violation.* The employee has been directly involved in one of the following operating rule violations or errors:

(i) Noncompliance with a train order, track warrant, timetable, signal indication, special instruction or other direction with respect to movement of a train that involves—

(A) Occupancy of a block or other segment of track to which entry was not authorized;

(B) Failure to clear a track to permit opposing or following movement to pass;

(C) Moving across a railroad crossing at grade without authorization; or

(D) Passing an absolute restrictive signal or passing a restrictive signal without stopping (if required);

(ii) Failure to protect a train as required by a rule consistent with § 218.37 of this chapter (including failure to protect a train that is fouling an adjacent track, where required by the railroad's rules);

(iii) Operation of a train at a speed that exceeds the maximum authorized speed by at least ten (10) miles per hour or by fifty percent (50%) of such maximum authorized speed, whichever is less;

(iv) Alignment of a switch in violation of a railroad rule, failure to align a switch as required for movement, operation of a switch under a train, or unauthorized running through a switch;

(v) Failure to apply or stop short of derail as required;

(vi) Failure to secure a hand brake or failure to secure sufficient hand brakes, as required;

(vii) Entering a crossover before both switches are lined for movement; or

(viii) In the case of a person performing a dispatching function or block operator function, issuance of a train order or establishment of a route that fails to provide proper protection for a train.

(c) *For cause drug testing.* In addition to reasonable suspicion as described in § 219.300, each of the conditions set forth in paragraphs (b)(2) (''accident/

incident'') and (b)(3) (''rule violation'') of this section as constituting cause for alcohol testing also constitutes cause with respect to drug testing.

(d) [Reserved]

(e) *Limitation for subpart C events.* The compulsory drug testing authority conferred by this section does not apply with respect to any event subject to post-accident toxicological testing as required by § 219.201. However, use of compulsory breath test authority is authorized in any case where breath test results can be obtained in a timely manner at the scene of the accident and conduct of such tests does not materially impede the collection of samples under subpart C of this part.

§ 219.302 Prompt sample collection; time limitation.

(a) Testing under this subpart may only be conducted promptly following the observations or events upon which the testing decision is based, consistent with the need to protect life and property.

(b) No employee may be required to participate in alcohol or drug testing under this section after the expiration of an eight-hour period from—

(1) The time of the observations or other events described in this section; or

(2) In the case of an accident/incident, the time a responsible railroad supervisor receives notice of the event providing reasonable cause for conduct of the test.

(c) An employee may not be tested under this subpart if that employee has been released from duty under the normal procedures of the railroad. An employee who has been transported to receive medical care is not released from duty for purposes of this section. Nothing in this section prohibits the subsequent testing of an employee who has failed to remain available for testing as required (i.e., who is absent without leave).

(d) As used in this subpart, a ''responsible railroad supervisor'' means any responsible line supervisor (e.g., a trainmaster or road foreman of engines) or superior official in authority over the employee to be tested.

(e) In the case of a drug test, the eight-hour requirement is satisfied if the employee has been delivered to the collection site (where the collector is present) and the request has been made to commence collection of the drug testing specimens within that period.

(f) [Reserved]

(g) Section 219.23 prescribes the notice to an employee that is required to provide breath or a body fluid sample under this part.

Subpart E—Identification of Troubled Employees

§ 219.401 Requirement for policies.

(a) The purpose of this subpart is to prevent the use of alcohol and drugs in connection with covered service.

(b) Each railroad must adopt, publish and implement—

(1) A policy designed to encourage and facilitate the identification of those covered employees who abuse alcohol or drugs as a part of a treatable condition and to ensure that such employees are provided the opportunity to obtain counseling or treatment before those problems manifest themselves in detected violations of this part (hereafter ''voluntary referral policy''); and

(2) A policy designed to foster employee participation in preventing violations of this subpart and encourage co-worker participation in the direct enforcement of this part (hereafter ''co-worker report policy'').

(c) A railroad may comply with this subpart by adopting, publishing and implementing policies meeting the specific requirements of §§ 219.403 and 219.405 or by complying with § 219.407.

(d) If a railroad complies with this part by adopting, publishing and implementing policies consistent with §§ 219.403 and 219.405, the railroad must make such policies, and publications announcing such policies, available for inspection and copying by FRA.

(e) Nothing in this subpart may be construed to—

(1) Require payment of compensation for any period an employee is out of service under a voluntary referral or co-worker report policy;

(2) Require a railroad to adhere to a voluntary referral or co-worker report policy in a case where the referral or report is made for the purpose, or with the effect, of anticipating the imminent and probable detection of a rule violation by a supervising employee; or

(3) Limit the discretion of a railroad to dismiss or otherwise discipline an employee for specific rule violations or criminal offenses, except as specifically provided by this subpart.

§ 219.403 Voluntary referral policy.

(a) *Scope.* This section prescribes minimum standards for voluntary referral policies. Nothing in this section restricts a railroad from adopting, publishing and implementing a voluntary referral policy that affords more favorable conditions to employees troubled by alcohol or drug abuse problems, consistent with the railroad's responsibility to prevent violations of §§ 219.101 and 219.102.

(b) *Required provisions.* A voluntary referral policy must include the following provisions:

(1) A covered employee who is affected by an alcohol or drug use problem may maintain an employment relationship with the railroad if, before the employee is charged with conduct deemed by the railroad sufficient to warrant dismissal, the employee seeks assistance through the railroad for the employee's alcohol or drug use problem or is referred for such assistance by another employee or by a representative of the employee's collective bargaining unit. The railroad must specify whether, and under what circumstances, its policy provides for the acceptance of referrals from other sources, including (at the option of the railroad) supervisory employees.

(2) Except as may be provided under paragraph (c) of this section, the railroad treats the referral and subsequent handling, including counseling and treatment, as confidential.

(3) The railroad will, to the extent necessary for treatment and rehabilitation, grant the employee a leave of absence from the railroad for the period necessary to complete primary treatment and establish control over the employee's alcohol or drug problem. The policy must allow a leave of absence of not less than 45 days, if necessary for the purpose of meeting initial treatment needs.

(4) Except as may be provided under paragraph (c)(2) of this section, the employee will be returned to service on the recommendation of the substance abuse professional. Approval to return to service may not be unreasonably withheld.

(5) With respect to a certified locomotive engineer or a candidate for certification, the railroad must meet the requirements of § 240.119(e) of this chapter.

(c) *Optional provisions.* A voluntary referral policy may include any of the following provisions, at the option of the railroad:

(1) The policy may provide that the rule of confidentiality is waived if—

(i) The employee at any time refuses to cooperate in a recommended course of counseling or treatment; and/or

(ii) The employee is later determined, after investigation, to have been involved in an alcohol or drug-related disciplinary offense growing out of subsequent conduct.

(2) The policy may require successful completion of a return-to-service medical examination as a further condition on reinstatement in covered service.

(3) The policy may provide that it does not apply to an employee who has previously been assisted by the railroad under a policy or program substantially consistent with this section or who has previously elected to waive investigation under § 219.405 (co-worker report policy).

(4) The policy may provide that, in order to invoke its benefits, the employee must report to the contact designated by the railroad either:

(i) During non-duty hours (i.e., at a time when the employee is off duty); or

(ii) While unimpaired and otherwise in compliance with the railroad's alcohol and drug rules consistent with this subpart.

§ 219.405 Co-worker report policy.

(a) *Scope.* This section prescribes minimum standards for co-worker report policies. Nothing in this section restricts a railroad from adopting, publishing and implementing a policy that affords more favorable conditions to employees troubled by alcohol or drug abuse problems, consistent with the railroad's responsibility to prevent violations of §§ 219.101 and 219.102.

(b) *Employment relationship.* A co-worker report policy must provide that a covered employee may maintain an employment relationship with the railroad following an alleged first offense under these rules or the railroad's alcohol and drug rules, subject to the conditions and procedures contained in this section.

(c) *General conditions and procedures.* (1) The alleged violation must come to the attention of the railroad as a result of a report by a co-worker that the employee was apparently unsafe to work with or was, or appeared to be, in violation of this part or the railroad's alcohol and drug rules.

(2) If the railroad representative determines that the employee is in violation, the railroad may immediately remove the employee from service in accordance with its existing policies and procedures.

(3) The employee must elect to waive investigation on the rule charge and must contact the substance abuse professional within a reasonable period specified by the policy.

(4) The substance abuse professional must schedule necessary interviews with the employee and complete an evaluation within 10 calendar days of the date on which the employee contacts the professional with a request for evaluation under the policy, unless it becomes necessary to refer the employee for further evaluation. In each case, all necessary evaluations must be completed within 20 days of the date on which the employee contacts the professional.

(d) *When treatment is required.* If the substance abuse professional determines that the employee is affected by psychological or chemical dependence on alcohol or a drug or by another identifiable and treatable mental or physical disorder involving the abuse of alcohol or drugs as a primary manifestation, the following conditions and procedures apply:

(1) The railroad must, to the extent necessary for treatment and rehabilitation, grant the employee a leave of absence from the railroad for the period necessary to complete primary treatment and establish control over the employee's alcohol or drug problem. The policy must allow a leave of absence of not less than 45 days, if necessary for the purpose of meeting initial treatment needs.

(2) The employee must agree to undertake and successfully complete a course of treatment deemed acceptable by the substance abuse professional.

(3) The railroad must promptly return the employee to service, on recommendation of the substance abuse professional, when the employee has established control over the substance abuse problem. Return to service may also be conditioned on successful completion of a return-to-service medical examination. Approval to return to service may not be unreasonably withheld.

(4) Following return to service, the employee, as a further condition on withholding of discipline, may, as necessary, be required to participate in a reasonable program of follow-up treatment for a period not to exceed 60 months from the date the employee was originally withdrawn from service.

(e) *When treatment is not required.* If the substance abuse professional determines that the employee is not affected by an identifiable and treatable mental or physical disorder—

(1) The railroad must return the employee to service within 5 days after completion of the evaluation.

(2) During or following the out-of-service period, the railroad may require the employee to participate in a program of education and training concerning the effects of alcohol and drugs on occupational or transportation safety.

(f) *Follow-up tests.* A railroad may conduct return-to-service and/or follow-up tests (as described in § 219.104) of an employee who waives investigation and is determined to be ready to return to service under this section.

§ 219.407 Alternate policies.

(a) In lieu of a policy under § 219.403 (voluntary referral) or § 219.405 (co-worker report), or both, a railroad may adopt, publish and implement, with respect to a particular class or craft of covered employees, an alternate policy or policies having as their purpose the prevention of alcohol or drug use in railroad operations, if such policy or policies have the written concurrence of the recognized representatives of such employees.

(b) The concurrence of recognized employee representatives in an alternate policy may be evidenced by a collective bargaining agreement or any other document describing the class or craft of employees to which the alternate policy applies. The agreement or other document must make express reference to this part and to the intention of the railroad and employee representatives that the alternate policy applies in lieu of the policy required by § 219.403, § 219.405, or both.

(c) The railroad must file the agreement or other document described in paragraph (b) of this section with the Associate Administrator for Safety, FRA. If the alternate policy is amended or revoked, the railroad must file a notice of such amendment or revocation at least 30 days prior to the effective date of such action.

(d) This section does not excuse a railroad from adopting, publishing and implementing the policies required by §§ 219.403 and 219.405 with respect to any group of covered employees not within the coverage of an appropriate alternate policy.

Subpart F—Pre-employment Tests

§ 219.501 Pre-employment drug testing.

(a) Prior to the first time a covered employee performs covered service for a railroad, the employee must undergo testing for drugs. No railroad may allow a covered employee to perform covered service, unless the employee has been administered a test for drugs with a result that did not indicate the misuse of controlled substances. This requirement applies to final applicants for employment and to employees seeking to transfer for the first time from non-covered service to duties involving covered service.

(b) As used in subpart H of this part with respect to a test required under this subpart, the term covered employee includes an applicant for pre-employment testing only. In the case of an applicant who declines to be tested and withdraws the application for employment, no record may be maintained of the declination.

§ 219.502 Pre-employment alcohol testing.

(a) A railroad may, but is not required to, conduct pre-employment alcohol testing under this part. If a railroad chooses to conduct pre-employment alcohol testing, the railroad must comply with the following requirements:

(1) It must conduct a pre-employment alcohol test before the first performance of safety-sensitive functions by every covered employee (whether a new employee or someone who has transferred to a position involving the performance of safety-sensitive functions).

(2) It must treat all safety-sensitive employees performing safety-sensitive functions the same for the purpose of pre-employment alcohol testing (i.e., it must not test some covered employees and not others).

(3) It must conduct the pre-employment tests after making a contingent offer of employment or transfer, subject to the employee passing the pre-employment alcohol test.

(4) It must conduct all pre-employment alcohol tests using the alcohol testing procedures of part 40 of this title.

(5) It must not allow a covered employee to begin performing safety-sensitive functions unless the result of the employee's test indicates an alcohol concentration of less than 0.04.

(b) As used in subpart H of this part, with respect to a test authorized under this subpart, the term covered employee includes an applicant for pre-employment testing only. In the case of an applicant who declines to be tested and withdraws the application for employment, no record may be maintained of the declination.

§ 219.503 Notification; records.

The railroad must provide for medical review of drug test results as provided in subpart H of this part. The railroad must notify the applicant of the results of the drug and alcohol tests in the same manner as provided for employees in subpart H of this part. Records must be maintained confidentially and be retained in the same manner as required under subpart J of this part for employee test records, except that such records need not reflect the identity of an applicant whose application for employment in covered service was denied.

§ 219.505 Refusals.

An applicant who has refused to submit to pre-employment testing under this section may not be employed in covered service based upon the application and examination with respect to which such refusal was made. This section does not create any right on the part of the applicant to have a subsequent application considered; nor does it restrict the discretion of the railroad to entertain a subsequent application for employment from the same person.

Subpart G—Random Alcohol and Drug Testing Programs

§ 219.601 Railroad random drug testing programs.

(a) *Submission.* Each railroad must submit for FRA approval a random testing program meeting the requirements of this subpart. A railroad commencing operations must submit such a program not later than 30 days prior to such commencement. The program must be submitted to the Associate Administrator for Safety, FRA, for review and approval by the FRA Administrator. If, after approval, a railroad desires to amend the random testing program implemented under this subpart, the railroad must file with FRA a notice of such amendment at least 30 days prior to the intended effective date of such action. A railroad already subject to this subpart that becomes subject to this subpart with respect to one or more additional employees must amend its program not later than 60 days after these employees become subject to this subpart and file with FRA a notice of such amendment at least 30 days prior to the intended effective date of such action. A program responsive to the requirements of this section or any amendment to the program may not be implemented prior to approval.

(b) *Form of programs.* Random testing programs submitted by or on behalf of each railroad under this subpart must meet the following criteria, and the railroad and its managers, supervisors, officials and other employees and agents must conform to such criteria in implementing the program:

(1) Selection of covered employees for testing must be made by a method employing objective, neutral criteria which ensure that every covered employee has a substantially equal statistical chance of being selected within a specified time frame. The method may not permit subjective factors to play a role in selection, i.e., no employee may be selected as the result of the exercise of discretion by the railroad. The selection method must be capable of verification with respect to the randomness of the selection process, and any records necessary to document random selection must be retained for not less than 24 months from the date upon which the particular samples were collected.

(2)(i) The program must select for testing a sufficient number of employees so that, during the first 12 months—

(A) The random testing program is spread reasonably through the 12-month period.

(B) [Reserved]

(ii) During the subsequent 12-month period, the program must select for testing a sufficient number of employees so that the number of tests conducted will equal at least 50 percent of the number of covered employees. Annualized percentage rates must be determined by reference to the total number of covered employees employed by the railroad at the beginning of the particular twelve-month period or by an alternate method specified in the plan approved by the Associate Administrator for Safety, FRA. If the railroad conducts random testing through a consortium, the annual rate may be calculated for each individual employer or for the total number of covered employees subject to random testing by the consortium.

(3) Railroad random testing programs must ensure to the maximum extent practicable that each employee perceives the possibility that a random test may be required on any day the employee reports for work.

(4) Notice of an employee's selection may not be provided until the duty tour in which testing is to be conducted, and then only so far in advance as is reasonably necessary to ensure the employee's presence at the time and place set for testing.

(5) The program must include testing procedures and safeguards, and procedures for action based on positive test results, consistent with this part.

(6) An employee must be subject to testing only while on duty. Only employees who perform covered service for the railroad are subject to testing under this part. In the case of employees who during some duty tours perform covered service and during others do not, the railroad program must specify the extent to which, and the circumstances under which they are be subject to testing. To the extent practical within the limitations of this part and in the context of the railroad's operations, the railroad program must provide that employees are subject to the possibility of random testing on any day they actually perform covered service.

(7) Each time an employee is notified for random drug testing the employee will be informed that selection was made on a random basis.

(c) *Approval.* The Associate Administrator for Safety, FRA, will

notify the railroad in writing whether the program is approved as consistent with the criteria set forth in this part. If the Associate Administrator for Safety determines that the program does not conform to those criteria, the Associate Administrator for Safety will inform the railroad of any matters preventing approval of the program, with specific explanation as to necessary revisions. The railroad must resubmit its program with the required revisions within 30 days of such notice. Failure to resubmit the program with the necessary revisions will be considered a failure to implement a program under this subpart.

(d) *Implementation.* (1) No later than 45 days prior to commencement of random testing, the railroad must publish to each of its covered employees, individually, a written notice that he or she will be subject to random drug testing under this part. Such notice must state the date for commencement of the program, must state that the selection of employees for testing will be on a strictly random basis, must describe the consequences of a determination that the employee has violated § 219.102 or any applicable railroad rule, and must inform the employee of the employee's rights under subpart E of this part. A copy of the notice must be provided to each new covered employee on or before the employee's initial date of service. Since knowledge of Federal law is presumed, nothing in this paragraph (1) creates a defense to a violation of § 219.102.

(2) A railroad commencing operations must submit a random testing program 60 days after doing so. The railroad must implement its approved random testing program not later than the expiration of 60 days from approval by the Administrator.

§ 219.602 FRA Administrator's determination of random drug testing rate.

(a) Except as provided in paragraphs (b) through (d) of this section, the minimum annual percentage rate for random drug testing must be 50 percent of covered employees.

(b) The FRA Administrator's decision to increase or decrease the minimum annual percentage rate for random drug testing is based on the reported positive rate for the entire industry. All information used for this determination is drawn from the drug MIS reports required by this part. In order to ensure reliability of the data, the Administrator considers the quality and completeness of the reported data, may obtain additional information or reports from railroads, and may make appropriate modifications in calculating the industry positive rate. Each year, the Administrator will publish in the **Federal Register** the minimum annual percentage rate for random drug testing of covered employees. The new minimum annual percentage rate for random drug testing will be applicable starting January 1 of the calendar year following publication.

(c) When the minimum annual percentage rate for random drug testing is 50 percent, the Administrator may lower this rate to 25 percent of all covered employees if the Administrator determines that the data received under the reporting requirements of § 219.803 for two consecutive calendar years indicate that the reported positive rate is less than 1.0 percent.

(d) When the minimum annual percentage rate for random drug testing is 25 percent, and the data received under the reporting requirements of § 219.803 for any calendar year indicate that the reported positive rate is equal to or greater than 1.0 percent, the Administrator will increase the minimum annual percentage rate for random drug testing to 50 percent of all covered employees.

(e) Selection of covered employees for testing must be made by a method employing objective, neutral criteria which ensures that every covered employee has a substantially equal statistical chance of being selected within a specified time frame. The method may not permit subjective factors to play a role in selection, i.e., no employee may be selected as a result of the exercise of discretion by the railroad. The selection method must be capable of verification with respect to the randomness of the selection process.

(f) The railroad must randomly select a sufficient number of covered employees for testing during each calendar year to equal an annual rate not less than the minimum annual percentage rate for random drug testing determined by the Administrator. If the railroad conducts random drug testing through a consortium, the number of employees to be tested may be calculated for each individual railroad or may be based on the total number of covered employees covered by the consortium who are subject to random drug testing at the same minimum annual percentage rate under this part or any DOT drug testing rule.

(g) Each railroad must ensure that random drug tests conducted under this part are unannounced and that the dates for administering random tests are spread reasonably throughout the calendar year.

(h) If a given covered employee is subject to random drug testing under the drug testing rules of more than one DOT agency for the same railroad, the employee must be subject to random drug testing at the percentage rate established for the calendar year by the DOT agency regulating more than 50 percent of the employee's function.

(i) If a railroad is required to conduct random drug testing under the drug testing rules of more than one DOT agency, the railroad may—

(1) Establish separate pools for random selection, with each pool containing the covered employees who are subject to testing at the same required rate; or

(2) Randomly select such employees for testing at the highest percentage rate established for the calendar year by any DOT agency to which the railroad is subject.

§ 219.603 Participation in drug testing.

A railroad shall, under the conditions specified in this subpart and subpart H of this part, require a covered employee selected through the random testing program to cooperate in urine testing to determine compliance with § 219.102, and the employee must provide the required sample and complete the required paperwork and certifications. Compliance by the employee may be excused only in the case of a documented medical or family emergency.

§ 219.605 Positive drug test results; procedures.

(a) [Reserved]

(b) Procedures for administrative handling by the railroad in the event a sample provided under this subpart is reported as positive by the MRO are set forth in § 219.104. The responsive action required in § 219.104 is not stayed pending the result of a retest or split sample test.

§ 219.607 Railroad random alcohol testing programs.

(a) Each railroad must submit for FRA approval a random alcohol testing program meeting the requirements of this subpart. A railroad commencing operations must submit a random alcohol testing program not later than 30 days prior to such commencement. The program must be submitted to the Associate Administrator for Safety, FRA, for review and approval. If, after approval, a railroad desires to amend the random alcohol testing program implemented under this subpart, the railroad must file with FRA a notice of such amendment at least 30 days prior to the intended effective date of such action. A program responsive to the requirements of this section or any

amendment to the program may not be implemented prior to approval.

(b) *Form of programs.* Random alcohol testing programs submitted by or on behalf of each railroad under this subpart must meet the following criteria, and the railroad and its managers, supervisors, officials and other employees and agents must conform to such criteria in implementing the program:

(1) Selection of covered employees for testing must be made by a method employing objective, neutral criteria which ensures that every covered employee has a substantially equal statistical chance of being selected within a specified time frame. The method may not permit subjective factors to play a role in selection, i.e., no employee may be selected as the result of the exercise of discretion by the railroad. The selection method must be capable of verification with respect to the randomness of the selection process, and any records necessary to document random selection must be retained for not less than 24 months from the date upon which the particular samples were collected.

(2) The program must include testing procedures and safeguards, and, consistent with this part, procedures for action based on tests where the employee is found to have violated § 219.101.

(3) The program must ensure that random alcohol tests conducted under this part are unannounced and that the dates for administering random tests are spread reasonably throughout the calendar year.

(4) The program must ensure to the maximum extent practicable that each covered employee perceives the possibility that a random alcohol test may be required at any time the employee reports for work and at any time during the duty tour (except any period when the employee is expressly relieved of any responsibility for performance of covered service).

(5) An employee may be subject to testing only while on duty. Only employees who perform covered service for the railroad may be subject to testing under this part. In the case of employees who during some duty tours perform covered service and during others do not, the railroad program may specify the extent to which, and the circumstances under which they are subject to testing. To the extent practical within the limitations of this part and in the context of the railroad's operations, the railroad program must provide that employees are subject to the possibility of random testing on any day they actually perform covered service.

(6) Testing must be conducted promptly, as provided in § 219.701(b)(1).

(7) Each time an employee is notified for random alcohol testing the employee must be informed that selection was made on a random basis.

(8) Each railroad must ensure that each covered employee who is notified of selection for random alcohol testing proceeds to the test site immediately; provided, however, that if the employee is performing a safety-sensitive function at the time of the notification, the railroad must instead ensure that the employee ceases to perform the safety-sensitive function and proceeds to the testing site as soon as possible.

(c) *Implementation.* (1) No later than 45 days prior to commencement of random alcohol testing, the railroad must publish to each of its covered employees, individually, a written notice that the employee will be subject to random alcohol testing under this part. Such notice must state the date for commencement of the program, must state that the selection of employees for testing will be on a strictly random basis, must describe the consequences of a determination that the employee has violated § 219.101 or any applicable railroad rule, and must inform the employee of the employee's rights under subpart E of this part. A copy of the notice must be provided to each new covered employee on or before the employee's initial date of service. Since knowledge of Federal law is presumed, nothing in this paragraph (c)(1) creates a defense to a violation of § 219.101. This notice may be combined with the notice or policy statement required by § 219.23.

(2) A railroad commencing operations must submit a random testing program 60 days after doing so. The railroad must implement its approved random testing program not later than the expiration of 60 days from approval by the Administrator.

§ 219.608 FRA Administrator's determination of random alcohol testing rate.

(a) Except as provided in paragraphs (b) through (d) of this section, the minimum annual percentage rate for random alcohol testing must be 25 percent of covered employees.

(b) The Administrator's decision to increase or decrease the minimum annual percentage rate for random alcohol testing is based on the violation rate for the entire industry. All information used for the determination is drawn from the alcohol MIS reports required by this part. In order to ensure reliability of the data, the Administrator considers the quality and completeness of the reported data, may obtain additional information or reports from employers, and may make appropriate modifications in calculating the industry violation rate. Each year, the Administrator will publish in the **Federal Register** the minimum annual percentage rate for random alcohol testing of covered employees. The new minimum annual percentage rate for random alcohol testing will be applicable starting January 1 of the calendar year following publication.

(c)(1) When the minimum annual percentage rate for random alcohol testing is 25 percent or more, the Administrator may lower this rate to 10 percent of all covered employees if the Administrator determines that the data received under the reporting requirements of § 219.801 for two consecutive calendar years indicate that the violation rate is less than 0.5 percent.

(2) When the minimum annual percentage rate for random alcohol testing is 50 percent, the Administrator may lower this rate to 25 percent of all covered employees if the Administrator determines that the data received under the reporting requirements of § 219.801 for two consecutive calendar years indicate that the violation rate is less than 1.0 percent but equal to or greater than 0.5 percent.

(d)(1) When the minimum annual percentage rate for random alcohol testing is 10 percent, and the data received under the reporting requirements of § 219.801 for that calendar year indicate that the violation rate is equal to or greater than 0.5 percent, but less than 1.0 percent, the Administrator will increase the minimum annual percentage rate for random alcohol testing to 25 percent of all covered employees.

(2) When the minimum annual percentage rate for random alcohol testing is 25 percent or less, and the data received under the reporting requirements of § 219.801 for any calendar year indicate that the violation rate is equal to or greater than 1.0 percent, the Administrator will increase the minimum annual percentage rate for random alcohol testing to 50 percent of all covered employees.

(e) The railroad must randomly select and test a sufficient number of covered employees for testing during each calendar year to equal an annual rate not less than the minimum annual percentage rate for random alcohol testing determined by the Administrator. If the railroad conducts random alcohol testing through a consortium, the number of employees to

be tested may be calculated for each individual employer or may be based on the total number of covered employees covered by the consortium who are subject to random testing at the same minimum annual percentage rate under this part or any DOT alcohol testing rule.

(f) If a railroad is required to conduct random alcohol testing under the alcohol testing rules of more than one DOT agency, the railroad may—

(1) Establish separate pools for random selection, with each pool containing the covered employees who are subject to testing at the same required rate; or

(2) Randomly select such employees for testing at the highest percentage rate established for the calendar year by any DOT agency to which the railroad is subject.

§ 219.609 Participation in alcohol testing.

A railroad must, under the conditions specified in this subpart and subpart H of this part, require a covered employee selected through the random testing program to cooperate in breath testing to determine compliance with § 219.101, and the employee must provide the required breath and complete the required paperwork and certifications. Compliance by the employee may be excused only in the case of a documented medical or family emergency.

§ 219.611 Test result indicating prohibited alcohol concentration; procedures.

Procedures for administrative handling by the railroad in the event an employee's confirmation test indicates an alcohol concentration of .04 or greater are set forth in § 219.104.

Subpart H—Drug and Alcohol Testing Procedures

§ 219.701 Standards for drug and alcohol testing.

(a) Drug testing required or authorized by subparts B, D, F, and G of this part must be conducted in compliance with all applicable provisions of the Department of Transportation Procedures for Transportation Workplace Drug and Alcohol Testing Programs (part 40 of this title).

(b) Alcohol testing required or authorized by subparts B, D, F, and G of this part must be conducted in compliance with all applicable provisions of the Department of Transportation Procedures for Transportation Workplace Drug and Alcohol Testing Programs (part 40 of this title).

(c) Each covered employee who is notified of selection for testing and who is not performing covered service at the time of notification must proceed to the testing site immediately. The railroad must ensure that an employee who is performing covered service at the time of notification shall, as soon as possible without affecting safety, cease to perform covered service and proceed to the testing site.

Subpart I—Annual Report

§ 219.801 Reporting alcohol misuse prevention program results in a management information system.

(a) Each railroad that has 400,000 or more total manhours shall submit to FRA by March 15 of each year a report covering the previous calendar year (January 1–December 31), summarizing the results of its alcohol misuse prevention program.

(b) A railroad that is subject to more than one DOT agency alcohol regulation must identify each employee covered by the regulations of more than one DOT agency. The identification will be by the total number and category of covered functions. Prior to conducting any alcohol test on a covered employee subject to the regulations of more than one DOT agency, the railroad must determine which DOT agency regulation or rule authorizes or requires the test. The test result information must be directed to the appropriate DOT agency or agencies.

(c) Each railroad must ensure the accuracy and timeliness of each report submitted. The report must be submitted on one of the two forms specified by the FRA.

(d) Each report required by this section that contains information on an alcohol screening test result of .02 or greater or a violation of the alcohol misuse provisions of subpart B of this part must include the following elements:

(1) Number of covered employees by employee category (i.e., train service, engine service, dispatcher/operator, signal, other).

(2) Number of covered employees in each category subject to alcohol testing under the alcohol misuse regulation of another DOT agency, identified by each agency.

(3)(i) Number of screening tests by type of test (i.e., pre-employment and covered service transfer, random, post-positive return to service, and follow-up) and employee category.

(ii) Number of confirmation tests, by type of test and employee category.

(4) Number of confirmation alcohol tests indicating an alcohol concentration equal of .02 or greater but less than .04, by type of test and employee category.

(5) Number of confirmation alcohol tests indicating an alcohol concentration of .04 or greater, by type of test and employee category.

(6) Number of persons denied a position as a covered employee following a pre-employment alcohol test indicating an alcohol concentration of .04 or greater.

(7) Number of covered employees with a confirmation alcohol test indicating an alcohol concentration of .04 or greater, or who have violations of other alcohol misuse provisions, who were returned to service in covered positions (having complied with the recommendations of a substance abuse professional as described in § 219.104(d)).

(8) For cause breath alcohol testing under railroad authority, by reason for test (accident/injury or rules violation), the number of screening tests conducted, the number of confirmation tests conducted, the number of confirmation tests of .02 or greater but less than .04, and the number of confirmation test results of .04 or greater.

(9) For cause breath alcohol testing under FRA authority, by reason for test (reasonable suspicion, accident/injury or rules violation), the number of screening tests conducted, the number of confirmation tests conducted, the number of confirmation tests of .02 or greater but less than .04, and the number of confirmation test results of .04 or greater.

(10) Number of covered employees who were found to have violated other provisions of subpart B of this part, and the action taken in response to the violation.

(11) Number of covered employees who were administered alcohol and drug tests at the same time, with both a positive drug test result and an alcohol test result indicating an alcohol concentration of .04 or greater.

(12) Number of covered employees who refused to submit to a random alcohol test required under this part.

(13) Number of covered employees who refused to submit to a non-random alcohol test required under this part.

(14) Number of supervisory personnel who have received the required initial training on the specific contemporaneous physical, behavioral, and performance indicators of probable alcohol use during the reporting period.

(e) Each report required by this section that contains information on neither a screening test result of 0.02 or greater nor a violation of the alcohol misuse provisions of subpart B of this part must include the following informational elements:

(1) Number of covered employees by employee category (i.e., train service, engine service, dispatcher/operator, signal, other).

(2) Number of covered employees in each category subject to alcohol testing under the alcohol misuse regulation of another DOT agency, identified by each agency.

(3) Number of screening tests by type of test (i.e., pre-employment and covered service transfer, random, post-positive return to service, and follow-up) and employee category.

(4) Number of covered employees with a confirmation alcohol test indicating an alcohol concentration of .04 or greater, or who have violations of other alcohol misuse provisions, who were returned to service in covered positions (having complied with the recommendations of a substance abuse professional as described in § 219.104(d)).

(5) For cause breath alcohol testing under railroad authority, by reason for test (accident/injury or rules violation), the number of screening tests conducted.

(6) For cause breath alcohol testing under FRA authority, by reason for test (reasonable suspicion, accident/injury or rules violation), the number of screening tests conducted.

(7) Number of covered employees who refused to submit to a random alcohol test required under this part.

(8) Number of covered employees who refused to submit to a non-random alcohol test required under this part.

(9) Number of supervisory personnel who have received the required initial training on the specific contemporaneous physical, behavioral, and performance indicators of probable alcohol use during the reporting period.

§ 219.803 Reporting drug misuse prevention program results in a management information system.

(a) Each railroad that has 400,000 or more total manhours shall submit to FRA an annual report covering the calendar year, summarizing the results of its drug misuse prevention program.

(b) A railroad that is subject to more than one DOT agency drug regulation must identify each employee covered by the regulations of more than one DOT agency. The identification will be by the total number and category of covered functions. Prior to conducting any drug test on a covered employee subject to the regulations of more than one DOT agency, the railroad must determine which DOT agency regulation or rules authorizes or requires the test. The test result information must be directed to the appropriate DOT agency or agencies.

(c) Each railroad must ensure the accuracy and timeliness of each report submitted by the railroad or a consortium.

(d) Each railroad must submit the required annual reports no later than March 15 of each year. The report must be submitted on one of the forms specified by the FRA. A railroad with no positive test result must submit the ''Drug Testing Management Information System Zero Positives Data Collection Form.'' All other railroads must submit the ''Drug Testing Management Information System Data Collection Form.''

(e) A railroad submitting the ''Drug Testing Management Information System Data Collection Form'' must address each of the following data elements:

(1) Number of covered employees by employee category (i.e., train service, engine service, dispatcher/operator, signal service, other).

(2) Number of covered employees in each category subject to testing under the anti-drug regulations of more than one DOT agency, identified by each agency.

(3) Number of specimens collected by type of test (i.e., pre-employment and covered service transfer, random, post-positive return to service, and follow-up), and employee category.

(4) Number of specimens verified negative by a Medical Review Officer (MRO) by type of test, and employee category.

(5) Number of specimens verified positive for one or more of the five drugs by a MRO by type of test, employee category, and type of drug. If a test has been verified positive by a MRO for multiple drugs, the employer should report the result as a positive for each type of drug.

(6) Number of applicants or transfers denied employment or transfer to a covered service position following a verified positive pre-employment drug test.

(7) Number of employees, currently in or having completed rehabilitation or otherwise qualified to return to duty, who have returned to work in a covered position during the reporting period.

(8) For cause drug testing, the number of specimens collected by reason for test (i.e., accident/injury, rules violation, or reasonable suspicion), type of authority (railroad or FRA), employee category and type of drug, including drugs tested for under railroad authority only.

(9) For cause drug testing, the number of specimens verified negative by a MRO by reason for test, type of authority, employee category and type of drug, including drugs tested for under railroad authority only.

(10) For cause drug testing, the number of specimens verified positive by a MRO by reason for test, type of authority, employee category and type of drug, including drugs tested for under railroad authority only.

(11) For cause breath alcohol testing under railroad authority, by reason for test, the number of tests conducted, the number of tests with a positive result (i.e., breath alcohol concentration (BAC) = or > .02), and the number of refusals.

(12) For cause urine alcohol testing under railroad authority, by reason for test, the number of tests conducted, the number of tests with a positive result, and the number of refusals.

(13) For cause breath alcohol testing under FRA authority, by reason for test, the number of tests conducted, the number of tests with a positive result, and the number of refusals.

(14) Total number of covered employees observed in documented operational tests and inspections related to enforcement of the railroad's rules on alcohol and drug use.

(15) Based on the tests and inspections described in paragraph (e)(14) of this section, the number of covered employees charged with a violation of the railroad's Rule G or similar rule or policy on drugs.

(16) Based on the tests and inspections described in paragraph (e)(14) of this section, the number of covered employees charged with a violation of the railroad's Rule G or similar rule or policy on alcohol.

(17) Number of specimens verified positive for more than one drug, by employee category and type of drug.

(18) Number of covered employees who refused to submit to a random drug test required under FRA authority.

(19) Number of covered employees who refused to submit to a non-random drug test required under FRA authority.

(20) Number of supervisory personnel who have received the required initial training on the specific contemporaneous physical, behavioral, and performance indicators of probable drug use during the reporting period.

(f) A railroad authorized to submit the ''Drug Testing Management Information System Zero Positives Data Collection Form'' must address each of the following data elements:

(1) Number of covered employees by employee category (i.e., train service, engine service, dispatcher/operator, signal service, other).

(2) Number of covered employees in each category subject to testing under the anti-drug regulations of more than

one DOT agency, identified by each agency.

(3) Number of specimens collected and verified negative by type of test (i.e., pre-employment and covered service transfer, random, for cause due to accident/incident, for cause due to rules violation, reasonable suspicion, post-positive return to service, and follow-up), and employee category.

(4) For cause breath alcohol testing under railroad authority, the number of tests conducted by reason for test (i.e., accident/injury, rules violation, or reasonable suspicion).

(5) For cause urine alcohol testing under railroad authority, the number of tests conducted by reason for test.

(6) For cause breath alcohol testing under FRA authority, the number of tests conducted by reason for test.

(7) Total number of covered employees observed in documented operational tests and inspections related to enforcement of the railroad's rules on alcohol and drug use.

(8) Based on the tests and inspections described in paragraph (f)(7) of this section, the number of covered employees charged with a violation of the railroad's Rule G or similar rule or policy on drugs.

(9) Based on the tests and inspections described in paragraph (f)(7) of this section, the number of covered employees charged with a violation of the railroad's Rule G or similar rule or policy on alcohol.

(10) Number of covered employees who refused to submit to a random drug test required under FRA authority.

(11) Number of covered employees who refused to submit to a non-random drug test required under FRA authority.

(12) Number of supervisory personnel who have received the required initial training on the specific contemporaneous physical, behavioral, and performance indicators of probable drug use during the reporting period.

Subpart J—Recordkeeping Requirements

§ 219.901 Retention of alcohol testing records.

(a) General requirement. In addition to the records required to be kept by part 40 of this title, each railroad must maintain alcohol misuse prevention program records in a secure location with controlled access as set out in this section.

(b) Each railroad must maintain the following records for a minimum of five years:

(1) A summary record of each covered employee's test results; and

(2) A copy of the annual report summarizing the results of its alcohol misuse prevention program (if required to submit the report under § 219.801(a)).

(c) Each railroad must maintain the following records for a minimum of two years:

(1) Records related to the collection process:

(i) Collection logbooks, if used.

(ii) Documents relating to the random selection process.

(iii) Documents generated in connection with decisions to administer reasonable suspicion alcohol tests.

(iv) Documents generated in connection with decisions on post-accident testing.

(v) Documents verifying the existence of a medical explanation of the inability of a covered employee to provide an adequate sample.

(2) Records related to test results:

(i) The railroad's copy of the alcohol test form, including the results of the test.

(ii) Documents related to the refusal of any covered employee to submit to an alcohol test required by this part.

(iii) Documents presented by a covered employee to dispute the result of an alcohol test administered under this part.

(3) Records related to other violations of this part.

(4) Records related to employee training:

(i) Materials on alcohol abuse awareness, including a copy of the railroad's policy on alcohol abuse.

(ii) Documentation of compliance with the requirements of § 219.23.

(iii) Documentation of training provided to supervisors for the purpose of qualifying the supervisors to make a determination concerning the need for alcohol testing based on reasonable suspicion.

(iv) Certification that any training conducted under this part complies with the requirements for such training.

§ 219.903 Retention of drug testing records.

(a) General requirement. In addition to the records required to be kept by part 40 of this title, each railroad must maintain drug abuse prevention program records in a secure location with controlled access as set forth in this section.

(b)(1) Each railroad must maintain the following records for a minimum of five years:

(i) A summary record of each covered employee's test results; and

(ii) A copy of the annual report summarizing the results of its drug misuse prevention program (if required to submit under § 219.803(a)).

(2) Each railroad must maintain the following records for a minimum of two years.

(c) *Types of records.* The following specific records must be maintained:

(1) Records related to the collection process:

(i) Documents relating to the random selection process.

(ii) Documents generated in connection with decisions to administer reasonable suspicion drug tests.

(iii) Documents generated in connection with decisions on post-accident testing.

(iv) Documents verifying the existence of a medical explanation of the inability of a covered employee to provide a sample.

(2) Records related to test results:

(i) The railroad's copy of the drug test custody and control form, including the results of the test.

(ii) Documents presented by a covered employee to dispute the result of a drug test administered under this part.

(3) Records related to other violations of this part.

(4) Records related to employee training:

(i) Materials on drug abuse awareness, including a copy of the railroad's policy on drug abuse.

(ii) Documentation of compliance with the requirements of § 219.23.

(iii) Documentation of training provided to supervisors for the purpose of qualifying the supervisors to make a determination concerning the need for alcohol testing based on reasonable suspicion.

(iv) Certification that any training conducted under this part complies with the requirements for such training.

§ 219.905 Access to facilities and records.

(a) Release of covered employee information contained in records required to be maintained under §§ 219.901 and 219.903 must be in accordance with part 40 of this title and with this section. (For purposes of this section only, urine drug testing records are considered equivalent to breath alcohol testing records.)

(b) Each railroad must permit access to all facilities utilized in complying with the requirements of this part to the Secretary of Transportation, United States Department of Transportation, or any DOT agency with regulatory authority over the railroad or any of its covered employees.

(c) Each railroad must make available copies of all results for railroad alcohol and drug testing programs conducted under this part and any other information pertaining to the railroad's alcohol and drug misuse prevention

program, when requested by the Secretary of Transportation or any DOT agency with regulatory authority over the railroad or covered employee.

Appendix A to Part 219—Schedule of Civil Penalties [1]

The following chart lists the schedule of civil penalties:

Section [2]	Violation	Willful violation
Subpart A—General		
219.3 Application.		
Railroad does not have required program	$5,000	$7,500
219.11 General conditions for chemical tests.		
A. Employee unlawfully refuses to participate in testing	$2,500	$5,000
B. Employer fails to give priority to medical treatment	3,000	8,000
C. Employee fails to remain available	2,500	5,000
D. Employee tampers with sample	2,500	5,000
E. Failure to meet supervisory training requirements	2,500	5,000
F. Program of instruction not available	2,500	5,000
G. Program not complete	2,500	5,000
219.23 Railroad policies.		
A. Failure to provide written notice of FRA test	$1,000	$4,000
B. Failure to provide written notice of basis for FRA test	1,000	4,000
C. Use of subpart C form for other test	1,000	4,000
D. Failure to provide educational materials	1,000	4,000
E. Educational materials fail to explain requirements of this part and/or include required content	1,000	4,000
F. Non-Federal provisions not clearly described as independent authority	1,000	4,000
Subpart B—Prohibitions		
219.101 Alcohol and drug use prohibited.		
Employee violates prohibition(s)		$10,000
219.103 Prescribed and over-the-counter drugs.		
A. Failure to train employee properly on requirements	$2,500	$5,000
B. Employee failure to comply	2,500	5,000
219.104 Responsive action.		
A. Failure to remove employee from covered service immediately	$3,000	$8,000
B. Failure to provide notice for removal	1,000	4,000
C. Failure to provide prompt hearing	2,000	7,000
D. Employee improperly returned to service	2,000	7,000
E. Failure to administer proper number of follow-up tests	2,500	5,000
219.105 Railroad's duty to prevent violations.		
A. Employee improperly permitted to remain in covered service	$7,000	$10,000
B. Failure to exercise due diligence to assure compliance with prohibition	2,500	5,000
219.107 Consequences of unlawful refusal.		
A. Employee not disqualified for nine months	$5,000	$7,500
B. Employee unlawfully returned to service	5,000	7,500
Subpart C—Post-Accident Toxicological Testing		
219.201 Events for which testing is required.		
A. Failure to test after qualifying event	$5,000	$7,500
B. Testing performed after non-qualifying event	5,000	10,000
C. Failure to make good faith determination	2,500	5,000
D. Failure to provide requested decision report to FRA	1,000	3,000
219.203 Responsibilities of railroads and employees.		
A. Failure to properly test/exclude from testing	$2,500	$5,000
B. Non-covered service employee tested	2,500	5,000
C. Delay in obtaining samples due to failure to make every reasonable effort	2,500	5,000
D. Testing not conducted in accordance with Appendix C requirements	2,500	5,000
E. Independent medical facility not utilized	2,500	5,000
F. Failure to report event or contact FRA when FRA intervention required	1,000	3,000
219.205 Sample collection and handling.		
A. Failure to observe requirements with respect to sample collection, marking and handling	$2,500	$5,000
B. Failure to provide properly prepared forms with samples	1,000	2,000
C. Failure to promptly or properly forward samples	2,500	5,000
219.207 Fatality.		
A. Failure to test	$5,000	$7,500
B. Failure to request assistance when necessary	2,500	5,000
C. Failure to ensure timely collection and shipment of required specimens	2,500	5,000
219.209 Reports of tests and refusals.		
A. Failure to provide telephonic report	$1,000	$2,000
B. Failure to provide written report of refusal to test	1,000	2,000
C. Failure to maintain report explaining why test not conducted within 4 hours	1,000	2,000
219.211 Analysis and follow-up.		
A. Failure to promptly forward specimens to designated FRA laboratory	$2,500	$5,000
B. Failure of MRO to report review of positive results to FRA	2,500	5,000
Subpart D—Testing for Cause		
219.300 Mandatory reasonable suspicion testing.		
A. Failure to test when reasonable suspicion criteria met	$5,000	$7,500

Section [2]	Violation	Willful violation
B. Tested when reasonable suspicion criteria not met	5,000	7,500
C. Testing did not comply with part 40 procedures	5,000	7,500
219.301 Testing for reasonable cause.		
A. Tested when accident/incident criteria not met	$5,000	$7,500
B. Tested when operating rules violation criteria not met	5,000	7,500
C. Testing did not comply with part 40 procedures	5,000	7,500
D. Event did not occur during duty tour	2,500	5,000
E. Employee not provided with notice	2,500	5,000
219.302 Prompt sample collection.		
Sample collection not conducted promptly	$2,500	$5,000
Subpart E—Identification of Troubled Employees		
219.401 Requirement for policies.		
A. Failure to publish and/or implement required policy	$2,500	$5,000
B. Failure to implement policy with respect to individual employee	2,500	5,000
219.407 Alternate policies.		
Failure to file agreement or other document or provide timely notice of revocation	$2,500	$5,000
Subpart F—Pre-Employment Tests		
219.501 Pre-employment tests.		
A. Failure to perform pre-employment drug test before first time employee performs covered service	$2,500	$5,000
B. Failure to give proper notice	2,500	5,000
Subpart G—Random Testing Programs		
219.601 Railroad random drug programs.		
A. Failure to file a random program	$2,500	$5,000
B. Failure to file amendment to program	2,500	5,000
C. Failure to meet random criteria	2,500	5,000
D. Failure to use a neutral selection process	2,500	5,000
E. Testing not spread throughout the year	2,500	5,000
F. Total number of tests below minimum random drug testing rate	2,500	5,000
G. Testing not distributed throughout the day	2,500	5,000
H. Advance notice provided to employee	2,500	5,000
I. Testing when employee not on duty	2,500	5,000
J. Testing continued after employee's duty tour expired	2,500	5,000
K. Failure to provide proper notice	2,500	5,000
L. Failure to include covered service employee in pool	2,500	5,000
M. Random testing not performed in a timely manner	2,500	5,000
219.603 Participation in drug testing.		
Failure to document reason for not testing selected employee	$2,500	$5,000
219.607 Railroad random alcohol programs.		
A. Failure to file a random alcohol program	$2,500	$5,000
B. Failure to file amendment to program	2,500	5,000
C. Failure to meet random criteria	2,500	5,000
D. Failure to use a neutral selection process	2,500	5,000
E. Total number of tests below minimum random alcohol testing rate	2,500	5,000
F. Advance notice provided to employee	2,500	5,000
G. Testing when employee not on duty	2,500	5,000
H. Testing continued after employee's duty tour expired	2,500	5,000
I. Failure to provide proper notice	2,500	5,000
J. Failure to include covered service employee in pool	2,500	5,000
K. Random testing not performed in a timely manner	2,500	5,000
219.609 Participation in alcohol testing.		
Failure to document reason for not testing selected employee	$2,500	$5,000
Subpart H—Drug and Alcohol Testing Procedures		
219.701 Standards for drug and alcohol testing.		
A. Failure to comply with part 40 procedures in subpart B, D, F, or G testing	$2,500	$5,000
	−5,000	−7,500
B. Failure to perform timely notification and testing	2,500	5,000
Subpart I—Annual Report		
219.801 Reporting alcohol misuse prevention program results in a management information system.		
A. Failure to submit MIS report on time	$2,500	$5,000
B. Failure to submit accurate MIS report	2,500	5,000
C. Failure to include required data	2,500	5,000
219.803 Reporting drug misuse prevention program results in a management information system.		
A. Failure to submit MIS report on time	$2,500	$5,000
B. Failure to submit accurate MIS report	2,500	5,000
C. Failure to include required data	2,500	5,000
Subpart J—Recordkeeping Requirements		
219.901 Retention of Alcohol Testing Records.		
A. Failure to keep records for required period	$2,500	$5,000
B. Failure to keep required documentation, materials or certification	2,500	5,000
219.903 Retention of Drug Testing Records.		
A. Failure to keep records for required period	$2,500	$5,000
B. Failure to retain required documentation, materials or certification	2,500	5,000
219.905 Access to facilities and records.		

Section [2]	Violation	Willful violation
A. Failure to release records in this subpart in accordance with part 40	$2,500	$5,000
B. Failure to permit access to appropriate authorities	2,500	5,000
C. Failure to provide access to results of railroad alcohol and drug testing programs	2,500	5,000

[1] A penalty may be assessed against an individual only for a willful violation. The FRA Administrator reserves the right to assess a penalty of up to $22,000 for any violation, including ones not listed in this penalty schedule, where circumstances warrant. See 49 CFR part 209, appendix A.

[2] The penalty schedule uses section numbers from 49 CFR part 219; and if more than one item is listed as a type of violation of a given section, each item is also designated by a ''penalty code'' (e.g., ''A''), which is used to facilitate assessment of civil penalties. For convenience, penalty citations will cite the CFR section and the penalty code, if any (e.g., ''§ 219.11A'') FRA reserves the right, should litigation become necessary, to substitute in its complaint the CFR citation in place of the combined CFR and penalty code citation.

Appendix B to Part 219—Designation of Laboratory for Post-Accident Toxicological Testing

The following laboratory is currently designated to conduct post-accident toxicological analysis under subpart C of this part: NWT Inc., 1141 E. 3900 South, Suite A–110, Salt Lake City, UT 84124, Telephone: (801) 268–2431 (Day), (801) 483–3383 (Night/Weekend).

Appendix C to Part 219—Post-Accident Testing Sample Collection

1.0 General

This appendix prescribes procedures for collection of samples for mandatory post-accident testing pursuant to subpart C of this part. Collection of blood and urine samples is required to be conducted at an independent medical facility.

(Surviving Employees)

2.0 Surviving Employees

This unit provides detailed procedures for collecting post-accident toxicological samples from surviving employees involved in train accidents and train incidents, as required by subpart C of this part. Subpart C of this part specifies qualifying events and employees required to be tested.

2.1 Collection Procedures; General

a. All forms and supplies necessary for collection and transfer of blood and urine samples for three surviving employees can be found in the FRA post-accident shipping box, which is made available to the collection site by the railroad representative.

b. Each shipping box contains supplies for blood/urine collections from three individuals, including instructions and necessary forms. The railroad is responsible for ensuring that materials are fresh, complete and meet FRA requirements.

2.1.1 Responsibility of the Railroad Representative

a. In the event of an accident/incident for which testing is required under subpart C of this part, the railroad representative shall follow the designated set of instructions, and, upon arrival at the independent medical facility, promptly present to the collection facility representative a post-accident shipping box or boxes with all remaining sets of instructions. (Each box contains supplies to collect samples from three employees.) The railroad representative shall request the collection facility representative to review the instructions provided and, through qualified personnel, provide for collection of the samples according to the procedures set out.

b. The railroad representative shall undertake the following additional responsibilities—

1. Complete Form FRA 6180.73 (revised), Accident Information Required for Post-Accident Toxicological Testing (49 CFR part 219), describing the testing event and identifying the employees whose samples are to be deposited in the shipping box.

2. As necessary to verify the identity of individual employees, affirm the identity of each employee to the medical facility personnel.

3. Consistent with the policy of the collection facility, monitor the progress of the collection procedure.

Warning: Monitor but do not directly observe urination or otherwise disturb the privacy of urine or blood collection. Do not handle sample containers, bottles or tubes (empty or full). Do not become part of the collection process.

2.1.2 Employee Responsibility

a. An employee who is identified for post-accident toxicological testing shall cooperate in testing as required by the railroad and personnel of the independent medical facility. Such cooperation will normally consist of the following, to be performed as requested:

1. Provide a blood sample, which a qualified medical professional or technician will draw using a single-use sterile syringe. The employee should be seated for this procedure.

2. Provide, in the privacy of an enclosure, a urine sample into a plastic collection cup. Deliver the cup to the collector.

3. Do not let the blood and urine samples that you provided leave your sight until they have been properly sealed and initialed by you.

4. Certify the statement in Step 4 of the Post-Accident Testing Blood/Urine Custody and Control Form (49 CFR 219) (Form FRA F 6180.74 (revised)).

5. If required by the medical facility, complete a separate consent form for taking of the samples and their release to FRA for analysis under the FRA rule.

Note: The employee may not be required to complete any form that contains any waiver of rights the employee may have in the employment relationship or that releases or holds harmless the medical facility with respect to negligence in the collection.

2.2 The Collection

Exhibit C–1 contains instructions for collection of samples for post-accident toxicology from surviving employees. These instructions shall be observed for each collection. Instructions are also contained in each post-accident shipping box and shall be provided to collection facility personnel involved in the collection and/or packaging of samples for shipment.

(Post Mortem Collection)

3.0 Fatality

This unit provides procedures for collecting post-accident body fluid/tissue samples from the remains of employees killed in train accidents and train incidents, as required by subpart C of this part. Subpart C specifies qualifying events and employees required to be tested.

3.1 Collection

In the event of a fatality for which testing is required under subpart C of this part, the railroad shall promptly make available to the custodian of the remains a post-accident shipping box. The railroad representative shall request the custodian to review the instructions contained in the shipping box and, through qualified medical personnel, to provide the samples as indicated.

(Surviving Employees and Fatalities)

4.0 Shipment

a. The railroad is responsible for arranging overnight transportation of the sealed shipping box containing the samples. When possible without incurring delay, the box should be delivered directly from the collection personnel providing the samples to an overnight express service courier. If it becomes necessary for the railroad to transport the box from point of collection to point of shipment, then—

1. Individual kits and the shipping box shall be sealed by collection personnel before the box is turned over to the railroad representative;

2. The railroad shall limit the number of persons handling the shipping box to the minimum necessary to provide for transportation;

3. If the shipping box cannot immediately be delivered to the express carrier for transportation, it shall be maintained in secure temporary storage; and

4. The railroad representatives handling the box shall document chain of custody of the shipping box and shall make available such documentation to FRA on request.

Exhibit C–1—Instructions for Collection of Blood and Urine Samples: Mandatory Post-Accident Toxicological Testing

A. Purpose

These instructions are for the use of personnel of collection facilities conducting collection of blood and urine samples from surviving railroad employees following railroad accidents and casualties that qualify for mandatory alcohol/drug testing. The Federal Railroad Administration appreciates the participation of medical facilities in this important public safety program.

B. Prepare for Collection

a. Railroad employees have consented to provision of samples for analysis by the Federal Railroad Administration as a condition of employment (§ 219.11). A private, controlled area should be designated for collection of samples and completion of paperwork.

b. Only one sample should be collected at a time, with each employee's blood draw or urine collection having the complete attention of the collector until the specific sample has been labeled, sealed and documented.

c. Please remember two critical rules for the collections:

d. All labeling and sealing must be done in the sight of the donor, with the sample never having left the donor's presence until the sample has been labeled, sealed and initialed by the donor.

e. Continuous custody and control of blood and urine samples must be maintained and documented on the forms provided. In order to do this, it is important for the paperwork and the samples to stay together.

f. To the extent practical, blood collection should take priority over urine collection. To limit steps in the chain of custody, it is best if a single collector handles both collections from a given employee.

g. You will use a single Post-Accident Testing Blood/Urine Custody and Control Form (FRA Form 6108.74 (revised)), consisting of six Steps to complete the collection for each employee. We will refer to it as the Control Form.

C. Identify the Donor

a. The employee donor must provide photo identification to each collector, or lacking this, be identified by the railroad representative.

b. The donor should remove all unnecessary outer garments such as coats or jackets, but may retain valuables, including a wallet. Donors should not be asked to disrobe, unless necessary for a separate physical examination required by the attending physician.

D. Draw Blood

a. Assemble the materials for collecting blood from each employee: two 10 ml grey-stoppered blood tubes and the Control Form.

b. Ask the donor to complete STEP 1 on the Control Form.

c. With the donor seated, draw two (2) 10 ml tubes of blood using standard medical procedures (sterile, single-use syringe into evacuated gray-top tubes provided).

CAUTION: Do not use alcohol or an alcohol-based swab to cleanse the venipuncture site.

d. Once both tubes are filled and the site of venipuncture is protected, immediately—

1. Seal and label each tube by placing a numbered blood sample label from the label set on the Control Form over the top of the tube and securing it down the sides.

2. Ask the donor to initial each label. Please check to see that the initials match the employee's name and note any discrepancies in the ''Remarks'' block of the Control Form.

3. As collector, sign and date each blood tube label at the place provided.

4. Skip to STEP 5 and initiate chain of custody for the blood tubes by filling out the first line of the block to show receipt of the blood samples from the donor.

5. Complete STEP 2 on the form.

6. Return the blood tubes into the individual kit. Keep the paperwork and samples together. If another collector will be collecting the urine sample from this employee, transfer both the form and the individual kit with blood tubes to that person, showing the transfer of the blood tubes on the second line of STEP 5 (the chain of custody block).

E. Collect Urine

a. The urine collector should assemble at his/her station the materials for collecting urine from each employee: one plastic collection cup with temperature device affixed enclosed in a heat-seal bag (with protective seal intact), two 90 ml urine sample bottles with caps and one biohazard bag (with absorbent) also enclosed in a heat-seal bag (with protective seal intact), and the Control Form. Blood samples already collected must remain in the collector's custody and control during this procedure.

b. After requiring the employee to wash his/her hands, the collector should escort the employee directly to the urine collection area. To the extent practical, all sources of water in the collection area should be secured and a bluing agent (provided in the box) placed in any toilet bowl, tank, or other standing water.

c. The employee will be provided a private place in which to void. Urination will not be directly observed. If the enclosure contains a source of running water that cannot be secured or any material (soap, etc.) that could be used to adulterate the sample, the collector should monitor the provision of the sample from outside the enclosure. Any unusual behavior or appearance should be noted in the remarks section of the Control Form or on the back of that form.

d. The collector should then proceed as follows:

e. Unwrap the collection cup in the employee's presence and hand it to the employee (or allow the employee to unwrap it).

f. Ask the employee to void at least 60 ml into the collection cup (at least to the line marked).

g. Leave the private enclosure.

IF THERE IS A PROBLEM WITH URINATION OR SAMPLE QUANTITY, SEE THE ''TROUBLE BOX'' AT THE BACK OF THESE INSTRUCTIONS.

h. Once the void is complete, the employee should exit the private enclosure and deliver the sample to the collector. Both the collector and the employee must proceed immediately to the labeling/sealing area, with the sample never leaving the sight of the employee before being sealed and labeled.

i. Upon receipt of the sample, proceed as follows:

1. In the full view of the employee, remove the wrapper from the two urine sample bottles. Transfer the urine from the collection cup into the sample bottles (at least 30 ml in bottle A and at least 15 ml in bottle B).

2. As you pour the sample into the sample bottles, please inspect for any unusual signs indicating possible adulteration or dilution. Carefully secure the tops. Note any unusual signs under ''Remarks'' at STEP 3 of the Control Form.

3. Within 4 minutes after the void, measure the temperature of the urine by reading the strip on the bottle. Mark the result at STEP 3 of the Control Form.

IF THERE IS A PROBLEM WITH THE URINE SAMPLE, SEE THE ''TROUBLE BOX'' AT THE BACK OF THESE INSTRUCTIONS.

4. Remove the urine bottle labels from the Control Form. The labels are marked ''A'' and ''B.'' Place each label as marked over the top of its corresponding bottle, and secure the label to the sides of the bottle.

5. Ask the donor to initial each label. Please check to see that the initials match the employee name and note any discrepancy in the ''Remarks'' block of STEP 3.

6. As collector, sign and date each urine label.

7. Skip to STEP 5 and initiate chain-of-custody by showing receipt of the urine samples from the donor. (If you collected the blood, a check under ''urine'' will suffice. If someone else collected the blood, first make sure transfer of the blood to you is documented. Then, using the next available line, show ''Provide samples'' under purpose, ''Donor'' under ''released by,'' check under ''urine'' and place your name, signature and date in the space provided.)

8. Complete the remainder of STEP 3 on the Control Form.

9. Have the employee complete STEP 4 on the Control Form.

10. Place the filled urine bottles in the individual employee kit. Keep the paperwork and samples together. If another collector will be collecting the blood sample from this employee, transfer both the form and the kit to that person, showing the transfer of the urine samples on the next available line of STEP 5 (the chain of custody block).

F. Seal the Individual Employee Kit

a. The blood and urine samples have now been collected for this employee. The blood/urine samples will now be sealed into the individual employee kit, while all paperwork will be retained for further completion. After rechecking to see that each sample is properly labeled and initialed, close the plastic bag to contain any leakage in

transportation, and apply the kit security seal to the small individual kit. As collector, sign and date the kit seal.

b. Before collecting samples from the next employee, complete the next line on the chain-of-custody block showing release of the blood and urine by yourself for the purpose of ''Shipment'' and receipt by the courier service or railroad representative that will provide transportation of the box, together with the date.

G. Complete Treatment Information

Complete STEP 6 of the Control Form. Mark the box if a breath alcohol test was conducted under FRA authority.

H. Prepare the Box for Shipment

a. Sealed individual employee kits should be retained in secure storage if there will be a delay in preparation of the shipping box. The shipping box shall be prepared and sealed by a collection facility representative as follows:

1. Inspect STEP 5 of each Control Form to ensure chain-of-custody is continuous and complete for each fluid (showing samples released for shipment). Retain the medical facility copy of each Control Form and the Accident Information form for your records.

2. Place sealed individual employee kits in the shipping box. Place all forms in zip-lock bag and seal securely. Place bag with forms and unused supplies in shipping box.

3. Affix the mailing label provided to the outside of the shipping box.

I. Ship the Box

a. The railroad must arrange to have the box shipped overnight air express or (if express service is unavailable) by air freight, prepaid, to FRA's designated laboratory. Whenever possible without incurring delay, the collector should deliver the box directly into the hands of the express courier or air freight representative.

b. Where courier pickup is not immediately available at the collection facility where the samples are taken, the railroad is required to transport the shipping box for expeditious shipment by air express, air freight or equivalent means.

c. *If the railroad is given custody of the box to arrange shipment,* please record the name of the railroad official taking custody on the copy of Form 6180.73 retained by the collection site.

''TROUBLE BOX''

1. Problem: *The employee claims an inability to urinate, either because he/she has recently voided or because of anxiety concerning the collection.*

Action: The employee may be offered moderate quantities of liquid to assist urination. If the employee continues to claim inability after 4 hours, the urine collection should be discontinued, but the blood samples should be forwarded and all other procedures followed. Please note in area provided for remarks what explanation was provided by the employee.

2. Problem: *The employee cannot provide approximately 60 ml. of sample.*

Action: The employee should remain at the collection facility until as much as possible of the required amount can be given (up to 4 hours). The employee should be offered moderate quantities of liquids to aid urination. The first bottle, if it contains any quantity of urine, should be sealed and securely stored with the blood tubes and Control Form pending shipment. A second bottle should then be used for the subsequent void (using a second Control Form with the words ''SECOND VOID—FIRST SAMPLE INSUFFICIENT'' in the remarks block and labels from that form). However, if after 4 hours the donor's second void is also insufficient or contains no more than the first insufficient void, discard the second void and send the first void to the laboratory.

3. Problem: *The urine temperature is outside the normal range* of 32 deg.-38 deg.C/90 deg.-100 deg.F, and a suitable medical explanation cannot be provided by an oral temperature or other means; or

4. Problem: *The collector observes conduct clearly and unequivocally indicating an attempt to substitute or adulterate the sample* (e.g., substitute urine in plain view, blue dye in sample presented, etc.) and a collection site supervisor or the railroad representative agrees that the circumstances indicate an attempt to tamper with the sample.

Action (for either Problem No. 3 or Problem No. 4): Document the problem on the Control Form. i. If the collection site supervisor or railroad representative concurs that the temperature of the sample, or other clear and unequivocal evidence, indicates a possible attempt to substitute or alter the sample, another void must be taken under direct observation by a collector of the same gender.

ii. If a collector of the same sex is not available, do NOT proceed with this step.

iii. If a collector of the same gender is available, proceed as follows: A new Control Form must be initiated for the second void. The original suspect sample should be marked ''Void'' and the follow-up void should be marked ''Void 2,'' with both voids being sent to the laboratory and the incident clearly detailed on the Control Form.

Exhibit C–2—Instructions for Collection of Post Mortem Samples: Employee Killed in a Railroad Accident/Incident

To the Medical Examiner, Coroner, or Pathologist:

a. In compliance with Federal safety regulations (49 CFR part 219), a railroad representative has requested that you obtain samples for toxicology from the remains of a railroad employee who was killed in a railroad accident or incident. The deceased consented to the taking of such samples, as a matter of Federal law, by performing service on the railroad (49 CFR 219.11(f)).

b. Your assistance is requested in carrying out this program of testing, which is important to the protection of the public safety and the safety of those who work on the railroads.

A. *Materials:*

The railroad will provide you a post-accident shipping box that contains necessary supplies. If the box is not immediately available, please proceed using supplies available to you that are suitable for forensic toxicology.

B. *Samples requested, in order of preference:*

a. Blood—20 milliliters or more. Preferred sites: intact femoral vein or artery or peripheral vessels (up to 10 ml, as available) and intact heart (20 ml). Deposit blood in gray-stopper tubes individually by site and shake to mix sample and preservative.

Note: If uncontaminated blood is not available, bloody fluid or clots from body cavity may be useful for qualitative purposes; but do not label as blood. Please indicate source and identity of sample on label of tube.

b. Urine—as much as 100 milliliters, if available. Deposit into plastic bottles provided.

c. Vitreous fluid—all available, deposited into smallest available tube (e.g., 3 ml) with 1% sodium fluoride, or gray-stopper tube (provided). Shake to mix sample and preservative.

d. If available at autopsy, organs—50 to 100 grams each of two or more of the following in order preference, as available: liver, bile, brain, kidney, spleen, and/or lung. Samples should be individually deposited into zip-lock bags or other clean, single use containers suitable for forensic samples.

e. If vitreous or urine is not available, please provide—

1. Spinal fluid—all available, in 8 ml container (if available) with sodium fluoride or in gray-stopper tube; or, if spinal fluid cannot be obtained,

2. Gastric content—up to 100 milliliters, as available, into plastic bottle.

C. *Sample collection:*

a. Sampling at time of autopsy is preferred so that percutaneous needle puncturing is not necessary. However, if autopsy will not be conducted or is delayed, please proceed with sampling.

b. Blood samples should be taken by sterile syringe and deposited directly into evacuated tube, if possible, to avoid contamination of sample or dissipation of volatiles (ethyl alcohol).

Note: If only cavity fluid is available, please open cavity to collect sample. Note condition of cavity.

c. Please use smallest tubes available to accommodate available quantity of fluid sample (with 1% sodium fluoride).

D. *Sample identification, sealing:*

a. As each sample is collected, seal each blood tube and each urine bottle using the respective blood tube or urine bottle using the identifier labels from the set provided with the Post-Accident Testing Blood/Urine Custody and Control Form (49 CFR part 219) (Form FRA F 6180.74 (revised)). Make sure the unique identification number on the labels match the pre-printed number on the Control Form. Please label other samples with name and sample set identification numbers. You may use labels and seals from any of the extra forms, but annotate them accordingly.

b. Annotate each label with sample description and source (as appropriate) (e.g., blood, femoral vein).

c. Please provide copy of any written documentation regarding condition of body and/or sampling procedure that is available at the time samples are shipped.

E. *Handling:*

a. If samples cannot be shipped immediately as provided below, samples other than blood may be immediately frozen. Blood samples should be refrigerated, but not frozen.

b. All samples and documentation should be secured from unauthorized access pending delivery for transportation.

F. *Information:*

a. If the railroad has not already done so, please place the name of the subject at the top of the Control Form (STEP 1). You are requested to complete STEP 2 of the form, annotating it by writing the word ''FATALITY,'' listing the samples provided, providing any further information under ''Remarks'' or at the bottom of the form. If it is necessary to transfer custody of the samples from the person taking the samples prior to preparing the box for shipment, please use the blocks provided in STEP 5 to document transfer of custody.

b. The railroad representative will also provide Accident Information Required for Post-Accident Toxicological Testing (49 CFR part 219), Form FRA 6180.73 (revised). Both forms should be placed in the shipping box when completed; but you may retain the designated medical facility copy of each form for your records.

G. *Packing the shipping box:*

a. Place urine bottles and blood tubes in the sponge liner in the individual kit, close the biohazard bag zipper, close the kit and apply the kit custody seal to the kit. You may use additional kits for each tissue sample, being careful to identify sample by tissue, name of deceased, and specimen set identification number. Apply kit security seals to individual kits and initial across all seals. Place all forms in the zip-lock bag and seal securely.

b. Place the bag in the shipping box. Do not put forms in with the specimens. Seal the shipping box with the seal provided and initial and date across the seal.

c. Affix the mailing label to the outside of the box.

H. *Shipping the box:*

a. The railroad must arrange to have the box shipped overnight air express or (if express service is unavailable) by air freight, prepaid, to FRA's designated laboratory. When possible, but without incurring delay, deliver the sealed shipping box directly to the express courier or the air freight representative.

b. If courier pickup is not immediately available at your facility, the railroad is required to transport the sealed shipping box to the nearest point of shipment via air express, air freight or equivalent means.

c. *If the railroad receives the sealed shipping box to arrange shipment,* please record under ''Supplemental Information'' on the Control Form, the name of the railroad official taking custody.

I. *Other:*

FRA requests that the person taking the samples annotate the Control Form under ''Supplemental Information'' if additional toxicological analysis will be undertaken with respect to the fatality. FRA reports are available to the coroner or medical examiner on request.

Issued in Washington, D.C., on April 11, 2001.

S. Mark Lindsey,

Acting Deputy Administrator, Federal Railroad Administration.

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DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

49 CFR Part 382

[Docket No. FMCSA–2000–8456]

RIN 2126–AA58

Controlled Substances and Alcohol Use and Testing

AGENCY: Federal Motor Carrier Safety Administration (FMCSA), DOT.

ACTION: Notice of proposed rulemaking (NPRM); request for comments.

SUMMARY: The Department of Transportation published a revision of its drug and alcohol testing procedures regulations on December 19, 2000. Consequently, the FMCSA is proposing to amend its controlled substances and alcohol testing regulations to ensure consistency with DOT's revised testing procedures and to avoid duplication. In addition, the FMCSA is proposing to amend its drug and alcohol testing regulations to update outdated provisions and clarify existing rules.

DATES: You must submit comments on or before June 14, 2001.

ADDRESSES: You can mail or hand deliver written comments to the US Department of Transportation, Docket Management Facility, Room PL–401, 400 Seventh Street, SW., Washington, DC 20590–0001, or submit on-line at *http://dmses.dot.gov/submit.* You must include the docket number that appears in the heading of this document in your comment. You can examine and copy all comments from 9 a.m. to 5 p.m. e.t., Monday through Friday, except Federal holidays. If you want notification of receipt of comments, please include a self-addressed, stamped envelope or postcard, or after submitting comments electronically, print the acknowledgment page.

FOR FURTHER INFORMATION CONTACT: Mr. Kenneth Rodgers, Transportation Specialist, MC–ECE, (202) 366–4016, or Mr. Michael Falk, Attorney-Advisor, MC–CC, (202) 366–0834, FMCSA, 400 Seventh Street, SW., Washington, DC 20590. Office hours are from 8:30 a.m. to 5:00 p.m., e.t., Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION: The Department of Transportation published a comprehensive revision to the drug and alcohol testing procedural rules (49 CFR Part 40) (December 19, 2000, 65 FR 79462). The new Part 40 makes numerous changes regarding the way that drug and alcohol testing will be conducted in the future. The majority of the changes in the rule will become effective August 1, 2001. However, some changes will become effective prior to August 1, 2001.

Part 40 is one element of a One-DOT set of regulations designed to deter and detect the use of illegal drugs and the misuse of alcohol by employees performing safety-sensitive transportation functions. It is important that the six DOT agency rules that cover specific transportation industries be consistent with the revised Part 40, to avoid duplication, conflict, or confusion among DOT regulatory requirements. Therefore, we are proposing to amend our drug and alcohol testing regulations to conform with Part 40.

Background

In this NPRM, the FMCSA proposes changes that would conform its drug and alcohol testing regulations (49 CFR Part 382) to the revised DOT procedures for transportation workplace drug and alcohol testing programs (49 CFR Part 40) published on December 19, 2000 (65 FR 79462).

The FMCSA proposes to delete from part 382 provisions that are also covered in the new part 40. Motor carrier employers and employees affected by part 382 have always been required to read and adhere *both* part 382 and part 40 to comply with the FMCSA's drug and alcohol testing requirements. Referring the reader directly to part 40 instead of duplicating part 40 rule text in part 382 would promote both drafting economy and consistency of interpretation. This NPRM proposes to delete from part 382 regulatory text regarding referral, evaluation and treatment requirements; follow-up testing; inquiries for alcohol and controlled substances information from previous employers; and substance abuse professionals. Instead, the regulations would reference the appropriate provisions of part 40 which deal with these issues.

Although the primary purpose of this NPRM is to conform part 382 with the new part 40, FMCSA would also delete outdated rule text references (e.g., past implementation dates and reporting requirements) that can currently be found throughout part 382. This includes replacing references to the Federal Highway Administration with

the Federal Motor Carrier Safety Administration.

For ease of reference, FMCSA is publishing part 382 in its entirety with the proposed amendments discussed below. FMCSA intends to time publication of the final rule so that its conforming changes to part 382 become effective concurrently with most of part 40 on August 1, 2001.

Subpart A—General

Section 382.107 Definitions

The following definitions have been added or modified in part 382 in order to conform to the definitions in revised part 40:

Confirmation or confirmatory test
Confirmed drug test
Consortium/Third party administrator
Controlled substances
Designated employer representative (DER)
Employer
Refuse to submit
Screening test (or initial test)
Stand-down

Section 382.115 Starting Date for Testing Programs

The starting date for testing programs has been modified to reflect that all implementation dates have elapsed. This section now requires all motor carriers, both domestic and foreign to implement the testing program requirements when they begin operating commercial motor vehicles in the United States. The implementation dates for large foreign employers and small foreign employers have been removed.

Section 382.117 Public Interest Exclusion

This section has been included to ensure consistency with 49 CFR Part 40, subpart R. In an attempt to protect the public interest, and transportation employers and employees, the Department is incorporating the public interest exclusion (PIE) into its regulations. The FMCSA has included this section to inform motor carriers subject to the controlled substances and alcohol testing regulations that they may not use a service agent who has had a PIE issued against it. The Department uses public interest exclusions to exclude service agents who are in serious noncompliance with the drug and alcohol testing regulations from participating in DOT's drug and alcohol testing program.

Section 382.119 Stand-Down Waiver Provision

This section has been added to include the stand-down waiver provision contained in 49 CFR Part 40. Section 40.21 maintains the departmental policy of prohibiting employers from standing an employee down, that is, removing the employee from safety-sensitive service after the medical review officer (MRO) has received a laboratory report of either a confirmed positive test result, adulterated test result, or substituted test result before the result has been verified by the MRO. The new section 40.21(d) authorizes each Administrator (or his or her designee) to waive this prohibition if doing so would effectively enhance safety while protecting employee fairness and confidentiality. Therefore, the new § 382.119 stand-down waiver provision outlines the procedures for applying for a waiver to the FMCSA. The FMCSA would review petitions for a waiver and decide to grant or deny the petition based on the requirements established in § 40.21.

Section 382.217 Actual Knowledge

The FMCSA is proposing to add a new section to the regulations to clarify the term ''actual knowledge.'' Published regulatory guidance previously provided by the FMCSA indicates that actual knowledge may result from the employer's direct observation of the employee, the driver's previous employer(s), the employee's admission of alcohol use, or other occurrences. Some entities believe the reference to an employee's admission or other occurrences are too ambiguous and prevents an employee from coming forward to self-identify that a drug or alcohol problem exists. Since our primary purpose is to deter alcohol misuse or controlled substance use, we encourage employers to have self-identification programs. As a result, we propose to include in the regulations language similar to that in the regulatory guidance, but have provided an exception in proposed § 382.219.

Section 382.219 Employee Admission of Alcohol and Controlled Substances Use

This section has been developed to allow employers to establish self-identification programs that permit employees to self-identify without DOT consequences. The self-identification program does not allow employees to self-identify in order to avoid DOT testing. The program must prohibit employers from taking adverse actions against an employee making a voluntary admission. Lastly, the program must preserve the intent of the controlled substance and alcohol testing regulations by ensuring that problem drivers are removed from safety-sensitive positions until the employee has successfully completed an educational or treatment program, as determined by a qualified substance abuse professional.

Section 382.301 Pre-employment Testing

Since mandatory pre-employment alcohol testing has been suspended as a result of a court decision and subsequent legislation, the FMCSA would eliminate paragraphs (b), (b)(1), (b)(2) and (e), which address pre-employment alcohol testing. Paragraphs (c) and (d) would be redesignated as paragraphs (b) and (c), respectively. The FMCSA would permit, but not require, employers to conduct pre-employment alcohol testing. If an employer chooses to conduct pre-employment alcohol testing, the employer would have to do so in accordance with 49 CFR part 40 and the proposed new paragraph (d) of this section.

Section 382.303 Post-Accident Testing

This section has been modified to include changes, deletions and updates to the post accident testing requirements. In many instances, motor carriers have conducted either alcohol or controlled substances tests, instead of conducting both tests as required by the regulations. Consequently, we are proposing to modify paragraph (a), which requires an employer to test for alcohol and controlled substances following an occurrence involving a commercial motor vehicle. The change removes controlled substances from paragraph (a) and places the post-accident controlled substances testing requirements in the proposed redesignated paragraph (b). The table previously codified as paragraph (a)(3) is proposed to be redesignated as paragraph (c). The requirements in paragraphs (b)(2) and (b)(3) of the current regulations are obsolete. Therefore, the FMCSA is proposing to delete these paragraphs, which required that certain information be submitted to the FHWA by March 15, 1996, March 15, 1997, and March 15, 1998. Other paragraphs in this section will be redesignated to accommodate the proposed changes.

Section 382.305 Random Testing

Currently, the random testing regulations require the Administrator to annually publish a Federal Register notice of the minimum annual percentage rates for random alcohol and controlled substances testing. The FMCSA is proposing to revise its random testing regulations to require the Administrator to publish notice of

the minimum annual percentage rates for random testing only in the event of a change in the annual percentage rates.

The FMCSA is seeking comments on the random testing regulations related to motor carriers testing at the applicable rates. Motor carriers may either administer their own random testing programs or rely on consortia/third party administrators (C/TPAs) to provide that service. There appears to be rising concern over how to calculate the testing rates when the motor carrier is in a consortium, especially if the consortium is not testing at the minimum rates, but the motor carrier is. The agency seeks comment whether the regulations codified in § 382.305(j) are sufficiently clear, or do they need clarification?

Section 382.307 Reasonable Suspicion Testing

The FMCSA is proposing to remove the regulatory test in 382.307(e)(2) requiring employers to submit MIS reports from March 15 1996 through March 15, 1998 respectively. This section will be renumbered accordingly to adjust for the deletion of this paragraph.

Section 382.309 Return-to-Duty Testing

The FMCSA is proposing to remove the regulatory text regarding return-to-duty testing requirements from part 382 in order to avoid potential duplication and inconsistency with the requirements in part 40. Please refer to the Common Preamble, Transportation Workplace Drug and Alcohol Testing Programs; Amendments to DOT Agency Rules Conforming to the Department of Transportation Final Rule, published elsewhere in this issue of the **Federal Register**.

Section 382.311 Follow-Up Testing

The FMCSA is proposing to remove the regulatory text regarding follow-up testing requirements from part 382 in order to avoid potential duplication and inconsistency with the requirements in part 40. Please refer to the Common Preamble, Transportation Workplace Drug and Alcohol Testing Programs; Amendments to DOT Agency Rules Conforming to 49 CFR Part 40, published elsewhere in this issue of the **Federal Register**.

Section 382.401 Retention of Records

The FMCSA is proposing that employers maintain semi-annual laboratory statistical summaries of urinalysis instead of quarterly summaries, to be consistent with the new part § 40.111(a).

Section 382.403 Reporting of Results in a Management Information System

The FMCSA is proposing to amend the reporting requirements in paragraphs (c)(8) and (d)(5) to include substituted or adulterated specimens. This would be consistent with part 40 and will provide clarifying information on positive drug test results that are accounted for in the MIS reports.

Section 382.405 Access to Facilities and Records

The FMCSA is proposing to amend the requirements in paragraph (g) regarding disclosure of information arising from a positive DOT drug or alcohol test or refusal to test also include disclosure of adulterated and substituted test results, consistent with § 40.323(a)(1). Additionally, this section allows an employer to disclose information in criminal or civil actions as provided in § 40.323(a)(2).

Section 382.407 Medical Review Officer Notifications to the Employer

The FMCSA is proposing to remove the regulatory text regarding requirements for medical review officer notifications to the employer from part 382 in avoid potential duplication and inconsistency with the requirements of part 40. Please refer to the Common Preamble, Transportation Workplace Drug and Alcohol Testing Programs; Amendments to DOT Agency Rules Conforming to 49 CFR Part 40, published elsewhere in this issue of the **Federal Register**.

Section 382.409 Medical Review Officer Record Retention for Controlled Substances

This section requires the medical review officer to maintain dated records and employer notifications for a period of time. The FMCSA proposes to amend paragraphs (a),(b) and (c) to include third party administrators within this requirement since part 40 now permits third party administrators to transmit the MRO's findings to the employer.

Section 382.411 Employer Notifications

Paragraphs (b) and (c) has been modified to replace the term designated management official with designated employer representative. In addition, we propose to amend paragraph (c) to require the designated employer representative to immediately notify the medical review officer that the driver has been notified to contact the medical review officer within 72 hours, in order to be consistent with § 40.131.

Section 382.413 Inquiries for Alcohol and Controlled Substances Information from Previous Employers

The FMCSA is proposing to remove the regulatory text regarding requirements for inquiries for alcohol and controlled substances information from previous employers from Part 382 in order to avoid potential duplication and inconsistency with Part 40. Please refer to the Common Preamble, Transportation Workplace Drug and Alcohol Testing Programs; Amendments to DOT Agency Rules Conforming to 49 CFR Part 40, published elsewhere in this issue of the **Federal Register**.

Section 382.507 Penalties

The FMCSA is proposing to add a provision stating that an employer who violates the requirements of part 40 will be subject to the penalties in 49 U.S.C. 521(b). This is a clarification of existing law. Section 382.105 makes the provisions of Part 40 applicable to employers and a violation of Part 40 is treated like a violation of part 382 for enforcement purposes.

Section 382.605 Referral, Evaluation, and Treatment

The FMCSA is proposing to remove the regulatory text regarding the requirements for referral, evaluation, and treatment from Part 382 in order to avoid potential duplication and inconsistency with the requirements of Part 40. Please refer to the Common Preamble, Transportation Workplace Drug and Alcohol Testing Programs; Amendments to DOT Agency Rules Conforming to 49 CFR Part 40, published elsewhere in this issue of the **Federal Register**.

Rulemaking Analyses and Notices

Executive Order 12866 (Regulatory Planning and Review) and DOT Regulatory Policies and Procedures

These proposed rules have been designated as non-significant under Executive Order 12866 and the Department of Transportation's Regulatory Policies and Procedures. They are non-significant because they merely make changes to conform to the revised 49 CFR part 40, which has already been subject to extensive comment and analysis, or seek to remove obsolete provisions or clarify existing law. The proposed changes would not have any incremental economic impacts on their own. The economic impacts of the underlying part 40 changes were analyzed in connection with the part 40 rulemaking.

Regulatory Flexibility Act

Because these proposals have no incremental economic impacts, the FMCSA certifies, under the Regulatory Flexibility Act, that these proposals, if adopted, would not have a significant economic impact on a substantial number of small entities.

Executive Order 13132 (Federalism)

This proposed action has been analyzed in accordance with the principles and criteria contained in Executive Order 13132, dated August 4, 1999. The FMCSA has determined this proposed rule would not have a substantial direct effect on, or sufficient federalism implications for, the States, nor would it limit the policymaking discretion of the States.

Paperwork Reduction Act

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)), the FMCSA has determined that there are no new requirements for information collection associated with this proposed rule. All the information collection requirements of part 40 have been analyzed and approved by OMB. These proposed rules would impose no information collection requirements that have not already been reviewed in the context of the part 40 rulemaking, so no further Paperwork Reduction Act review is necessary.

Unfunded Mandates Reform Act

This proposed rule would not impose a Federal mandate resulting in the expenditure by State, local or tribal governments, in the aggregate, or by the private sector, of $100 million or more in any one year (2 U.S.C. 1531 *et seq.*).

Executive Order 12988 (Civil Justice Reform)

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

Executive Order 13045 (Protection of Children)

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

Executive Order 12630 (Taking of Private Property)

The FMCSA certifies that this proposed rule has no taking implications under the Fifth Amendment or Executive Order 12630, Governmental Actions and Interference With Constitutionally Protected Property Rights.

Executive Order 12372 (Intergovernmental Review)

The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities do not apply to this program.

National Environmental Policy Act

The agency has analyzed this proposal for the purpose of the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*) and has determined that this action would not have an adverse effect on the quality of the environment.

List of Subjects in 49 CFR Part 382

Administrative practice and procedure, Alcohol abuse, Alcohol testing, Drug abuse, Drug testing, Highway safety, Motor carriers, Penalties, Reporting and recordkeeping requirements, Safety, Transportation.

Accordingly, the FMCSA proposes to revise Part 382 of 49 CFR to read as follows:

PART 382—CONTROLLED SUBSTANCES AND ALCOHOL USE AND TESTING

Subpart A—General

Sec.
382.101 Purpose 382.103 Applicability.
382.105 Testing procedures.
382.107 Definitions.
382.109 Preemption of State and local laws.
382.111 Other requirements imposed by employers.
382.113 Requirements for notice.
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Subpart B—Prohibitions

382.201 Alcohol concentration.
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382.217 Actual knowledge.
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382.301 Pre-employment testing.
382.303 Post-accident testing.
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382.309 Return-to-duty testing.
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Subpart D—Handling of Test Results, Record Retention, and Confidentiality

382.401 Retention of records.
382.403 Reporting of results in a management information system.
382.405 Access to facilities and records.
382.407 Medical review officer notifications to the employer.
382.409 Medical review officer record retention for controlled substances.
382.411 Employer notifications.
382.413 Inquiries for alcohol and controlled substances information from previous employers.

Subpart E—Consequences for Drivers Engaging in Substance Use-Related Conduct

382.501 Removal from safety-sensitive function.
382.503 Required evaluation and testing.
382.505 Other alcohol-related conduct.
382.507 Penalties.

Subpart F—Alcohol Misuse and Controlled Substances Use Information, Training, and Referral

382.601 Employer obligation to promulgate a policy on the misuse of alcohol and use of controlled substances.
382.603 Training for supervisors.
382.605 Referral, evaluation, and treatment.

Authority: 49 U.S.C. 31133, 31136, 31301 *et seq.*, 31502; and 49 CFR 1.73.

Subpart A—General

§ 382.101 Purpose.

The purpose of this part is to establish programs designed to help prevent accidents and injuries resulting from the misuse of alcohol or use of controlled substances by drivers of commercial motor vehicles.

§ 382.103 Applicability.

(a) This part applies to every person and to all employers of such persons who operate a commercial motor vehicle in commerce in any State, and is subject to:

(1) The commercial driver's license requirements of part 383 of this subchapter;

(2) The Licencia Federal de Conductor (Mexico) requirements; or

(3) The commercial driver's license requirements of the Canadian National Safety Code.

(b) An employer who employs himself/herself as a driver must comply with both the requirements in this part that apply to employers and the requirements in this part that apply to drivers. An employer who employs only himself/herself as a driver shall implement a random alcohol and controlled substances testing program of

two or more covered employees in the random testing selection pool.

(c) The exceptions contained in § 390.3(f) of this subchapter do not apply to this part. The employers and drivers identified in § 390.3(f) of this subchapter must comply with the requirements of this part, unless otherwise specifically provided in paragraph (d) of this section.

(d) *Exceptions.* This part shall not apply to employers and their drivers:

(1) Required to comply with the alcohol and/or controlled substances testing requirements of parts 653 and 655 of this title (Federal Transit Administration alcohol and controlled substances testing regulations); or

(2) Who a State must waive from the requirements of part 383 of this subchapter. These individuals include active duty military personnel; members of the reserves; and members of the national guard on active duty, including personnel on full-time national guard duty, personnel on part-time national guard training and national guard military technicians (civilians who are required to wear military uniforms), and active duty U.S. Coast Guard personnel; or

(3) Who a State has, at its discretion, exempted from the requirements of part 383 of this subchapter. These individuals may be:

(i) Operators of a farm vehicle which is:

(A) Controlled and operated by a farmer;

(B) Used to transport either agricultural products, farm machinery, farm supplies, or both to or from a farm;

(C) Not used in the operations of a common or contract motor carrier; and

(D) Used within 241 kilometers (150 miles) of the farmer's farm.

(ii) Firefighters or other persons who operate commercial motor vehicles which are necessary for the preservation of life or property or the execution of emergency governmental functions, are equipped with audible and visual signals, and are not subject to normal traffic regulation.

§ 382.105 Testing procedures.

Each employer shall ensure that all alcohol or controlled substances testing conducted under this part complies with the procedures set forth in part 40 of this title. The provisions of part 40 of this title that address alcohol or controlled substances testing are made applicable to employers by this part.

§ 382.107 Definitions.

Words or phrases used in this part are defined in §§ 386.2 and 390.5 of this subchapter, and § 40.3 of this title, except as provided in this section—

Alcohol means the intoxicating agent in beverage alcohol, ethyl alcohol, or other low molecular weight alcohols including methyl and isopropyl alcohol.

Alcohol concentration (or content) means the alcohol in a volume of breath expressed in terms of grams of alcohol per 210 liters of breath as indicated by an evidential breath test under this part.

Alcohol use means the drinking or swallowing of any beverage, liquid mixiture or preparation (including any medication), containing alcohol.

Commerce means:

(1) Any trade, traffic or transportation within the jurisdiction of the United States between a place in a State and a place outside of such State, including a place outside of the United States; and

(2) Trade, traffic, and transportation in the United States which affects any trade, traffic, and transportation described in paragraph (1) of this definition.

Commercial motor vehicle means a motor vehicle or combination of motor vehicles used in commerce to transport passengers or property if the vehicle—

(1) Has a gross combination weight rating of 11,794 or more kilograms (26,001 or more pounds) inclusive of a towed unit with a gross vehicle weight rating of more than of 4,536 kilograms (10,000 pounds); or

(2) Has a gross vehicle weight rating of 11,794 or more kilograms (26,001 or more pounds); or

(3) Is designed to transport 16 or more passengers, including the driver; or

(4) Is of any size and is used in the transportation of materials found to be hazardous for the purposes of the Hazardous Materials Transportation Act and which require the motor vehicle to be placarded under the Hazardous Materials Regulations (49 CFR Part 172, subpart F).

Confirmation (or confirmatory) drug test means a second analytical procedure performed on a urine specimen to identify an dquantify the presence of a specific drug or drug metabolite.

Confirmation (or confirmatory) validity test means a second test performed on a urine specimen to further support a validity test result.

Confirmed drug test means a confirmation test result received by an MRO from a laboratory.

Consortium/Third party administrator (C/TPA) means a service agent that provides or coordinates one or more drug and/or alcohol testing services to DOT-regulated employers. C/TPAs typically provide or coordinate the provision of a number of such services and perform administrative tasks concerning the operation of the employers' drug and alcohol testing programs. This term includes, but is not limited to, groups of employers who join together to administer, as a single entity, the DOT drug and alcohol testing programs of its members (e.g., having a combined random testing pool). C/TPAs are not ''employers'' for purposes of this part.

Controlled substances mean those substances identified in § 40.85 of this title.

Designated employer representative (DER) is an individual identified by the employer as able to receive communications and test results from service agents and who is authorized to take immediate actions to remove employees from safety-sensitive duties and to make required decisions in the testing and evaluation processes. The individual must be an employee of the company. Service agents cannot serve as DERs.

Disabling damage means damage which precludes departure of a motor vehicle from the scene of the accident in its usual manner in daylight after simple repairs.

(1) *Inclusions.* Damage to motor vehicles that could have been driven, but would have been further damaged if so driven.

(2) *Exclusions.* (i) Damage which can be remedied temporarily at the scene of the accident without special tools or parts.

(ii) Tire disablement without other damage even if no spare tire is available.

(iii) Headlight or taillight damage.

(iv) Damage to turn signals, horn, or windshield wipers which make them inoperative.

DOT Agency means an agency (or ''operating administration'') of the United States Department of Transportation administering regulations requiring alcohol and/or drug testing (14 CFR parts 61, 63, 65, 121, and 135; 49 CFR parts 199, 219, 382, 653 and 654), in accordance with Part 40 of this title.

Driver means any person who operates a commercial motor vehicle. This includes, but is not limited to: Full time, regularly employed drivers; casual, intermittent or occasional drivers; leased drivers and independent owner-operator contractors who are either directly employed by or under lease to an employer or who operate a commercial motor vehicle at the direction of or with the consent of an employer.

Employer means an entity employing one or more employees (including an individual who is self-employed) that is subject to DOT agency regulations requiring compliance with this part. The

term, as used in these regulations, refers to the entity responsible for overall implementation of DOT drug and alcohol program requirements, as well as those individuals employed by the entity who take personnel actions resulting from violations of this part and any applicable DOT agency regulations. Service agents are not employers for the purposes of this part.

Licensed medical practitioner means a person who is licensed, certified, and/or registered, in accordance with applicable Federal, State, local, or foreign laws and regulations, to prescribe controlled substances and other drugs.

Performing (a safety-sensitive function) means a driver is considered to be performing a safety-sensitive function during any period in which he or she is actually performing, ready to perform, or immediately available to perform any safety-sensitive functions.

Positive rate means the number of positive results for random controlled substances tests conducted under this part plus the number of refusals of random controlled substances tests required by this part, divided by the total of random controlled substances tests conducted under this part plus the number of refusals of random tests required by this part.

Refuse to submit (to an alcohol or controlled substances test) means that a driver:

(1) Fails to show up for any test within a reasonable time after being directed to do so by the employer or to remain at the testing site until the testing process is complete. This includes the failure of an employee (including an owner-operator) to appear for a test when called by a C/TPA (see § 40.61(a) of this title);

(2) Fails to provide a urine specimen for any drug test required by this part;

(3) In the case of a directly observed or monitored collection in a drug test, fails to permit the observation or monitoring of the provision of a specimen (§§ 40.67(k) and 40.69(g) of this title);

(4) Fails to provide a sufficient amount of urine when directed, unless it has been determined, through a required medical evaluation, that there was an adequate medical explanation for the failure (see § 40.193(d)(2) of this title);

(5) Fails or declines to take a second test the employer has directed following a negative dilute result (see § 40.197(g) of this title);

(6) Fails to undergo an additional medical examination, as directed by the MRO as part of the verification process, or as directed by the DER concerning the evaluation as part of the ''shy bladder'' procedures in part 40, subpart I, of this title; or

(7) Fails to cooperate (e.g., leaves the test site before the collection process is completed, refuses to empty pockets) with any part of the testing process.

Safety-sensitive function means all time from the time a driver begins to work or is required to be in readiness to work until the time he/she is relieved from work and all responsibility for performing work. Safety-sensitive functions shall include:

(1) All time at an employer or shipper plant, terminal, facility, or other property, or on any public property, waiting to be dispatched, unless the driver has been relieved from duty by the employer;

(2) All time inspecting equipment as required by §§ 392.7 and 392.8 of this subchapter or otherwise inspecting, servicing, or conditioning any commercial motor vehicle at any time;

(3) All time spent at the driving controls of a commercial motor vehicle in operation;

(4) All time, other than driving time, in or upon any commercial motor vehicle except time spent resting in a sleeper berth (a berth conforming to the requirements of § 393.76 of this subchapter);

(5) All time loading or unloading a vehicle, supervising, or assisting in the loading or unloading, attending a vehicle being loaded or unloaded, remaining in readiness to operate the vehicle, or in giving or receiving receipts for shipments loaded or unloaded; and

(6) All time repairing, obtaining assistance, or remaining in attendance upon a disabled vehicle.

Screening test (or initial test) means:

(1) In drug testing, a test to eliminate ''negative'' urine specimens from further analysis or to identify a specimen that requires additional testing for the presence of drugs.

(2) In alcohol testing, an analytical procedure to determine whether an employee may have a prohibited concentration of alcohol in a breath or saliva specimen.

Stand-down means the practice of temporarily removing an employee from the performance of safety-sensitive functions based only on a report from a laboratory to the MRO of a confirmed positive test for a drug or drug metabolite, an adulterated test, or a substituted test, before the MRO has completed verification of the test results.

Violation rate means the number of drivers (as reported under § 382.305) found during random tests given under this part to have an alcohol concentration of 0.04 or greater, plus the number of drivers who refuse a random test required by this part, divided by the total reported number of drivers in the industry given random alcohol tests under this part plus the total reported number of drivers in the industry who refuse a random test required by this part.

§ 382.109 Preemption of State and local laws.

(a) Except as provided in paragraph (b) of this section, this part preempts any State or local law, rule, regulation, or order to the extent that:

(1) Compliance with both the State or local requirement in this part is not possible; or

(2) Compliance with the State or local requirement is an obstacle to the accomplishment and execution of any requirement in this part.

(b) This part shall not be construed to preempt provisions of State criminal law that impose sanctions for reckless conduct leading to actual loss of life, injury, or damage to property, whether the provisions apply specifically to transportation employees, employers, or the general public.

§ 382.111 Other requirements imposed by employers.

Except as expressly provided in this part, nothing in this part shall be construed to affect the authority of employers, or the rights of drivers, with respect to the use of alcohol, or the use of controlled substances, including authority and rights with respect to testing and rehabilitation.

§ 382.113 Requirement for notice.

Before performing an alcohol or controlled substances test under this part, each employer shall notify a driver that the alcohol or controlled substances test is required by this part. No employer shall falsely represent that a test is administered under this part.

§ 382.115 Starting date for testing programs.

(a) All domestic-domiciled employers must implement the requirements of this part on the date the employer begins commercial motor vehicle operations.

(b) All foreign-domiciled employers must implement the requirements of this part on the date the employer begins commercial motor vehicle operations in the United States.

§ 382.117 Public interest exclusion.

No employer shall use the services of a service agent who is subject to a

public interest exclusion in accordance with 49 CFR part 40, subpart R.

§ 382.119 Stand-down waiver provision.

(a) An employer subject to this part who seeks a waiver from the prohibition against standing down an employee before the MRO has completed the verification process shall follow the procedures in 49 CFR 40.21. The employer must send a written request which includes all of the information required by that section to the Federal Motor Carrier Safety Administrator (or the Administrator's designee), U.S. Department of Transportation, 400 Seventh Street, SW., Washington, DC 20590.

(b) The final decision whether to grant or deny the application for a waiver will be made by the Administrator or the Administrator's designee.

(c) After a decision is signed by the Administrator or the Administrator's designee, the employer will be sent a copy of the decision, which will include the terms and conditions for the waiver or the reason for denying the application for a waiver.

(d) Questions regarding waiver applications should be directed to the Office of Enforcement and Compliance, Federal Motor Carrier Safety Administration, 400 Seventh Street, SW., Washington, DC 20590. The telephone number is (202) 366–5720.

Subpart B—Prohibitions

§ 382.201 Alcohol concentration.

No driver shall report for duty or remain on duty requiring the performance of safety-sensitive functions while having an alcohol concentration of 0.04 or greater. No employer having actual knowledge that a driver has an alcohol concentration of 0.04 or greater shall permit the driver to perform or continue to perform safety-sensitive functions.

§ 382.205 On-duty use.

No driver shall use alcohol while performing safety-sensitive functions. No employer having actual knowledge that a driver is using alcohol while performing safety-sensitive functions shall permit the driver to perform or continue to perform safety-sensitive functions.

§ 382.207 Pre-duty use.

No driver shall perform safety-sensitive functions within four hours after using alcohol. No employer having actual knowledge that a driver has used alcohol within four hours shall permit a driver to perform or continue to perform safety-sensitive functions.

§ 382.209 Use following an accident.

No driver required to take a post-accident alcohol test under § 382.303 shall use alcohol for eight hours following the accident, or until he/she undergoes a post-accident alcohol test, whichever occurs first.

§ 382.211 Refusal to submit to a required alcohol or controlled substances test.

No driver shall refuse to submit to a post-accident alcohol or controlled substances test required under § 382.303, a random alcohol or controlled substances test required under § 382.305, a reasonable suspicion alcohol or controlled substances test required under § 382.307, or a follow-up alcohol or controlled substances test required under § 382.311. No employer shall permit a driver who refuses to submit to such tests to perform or continue to perform safety-sensitive functions.

§ 382.213 Controlled substances use.

(a) No driver shall report for duty or remain on duty requiring the performance of safety-sensitive functions when the driver uses any controlled substance, except when the use is pursuant to the instructions of a licensed medical practitioner, as defined in § 382.107, who has advised the driver that the substance will not adversely affect the driver's ability to safely operate a commercial motor vehicle.

(b) No employer having actual knowledge that a driver has used a controlled substance shall permit the driver to perform or continue to perform a safety-sensitive function.

(c) An employer may require a driver to inform the employer of any therapeutic drug use.

§ 382.215 Controlled substances testing.

No driver shall report for duty, remain on duty or perform a safety-sensitive function, if the driver tests positive or has adulterated or substituted a test specimen for controlled substances. No employer having actual knowledge that a driver has tested positive or has adulterated or substituted a test specimen for controlled substances shall permit the driver to perform or continue to perform safety-sensitive functions.

§ 382.217 Actual knowledge.

For the purposes of this subpart, an employer can obtain actual knowledge that a driver has used alcohol or controlled substances based on the employer's direct observation of the employee, information provided by the driver's previous employer(s), a traffic citation for driving a CMV while under the influence of alcohol or controlled substances or an employee's admission of alcohol or controlled substances use, except as provided in § 382.219.

§ 382.219 Employee admission of alcohol and controlled substances use.

(a) Employees who admit to alcohol misuse or controlled substances use are not subject to the referral, evaluation and treatment requirements of this part and part 40 of this title, provided that:

(1) The admission is in accordance with a written employer-established voluntary self-identification program or policy which meets the requirements of paragraph (b) of this section;

(2) The driver does not self-identify in order to avoid testing under the requirements of this part;

(3) The driver makes the admission of alcohol misuse or controlled substances use before performing a safety sensitive function; and

(4) The driver does not perform a safety sensitive function until the employer is satisfied that the employee has been evaluated and has successfully completed education or treatment requirements in accordance with the self-identification program guidelines.

(b) A qualified voluntary self-identification program or policy must contain the following elements:

(1) It must prohibit the employer from taking adverse action against an employee making a voluntary admission of alcohol misuse or controlled substances use within the parameters of the program or policy and paragraph (a) of this section;

(2) It must allow the employee sufficient opportunity to seek evaluation, education or treatment to establish control over the employee's drug or alcohol problem; and

(3) It must permit the employee to return to safety sensitive duties only upon successful completion of an educational or treatment program, as determined by a substance abuse professional.

Subpart C—Tests Required

§ 382.301 Pre-employment testing.

(a) Prior to the first time a driver performs safety-sensitive functions for an employer, the driver shall undergo testing for controlled substances as a condition prior to being used, unless the employer uses the exception in paragraph (b) of this section. No employer shall allow a driver, who the employer intends to hire or use, to perform safety-sensitive functions unless the employer has received a controlled substances test result from the MRO or C/TPA indicating a verified negative test result for that driver.

(b) An employer is not required to administer a controlled substances test required by paragraph (a) of this section if:

(1) The driver has participated in a controlled substances testing program that meets the requirements of this part within the previous 30 days; and

(2) While participating in that program, either—

(i) Was tested for controlled substances within the past 6 months (from the date of application with the employer), or

(ii) Participated in the random controlled substances testing program for the previous 12 months (from the date of application with the employer); and

(3) The employer ensures that no prior employer of the driver of whom the employer has knowledge has records of a violation of this part or the controlled substances use rule of another DOT agency within the previous six months.

(c)(1) An employer who exercises the exception in paragraph (b) of this section shall contact the controlled substances testing program(s) in which the driver participates or participated and shall obtain and retain from the testing program(s) the following information:

(i) Name(s) and address(es) of the program(s).

(ii) Verification that the driver participates or participated in the program(s).

(iii) Verification that the program(s) conforms to part 40 of this title.

(iv) Verification that the driver is qualified under the rules of this part, including that the driver has not refused to be tested for controlled substances.

(v) The date the driver was last tested for controlled substances.

(vi) The results of any tests taken within the previous six months and any other violations of subpart B of this part.

(2) An employer who uses, but does not employ, a driver more than once a year to operate commercial motor vehicles must obtain the information in paragraph (c)(1) of this section at least once every six months. The records prepared under this paragraph shall be maintained in accordance with § 382.401. If the employer cannot verify that the driver is participating in a controlled substances testing program in accordance with this part and part 40 of this title, the employer shall conduct a pre-employment controlled substances test.

(d) An employer may, but is not required to, conduct pre-employment alcohol testing under this part. If an employer chooses to conduct pre-employment alcohol testing, it must comply with the following requirements:

(1) It must conduct a pre-employment alcohol test before the first performance of safety-sensitive functions by every covered employee (whether a new employee or someone who has transferred to a position involving the performance of safety-sensitive functions).

(2) It must treat all safety-sensitive employees performing safety-sensitive functions the same for the purpose of pre-employment alcohol testing (i.e., it must not test some covered employees and not others).

(3) It must conduct the pre-employment tests after making a contingent offer of employment or transfer, subject to the employee passing the pre-employment alcohol test.

(4) It must conduct all pre-employment alcohol tests using the alcohol testing procedures of part 40 of this title.

(5) It must not allow a covered employee to begin performing safety-sensitive functions unless the result of the employee's test indicates an alcohol concentration of less than 0.04.

§ 382.303 Post-accident testing.

(a) As soon as practicable following an occurrence involving a commercial motor vehicle operating on a public road in commerce, each employer shall test for alcohol for each surviving driver:

(1) Who was performing safety-sensitive functions with respect to the vehicle, if the accident involved the loss of human life; or

(2) Who receives a citation under State or local law for a moving traffic violation arising from the accident, if the accident involved:

(i) Bodily injury to any person who, as a result of the injury, immediately receives medical treatment away from the scene of the accident; or

(ii) One or more motor vehicles incurring disabling damage as a result of the accident, requiring the motor vehicle to be transported away from the scene by a tow truck or other motor vehicle.

(b) As soon as practicable following an occurrence involving a commercial motor vehicle operating on a public road in commerce, each employer shall test for controlled substances for each surviving driver:

(1) Who was performing safety-sensitive functions with respect to the vehicle, if the accident involved the loss of human life; or (2) Who receives a citation under State or local law for a moving traffic violation arising from the accident, if the accident involved:

(i) Bodily injury to any person who, as a result of the injury, immediately receives medical treatment away from the scene of the accident; or

(ii) One or more motor vehicles incurring disabling damage as a result of the accident, requiring the motor vehicle to be transported away from the scene by a tow truck or other motor vehicle.

(c) The following table notes when a post-accident test is required to be conducted by paragraphs (a)(1), (a)(2), (b)(1), and (b)(2) of this section:

TABLE FOR § 382.303(a) AND (b)

Type of accident involved	Citation issued to the CMV driver	Test must be performed by employer
i. Human fatality	Yes No	Yes. Yes.
ii. Bodily injury with immediate medical treatment away from the scene.	Yes No	Yes. No.
iii. Disabling damage to any motor vehicle requiring tow away.	Yes No	Yes. No.

(d)(1) *Alcohol tests.* If a test required by this section is not administered within two hours following the accident, the employer shall prepare and maintain on file a record stating the reasons the test was not promptly

administered. If a test required by this section is not administered within eight hours following the accident, the employer shall cease attempts to administer an alcohol test and shall prepare and maintain the same record. Records shall be submitted to the FMCSA upon request.

(2) *Controlled substance tests.* If a test required by this section is not administered within 32 hours following the accident, the employer shall cease attempts to administer a controlled substances test, and prepare and maintain on file a record stating the reasons the test was not promptly administered. Records shall be submitted to the FMCSA upon request.

(e) A driver who is subject to post-accident testing shall remain readily available for such testing or may be deemed by the employer to have refused to submit to testing. Nothing in this section shall be construed to require the delay of necessary medical attention for injured people following an accident or to prohibit a driver from leaving the scene of an accident for the period necessary to obtain assistance in responding to the accident, or to obtain necessary emergency medical care.

(f) An employer shall provide drivers with necessary post-accident information, procedures and instructions, prior to the driver operating a commercial motor vehicle, so that drivers will be able to comply with the requirements of this section.

(g)(1) The results of a breath or blood test for the use of alcohol, conducted by Federal, State, or local officials having independent authority for the test, shall be considered to meet the requirements of this section, provided such tests conform to the applicable Federal, State or local alcohol testing requirements, and that the results of the tests are obtained by the employer.

(2) The results of a urine test for the use of controlled substances, conducted by Federal, State, or local officials having independent authority for the test, shall be considered to meet the requirements of this section, provided such tests conform to the applicable Federal, State or local controlled substances testing requirements, and that the results of the tests are obtained by the employer.

(h) *Exception.* This section does not apply to:

(1) An occurrence involving only boarding or alighting from a stationary motor vehicle; or

(2) An occurrence involving only the loading or unloading of cargo; or

(3) An occurrence in the course of the operation of a passenger car or a multipurpose passenger vehicle (as defined in § 571.3 of this title) by an employer unless the motor vehicle is transporting passengers for hire or hazardous materials of a type and quantity that require the motor vehicle to be marked or placarded in accordance with § 177.823 of this title.

§ 382.305 Random testing.

(a) Every employer shall comply with the requirements of this section. Every driver shall submit to random alcohol and controlled substance testing as required in this section.

(b)(1) Except as provided in paragraphs (c) through (e) of this section, the minimum annual percentage rate for random alcohol testing shall be 10 percent of the average number of driver positions.

(2) Except as provided in paragraphs (f) through (h) of this section, the minimum annual percentage rate for random controlled substances testing shall be 50 percent of the average number of driver positions.

(c) The FMCSA Administrator's decision to increase or decrease the minimum annual percentage rate for alcohol testing is based on the reported violation rate for the entire industry. All information used for this determination is drawn from the alcohol management information system reports required by § 382.403. In order to ensure reliability of the data, the FMCSA Administrator considers the quality and completeness of the reported data, may obtain additional information or reports from employers, and may make appropriate modifications in calculating the industry violation rate. In the event of a change in the annual percentage rate, the FMCSA Administrator will publish in the **Federal Register** the new minimum annual percentage rate for random alcohol testing of drivers. The new minimum annual percentage rate for random alcohol testing will be applicable starting January 1 of the calendar year following publication in the **Federal Register**.

(d)(1) When the minimum annual percentage rate for random alcohol testing is 25 percent or more, the FMCSA Administrator may lower this rate to 10 percent of all driver positions if the FMCSA Administrator determines that the data received under the reporting requirements of § 382.403 for two consecutive calendar years indicate that the violation rate is less than 0.5 percent.

(2) When the minimum annual percentage rate for random alcohol testing is 50 percent, the FMCSA Administrator may lower this rate to 25 percent of all driver positions if the FMCSA Administrator determines that the data received under the reporting requirements of § 382.403 for two consecutive calendar years indicate that the violation rate is less than 1.0 percent but equal to or greater than 0.5 percent.

(e)(1) When the minimum annual percentage rate for random alcohol testing is 10 percent, and the data received under the reporting requirements of § 382.403 for that calendar year indicate that the violation rate is equal to or greater than 0.5 percent, but less than 1.0 percent, the FMCSA Administrator will increase the minimum annual percentage rate for random alcohol testing to 25 percent for all driver positions.

(2) When the minimum annual percentage rate for random alcohol testing is 25 percent or less, and the data received under the reporting requirements of § 382.403 for that calendar year indicate that the violation rate is equal to or greater than 1.0 percent, the FMCSA Administrator will increase the minimum annual percentage rate for random alcohol testing to 50 percent for all driver positions.

(f) The FMCSA Administrator's decision to increase or decrease the minimum annual percentage rate for controlled substances testing is based on the reported positive rate for the entire industry. All information used for this determination is drawn from the controlled substances management information system reports required by § 382.403. In order to ensure reliability of the data, the FMCSA Administrator considers the quality and completeness of the reported data, may obtain additional information or reports from employers, and may make appropriate modifications in calculating the industry positive rate. In the event of a change in the annual percentage rate, the FMCSA Administrator will publish in the **Federal Register** the new minimum annual percentage rate for controlled substances testing of drivers. The new minimum annual percentage rate for random controlled substances testing will be applicable starting January 1 of the calendar year following publication in the **Federal Register**.

(g) When the minimum annual percentage rate for random controlled substances testing is 50 percent, the FMCSA Administrator may lower this rate to 25 percent of all driver positions if the FMCSA Administrator determines that the data received under the reporting requirements of § 382.403 for two consecutive calendar years indicate that the positive rate is less than 1.0 percent.

(h) When the minimum annual percentage rate for random controlled

substances testing is 25 percent, and the data received under the reporting requirements of § 382.403 for any calendar year indicate that the reported positive rate is equal to or greater than 1.0 percent, the FMCSA Administrator will increase the minimum annual percentage rate for random controlled substances testing to 50 percent of all driver positions.

(i) The selection of drivers for random alcohol and controlled substances testing shall be made by a scientifically valid method, such as a random number table or a computer-based random number generator that is matched with drivers' Social Security numbers, payroll identification numbers, or other comparable identifying numbers. Under the selection process used, each driver shall have an equal chance of being tested each time selections are made.

(j) The employer shall randomly select a sufficient number of drivers for testing during each calendar year to equal an annual rate not less than the minimum annual percentage rate for random alcohol and controlled substances testing determined by the FMCSA Administrator. If the employer conducts random testing for alcohol and/or controlled substances through a C/TPA, the number of drivers to be tested may be calculated for each individual employer or may be based on the total number of drivers covered by the C/TPA who are subject to random alcohol and/or controlled substances testing at the same minimum annual percentage rate under this part or any DOT alcohol or controlled substances random testing rule may be calculated for the employer.

(k) Each employer shall ensure that random alcohol and controlled substances tests conducted under this part are unannounced and that the dates for administering random alcohol and controlled substances tests are spread reasonably throughout the calendar year.

(l) Each employer shall require that each driver who is notified of selection for random alcohol and/or controlled substances testing proceeds to the test site immediately; provided, however, that if the driver is performing a safety-sensitive function, other than driving a commercial motor vehicle, at the time of notification, the employer shall instead ensure that the driver ceases to perform the safety-sensitive function and proceeds to the testing site as soon as possible.

(m) A driver shall only be tested for alcohol while the driver is performing safety-sensitive functions, just before the driver is to perform safety-sensitive functions, or just after the driver has ceased performing such functions.

(n) If a given driver is subject to random alcohol or controlled substances testing under the random alcohol or controlled substances testing rules of more than one DOT agency for the same employer, the driver shall be subject to random alcohol and/or controlled substances testing at the annual percentage rate established for the calendar year by the DOT agency regulating more than 50 percent of the driver's function.

(o) If an employer is required to conduct random alcohol or controlled substances testing under the alcohol or controlled substances testing rules of more than one DOT agency, the employer may—

(1) Establish separate pools for random selection, with each pool containing the DOT-covered employees who are subject to testing at the same required minimum annual percentage rate; or

(2) Randomly select such employees for testing at the highest minimum annual percentage rate established for the calendar year by any DOT agency to which the employer is subject.

§ 382.307 Reasonable suspicion testing.

(a) An employer shall require a driver to submit to an alcohol test when the employer has reasonable suspicion to believe that the driver has violated the prohibitions of subpart B of this part concerning alcohol. The employer's determination that reasonable suspicion exists to require the driver to undergo an alcohol test must be based on specific, contemporaneous, articulable observations concerning the appearance, behavior, speech or body odors of the driver.

(b) An employer shall require a driver to submit to a controlled substances test when the employer has reasonable suspicion to believe that the driver has violated the prohibitions of subpart B of this part concerning controlled substances. The employer's determination that reasonable suspicion exists to require the driver to undergo a controlled substances test must be based on specific, contemporaneous, articulable observations concerning the appearance, behavior, speech or body odors of the driver. The observations may include indications of the chronic and withdrawal effects of controlled substances.

(c) The required observations for alcohol and/or controlled substances reasonable suspicion testing shall be made by a supervisor or company official who is trained in accordance with § 382.603. The person who makes the determination that reasonable suspicion exists to conduct an alcohol test shall not conduct the alcohol test of the driver.

(d) Alcohol testing is authorized by this section only if the observations required by paragraph (a) of this section are made during, just preceding, or just after the period of the work day that the driver is required to be in compliance with this part. A driver may be directed by the employer to only undergo reasonable suspicion testing while the driver is performing safety-sensitive functions, just before the driver is to perform safety-sensitive functions, or just after the driver has ceased performing such functions.

(e)(1) If an alcohol test required by this section is not administered within two hours following the determination under paragraph (a) of this section, the employer shall prepare and maintain on file a record stating the reasons the alcohol test was not promptly administered. If an alcohol test required by this section is not administered within eight hours following the determination under paragraph (a) of this section, the employer shall cease attempts to administer an alcohol test and shall state in the record the reasons for not administering the test.

(2) Notwithstanding the absence of a reasonable suspicion alcohol test under this section, no driver shall report for duty or remain on duty requiring the performance of safety-sensitive functions while the driver is under the influence of or impaired by alcohol, as shown by the behavioral, speech, and performance indicators of alcohol misuse, nor shall an employer permit the driver to perform or continue to perform safety-sensitive functions, until:

(i) An alcohol test is administered and the driver's alcohol concentration measures less than 0.02; or

(ii) Twenty four hours have elapsed following the determination under paragraph (a) of this section that there is reasonable suspicion to believe that the driver has violated the prohibitions in this part concerning the use of alcohol.

(3) Except as provided in paragraph (e)(2) of this section, no employer shall take any action under this part against a driver based solely on the driver's behavior and appearance, with respect to alcohol use, in the absence of an alcohol test. This does not prohibit an employer with independent authority of this part from taking any action otherwise consistent with law.

(f) A written record shall be made of the observations leading to a controlled substance reasonable suspicion test, and signed by the supervisor or company

official who made the observations, within 24 hours of the observed behavior or before the results of the controlled substances test are released, whichever is earlier.

§ 382.309 Return-to-duty testing.

The requirements for return-to-duty testing must be performed in accordance with 49 CFR part 40, Subpart O.

§ 382.311 Follow-up testing.

The requirements for following-up testing must be performed in accordance with 49 CFR part 40, Subpart O.

Subpart D—Handling of Test Results, Record Retention, and Confidentiality

§ 382.401 Retention of records.

(a) *General requirement.* Each employer shall maintain records of its alcohol misuse and controlled substances use prevention programs as provided in this section. The records shall be maintained in a secure location with controlled access.

(b) *Period of retention.* Each employer shall maintain the records in accordance with the following schedule:

(1) *Five years.* The following records shall be maintained for a minimum of five years:

(i) Records of driver alcohol test results indicating an alcohol concentration of 0.02 or greater,

(ii) Records of driver verified positive controlled substances test results,

(iii) Documentation of refusals to take required alcohol and/or controlled substances tests,

(iv) Driver evaluation and referrals,

(v) Calibration documentation,

(vi) Records related to the administration of the alcohol and controlled substances testing programs, and

(vii) A copy of each annual calendar year summary required by § 382.403.

(2) *Two years.* Records related to the alcohol and controlled substances collection process (except calibration of evidential breath testing devices).

(3) *One year.* Records of negative and canceled controlled substances test results (as defined in part 40 of this title) and alcohol test results with a concentration of less than 0.02 shall be maintained for a minimum of one year.

(4) *Indefinite period.* Records related to the education and training of breath alcohol technicians, screening test technicians, supervisors, and drivers shall be maintained by the employer while the individual performs the functions which require the training and for two years after ceasing to perform those functions.

(c) *Types of records.* The following specific types of records shall be maintained. ''Documents generated'' are documents that may have to be prepared under a requirement of this part. If the record is required to be prepared, it must be maintained.

(1) Records related to the collection process:

(i) Collection logbooks, if used;

(ii) Documents relating to the random selection process;

(iii) Calibration documentation for evidential breath testing devices;

(iv) Documentation of breath alcohol technician training;

(v) Documents generated in connection with decisions to administer reasonable suspicion alcohol or controlled substances tests;

(vi) Documents generated in connection with decisions on post-accident tests;

(vii) Documents verifying existence of a medical explanation of the inability of a driver to provide adequate breath or to provide a urine specimen for testing; and

(viii) Consolidated annual calendar year summaries as required by § 382.403.

(2) Records related to a driver's test results:

(i) The employer's copy of the alcohol test form, including the results of the test;

(ii) The employer's copy of the controlled substances test chain of custody and control form;

(iii) Documents sent by the MRO to the employer, including those required by part 40, subpart G, of this title;

(iv) Documents related to the refusal of any driver to submit to an alcohol or controlled substances test required by this part;

(v) Documents presented by a driver to dispute the result of an alcohol or controlled substances test administered under this part; and

(vi) Documents generated in connection with verifications of prior employers' alcohol or controlled substances test results that the employer:

(A) Must obtain in connection with the exception contained in § 382.301, and

(B) Must obtain as required by § 382.413.

(3) Records related to other violations of this part.

(4) Records related to evaluations:

(i) Records pertaining to a determination by a substance abuse professional concerning a driver's need for assistance; and

(ii) Records concerning a driver's compliance with recommendations of the substance abuse professional.

(5) Records related to education and training:

(i) Materials on alcohol misuse and controlled substance use awareness, including a copy of the employer's policy on alcohol misuse and controlled substance use;

(ii) Documentation of compliance with the requirements of § 382.601, including the driver's signed receipt of education materials;

(iii) Documentation of training provided to supervisors for the purpose of qualifying the supervisors to make a determination concerning the need for alcohol and/or controlled substances testing based on reasonable suspicion;

(iv) Documentation of training for breath alcohol technicians as required by § 40.213(a) of this title; and

(v) Certification that any training conducted under this part complies with the requirements for such training.

(6) Administrative records related to alcohol and controlled substances testing:

(i) Agreements with collection site facilities, laboratories, breath alcohol technicians, screening test technicians, medical review officers, consortia, and third party service providers;

(ii) Names and positions of officials and their role in the employer's alcohol and controlled substances testing program(s);

(iii) Semi-annual laboratory statistical summaries of urinalysis required by § 40.111(a) of this title; and

(iv) The employer's alcohol and controlled substances testing policy and procedures.

(d) *Location of records.* All records required by this part shall be maintained as required by § 390.31 of this subchapter and shall be made available for inspection at the employer's principal place of business within two business days after a request has been made by an authorized representative of the Federal Motor Carrier Safety Administration.

(e) *OMB control number.* (1) The information collection requirements of this part have been reviewed by the Office of Management and Budget pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*) and have been assigned OMB control number 2126–0012.

(2) The information collection requirements of this part are found in the following sections: Sections 382.105, 382.113, 382.301, 382.303, 382.305, 382.307, 382.401, 382.403, 382.405, 382.409, 382.411, 382.601, 382.603.

§ 382.403 Reporting of results in a management information system.

(a) An employer shall prepare and maintain a summary of the results of its

alcohol and controlled substances testing programs performed under this part during the previous calendar year, when requested by the Secretary of Transportation, any DOT agency, or any State or local officials with regulatory authority over the employer or any of its drivers.

(b) If an employer is notified, during the month of January, of a request by the Federal Motor Carrier Safety Administration to report the employer's annual calendar year summary information, the employer shall prepare and submit the report to the FMCSA by March 15 of that year. The employer shall ensure that the annual summary report is accurate and received by March 15 at the location that the FMCSA specifies in its request. The report shall be in the form and manner prescribed by the FMCSA in its request. When the report is submitted to the FMCSA by mail or electronic transmission, the information requested shall be typed, except for the signature of the certifying official. Each employer shall ensure the accuracy and timeliness of each report submitted by the employer or a consortium.

(c) *Detailed summary.* Each annual calendar year summary that contains information on a verified positive controlled substances test result, an alcohol screening test result of 0.02 or greater, or any other violation of the alcohol misuse provisions of subpart B of this part shall include the following informational elements:

(1) Number of drivers subject to this part;

(2) Number of drivers subject to testing under the alcohol misuse or controlled substances use rules of more than one DOT agency, identified by each agency;

(3) Number of urine specimens collected by type of test (e.g., pre-employment, random, reasonable suspicion, post-accident);

(4) Number of positives verified by a MRO by type of test, and type of controlled substance;

(5) Number of negative controlled substance tests verified by a MRO by type of test;

(6) Number of persons denied a position as a driver following a pre-employment verified positive controlled substances test and/or a pre-employment alcohol test that indicates an alcohol concentration of 0.04 or greater;

(7) Number of drivers with tests verified positive by a medical review officer for multiple controlled substances;

(8) Number of drivers who refused to submit to an alcohol or controlled substances test required under this subpart, including those who submitted substituted or adulterated specimens;

(9)(i) Number of supervisors who have received required alcohol training during the reporting period; and

(ii) Number of supervisors who have received required controlled substances training during the reporting period;

(10)(i) Number of screening alcohol tests by type of test; and

(ii) Number of confirmation alcohol tests, by type of test;

(11) Number of confirmation alcohol tests indicating an alcohol concentration of 0.02 or greater but less than 0.04, by type of test;

(12) Number of confirmation alcohol tests indicating an alcohol concentration of 0.04 or greater, by type of test;

(13) Number of drivers who were returned to duty (having complied with the recommendations of a substance abuse professional as described in § 382.503 and part 40, subpart O, of this title), in this reporting period, who previously:

(i) Had a verified positive controlled substance test result, or

(ii) Engaged in prohibited alcohol misuse under the provisions of this part;

(14) Number of drivers who were administered alcohol and drug tests at the same time, with both a verified positive drug test result and an alcohol test result indicating an alcohol concentration of 0.04 or greater; and

(15) Number of drivers who were found to have violated any non-testing prohibitions of subpart B of this part, and any action taken in response to the violation.

(d) *Short summary.* Each employer's annual calendar year summary that contains only negative controlled substance test results, alcohol screening test results of less than 0.02, and does not contain any other violations of subpart B of this part, may prepare and submit, as required by paragraph (b) of this section, either a standard report form containing all the information elements specified in paragraph (c) of this section, or an ''EZ'' report form. The ''EZ'' report shall include the following information elements:

(1) Number of drivers subject to this part;

(2) Number of drivers subject to testing under the alcohol misuse or controlled substance use rules of more than one DOT agency, identified by each agency;

(3) Number of urine specimens collected by type of test (e.g., pre-employment, random, reasonable suspicion, post-accident);

(4) Number of negatives verified by a medical review officer by type of test;

(5) Number of drivers who refused to submit to an alcohol or controlled substances test required under this subpart, including those who submitted substituted or adulterated specimens;

(6)(i) Number of supervisors who have received required alcohol training during the reporting period; and

(ii) Number of supervisors who have received required controlled substances training during the reporting period;

(7) Number of screen alcohol tests by type of test; and

(8) Number of drivers who were returned to duty (having complied with the recommendations of a substance abuse professional as described in § 382.503 and part 40, subpart O, of this title), in this reporting period, who previously:

(i) Had a verified positive controlled substance test result, or

(ii) Engaged in prohibited alcohol misuse under the provisions of this part.

(e) Each employer that is subject to more than one DOT agency alcohol or controlled substances rule shall identify each driver covered by the regulations of more than one DOT agency. The identification will be by the total number of covered functions. Prior to conducting any alcohol or controlled substances test on a driver subject to the rules of more than one DOT agency, the employer shall determine which DOT agency rule or rules authorizes or requires the test. The test result information shall be directed to the appropriate DOT agency or agencies.

(f) A C/TPA may prepare annual calendar year summaries and reports on behalf of individual employers for purposes of compliance with this section. However, each employer shall sign and submit such a report and shall remain responsible for ensuring the accuracy and timeliness of each report prepared on its behalf by a C/TPA.

§ 382.405 Access to facilities and records.

(a) Except as required by law or expressly authorized or required in this section, no employer shall release driver information that is contained in records required to be maintained under § 382.401.

(b) A driver is entitled, upon written request, to obtain copies of any records pertaining to the driver's use of alcohol or controlled substances, including any records pertaining to his or her alcohol or controlled substances tests. The employer shall promptly provide the records requested by the driver. Access to a driver's records shall not be contingent upon payment for records other than those specifically requested.

(c) Each employer shall permit access to all facilities utilized in complying

with the requirements of this part to the Secretary of Transportation, any DOT agency, or any State or local officials with regulatory authority over the employer or any of its drivers.

(d) Each employer shall make available copies of all results for employer alcohol and/or controlled substances testing conducted under this part and any other information pertaining to the employer's alcohol misuse and/or controlled substances use prevention program, when requested by the Secretary of Transportation, any DOT agency, or any State or local officials with regulatory authority over the employer or any of its drivers.

(e) When requested by the National Transportation Safety Board as part of an accident investigation, employers shall disclose information related to the employer's administration of a post-accident alcohol and/or controlled substance test administered following the accident under investigation.

(f) Records shall be made available to a subsequent employer upon receipt of a written request from a driver. Disclosure by the subsequent employer is permitted only as expressly authorized by the terms of the driver's request.

(g) An employer may disclose information required to be maintained under this part pertaining to a driver to the decision maker in a lawsuit, grievance, or administrative proceeding initiated by or on behalf of the individual, and arising from a positive DOT drug or alcohol test or a refusal to test (including, but not limited to, adulterated or substituted test results) of this part (including, but not limited to, a worker's compensation, unemployment compensation, or other proceeding relating to a benefit sought by the driver.) Additionally, an employer may disclose information in criminal or civil actions in accordance with § 40.323(a)(2) of this title.

(h) An employer shall release information regarding a driver's records as directed by the specific, written consent of the driver authorizing release of the information to an identified person. Release of such information by the person receiving the information is permitted only in accordance with the terms of the employee's consent.

§ 382.407 Medical review officer notifications to the employer.

Medical review officers shall report the results of controlled substances tests to employers in accordance with the requirements of part 40, subpart G, of this title.

§ 382.409 Medical review officer record retention for controlled substances.

(a) A medical review officer or third party administrator shall maintain all dated records and notifications, identified by individual, for a minimum of five years for verified positive controlled substances test results.

(b) A medical review officer or third party administrator shall maintain all dated records and notifications, identified by individual, for a minimum of one year for negative and canceled controlled substances test results.

(c) No person may obtain the individual controlled substances test results retained by a medical review officer or third party administrator, and no medical review officer or third party administrator shall release the individual controlled substances test results of any driver to any person, without first obtaining a specific, written authorization from the tested driver. Nothing in this paragraph (c) shall prohibit a medical review officer or third party administrator from releasing, to the employer or to officials of the Secretary of Transportation, any DOT agency, or any State or local officials with regulatory authority over the controlled substances testing program under this part, the information delineated in part 40, Subpart G, of this title.

§ 382.411 Employer notifications.

(a) An employer shall notify a driver of the results of a pre-employment controlled substances test conducted under this part, if the driver requests such results within 60 calendar days of being notified of the disposition of the employment application. An employer shall notify a driver of the results of random, reasonable suspicion and post-accident tests for controlled substances conducted under this part if the test results are verified positive. The employer shall also inform the driver which controlled substance or substances were verified as positive.

(b) The designated employer representative shall make reasonable efforts to contact and request each driver who submitted a specimen under the employer's program, regardless of the driver's employment status, to contact and discuss the results of the controlled substances test with a medical review officer who has been unable to contact the driver.

(c) The designated employer representative shall immediately notify the medical review officer that the driver has been notified to contact the medical review officer within 72 hours.

§ 382.413 Inquiries for alcohol and controlled substances information from previous employers.

Employers shall request alcohol and controlled substances information from previous employers in accordance with the requirements of part 40, subpart B, of this title.

Subpart E—Consequences for Drivers Engaging in Substance Use-Related Conduct

§ 382.501 Removal from safety-sensitive function.

(a) Except as provided in subpart F of this part, no driver shall perform safety-sensitive functions, including driving a commercial motor vehicle, if the driver has engaged in conduct prohibited by subpart B of this part or an alcohol or controlled substances rule of another DOT agency.

(b) No employer shall permit any driver to perform safety-sensitive functions, including driving a commercial motor vehicle, if the employer has determined that the driver has violated this section.

(c) For purposes of this subpart, commercial motor vehicle means a commercial motor vehicle in commerce as defined in § 382.107, and a commercial motor vehicle in interstate commerce as defined in part 390 of this subchapter.

§ 382.503 Required evaluation and testing.

No driver who has engaged in conduct prohibited by subpart B of this part shall perform safety-sensitive functions, including driving a commercial motor vehicle, unless the driver has met the requirements of part 40, subpart O, of this title. No employer shall permit a driver who has engaged in conduct prohibited by subpart B of this part to perform safety-sensitive functions, including driving a commercial motor vehicle, unless the driver has met the requirements of part 40, subpart O, of this title.

§ 382.505 Other alcohol-related conduct.

(a) No driver tested under the provisions of subpart C of this part who is found to have an alcohol concentration of 0.02 or greater but less than 0.04 shall perform or continue to perform safety-sensitive functions for an employer, including driving a commercial motor vehicle, nor shall an employer permit the driver to perform or continue to perform safety-sensitive functions, until the start of the driver's next regularly scheduled duty period, but not less than 24 hours following administration of the test.

(b) Except as provided in paragraph (a) of this section, no employer shall

take any action under this part against a driver based solely on test results showing an alcohol concentration less than 0.04. This does not prohibit an employer with authority independent of this part from taking any action otherwise consistent with law.

§ 382.507 Penalties.

Any employer or driver who violates the requirements of this part shall be subject to the penalty provisions of 49 U.S.C. 521(b). In addition, any employer or driver who violates the requirements of 49 CFR part 40 shall be subject to the penalty provisions of 49 U.S.C. 521(b).

Subpart F—Alcohol Misuse and Controlled Substances Use Information, Training, and Referral

§ 382.601 Employer obligation to promulgate a policy on the misuse of alcohol and use of controlled substances.

(a) *General requirements.* Each employer shall provide educational materials that explain the requirements of this part and the employer's policies and procedures with respect to meeting these requirements.

(1) The employer shall ensure that a copy of these materials is distributed to each driver prior to the start of alcohol and controlled substances testing under this part and to each driver subsequently hired or transferred into a position requiring driving a commercial motor vehicle.

(2) Each employer shall provide written notice to representatives of employee organizations of the availability of this information.

(b) *Required content.* The materials to be made available to drivers shall include detailed discussion of at least the following:

(1) The identity of the person designated by the employer to answer driver questions about the materials;

(2) The categories of drivers who are subject to the provisions of this part;

(3) Sufficient information about the safety-sensitive functions performed by those drivers to make clear what period of the work day the driver is required to be in compliance with this part;

(4) Specific information concerning driver conduct that is prohibited by this part;

(5) The circumstances under which a driver will be tested for alcohol and/or controlled substances under this part, including post-accident testing under § 382.303(d);

(6) The procedures that will be used to test for the presence of alcohol and controlled substances, protect the driver and the integrity of the testing processes, safeguard the validity of the test results, and ensure that those results are attributed to the correct driver, including post-accident information, procedures and instructions required by § 382.303(d);

(7) The requirement that a driver submit to alcohol and controlled substances tests administered in accordance with this part;

(8) An explanation of what constitutes a refusal to submit to an alcohol or controlled substances test and the attendant consequences;

(9) The consequences for drivers found to have violated subpart B of this part, including the requirement that the driver be removed immediately from safety-sensitive functions, and the procedures under part 40, subpart O, of this title;

(10) The consequences for drivers found to have an alcohol concentration of 0.02 or greater but less than 0.04;

(11) Information concerning the effects of alcohol and controlled substances use on an individual's health, work, and personal life; signs and symptoms of an alcohol or a controlled substances problem (the driver's or a co-worker's); and available methods of intervening when an alcohol or a controlled substances problem is suspected, including confrontation, referral to any employee assistance program and or referral to management.

(c) *Optional provision.* The materials supplied to drivers may also include information on additional employer policies with respect to the use of alcohol or controlled substances, including any consequences for a driver found to have a specified alcohol or controlled substances level, that are based on the employer's authority independent of this part. Any such additional policies or consequences must be clearly and obviously described as being based on independent authority.

(d) *Certificate of receipt.* Each employer shall ensure that each driver is required to sign a statement certifying that he or she has received a copy of these materials described in this section. Each employer shall maintain the original of the signed certificate and may provide a copy of the certificate to the driver.

§ 382.603 Training for supervisors.

Each employer shall ensure that all persons designated to supervise drivers receive at least 60 minutes of training on alcohol misuse and receive at least an additional 60 minutes of training on controlled substances use. The training will be used by the supervisors to determine whether reasonable suspicion exists to require a driver to undergo testing under § 382.307. The training shall include the physical, behavioral, speech, and performance indicators of probable alcohol misuse and use of controlled substances.

§ 382.605 Referral, evaluation, and treatment.

The requirements for referral, evaluation, and treatment must be performed in accordance with 49 CFR part 40, subpart O.

Date Issued: March 16, 2001.

Julie Anna Cirillo,

Acting Deputy Administrator, Federal Motor Carrier Safety Administration.

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DEPARTMENT OF TRANSPORTATION

Federal Transit Administration

49 CFR Parts 653, 654, and 655

[Docket No. FTA–2000–8513]

RIN 2132–AA71

Prevention of Alcohol Misuse and Prohibited Drug Use in Transit Operations

AGENCY: Federal Transit Administration, Department of Transportation.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: The Federal Transit Administration (FTA) proposes to combine its drug and alcohol testing regulations. FTA believes this action will make the rules more ''user-friendly'' and easier to understand. Also, the new rule will take into account the guidance that FTA has issued in the past several years, including technical assistance, letters of interpretation, audit findings, newsletters, training classes, safety seminars, and public speaking engagements. In addition, this NPRM conforms FTA's rule to the Department of Transportation's (DOT) revised drug and alcohol testing rule published on December 19, 2000.

DATES: Comments on this proposed rule must be submitted by June 14, 2001.

ADDRESSES: Written comments must refer to the docket number appearing above and must be submitted to the United States Department of Transportation (U.S. DOT), Central Docket Office, PL–401, 400 Seventh Street SW., Washington, DC 20590. All comments received will be available for inspection at the above address from 10 a.m. to 5 p.m., Monday through Friday, except Federal holidays. Those desiring

the agency to acknowledge receipt of their comments should include a self-addressed stamped postcard with their comments.

Commenters may also submit their comments electronically. Instructions for electronic submission may be found at the following web address: *http://dms.dot.gov/submit/.* The public may also review docketed comments electronically. The following web address provides instructions and access to the DOT electronic docket: *http://dms.dot.gov/search/.*

FOR FURTHER INFORMATION CONTACT: For program issues, Mark Snider, Office of Safety and Security, (202) 366–2896 (telephone); (202) 366–7951 (fax); or mark.snider@fta.dot.gov (e-mail). For legal issues, Bruce Walker, Office of the Chief Counsel, (202) 366–4011 (telephone); (202) 366–3809 (fax); or Bruce.Walker@fta.dot.gov (e-mail).

SUPPLEMENTARY INFORMATION:

Electronic Access

Electronic access to this rule and other safety rules may be obtained through the FTA Office of Safety and Security home page at *http://transit-safety.volpe.dot.gov.*

An electronic copy of this document may be downloaded, using a modem and suitable communications software, from the Government Printing Office's (GPO) Electronic Bulletin Board Service at (202) 512–1661. Internet users may download this document from the **Federal Register**'s homepage at *http://www.nara.gov/fedreg* and from the GPO database at *http://www.access.gpo.gov/nara.*

Internet users can access all comments received by the U.S. DOT Dockets, Room PL–401, via the Dockets Management System (DMS) on the DOT home page at *http://dms.dot.gov.* The DMS is available 24 hours each day, 365 days each year. Please follow the online instructions for more information and help.

I. Background

The Omnibus Transportation Employee Testing Act of 1991 (the Act) mandated the Secretary of Transportation to issue regulations to combat prohibited drug use and alcohol misuse in the transportation industry. (Public Law 102–143, October 28, 1991, FTA sections codified at 49 U.S.C. 5331). In December 1992, FTA issued two NPRMs to prevent prohibited drug use and alcohol misuse by ''safety-sensitive'' employees in the transit industry. In February 1994, FTA adopted drug and alcohol testing rules, which were promulgated at 49 CFR parts 653 and 654.

Omnibus Transportation Employee Testing Act of 1991

The Act requires FTA to issue regulations requiring recipients of funds under 49 U.S.C. 5307, 5309, and 5311, and 23 U.S.C. 103(e)(4) to test safety-sensitive employees for the use of alcohol or drugs in violation of law or federal regulation. The Act allows FTA to defer to regulations issued by the Federal Railroad Administration (FRA), for operations covered by that agency.

As a condition of FTA funding, the Act requires recipients to establish alcohol and drug testing programs. The Act mandates four types of testing: Pre-employment, random, reasonable suspicion, and post-accident. In addition, the Act permits return-to-duty and follow-up testing under specific circumstances. The Act requires that recipients follow the testing procedures set out by the Department of Health and Human Services (DHHS).

The Act does not require recipients to follow a particular course of action when they learn that a safety-sensitive employee has violated a law or Federal regulation concerning alcohol or drug use. Rather, the Act directs FTA to issue regulations establishing consequences for the use of alcohol or drugs in violation of FTA regulations. Possible consequences include education, counseling, rehabilitation programs, and suspension or termination from employment.

In authorizing this regulatory scheme, the Act has pre-empted inconsistent State or local laws, rules, regulations, ordinances, standards, or orders. However, provisions of State criminal law, which impose sanctions for reckless conduct leading to actual loss of life, injury, or damage to property, are not pre-empted by the Act.

Previous Action by FTA

On December 15, 1992, FTA issued two NPRMs to prevent prohibited drug use and alcohol misuse (49 CFR parts 653 and 654). The rules established a scheme whereby safety-sensitive employees would be tested on a pre-employment, random, reasonable suspicion, post-accident, return-to-duty, and follow-up basis.

In the December 1992 **Federal Register** notice, FTA stated that it was ''considering combining the final FTA alcohol and drug testing regulations into one part in the Code of Federal Regulations.'' At that time, FTA noted that while the drug and alcohol testing rules shared many similarities, there were still enough differences to warrant two distinct CFR Parts. On February 15, 1994, FTA adopted two separate rules—the drug testing rule, 49 CFR part 653, and the alcohol testing rule, 49 CFR part 654.

Since the rules were first published, there have been two notable amendments as well as several minor (technical) amendments. In December 1998, FTA amended its post-accident regulation to allow an employer to seek post-accident test results from law enforcement agencies in the limited circumstance when the employer has been unable to perform such a test itself. FTA has stressed the limited applicability of this amendment.

In January 1999, FTA amended its definition of ''[m]aintaining a revenue service vehicle or equipment,'' located under safety-sensitive function (§ 653.7 and § 654.7). The new definition includes persons that perform overhaul and rebuilding services of engines, parts, and vehicles. This was a shift from FTA's previous position of not including employees who performed those services. FTA has stressed that this amendment applies both to employees working directly for FTA grantees and to FTA grantees' contractors performing such safety-sensitive work.

When the drug and alcohol rules became effective, FTA began an aggressive outreach effort to assist affected entities in complying with the new rules. FTA offered numerous courses throughout the country on implementation. In addition, in April 1994, FTA published Implementation Guidelines for Drug and Alcohol Regulations in Mass Transit and made them available to any party seeking help in implementing the rules. The Guidelines, which were published virtually concurrently with the rules in the **Federal Register** and several months prior to the effective date of the rule, are a step-by-step manual on how to most effectively comply with Parts 653 and 654. FTA envisions an update to the Guidelines in the near future, to assist employers in implementing Part 655.

FTA has issued hundreds of letters of interpretation on the rules. Public response to these letters, especially since they became available on FTA's external Web page, has been highly favorable. Employers and employees have found that the letters more fully explain the rules, FTA's implementation of the rules, and FTA's reasons for that implementation of the rules. FTA will continue to offer such guidance and to amend its guidance, if necessary, based on the final publication of the rule.

To determine compliance with the rules, FTA's Office of Safety and Security began auditing grantee drug and alcohol testing programs in March

1997. The audits quickly evolved into opportunities for FTA to provide extensive technical assistance. Through the audits, FTA has gained a better understanding of the difficulties that grantees encounter when implementing the rules. In addition, audits have shown FTA where the rules can be strengthened and improved. The impetus to combine Parts 653 and 654 is due, in no small part, to the audit program.

II. Overview of Proposed Rule

In its broadest sense, proposed Part 655 should be read as a combination of Parts 653 and 654. FTA decided to combine the drug and alcohol testing rules based on its experience since the rules have been implemented. FTA believes that this change will allow the program to be implemented more efficiently and will bring FTA into line with the three other operating administrations that fall under the Omnibus Transportation Employee Testing Act of 1991 (Federal Aviation Administration, Federal Railroad Administration, Federal Motor Carrier Safety Administration [formerly the Office of Motor Carrier and Highway Safety within the Federal Highway Administration]), as well as the two other operating administrations that have drug and alcohol testing regulations (Research and Special Programs Administration and U.S. Coast Guard).

The rule, as proposed, applies to recipients of funds under 49 U.S.C. 5307, 5309, and 5311, and 23 U.S.C. 103(e)(4). It requires each transit operator (employer) who receives these funds to establish and conduct a multi-faceted anti-drug and alcohol misuse testing program. The regulation conditions financial assistance on the implementation of a program. Failure of an employer to develop a program and implement the program in compliance with this regulation will result in the suspension of Federal transit funding.

A basic component of the regulation requires the testing of safety-sensitive employees for the use of controlled substances and the misuse of alcohol; however the regulation also requires education and awareness about the problems associated with prohibited drug use and alcohol misuse. In addition, the regulation mandates that each employer have a policy statement describing its program policies and procedures. The statement must include the consequences for prohibited drug use and alcohol misuse.

The regulation specifies that safety-sensitive employees are prohibited from using five illegal substances (marijuana, cocaine, opiates, amphetamines, and phencyclidine) and are prohibited from misusing alcohol. The NPRM proposes the testing of safety-sensitive employees in five situations: (1) Pre-employment (including transfer to a safety-sensitive position within the organization); (2) Reasonable suspicion; (3) Random; (4) Post-accident; and (5) Return to duty/follow-up (periodic). Drug testing is required in all five situations. Alcohol testing is required for all situations except for pre-employment, in which it is only encouraged.

This NPRM requires the use of the Department-wide drug and alcohol testing procedures contained in 49 CFR part 40 (December 19, 2000, 65 FR 79462). Part 40 is consistent with the Department of Health and Human Services (DHHS) regulation, ''Scientific and Technical Guidelines for Drug Testing Programs,'' which was originally issued on April 11, 1988 and then re-issued on June 9, 1994. The DHHS regulation, which includes the chain of custody procedures to be used when collecting urine samples, provides procedures for ensuring the integrity of the test and maximizing the privacy of the individual being tested.

If a covered employee tests positive for illegal drug use or alcohol misuse or otherwise violates the rule, the employee must be removed from his or her safety-sensitive position. Therefore, the employee must be told, at a minimum, about education and rehabilitation programs. Should the employer decide to retain a covered employee whose test result has been verified positive, the employee must be evaluated by a substance abuse professional. Prior to returning an employee to a safety-sensitive function, the employer must ensure that the employee has successfully completed rehabilitation; the rule does not require the employer to pay for rehabilitation.

This NPRM applies to recipients of federal transit funds, i.e., transit systems, metropolitan planning organizations (MPOs), and States; any enforcement action for noncompliance is against such recipients. MPOs and States are affected by this regulation if (1) they provide transit service or they provide money to a subrecipient who provides transit service and (2) are required to provide certifications of compliance on behalf of the subrecipient. MPO's or States that provide transit service must develop and implement a program, like any other recipient. MPO's or States that fund or manage transit providers, but do not provide transit service, must ensure that transit provider employers provide certifications of compliance.

FTA has its primary relationship with grantees. Many grantees both receive transit funds and operate mass transit services. Typical among these are large transit entities that receive funds under sections 49 U.S.C. 5307, 5309, and 5311. In addition, some grantees (typically States) pass the money they receive to smaller subrecipients within their States. In these situations, the FTA recipient is not the transit operator.

This NPRM eliminates the distinction between large and small operators. The term ''employer'' is now used to include both small and large operators, as well as entities providing service under contract or other arrangement with the transit operator.

III. General Discussion about the Rule

Today's Proposed Rule

This rule combines 49 CFR Parts 653 and 654. Both its rule text and its preamble incorporate views expressed in letters of interpretation, policy determinations, amendments, newsletters, and audits. In addition, this NPRM conforms the new part 655 with the new Department of Transportation procedures for drug and alcohol testing, 49 CFR Part 40 (December 19, 2000, 65 FR 79462).

The Common Preamble

Procedures for Transportation Workplace Drug and Alcohol Testing Programs, promulgated at 49 CFR part 40, have been revised. As a result, the modal administrations' have proposed amendments to their drug and alcohol regulations that conform accordingly. A common preamble that outlines the proposed amendments is published elsewhere in the **Federal Register**.

IV. Section-by-Section Analysis

In this section, FTA will discuss the differences between the existing rules in Parts 653 and 654 and the proposed rules in Part 655. There is no discussion for sections that have remained substantially the same. In addition to seeking comments on the NPRM overall, FTA also requests comments on the specific issues indicated below.

Subpart A—General

A. Definitions (§ 655.4).

Employer: FTA is clarifying the definition of employer. FTA believes that, in addition to direct recipients of FTA funding, the term ''employer'' includes State recipients that pass the money to subrecipients and grantees that have contractors performing transit operations. State recipients and grantees (that have contractors performing transit operations) are considered employers

under this expanded definition, they will now have access to individual's test records. States need access to an individual's test records, because States are required to certify compliance with all of their subrecipients' drug and alcohol testing programs. Without a comprehensive review of their subrecipients' programs, States cannot, in good faith, sign the certification of compliance. This is also true for grantees whose operations are performed by contractors. The grantee is responsible for ensuring compliance, and without the ability to take a comprehensive look at its contractors' drug and alcohol programs, the grantee is unable to certify compliance.

Second chance policy: FTA is adding this definition to the rule; however, FTA would like to clarify that it has no position on whether grantees must adopt a second chance policy, i.e., a policy allowing an employee (who has previously violated the employer's drug and/or alcohol policy) to return to a safety-sensitive position after completing rehabilitation.

Taxi cab drivers and other transportation providers: The duties performed by taxicab drivers and other transportation providers can be considered safety-sensitive functions, pursuant to (1) the definition of safety-sensitive function, ''operating a revenue service vehicle, including when not in revenue service.''

FTA has expressed its policy regarding taxicab drivers and other transportation providers in a series of interpretation letters (see, e.g., Letter to Florida Commission for the Transportation Disadvantaged dated 26 April 1999, Letter to King County in Washington dated 4 February 1999, Letter to AC Transit in Oakland, California dated 30 September 1998). According to the policy, drug and alcohol testing rules do not apply to taxi cab drivers when patrons (using publicly subsidized vouchers) or transportation providers can choose from a variety of taxi cab companies. Alternatively, the rules do apply when a transit patron has to contact one or two specific companies in order to take advantage of certain publicly-financed transportation benefits. This policy is based on the practical difficulty of administering a drug and alcohol testing program to taxi companies that only incidentally provide transit service. FTA proposes to incorporate this reasoning when implementing Part 655.

FTA specifically seeks comment on whether there is a difference between the transit patron choosing the transportation provider from a variety of choices, and the grantee (or its contracted broker) choosing from a limited number of choices. In the former, the patron chooses, while in the latter, the grantee (or its contracted broker) chooses.

Dispatchers: The current rules defines ''safety-sensitive function'' to include any individual ''controlling dispatch or movement of a revenue service vehicle.'' At least one individual has questioned whether the duties of certain types of transit dispatchers implicate safety. Therefore, FTA welcomes comment on the duties and responsibilities of dispatchers in the different transit systems. FTA seeks to determine whether the duties and responsibilities vary significantly enough to warrant modification of the current blanket rule.

Maintenance contractors: The current rules include maintenance work in their definition of safety-sensitive function. In January 1999, FTA amended its definition of maintenance duties. FTA is now clarifying that amendment. The amendment expanded the definition of maintenance work to include all workers (including contractors) who overhaul and rebuild engines, vehicles, and parts. There were few objections to the amendment during the comment period. However, shortly after the rule change became effective, grantees expressed concern that, because overhaul and rebuild work is often contracted out, a particular category of maintenance workers (i.e. contractors who perform overhaul and rebuilding), who were previously not subject to the rules, would now be subject to the rules.

In response, FTA explained that the rules should extend to contractors that perform any type of maintenance work (i.e., the rules should cover both direct recipient employees and contract employees equally). FTA took this position, and maintains that position, for the reasons stated in the preamble to the 1999 rule change, i.e., fairness and safety (64 FR 425, January 5, 1999).

B. Stand-Down Waivers for Drug Testing (§ 655.5)

In accordance with changes made to 49 CFR part 40, FTA has added a subsection on stand-down waivers. Section 655.5 provides the specific FTA waiver procedures. The DOT-wide regulation, 49 CFR part 40, contains the substantive requirements for obtaining a waiver.

Subpart B—Program Requirements

A. Policy Statement Contents (§ 655.15)

In response to current industry practices and FTA audit procedures, FTA is clarifying its Policy Statement requirement. FTA has had numerous questions as to what is required in a policy. FTA would like to emphasize that the only information required in a Policy Statement is the information listed in § 655.15. A grantee may choose, however, to include additional requirements not mandated by FTA. If a grantee does so, the grantee's policy shall indicate that those additional requirements are the employer's, and not FTA's.

Moreover, in order to comply with § 655.15(e), employers may incorporate by reference 49 CFR Part 40 in their Policy Statements, provided that 49 CFR Part 40 is available for review by employees when requested.

Finally, FTA is clarifying who must approve the policy. In most instances, a grantee will have a governing board that can adopt the policy. However, where there is no governing board or the governing board does not have approval authority, the highest-ranking official with authority to approve the policy can do so, and that will satisfy the regulatory intent.

Subpart E—Types of Testing

A. Pre-employment Drug Testing (§ 655.41)

FTA is changing the pre-employment drug testing requirement concerning hiring. In the past, employers had to administer a test and receive a negative test result before they could hire an employee. FTA believes that this provision is too restrictive on employers. FTA will no longer use the word ''hire.'' In the new rule, FTA will instead require that an employer administer the pre-employment test and receive a negative drug test prior to the first time that an employee performs a safety-sensitive function. This change has taken place to better satisfy the intent of this section, which is to ensure that an employer knows that an employee can successfully pass a drug test before allowing the employee to perform a safety-sensitive function.

FTA is also clarifying another pre-employment provision. Numerous affected entities have asked how long an employee can be off from work before he or she must take another pre-employment test; this issue arises most often for seasonal workers. FTA proposes that an employee who is off for more than 90 consecutive calendar days and plans to return to a safety-sensitive function must first successfully pass another pre-employment drug test before returning to work. Likewise, an applicant, who has not commenced performing a safety-sensitive function within 90 consecutive calendar days of the employer's receipt of a negative test

result for that applicant, must successfully pass another pre-employment drug test before performing such safety-sensitive functions. It is FTA's intention that employers assure themselves that employees can successfully pass a drug test before returning them to safety-sensitive functions.

B. Pre-Employment Alcohol Testing (§ 655.42)

For several years, due to a court decision and subsequent legislation, the pre-employment alcohol testing requirements in FTA's rule have been suspended. In order to better reflect the legislation and to conform with the other DOT agency drug and alcohol testing programs, all six DOT agencies with testing programs are adding this subsection to their respective rules. This subsection allows, but does not require, employers to conduct pre-employment alcohol testing. If an employer chooses to conduct pre-employment alcohol testing, the employer would have to conduct the testing in accordance with all of the requirements of 49 CFR Part 40.

C. Post-Accident Testing (§ 655.44)

In December 1998, FTA amended its post-accident testing regulation to allow, in extremely limited circumstances, an employer to use the test results from a local law enforcement-administered post-accident test. FTA wants to reiterate that such results may be used only when an employer has been unable to perform a post-accident test within the required time frame. FTA wishes to dispel the idea that employers can simply ''count on'' local law enforcement to administer post-accident tests and provide test results.

D. Random Testing (§ 655.45)

FTA is clarifying section 655.45(g), which is concerned with ensuring that random tests are spread reasonably throughout the calendar year. In the course of conducting its audits, FTA has learned that current industry practice is to conduct random testing when it is convenient, *e.g.,* random tests are only performed every Thursday afternoon. The purpose of random testing is deterrence, and the most effective way to achieve the highest level of deterrence is to conduct random drug and alcohol tests in an unpredictable manner. FTA reiterates that the rule requires random testing to be spread out throughout the calendar year. At a minimum, random testing shall be conducted at least quarterly. Random tests must be spread throughout all days and all hours of service. The testing should be completely unpredictable and encompass all safety-sensitive employees.

Subpart H—Administrative Requirements

A. Reporting Results In A Management Information System (§ 655.72)

FTA is changing its Management Information System (MIS) reporting requirement from census reporting to stratified random sampling. FTA has required census reports for six years and believes it now has an accurate portrait of the current state of drug and alcohol testing (including positive rates) in the transit industry. By using sampling, FTA will reduce the paperwork burden on a portion of the industry while still maintaining a high confidence level in the results. Although transit employers will still be required to prepare an MIS form annually, they will only be required to submit an MIS form when requested by FTA. FTA will officially notify employers when they must submit an MIS form and will provide employers with all necessary forms and instructions to prepare an MIS form.

B. Access to Facilities And Records (§ 655.73)

FTA seeks comment on access to facilities and records. This request has arisen in the context of grantees that, in attempting to exercise oversight responsibility, have been denied access to employee records for confidentiality reasons. On one hand, FTA does not want employee records made available to a potentially unlimited number of individuals. On the other hand, FTA does not want to impede a grantee (such as a State) from properly exercising its oversight role.

FTA seeks comment on a related issue, i.e., whether state regulatory agencies should have access to drug and alcohol testing results. Another DOT agency, the Federal Motor Carrier Safety Administration (FMCSA), has included such a provision in its regulation for quite some time. See 49 CFR 382.405(d). Grantees have expressed concern about the undesirable consequences that result when state regulatory agencies do not have access to drug and alcohol test results. For example, a Department of Motor Vehicles, which is responsible for issuing Commercial Drivers Licenses (CDLs), is not able to obtain the drug and alcohol testing results from transit agencies performing such tests for CDL holders. Thus, a transit employee with a CDL who tests positive on a test and is discharged from his job, can simply find another job requiring a CDL. Therefore, FTA seeks comment on whether employers should be permitted to release employee data from its drug and alcohol testing programs to State or local officials with regulatory authority over the employer or any of its employees.

Similarly, FTA seeks comment on whether employers should be permitted to release employee data from its drug and alcohol testing programs to local law enforcement officials.

V. Effect of the Americans With Disabilities Act of 1990 on Alcohol Testing Programs

Title I of the Americans With Disabilities Act of 1990 (ADA) focuses on employers' responsibilities toward employees with disabilities. According to Title I, an employer must provide reasonable accommodations for work for persons with disabilities. Some covered workers are considered persons with disabilities for purposes of protection under the ADA. This issue was treated more fully in the 1994 DOT-wide preamble (59 FR 7302, 7311–14, February 15, 1994).

VI. Regulatory Process Matters

A. Executive Order 12866

FTA has evaluated the industry costs and benefits of this rule, which requires that transit industry personnel who perform safety-sensitive functions be covered by a program to control illegal drug abuse and alcohol misuse in mass transportation operations. This rule makes no noteworthy substantive changes. Any incremental costs are negligible, and the policy and economic impact will have no significant effect.

B. Departmental Significance

This rule is a ''non-significant regulation'' as defined by the Department's Regulatory Policies and Procedures, because, while it involves an important Departmental policy that is likely to generate a great deal of public interest, in the larger scheme, it is simply a combination of two existing regulations (49 CFR parts 653 and 654). It also conforms FTA's drug and alcohol testing regulations with the Department's drug and alcohol testing regulations (49 CFR part 40), to which FTA grantees already are subject.

C. Regulatory Flexibility Act

In accordance with the Regulatory Flexibility Act (5 U.S.C. 601–612), FTA has made a preliminary assessment of the possible effects of the rule on small businesses. To the extent possible, FTA has made efforts to acknowledge the differences between small and large entities, and has endeavored to make

accommodations when possible. Experience with Parts 653 and 654 has shown that the rule has a significant impact on a substantial number of small entities. FTA believes that this new rule will provide greater clarity and ease of implementation for small entities.

D. Paperwork Reduction Act

This rule includes information collection requirements subject to the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3501, *et seq.*) The Office of Management and Budget has approved FTA's PRA request for Parts 653 and 654. This rule includes the same information collection devices; therefore, FTA believes it already has OMB approval. The management information system (MIS) forms currently required by Parts 653 and 654 may be modified in the future, but will continue to be required by FTA, without changes, under Part 655.

E. Executive Order 13132

This action has been reviewed under Executive Order 13132, on Federalism. FTA has determined that this action has significant federalism implications to warrant a federalism assessment, however, this rulemaking is mandated by Congress in the Omnibus Transportation Employee Testing Act of 1991. FTA has limited discretion.

The 1991 legislation mandates FTA to issue regulations requiring grantees of funds under 49 U.S.C. 5307, 5309, and 5311, and 23 U.S.C. 103(e)(4) to test their safety-sensitive employees for the use of drugs and the misuse of alcohol in violation of law or federal regulation.

Before passage of the Omnibus Transportation Employee Testing Act of 1991, safety issues were largely handled as a local matter. This Act clarifies the Federal role by including specific Federal pre-emption language. This Act also makes it clear that, in the area of substance abuse testing, Federal regulations are to take precedence over any inconsistent State or local specifications.

Although Congress has pre-empted state or local law, FTA has preserved the role of local entities in mass transit safety. This regulation does not disturb testing programs which were created by virtue of a grantee's own authority and which are not inconsistent with this regulation.

List of Subjects

49 CFR Part 653

Drug abuse, Drug testing, Grant programs—transportation, Mass transportation, Reporting and recordkeeping requirements, Safety, Transportation.

49 CFR Part 654

Alcohol abuse, drug testing, Grant programs—transportation, Mass transportation, Reporting and recordkeeping requirements, Safety, Transportation.

49 CFR Part 655

Alcohol abuse, Drug abuse, Drug testing, grant programs—transportation, Mass transportation, reporting and recordkeeping requirements, Safety, Transportation.

For the reasons set forth in the preamble and under the authority of 49 U.S.C. 5331, the agency proposes to amend Chapter VI of Title 49 of the Code of Federal Regulations as set forth below:

PART 653—[REMOVED]

1. Remove part 653.

PART 654—[REMOVED]

2. Remove part 654.
3. Add part 655 to read as follows:

PART 655—PREVENTION OF ALCOHOL MISUSE AND PROHIBITED DRUG USE IN TRANSIT OPERATIONS

Subpart A—General

Sec.

655.1 Purpose.
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Subpart E—Types of Testing

655.41 Pre-employment drug testing.
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655.45 Random testing.
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655.47 Follow-up testing after returning to duty.
655.48 Retesting of covered employees with an alcohol concentration of 0.02 or greater but less than 0.04.
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Subpart F—Drug and Alcohol Testing Procedures

655.51 Compliance with testing procedures requirements.
655.52 Substance abuse professional (SAP).
655.53 Supervisor acting as collection site personnel.

Subpart G—Consequences

655.61 Action when an employee has a verified positive drug test result or has a confirmed alcohol test result of 0.04 or greater, or refuses to submit to a test.
655.62 Referral, evaluation, and treatment.

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Subpart I—Certifying Compliance

655.81 Grantee oversight responsibility.
655.82 Compliance a condition of financial assistance.
655.83 Requirement to certify compliance.
Appendix A to Part 655 Drug Testing Management Information System (MIS) Data Collection Form
Appendix B to Part 655 Drug Testing Management Information System (MIS) ''EZ'' Data Collection Form
Appendix C to Part 655 Alcohol Testing Management Information System (MIS) Data Collection Form
Appendix D to Part 655 Alcohol Testing Management Information System (MIS) ''EZ'' Data Collection Form

Authority: 49 U.S.C. 5331; 49 CFR 1.51.

Subpart A—General

§ 655.1 Purpose.

The purpose of this part is to establish programs, to be implemented by employers that receive financial assistance from the Federal Transit Administration (FTA) and by contractors of those employers, that are designed to help prevent accidents, injuries, and fatalities resulting from the misuse of alcohol and use of prohibited drugs by employees who perform safety-sensitive functions.

§ 655.2 Overview.

(a) This part includes nine Subparts. Subpart A of this part covers the general requirements of FTA's drug and alcohol testing programs. Subpart B of this part specifies the basic requirements of each employer's alcohol misuse and prohibited drug use program, including the elements required to be in each employer's testing program. Subpart C of this part describes prohibited drug

use. Subpart D of this part describes prohibited alcohol use. Subpart E of this part describes the types of alcohol and drug tests to be conducted. Subpart F of this part addresses the testing procedural requirements mandated by the Omnibus Transportation Employee Testing Act of 1991, and as required in 49 CFR Part 40. Subpart G of this part lists the consequences for covered employees who engage in alcohol misuse or prohibited drug use. Subpart H of this part contains administrative matters, such as reports and recordkeeping requirements. Subpart I of this part specifies how a recipient certifies compliance with the rule.

(b) This part must be read in conjunction with 49 CFR Part 40, Procedures for Transportation Workplace Drug and Alcohol Testing Programs.

§ 655.3 Applicability.

(a) Except as specifically excluded in paragraph (b) of this section, this part applies to:

(1) Each recipient and subrecipient receiving federal assistance under:

(i) 49 U.S.C. 5307, 5309, or 5311; or

(ii) 23 U.S.C. 103(e)(4); and

(2) Any contractor of a recipient or subrecipient of federal assistance under:

(i) 49 U.S.C. 5307, 5309, or 5311; or

(ii) 23 U.S.C. 103(e)(4).

(b) A recipient operating a railroad regulated by the Federal Railroad Administration (FRA) shall follow 49 CFR Part 219 and § 655.83 for its railroad operations, and shall follow this part for its non-railroad operations, if any.

§ 655.4 Definitions.

For this part, the terms listed in this section have the following definitions. The definitions of additional terms used in this part but not listed in this section can be found in 49 CFR Part 40.

Accident means an occurrence associated with the operation of a vehicle, if as a result:

(1) An individual dies; or

(2) An individual suffers bodily injury and immediately receives medical treatment away from the scene of the accident; or

(3) With respect to an occurrence in which the mass transit vehicle involved is a bus, electric bus, van, or automobile, one or more vehicles (including non-FTA funded vehicles) incurs disabling damage as the result of the occurrence and such vehicle or vehicles are transported away from the scene by a tow truck or other vehicle; or

(4) With respect to an occurrence in which the mass transit vehicle involved is a rail car, trolley car, trolley bus, or vessel, the mass transit vehicle is removed from operation.

Administrator means the Administrator of the Federal Transit Administration or the Administrator's designee.

Anti-drug program means a program to detect and deter the use of prohibited drugs as required by this part.

Certification means a recipient's written statement, authorized by the organization's governing board or other authorizing official, that the recipient has complied with the provisions of this part. (See § 655.82 and § 655.83 for certification requirements.)

Contractor means a person or organization that provides a safety-sensitive service for a recipient, subrecipient, employer, or operator consistent with a specific understanding or arrangement. The understanding can be a written contract or an informal arrangement that reflects an ongoing relationship between the parties.

Covered employee means a person, including an applicant or transferee, who performs a safety-sensitive function for an entity subject to this part. A volunteer is a covered employee if:

(1) The volunteer is required to hold a commercial driver's license to operate the vehicle; or

(2) The volunteer performs a safety-sensitive function for an entity subject to this part and works in the expectation of receiving some type of in-kind or tangible benefit. *Disabling damage* means damage that precludes departure of a motor vehicle from the scene of the accident in its usual manner in daylight after simple repairs.

(1) *Inclusion.* Damage to a motor vehicle, where the vehicle could have been driven, but would have been further damaged if so driven.

(2) *Exclusions.* (i) Damage that can be remedied temporarily at the scene of the accident without special tools or parts.

(ii) Tire disablement without other damage even if no spare tire is available.

(iii) Headlamp or taillight damage.

(iv) Damage to turn signals, horn, or windshield wipers, which makes the vehicle inoperable.

DOT or *The Department* means the United States Department of Transportation.

DOT agency means an agency (or ''operating administration'') of the United States Department of Transportation administering regulations requiring drug and alcohol testing. See 14 CFR part 121, appendices I and J; 33 CFR part 95; 46 CFR parts 4, 5, and 16; and 49 CFR parts 199, 219, 382, and 655.

Employer means a recipient or other entity that provides mass transportation service or which performs a safety-sensitive function for such recipient or other entity. This term includes subrecipients, operators, and contractors.

FTA means the Federal Transit Administration, an agency of the U.S. Department of Transportation.

Large operator means a recipient or subrecipient primarily operating in an urbanized area of 200,000 or more in population.

Performing (a safety-sensitive function) means a covered employee is considered to be performing a safety-sensitive function and includes any period in which he or she is actually performing, ready to perform, or immediately available to perform such functions.

Positive rate means the annual number of positive results for random drug tests conducted under this part divided by the total annual number of random drug tests conducted under this part.

Railroad means:

(1) All forms of non-highway ground transportation that run on rails or electromagnetic guideways, including:

(i) Commuter or other short-haul rail passenger service in a metropolitan or suburban area, as well as any commuter rail service that was operated by the Consolidated Rail Corporation as of January 1, 1979; and

(ii) High speed ground transportation systems that connect metropolitan areas, without regard to whether they use new technologies not associated with traditional railroads.

(2) Such term does not include rapid transit operations within an urban area that are not connected to the general railroad system of transportation.

Recipient means an entity receiving Federal financial assistance under 49 U.S.C. 5307, 5309, or 5311; or under 23 U.S.C. 103(e)(4).

Refuse to submit means any circumstance outlined in 49 CFR 40.191 and 40.261.

Safety-sensitive function means any of the following duties, when performed by employees of recipients, subrecipients, operators, or contractors:

(1) Operating a revenue service vehicle, including when not in revenue service;

(2) Operating a nonrevenue service vehicle, when required to be operated by a holder of a Commercial Driver's License;

(3) Controlling dispatch or movement of a revenue service vehicle;

(4) Maintaining (including repairs, overhaul and rebuilding) a revenue

service vehicle or equipment used in revenue service. This provision does not apply to the following: an employer who receives funding under 49 U.S.C. 5309, is in an area under 50,000 in population, and contracts out such services; and an employer who receives funding under 49 U.S.C. 5311 and contracts out such services;

(5) Carrying a firearm for security purposes.

Small operator means a recipient or subrecipient primarily operating in a nonurbanized area or in an urbanized area of less than 200,000 in population.

Second chance policy means that an employer's substance abuse policy permits employees who have previously violated that policy to return to work (including performance of a safety-sensitive function) after complying with the return-to-work testing requirements.

Vehicle means a bus, electric bus, van, automobile, rail car, trolley car, trolley bus, or vessel. A mass transit vehicle is a vehicle used for mass transportation or for ancillary services.

Violation rate means the number of covered employees found during random tests given annually under this part to have an alcohol concentration of .04 or greater, plus the number of employees who refuse a random test required by this part, divided by the total reported number of employees in the transit industry annually given random alcohol tests under this part plus the total reported number of employees in the transit industry who refuse a random test required by this part.

§ 655.5 Stand-down waivers for drug testing.

(a) An employer subject to this part may petition the Federal Transit Administration for a waiver allowing the employer to stand down an employee following a report of a laboratory confirmed positive drug test or refusal, pending the outcome of the verification process.

(b) Each petition for a waiver must be in writing and include facts and justification to support the waiver. Each petition must satisfy the substantive requirements for obtaining a waiver, as provided in 49 CFR 40.21.

(c) Each petition for a waiver must be submitted to the Office of Safety and Security, Federal Transit Administration, Department of Transportation, 400 Seventh Street, SW. Washington, DC 20590.

(d) The Administrator may grant a waiver subject to 49 CFR 40.21(d).

§ 655.6 Preemption of state and local laws.

(a) Except as provided in paragraph (b) of this section, this part preempts any State or local law, rule, regulation, or order to the extent that:

(1) Compliance with both the State or local requirement and any requirement in this Part is not possible; or

(2) Compliance with the State or local requirement is an obstacle to the accomplishment and execution of any requirement in this part.

(b) This part shall not be construed to preempt provisions of State criminal laws that impose sanctions for reckless conduct, attributed to prohibited drug use or alcohol misuse, leading to actual loss of life, injury, or damage to property, whether the provisions apply specifically to transportation employees or employers or to the general public.

§ 655.7 Starting date for testing programs.

An employer must have an anti-drug and alcohol misuse testing program in place by the date the employer begins operations.

Subpart B—Program Requirements

§ 655.11 Requirement to establish an anti-drug use and alcohol misuse program.

Each employer shall establish an anti-drug use and alcohol misuse program consistent with the requirements of this part.

§ 655.12 Required elements of an anti-drug use and alcohol misuse program.

An anti-drug use and alcohol misuse program shall include the following:

(a) A statement describing the employer's policy on prohibited drug use and alcohol misuse in the workplace, including the consequences associated with prohibited drug use and alcohol misuse. This policy statement shall include all of the elements specified in § 655.15. Each employer shall disseminate the policy consistent with the provisions of § 655.16.

(b) An education and training program which meets the requirements of § 655.14.

(c) A testing program, as described in Subparts C and D of this part, which meets the requirements of this part and 49 CFR part 40.

(d) Procedures for referring a covered employee who has a verified positive drug test result or an alcohol concentration of 0.04 or greater to a Substance Abuse Professional, consistent with 49 CFR Part 40.

§ 655.13 Other requirements imposed by an employer.

An employer may not impose requirements that are inconsistent with, contrary to, or frustrate the provisions of this part.

§ 655.14 Education and training programs.

Each employer shall establish an employee education and training program for all covered employees, including:

(a) *Education.* The education component shall include display and distribution to every covered employee of: informational material and a community service hot-line telephone number for employee assistance, if available.

(b) *Training*—(1) *Covered employees.* Covered employees must receive at least 60 minutes of training on the effects and consequences of prohibited drug use on personal health, safety, and the work environment, and on the signs and symptoms that may indicate prohibited drug use.

(2) *Supervisors.* Supervisors who may make reasonable suspicion determinations shall receive at least 60 minutes of training on the physical, behavioral, and performance indicators of probable drug use and at least 60 minutes of training on the physical, behavioral, speech, and performance indicators of probable alcohol misuse.

§ 655.15 Policy statement contents.

The local governing board of the employer or operator shall adopt an anti-drug and alcohol misuse policy statement. The statement must be made available to each covered employee, and shall include the following:

(a) The identity of the person designated by the employer to answer employee questions about the employer's anti-drug use and alcohol misuse programs.

(b) The categories of employees who are subject to the provisions of this part.

(c) Specific information concerning the behavior and conduct that is prohibited by this part.

(d) The specific circumstances under which a covered employee will be tested for prohibited drugs or alcohol misuse under this part.

(e) The procedures that will be used to test for the presence of illegal drugs or alcohol misuse, protect the employee and the integrity of the drug and alcohol testing process, safeguard the validity of the test results, and ensure the test results are attributed to the correct covered employee.

(f) The requirement that a covered employee submit to drug and alcohol testing administered in accordance with this part.

(g) A description of the kind of behavior that constitutes a refusal to take a drug or alcohol test, and a statement that such a refusal constitutes a violation of the employer's policy.

(h) The consequences for a covered employee who has a verified positive drug or a confirmed alcohol test result with an alcohol concentration of 0.04 or greater, or who refuses to submit to a test under this part, including the mandatory requirements that the covered employee be removed immediately from his or her safety-sensitive function and be evaluated by a substance abuse professional, as required by 49 CFR part 40.

(i) The consequences, as set forth in § 655.35, for a covered employee who is found to have an alcohol concentration of 0.02 or greater but less than 0.04.

(j) If the employer implements elements of an anti-drug use or alcohol misuse program that are in addition to this part, the employer shall give each covered employee specific information concerning which provisions are mandated by this part and which are not.

§ 655.16 Requirement to disseminate policy.

Each employer shall provide written notice to every covered employee and to representatives of employee organizations of the employer's anti-drug and alcohol misuse policies and procedures.

§ 655.17 Notice requirement.

Before performing a drug or alcohol test under this part, each employer shall notify a covered employee that the test is required by this part. No employer shall falsely represent that a test is administered under this part.

Subpart C—Prohibited Drug Use

§ 655.21 Drug testing.

(a) An employer shall establish a program that provides testing for prohibited drugs and drug metabolites in the following circumstances: pre-employment, post-accident, reasonable suspicion, random, and return to duty/follow-up.

(b) When administering a drug test, an employer shall ensure that the following drugs are tested for:

(1) Marijuana;

(2) Cocaine;

(3) Opiates;

(4) Amphetamines; and

(5) Phencyclidine.

(c) Consumption of these products is prohibited at all times.

Subpart D—Prohibited Alcohol Use

§ 655.31 Alcohol testing.

(a) An employer shall establish a program that provides for testing for alcohol in the following circumstances: post-accident, reasonable suspicion, random, and return to duty/follow-up. An employer may also conduct pre-employment alcohol testing.

(b) Each employer shall prohibit a covered employee, while having an alcohol concentration of 0.04 or greater, from reporting for duty to perform a safety-sensitive function or remaining on duty while performing a safety-sensitive function.

§ 655.32 On duty use.

Each employer shall prohibit a covered employee from using alcohol while performing safety-sensitive functions. No employer having actual knowledge that a covered employee is using alcohol while performing safety-sensitive functions shall permit the employee to perform or continue to perform safety-sensitive functions.

§ 655.33 Pre-duty use.

(a) *General.* Each employer shall prohibit a covered employee from using alcohol within 4 hours prior to performing safety-sensitive functions. No employer having actual knowledge that a covered employee has used alcohol within four hours of performing a safety-sensitive function shall permit the employee to perform or continue to perform safety-sensitive functions.

(b) *On-call employees.* An employer shall prohibit the consumption of alcohol for the specified on-call hours of each covered employee who is on-call. The procedure shall include:

(1) The opportunity for the covered employee to acknowledge the use of alcohol at the time he or she is called to report to duty and the inability to perform his or her safety-sensitive function.

(2) The requirement that the covered employee take an alcohol test, if the covered employee has acknowledged the use of alcohol, but claims ability to perform his or her safety-sensitive function.

§ 655.34 Use following an accident.

Each employer shall prohibit alcohol use by any covered employee required to take a post-accident alcohol test under § 655.44 for eight hours following the accident or until he or she undergoes a post-accident alcohol test, whichever occurs first.

§ 655.35 Other alcohol-related conduct.

(a) No employer shall permit a covered employee tested under the provisions of subpart E of this part who is found to have an alcohol concentration of 0.02 or greater but less than 0.04 to perform or continue to perform safety-sensitive functions, until:

(1) The employee's alcohol concentration measures less than 0.02; or (2) The start of the employee's next regularly scheduled duty period, but not less than eight hours following administration of the test.

(b) Except as provided in paragraph (a) of this section, no employer shall take any action under this part against an employee based solely on test results showing an alcohol concentration less than 0.04. This does not prohibit an employer with authority independent of this part from taking any action otherwise consistent with law.

Subpart E—Types of Testing

§ 655.41 Pre-employment drug testing

(a)(1) Before allowing a covered employee or applicant to perform a safety-sensitive function for the first time, the employer must ensure that the employee takes a pre-employment drug test administered under this part with a verified negative result. An employer may not allow a covered employee, including an applicant, to perform a safety-sensitive function unless the employee takes a drug test administered under this part with a verified negative result.

(2) When a covered employee or applicant has previously failed a pre-employment drug test administered under this part, the employee must present to the employer proof of successfully having completed a referral, evaluation and treatment plan as described in § 655.62.

(b) An employer may not transfer an employee from a nonsafety-sensitive function to a safety-sensitive function until the employee takes a pre-employment drug test administered under this part with a verified negative result.

(c) If a pre-employment drug test is canceled, the employer shall require the covered employee or applicant to take another pre-employment drug test administered under this part with a verified negative result.

(d) When a covered employee or applicant has not performed a safety-sensitive function for 90 consecutive calendar days regardless of the reason, and the employee has not been in the employer's random selection pool during that time frame, the employer shall ensure that the employee takes a pre-employment drug test with a verified negative result.

§ 655.42 Pre-employment alcohol testing.

As an employer, you may, but are not required to, conduct pre-employment alcohol testing under this part. If you choose to conduct pre-employment alcohol testing, you must comply with the following requirements:

(a) You must conduct a pre-employment alcohol test before the first performance of safety-sensitive functions by every covered employee (whether a new employee or someone who has transferred to a position involving the performance of safety-sensitive functions).

(b) You must treat all safety-sensitive employees performing safety-sensitive functions the same for the purpose of pre-employment alcohol testing (i.e., you must not test some covered employees and not others).

(c) You must conduct the pre-employment tests after making a contingent offer of employment or transfer, subject to the employee passing the pre-employment alcohol test.

(d) You must conduct all pre-employment alcohol tests using the alcohol testing procedures of 49 CFR part 40.

(e) You must not allow a covered employee to begin performing safety-sensitive functions unless the result of the employee's test indicates an alcohol concentration of less than 0.04.

§ 655.43 Reasonable suspicion testing.

(a) An employer shall conduct a drug and/or alcohol test when the employer has reasonable suspicion to believe that the covered employee has used a prohibited drug and/or engaged in alcohol misuse.

(b) An employer's determination that reasonable suspicion exists shall be based on specific, contemporaneous, articulable observations concerning the appearance, behavior, speech, or body odors of the covered employee. A supervisor who is trained in detecting the signs and symptoms of drug use and alcohol misuse must make the required observations.

(c) The decision to refer an employee for a reasonable suspicion test shall be made by one trained supervisor. Employers are prohibited from requiring two or more trained supervisors to participate and/or agree on such a referral.

§ 655.44 Post-accident testing.

(a) Accidents. (1) *Fatal accidents.* As soon as practicable following an accident involving the loss of human life, an employer shall conduct drug and alcohol tests on each surviving covered employee operating the mass transit vehicle at the time of the accident. The employer shall also drug and alcohol test any other covered employee whose performance could have contributed to the accident, as determined by the employer using the best information available at the time of the decision.

(2) *Nonfatal accidents.* (i) As soon as practicable following an accident not involving the loss of human life, in which a mass transit vehicle is involved, the employer shall drug and alcohol test each covered employee operating the mass transit vehicle at the time of the accident unless the employer determines, using the best information available at the time of the decision, that the covered employee's performance can be completely discounted as a contributing factor to the accident. The decision not to administer a drug and/or alcohol test under this paragraph (a)(2)(i) shall be based on the employer's determination, using the best available information at the time of the determination, that the employee's performance could not have contributed to the accident. Such a decision must be documented in detail, including the decision-making process used to reach the decision not to test. The employer shall also drug and alcohol test any other covered employee whose performance could have contributed to the accident, as determined by the employer using the best information available at the time of the decision.

(ii) If an alcohol test required by this section is not administered within two hours following the accident, the employer shall prepare and maintain on file a record stating the reasons the alcohol test was not promptly administered. If an alcohol test required by this paragraph (a)(2)(ii) is not administered within eight hours following the accident, the employer shall cease attempts to administer an alcohol test and shall maintain the same record. Records shall be submitted to FTA upon request of the Administrator.

(b) An employer shall ensure that a covered employee required to be drug tested under this section is tested as soon as practicable but within 32 hours of the accident.

(c) A covered employee who is subject to post-accident testing who fails to remain readily available for such testing, including notifying the employer or the employer representative of his or her location if he or she leaves the scene of the accident prior to submission to such test, may be deemed by the employer to have refused to submit to testing.

(d) Nothing in this section shall be construed to require the delay of necessary medical attention for the injured following an accident or to prohibit a covered employee from leaving the scene of an accident for the period necessary to obtain assistance in responding to the accident or to obtain necessary emergency medical care.

(e) The results of a blood, urine, or breath test for the use of prohibited drugs or alcohol misuse, conducted by Federal, State, or local officials having independent authority for the test, shall be considered to meet the requirements of this section, provided such test conforms to the applicable Federal, State, or local testing requirements, and that the test results are obtained by the employer.

§ 655.45 Random testing.

(a) Except as provided in paragraphs (b) through (d) of this section, the minimum annual percentage rate for random drug testing shall be 50 percent of covered employees; the random alcohol testing rate shall be 25 percent. As provided in paragraph (b) of this section, this rate is subject to annual review by the Administrator.

(b) The Administrator's decision to increase or decrease the minimum annual percentage rate for random drug and alcohol testing is based, respectively, on the reported positive drug and alcohol violation rates for the entire industry. All information used for this determination is drawn from the drug and alcohol Management Information System (MIS) reports required by this part. In order to ensure reliability of the data, the Administrator shall consider the quality and completeness of the reported data, may obtain additional information or reports from employers, and may make appropriate modifications in calculating the industry's verified positive results and violation rates. Each year, the Administrator will publish in the **Federal Register** the minimum annual percentage rates for random drug and alcohol testing of covered employees. The new minimum annual percentage rate for random drug and alcohol testing will be applicable starting January 1 of the calendar year following publication.

(c) Rates for drug testing. (1) When the minimum annual percentage rate for random drug testing is 50 percent, the Administrator may lower this rate to 25 percent of all covered employees if the Administrator determines that the data received under the reporting requirements of § 655.72 for the two preceding consecutive calendar years indicate that the reported positive rate is less than 1.0 percent.

(2) When the minimum annual percentage rate for random drug testing is 25 percent, and the data received under the reporting requirements of § 655.72 for the calendar year indicate that the reported positive rate is equal to or greater than 1.0 percent, the Administrator will increase the minimum annual percentage rate for

random drug or random alcohol testing to 50 percent of all covered employees.

(d) Rates for alcohol testing. (1)(i) When the minimum annual percentage rate for random alcohol testing is 25 percent or more, the Administrator may lower this rate to 10 percent of all covered employees if the Administrator determines that the data received under the reporting requirements of § 655.72 for two consecutive calendar years indicate that the violation rate is less than 0.5 percent.

(ii) When the minimum annual percentage rate for random alcohol testing is 50 percent, the Administrator may lower this rate to 25 percent of all covered employees if the Administrator determines that the data received under the reporting requirements of § 655.72 for two consecutive calendar years indicate that the violation rate is less than 1.0 percent but equal to or greater than 0.5 percent.

(2)(i) When the minimum annual percentage rate for random alcohol testing is 10 percent, and the data received under the reporting requirements of § 655.72 for that calendar year indicate that the violation rate is equal to or greater than 0.5 percent, but less than 1.0 percent, the Administrator will increase the minimum annual percentage rate for random alcohol testing to 25 percent of all covered employees.

(ii) When the minimum annual percentage rate for random alcohol testing is 25 percent or less, and the data received under the reporting requirements of § 655.72 for that calendar year indicate that the violation rate is equal to or greater than 1.0 percent, the Administrator will increase the minimum annual percentage rate for random alcohol testing to 50 percent of all covered employees.

(e) The selection of employees for random drug and alcohol testing shall be made by a scientifically valid method, such as a random number table or a computer-based random number generator that is matched with employees' Social Security numbers, payroll identification numbers, or other comparable identifying numbers. Under the selection process used, each covered employee shall have an equal chance of being tested each time selections are made.

(f) The employer shall randomly select a sufficient number of covered employees for testing during each calendar year to equal an annual rate not less than the minimum annual percentage rates for random drug and alcohol testing determined by the Administrator. If the employer conducts random drug and alcohol testing through a consortium, the number of employees to be tested may be calculated for each individual employer or may be based on the total number of covered employees covered by the consortium who are subject to random drug and alcohol testing at the same minimum annual percentage rate under this part.

(g) Each employer shall ensure that random drug and alcohol tests conducted under this part are unannounced and unpredictable, and that the dates for administering random tests are spread reasonably throughout the calendar year. Random testing must be conducted during all time periods when safety-sensitive functions are performed.

(h) Each employer shall require that each covered employee who is notified of selection for random drug or random alcohol testing proceeds to the test site immediately; provided, however, that if the employee is performing a safety-sensitive function at the time of the notification, the employer shall instead ensure that the employee ceases to perform the safety-sensitive function and proceeds to the testing site immediately.

(i) A covered employee shall only be randomly tested for prohibited drug use or alcohol misuse while the employee is performing safety-sensitive functions; just before the employee is to perform safety-sensitive functions; or just after the employee has ceased performing such functions.

(j) If a given covered employee is subject to random drug and alcohol testing under the testing rules of more than one DOT agency for the same employer, the employee shall be subject to random drug and alcohol testing at the percentage rate established for the calendar year by the DOT agency regulating more than 50 percent of the employee's function.

(k) If an employer is required to conduct random drug and alcohol testing under the drug and alcohol testing rules of more than one DOT agency, the employer may—

(1) Establish separate pools for random selection, with each pool containing the covered employees who are subject to testing at the same required rate; or

(2) Randomly select such employees for testing at the highest percentage rate established for the calendar year by any DOT agency to which the employer is subject.

§ 655.46 Return to duty testing following refusal to submit to a test, verified positive drug test result and/or breath alcohol test result greater than 0.04.

Where a covered employee refuses to submit to a test, has a verified positive drug test result, and/or has a confirmed alcohol test result greater than 0.04, the employer, before returning the employee to duty to perform a safety-sensitive function, shall follow the procedures outlined in 49 CFR part 40.

§ 655.47 Follow-up testing after returning to duty.

An employer shall conduct follow-up testing of each employee who returns to duty, as specified in 49 CFR part 40, subpart O. The substance abuse professional may terminate the requirement for follow-up testing, as provided in 49 CFR 40.307.

§ 655.48 Retesting of covered employees with an alcohol concentration of 0.02 or greater but less than 0.04.

Each employer shall retest a covered employee to ensure compliance with the provisions of § 655.35, if the employer chooses to permit the employee to perform a safety-sensitive function within 8 hours following the administration of an alcohol test indicating an alcohol concentration of 0.02 or greater but less than 0.04. The employee may not perform safety-sensitive functions unless the confirmation alcohol test result is less than 0.02.

§ 655.49 Refusal to submit to a drug or alcohol test.

(a) Each employer shall require a covered employee to submit to a post-accident drug and alcohol test required under § 655.44, a random drug and alcohol test required under § 655.45, a reasonable suspicion drug and alcohol test required under § 655.43, or a follow-up drug and alcohol test required under § 655.47. No employer shall permit an employee who refuses to submit to such a test to perform or continue to perform safety-sensitive functions.

(b) Where an employee refuses to submit to a test, the employer shall follow the procedures outlined in 49 CFR part 40.

Subpart F—Drug and Alcohol Testing Procedures

§ 655.51 Compliance with testing procedures requirements.

The drug and alcohol testing procedures in 49 CFR part 40 apply to employers covered by this part, and must be read together with this part, unless expressly provided otherwise in this part.

§ 655.52 Substance abuse professional (SAP).

The SAP must perform the functions in 49 CFR part 40, subpart O.

§ 655.53 Supervisor acting as collection site personnel.

An employer shall not permit an employee with direct or immediate supervisory responsibility or authority over another employee to serve as the urine collection person, breath alcohol technician, or saliva-testing technician for a drug or alcohol test of the employee.

Subpart G—Consequences

§ 655.61 Action when an employee has a verified positive drug test result or has a confirmed alcohol test result of 0.04 or greater, or refuses to submit to a test.

(a)(1) Immediately after receiving notice from a medical review officer (MRO) or a consortium/third party administrator (C/TPA) that a covered employee has a verified positive drug test result, the employer shall require that the covered employee cease performing a safety-sensitive function.

(2) Immediately after receiving notice from a Breath Alcohol Technician (BAT) that a covered employee has a confirmed alcohol test result of 0.04 or greater, the employer shall require that the covered employee cease performing a safety-sensitive function.

(3) If an employee refuses to submit to a drug or alcohol test, the employer shall require that the covered employee cease performing a safety-sensitive function.

(b) Before allowing the covered employee to resume performing a safety-sensitive function, the employer shall ensure that the covered employee meets the requirements of 49 CFR part 40 for returning to duty, including taking a return to duty drug and/or alcohol test.

§ 655.62 Referral, evaluation, and treatment.

(a) If a covered employee has a verified positive drug test result, or has a confirmed alcohol test of 0.04 or greater, or refuses to submit to a drug or alcohol test, the employer shall advise the employee of the resources available for evaluating and resolving problems associated with prohibited drug use and alcohol misuse, including the names, addresses, and telephone numbers of substance abuse professionals (SAPs) and counseling and treatment programs.

(b) A covered employee under a second chance agreement, who has had a verified positive drug test result, or had a confirmed alcohol test of 0.04 or greater, or refused to submit to a drug or alcohol test, shall not resume performing safety-sensitive functions until the covered employee has met all the requirements of 49 CFR part 40, including a substance abuse professional (SAP) evaluation, referral, and education treatment process.

Subpart H—Administrative Requirements

§ 655.71 Retention of records.

(a) *General requirement.* An employer shall maintain records of its anti-drug and alcohol misuse program as provided in this section. The records shall be maintained in a secure location with controlled access.

(b) *Period of retention.* In determining compliance with the retention period requirement, each record shall be maintained for the specified period of time, measured from the date of the document's or data's creation. Each employer shall maintain the records in accordance with the following schedule:

(1) *Five years.* Records of covered employee verified positive drug or alcohol test results, documentation of refusals to take required drug or alcohol tests, and covered employee referrals to the substance abuse professional, and copies of annual MIS reports submitted to FTA.

(2) *Two years.* Records related to the collection process and employee training.

(3) *One year.* Records of negative drug or alcohol test results.

(c) *Types of records.* The following specific records must be maintained:

(1) Records related to the collection process:

(i) Collection logbooks, if used.

(ii) Documents relating to the random selection process.

(iii) Documents generated in connection with decisions to administer reasonable suspicion drug or alcohol tests.

(iv) Documents generated in connection with decisions on post-accident drug and alcohol testing.

(v) MRO documents verifying existence of a medical explanation of the inability of a covered employee to provide an adequate urine or breathe sample.

(2) Records related to test results:

(i) The employer's copy of the custody and control form.

(ii) Documents related to the refusal of any covered employee to submit to a test required by this part.

(iii) Documents presented by a covered employee to dispute the result of a test administered under this part.

(3) Records related to referral and return to duty and follow-up testing: Records concerning a covered employee's entry into and completion of the treatment program recommended by the substance abuse professional.

(4) Records related to employee training:

(i) Training materials on drug use awareness and alcohol misuse, including a copy of the employer's policy on prohibited drug use and alcohol misuse.

(ii) Names of covered employees attending training on prohibited drug use and alcohol misuse and the dates and times of such training.

(iii) Documentation of training provided to supervisors for the purpose of qualifying the supervisors to make a determination concerning the need for drug and alcohol testing based on reasonable suspicion.

(iv) Certification that any training conducted under this part complies with the requirements for such training.

(5) Copies of annual MIS reports submitted to FTA.

§ 655.72 Reporting of results in a management information system.

(a) Each recipient shall annually prepare and maintain a summary of the results of its anti-drug and alcohol misuse testing programs performed under this part during the previous calendar year.

(b) When requested by FTA, each recipient shall submit to FTA's Office of Safety and Security, or its designated agent, by March 15, a report covering the previous calendar year (January 1 through December 31) summarizing the results of its anti-drug and alcohol misuse programs.

(c) Each recipient shall be responsible for ensuring the accuracy and timeliness of each report submitted by an employer, contractor, consortium or joint enterprise or by a third party service provider acting on the recipient's or employer's behalf.

(d) *Drug use information: Long Form.* Each report that contains information on verified positive drug test results shall be submitted on the FTA Drug Testing Management Information System (MIS) Data Collection Form (Appendix A of this part) and shall include the following informational elements:

(1) Number of FTA covered employees by employee category.

(2) Number of covered employees subject to testing under the anti-drug regulations of the United States Coast Guard.

(3) Number of specimens collected by type of test (i.e., pre-employment, follow-up, random, etc.) and employee category.

(4) Number of positives verified by a Medical Review Officer (MRO) by type

of test, type of drug, and employee category.

(5) Number of negatives verified by an MRO by type of test and employee category.

(6) Number of persons denied a position as a covered employee following a verified positive drug test.

(7) Number of covered employees verified positive by an MRO or who refused to submit to a drug test, who were returned to duty in covered positions during the reporting period (having complied with the recommendations of a substance abuse professional as described in § 655.61).

(8) Number of employees with tests verified positive by a MRO for multiple drugs.

(9) Number of covered employees who were administered drug and alcohol tests at the same time, with both a verified positive drug test result and an alcohol test result indicating an alcohol concentration of 0.04 or greater.

(10) Number of covered employees who refused to submit to a random drug test required under this part.

(11) Number of covered employees who refused to submit to a non-random drug test required under this part.

(12) Number of covered employees and supervisors who received training during the reporting period.

(13) Number of fatal and nonfatal accidents which resulted in a verified positive post-accident drug test.

(14) Number of fatalities resulting from accidents which resulted in a verified positive post-accident drug test.

(15) Identification of FTA funding source(s).

(e) *Drug Use Information: Short Form.* If all drug test results were negative during the reporting period, the employer must use the ''EZ form'' (Appendix B of this part). It shall contain:

(1) Number of FTA covered employees.

(2) Number of covered employees subject to testing under the anti-drug regulation of the United States Coast Guard.

(3) Number of specimens collected and verified negative by type of test and employee category.

(4) Number of covered employees verified positive by an MRO or who refused to submit to a drug test prior to the reporting period and who were returned to duty in covered positions during the reporting period (having complied with the recommendations of a substance abuse professional as described in § 655.62).

(5) Number of covered employees who refused to submit to a non-random drug test required under this part.

(6) Number of covered employees and supervisors who received training during the reporting period.

(7) Identification of FTA funding source(s).

(f) *Alcohol misuse information: Long Form.* Each report that contains information on an alcohol screening test result of 0.02 or greater or a violation of the alcohol misuse provisions of this part shall be submitted on the FTA Alcohol Testing Management (MIS) Data Collection Form (Appendix C of this part) and shall include the following informational elements:

(1) Number of FTA covered employees by employee category.

(2)(i) Number of screening tests by type of test and employee category.

(ii) Number of confirmed tests, by type of test and employee category.

(3) Number of confirmed alcohol tests indicating an alcohol concentration of 0.02 or greater but less than 0.04, by type of test and employee category.

(4) Number of confirmed alcohol tests indicating an alcohol concentration of 0.04 or greater, by type of test and employee category.

(5) Number of covered employees with a confirmed alcohol test indicating an alcohol concentration of 0.04 or greater who were returned to duty in covered positions during the reporting period (having complied with the recommendation of a substance abuse professional as described in § 655.61).

(6) Number of fatal and nonfatal accidents which resulted in a confirmed post-accident alcohol test indicating an alcohol concentration of 0.04 or greater.

(7) Number of fatalities resulting from accidents which resulted in a confirmed post-accident alcohol test indicating an alcohol concentration of 0.04 or greater.

(8) Number of covered employees who were found to have violated other provisions of subpart B of this part and the action taken in response to the violation.

(9) Number of covered employees who were administered alcohol and drug tests at the same time, with a positive drug test result and an alcohol test result indicating an alcohol concentration of 0.04 or greater.

(10) Number of covered employees who refused to submit to a random alcohol test required under this part.

(11) Number of covered employees who refused to submit to a non-random alcohol test required under this part.

(12) Number of supervisors who have received training during the reporting period in determining the existence of reasonable suspicion of alcohol misuse.

(13) Identification of FTA funding source(s).

(g) *Alcohol Misuse Information: Short Form.* If an employer has no screening test results of 0.02 or greater and no violations of the alcohol misuse provisions of this part, the employer must use the ''EZ'' form (Appendix D of this part). It shall contain: (This report may only be submitted if the program results meet these criteria.)

(1) Number of FTA covered employees.

(2) Number of alcohol tests conducted with results less than 0.02 by type of test and employee category.

(3) Number of employees with confirmed alcohol test results indicating an alcohol concentration of 0.04 or greater prior to the reporting period and who were returned to duty in a covered position during the reporting period.

(4) Number of covered employees who refused to submit to a random alcohol test required under this part.

(5) Number of supervisors who have received training during the reporting period in determining the existence of reasonable suspicion of alcohol misuse.

(6) Identification of FTA funding source(s).

§ 655.73 Access to facilities and records

(a) Except as required by law, or expressly authorized or required in this section, no employer may release information pertaining to a covered employee that is contained in records required to be maintained by § 655.71.

(b) A covered employee is entitled, upon written request, to obtain copies of any records pertaining to the covered employee's use of prohibited drugs or misuse of alcohol, including any records pertaining to his or her drug or alcohol tests. The employer shall provide promptly the records requested by the employee. Access to a covered employee's records shall not be contingent upon the employer's receipt of payment for the production of those records.

(c) An employer shall permit access to all facilities utilized and records compiled in complying with the requirements of this part to the Secretary of Transportation or any DOT agency with regulatory authority over the employer or any of its employees or to a State oversight agency authorized to oversee rail fixed guideway systems.

(d) An employer shall disclose data for its drug and alcohol testing programs, and any other information pertaining to the employer's anti-drug and alcohol misuse programs required to be maintained by this part, to the Secretary of Transportation or any DOT agency with regulatory authority over the employer or covered employee or to a State oversight agency authorized to oversee rail fixed guideway systems,

upon the Secretary's request or the respective agency's request.

(e) When requested by the National Transportation Safety Board as part of an accident investigation, employers shall disclose information related to the employer's drug or alcohol testing related to the accident under investigation.

(f) Records shall be made available to a subsequent employer upon receipt of a written request from the covered employee. Subsequent disclosure by the employer is permitted only as expressly authorized by the terms of the covered employee's request.

(g) An employer may disclose information required to be maintained under this part pertaining to a covered employee to the employee or the decisionmaker in a lawsuit, grievance, or other proceeding initiated by or on behalf of the individual, and arising from the results of a drug or alcohol test under this part (including, but not limited to, a worker's compensation, unemployment compensation, or other proceeding relating to a benefit sought by the covered employee.)

(h) An employer shall release information regarding a covered employee's record as directed by the specific, written consent of the employee authorizing release of the information to an identified person.

Subpart I—Certifying Compliance

§ 655.81 Grantee oversight responsibility

A grantee shall ensure that the recipients of funds under 49 U.S.C. 5307, 5309, or 5311 comply with this part.

§ 655.82 Compliance as a condition of financial assistance.

(a) *General.* A recipient may not be eligible for federal financial assistance under 49 U.S.C. 5307, 5309, or 5311 or under 23 U.S.C. 103(e)(4), if a recipient fails to establish and implement an anti-drug and alcohol misuse program as required by this part. Failure to certify compliance with these requirements, as specified in § 655.83, may result in the suspension of a grantee's eligibility for federal funding.

(b) *Criminal violation.* A recipient is subject to criminal sanctions and fines for false statements or misrepresentations under 18 U.S.C. 1001.

(c) *State's role.* Each State shall certify compliance on behalf of its section 5307, 5309, or 5311 subrecipients, as applicable, whose grant the State administers. In so certifying, the State shall ensure that each subrecipient is complying with the requirements of this part. A section 5307, 5309, or 5311 subrecipient, through the administering State, is subject to suspension of funding from the State if such subrecipient is not in compliance with this part.

§ 655.83 Requirement to certify compliance

(a) A recipient of FTA financial assistance shall annually certify compliance, as set forth in § 655.82, to the applicable FTA Regional Office.

(b) A certification must be authorized by the organization's governing board or other authorizing official, and must be signed by a party specifically authorized to do so.

(c) A recipient will be ineligible for further FTA financial assistance if the recipient fails to establish and implement an anti-drug and alcohol misuse program in accordance with this part.

BILLING CODE 4910–57–P

APPENDIX A TO PART 655 - DRUG TESTING MANAGEMENT INFORMATION SYSTEM (MIS) DATA COLLECTION FORM

INSTRUCTIONS

The following instructions are to be used as a guide for completing the drug testing information in the Federal Transit Administration (FTA) **Drug Testing MIS Data Collection Form.** These instructions outline and explain the information requested and indicate the probable sources for this information. A sample testing results table with a narrative explanation is provided on pages iii-v as an example to facilitate the process of completing the form correctly.

This reporting form includes six sections. Collectively, these sections address the data elements required in the FTA and the U.S. Department of Transportation (DOT) drug testing regulations. The six sections, the page number for the instructions, and the page location on the reporting form are:

Section	Instructions Page	Reporting Form Page
A. EMPLOYER INFORMATION	i	1
B. COVERED EMPLOYEES	i	2
C. DRUG TESTING INFORMATION	ii-v	3-4
D. OTHER DRUG TESTING/PROGRAM INFORMATION	v	5
E. DRUG TRAINING/EDUCATION	vi	5
F. FTA FUNDING SOURCES	vi	5

Page 1 **EMPLOYER INFORMATION** (Section A) requires the name of the employer for which the report is done, a current address, contact name, and phone number. Below this, information must be entered for the consortium used (if applicable). Finally, a signature, title and date are required certifying the correctness and completeness of the form. Note: A separate report must be submitted by each FTA recipient for each of its contract service and contract maintenance providers covered by the FTA drug testing regulation.

Page 2 **COVERED EMPLOYEES** (Section B) requires a count for each employee category that must be tested under the FTA drug testing regulation. The employee categories are: Revenue Service Vehicle Operation, Revenue Service Vehicle and Equipment Maintenance, Revenue Service Vehicle Control/Dispatch, Commercial Driver License (CDL) Holders who operate Non-Revenue Service Vehicles, and Security Personnel who carry Firearms. The most likely source for this information is the employer's personnel department. These counts should be based on the

recipient's or contractor's records for the reported year. The **TOTAL** is a count of **all** covered employees for **all** categories combined, i.e., the sum of the columns.

Additional information must be completed if the employer has personnel who perform duties also covered by the anti-drug rule of the United States Coast Guard (USCG). **NUMBER OF EMPLOYEES COVERED BY THE USCG**, requires that you identify the number of employees in each employee category.

Section C is used to summarize the drug testing results for applicants and covered employees. There are six categories of testing to be completed. The first part of the table is where you enter the data on pre-employment testing. The following five parts are for entering drug testing data on random, post-accident, reasonable suspicion, return to duty and follow-up testing, respectively. Items necessary to complete these tables include:

1) the number of specimens collected in each employee category;
2) the number of specimens tested which were verified negative and verified positive for any drug(s); and
3) individual counts of those specimens which were verified positive for each of the five drugs.

Do not include results of quality control (QC) samples submitted to the testing laboratory in any of the tables.

A sample table with detailed instructions is provided for the first part, **PRE-EMPLOYMENT** testing information. The format and explanations used for the sample apply to all six parts of the table in Section C.

Information on actions taken with those persons testing positive is required at the end of both pages. Specific instructions for providing this latter information are given after the instructions for completing the table in Section C.

Page 3 **DRUG TESTING INFORMATION** (Section C) requires information for drug testing by category of testing. All numbers entered into the pre-employment category section of the table should be separated into the category of employment for which the person was applying or transferring. The other categories are for employee testing and require information for employees in **covered positions** only. Each part of this table must be completed for each category of testing. These categories include: (1) random, (2) post-accident, (3) reasonable suspicion, (4) return to duty, and (5) follow-up testing. These numbers **do not** include refusals for testing. A sample section of the table with example numbers is presented on page iv.

Three types of information are necessary to complete the left side of this table. The first blank column with the heading "**NUMBER OF SPECIMENS COLLECTED**," requires a count for all collected specimens by employee category. The second blank column with the heading "**NUMBER OF SPECIMENS VERIFIED NEGATIVE**," requires a count for all completed tests by employee category that were verified negative by your Medical Review Officer (MRO).

The third blank column with the heading "**NUMBER OF SPECIMENS VERIFIED POSITIVE FOR ONE OR MORE OF THE FIVE DRUGS,**" refers to the number of specimens provided by applicants or employees that were verified positive. "Verified positive" means the results were verified by your MRO.

The right hand portion of this table, with the heading "**NUMBER OF SPECIMENS VERIFIED POSITIVE FOR EACH TYPE OF DRUG,**" requires counts of positive tests for each of the five drugs for which tests were done, i.e., marijuana (THC), cocaine, phencyclidine (PCP), opiates, and amphetamines. The number of specimens positive for each drug should be entered in the appropriate column for that drug type. Again, "verified positive" refers to test results verified by your MRO.

If an applicant or employee tested positive for more than one drug; for example, both marijuana and cocaine, that person's positive results would be included once in each of the appropriate columns (marijuana and cocaine).

Each column in the table should be added and the answer entered in the row marked "**TOTAL**".

A sample table is provided on page iv with example numbers.

Page 3 Below the part of the table containing pre-employment testing information is a box with the heading "**Number of persons denied a position as a covered employee following a verified positive drug test**". This is simply a count of those persons who were not placed in a covered position because they tested positive for one or more drugs.

SAMPLE APPLICANT TEST RESULTS TABLE

The following example is for Section C, **DRUG TESTING INFORMATION**, which summarizes pre-employment testing results. The procedures detailed here also apply to the other categories of testing in Section C which require you to summarize testing results for employees. This example uses the categories "Revenue Vehicle Operation" and "Armed Security Personnel" to illustrate the procedures for completing the form.

A Urine specimens were collected for 157 applicants for revenue service vehicle operation positions during the reporting year. This information is entered in the first blank column of the table in the row marked "Revenue Vehicle Operation".

B The Medical Review Officer (MRO) for the employer reported that 153 of those 157 specimens from applicants for revenue service vehicle operation positions were negative (i.e., no drugs were detected). Enter this information in the second blank column of the table in the row marked "Revenue Vehicle Operation".

C The MRO for the employer reported that 4 of those 157 specimens from applicants for revenue service vehicle operation positions were positive (i.e., a drug or drugs

were detected). Enter this information in the third blank column of the table in the row marked "Revenue Vehicle Operation".

D

With the 4 specimens that tested positive, the following drugs were detected:

Specimen	Drugs
#1	Marijuana
#2	Amphetamines
#3	Marijuana and Cocaine (Multi-drug specimen)
#4	Marijuana

Marijuana was detected in three (3) specimens, cocaine in one (1), and amphetamines in one (1). This information is entered in the columns on the right hand side of the table under each of these drugs. Two different drugs were detected in specimen #3 (multi-drug) so an entry is made in both the marijuana and the cocaine column for this specimen. Information on multi-drug specimens must also be entered in Section D, OTHER DRUG TESTING/PROGRAM INFORMATION, on page 5 of the reporting form.

Please note that the sample data collection form also has information for armed security personnel on line two. The same procedures outlined for revenue service vehicle operation should be followed for entering the data on armed security personnel. With applicants for armed security personnel positions, 107 specimens were collected resulting in 105 verified negatives and 2 verified positives – 1 for marijuana and 1 for opiates. This information is entered in the row marked "Armed Security Personnel".

E

The last row, marked "TOTAL", requires you to add the numbers in each of the columns. With this example, 157 specimens from applicants for revenue service vehicle operation positions were collected and 107 for applicants for armed security personnel positions. The total for that column would be 264 (i.e., 157+107). The same procedure should be used for each column, i.e., add all the numbers in that column and place the answer in the last row.

PRE-EMPLOYMENT								
EMPLOYEE CATEGORY	NUMBER OF SPECIMENS COLLECTED	NUMBER OF SPECIMENS VERIFIED NEGATIVE	NUMBER OF SPECIMENS VERIFIED POSITIVE FOR ONE OR MORE OF THE FIVE DRUGS	NUMBER OF SPECIMENS VERIFIED POSITIVE FOR EACH TYPE OF DRUG				
				MARIJUANA (THC)	COCAINE	PHENCY-CLIDINE (PCP)	OPIATES	AMPHET-AMINES
REVENUE VEHICLE OPERATION	157	153	4	3	1	0	0	1
ARMED SECURITY PERSONNEL	107	105	2	1	0	0	1	0
TOTAL	264	258	6	4	1	0	1	1

A B C D E

Note that adding up the numbers for each type of drug in a row ("NUMBER OF SPECIMENS VERIFIED POSITIVE FOR EACH TYPE OF DRUG") will not always match the number entered in the third column, "NUMBER OF SPECIMENS VERIFIED POSITIVE FOR ONE OR MORE OF THE FIVE DRUGS". The total for the numbers on the right hand side of the table may differ from the number of specimens testing positive since some specimens may contain more than one drug.

Remember that the same procedures indicated above are to be used for completing all of the categories for testing in Section C.

Page 4 — Following the table that summarizes **DRUG TESTING INFORMATION**, you must provide counts of fatal and non-fatal accidents and fatalities which resulted in positive post-accident drug tests for any employee involved in the accident. This information should be available from the safety program manager or the drug program manager.

Page 4 — Also following the table that summarizes **DRUG TESTING INFORMATION**, you must provide a count of employees returned to duty during this reporting period who had a verified positive drug test or refused a drug test required under the FTA rule. This information should be available from the personnel office and/or drug program manager.

Page 5 — **OTHER DRUG TESTING/PROGRAM INFORMATION** (Section D) requires that you complete a table dealing with specimens positive for more than one drug, employees testing positive for both drugs and alcohol, and a table dealing with employees who refused to submit to a drug test.

Page 5 — **SPECIMENS VERIFIED POSITIVE FOR MORE THAN ONE DRUG** requires information on specimens that contained more than one drug. Indicate the **EMPLOYEE CATEGORY** and the **NUMBER OF VERIFIED POSITIVES**. Then specify the combination of drugs reported as positive by placing the number in the appropriate columns. For example, if marijuana and cocaine were detected in 3 revenue vehicle operator specimens, then you would write "Revenue Vehicle Operation" as the employee category, "3" as the number of verified positives, and "3" in the columns for "Marijuana" and "Cocaine". If marijuana and opiates were detected in 2 revenue vehicle operator specimens, then you would write "Revenue Vehicle Operation" as the employee category, "2" as the number of verified positives, and "2" in the columns for "Marijuana" and "Opiates".

Page 5 — Next you must provide a count of **employees administered drug and alcohol tests at the same time resulting in a verified positive drug test and an alcohol test indicating an alcohol concentration of 0.04 or greater.**

Page 5 — **EMPLOYEES WHO REFUSED TO SUBMIT TO A DRUG TEST** requires information on the **NUMBER OF COVERED EMPLOYEES** who refused to submit to a **random** or **non-random** (pre-employment, post-accident, reasonable suspicion, return to duty, or follow-up) drug test required under the FTA regulation.

Page 5 — **DRUG TRAINING/EDUCATION** (Section E) requires information on the number of covered employees and supervisory personnel who have received drug training during the current reporting period.

Page 5 — **FTA FUNDING SOURCES** (Section F) asks for the sources of FTA funds for your organization. Simply place a check mark by each applicable funding section(s).

For FTA Use Only

FTA DRUG TESTING MIS DATA COLLECTION FORM

OMB No. 2132-0556

YEAR COVERED BY THIS REPORT: 20 ___

A. EMPLOYER INFORMATION

Name _____

Address _____

_____

Contact _____

Phone _____

Consortium Used (if applicable)

Name _____

Address _____

_____

Contact _____

Phone _____

I, the undersigned, certify that the information provided on this Federal Transit Administration Drug Testing Management Information System Data Collection Form is, to the best of my knowledge and belief, true, correct, and complete for the period stated.

_____ Signature

_____ Date of Signature

_____ Title

Title 18, U.S.C. Section 1001, makes it a criminal offense subject to a maximum fine of $10,000, or imprisonment for not more than 5 years, or both, to knowingly and willfully make or cause to be made any false or fraudulent statements or representations in any matter within the jurisdiction of any agency of the United States.

The Federal Transit Administration estimates that the average burden for this report form is 8 hours. You may submit any comments concerning the accuracy of this burden estimate or any suggestions for reducing the burden to: Office of Safety and Security (TPM-30), Federal Transit Administration; 400 7th St., S.W.; Washington, D.C. 20590; OR Office of Management and Budget, Paperwork Reduction Project (2132-0556); Washington, D.C. 20503.

B. COVERED EMPLOYEES

COVERED EMPLOYEES		
EMPLOYEE CATEGORY	NUMBER OF FTA COVERED EMPLOYEES	NUMBER OF EMPLOYEES COVERED BY THE USCG
Revenue Vehicle Operation		
Revenue Vehicle and Equipment Maintenance		
Revenue Vehicle Control/Dispatch		
CDL/Non-Revenue Vehicle		
Armed Security Personnel		
TOTAL		

READ BEFORE COMPLETING THE REMAINDER OF THIS FORM:

1. All items refer to the **current** reporting period **only** (for example, January 1, 1994 - December 31, 1994).

2. This report is only for testing **REQUIRED BY THE FEDERAL TRANSIT ADMINISTRATION (FTA) AND THE U.S. DEPARTMENT OF TRANSPORTATION (DOT)**:

   - Results should be reported only for employees in **COVERED POSITIONS** as defined by the FTA drug testing regulation.

   - The information requested should only include testing for marijuana (THC), cocaine, phencyclidine (PCP), opiates, and amphetamines using the standard procedures required by DOT regulation 49 CFR Part 40.

3. Information on refusals for testing should only be reported in Section D ["OTHER DRUG TESTING INFORMATION"]. Do not include refusals for testing in other sections of this report.

4. Do not include the results of any quality control (QC) samples submitted to the testing laboratory in any of the tables.

5. Complete all items; DO NOT LEAVE ANY ITEM BLANK. If the value for an item is zero (0), place a zero (0) on the form.

This part of the form requires information on VERIFIED POSITIVE and VERIFIED NEGATIVE drug tests. These are the results that are reported to you by your Medical Review Officer (MRO).

C. DRUG TESTING INFORMATION

EMPLOYEE CATEGORY	NUMBER OF SPECIMENS COLLECTED	NUMBER OF SPECIMENS VERIFIED NEGATIVE	NUMBER OF SPECIMENS VERIFIED POSITIVE FOR ONE OR MORE OF THE FIVE DRUGS	NUMBER OF SPECIMENS VERIFIED POSITIVE FOR EACH TYPE OF DRUG				
				Mari-juana (THC)	Cocaine	Phency-clidine (PCP)	Opiates	Amphet-amines
PRE-EMPLOYMENT								
Revenue Vehicle Operation								
Revenue Vehicle and Equipment Maintenance								
Revenue Vehicle Control/Dispatch								
CDL/Non-Revenue Vehicle								
Armed Security Personnel								
Total								
RANDOM								
Revenue Vehicle Operation								
Revenue Vehicle and Equipment Maintenance								
Revenue Vehicle Control/Dispatch								
CDL/Non-Revenue Vehicle								
Armed Security Personnel								
Total								
POST-ACCIDENT								
Revenue Vehicle Operation								
Revenue Vehicle and Equipment Maintenance								
Revenue Vehicle Control/Dispatch								
CDL/Non-Revenue Vehicle								
Armed Security Personnel								
Total								

Number of persons denied a position as a covered employee following a verified positive drug test: _____

C. DRUG TESTING INFORMATION (cont.)

EMPLOYEE CATEGORY	NUMBER OF SPECIMENS COLLECTED	NUMBER OF SPECIMENS VERIFIED NEGATIVE	NUMBER OF SPECIMENS VERIFIED POSITIVE FOR ONE OR MORE OF THE FIVE DRUGS	NUMBER OF SPECIMENS VERIFIED POSITIVE FOR EACH TYPE OF DRUG				
				Mari-juana (THC)	Cocaine	Phency-clidine (PCP)	Opiates	Amphet-amines
REASONABLE SUSPICION								
Revenue Vehicle Operation								
Revenue Vehicle and Equipment Maintenance								
Revenue Vehicle Control/Dispatch								
CDL/Non-Revenue Vehicle								
Armed Security Personnel								
Total								
RETURN TO DUTY								
Revenue Vehicle Operation								
Revenue Vehicle and Equipment Maintenance								
Revenue Vehicle Control/Dispatch								
CDL/Non-Revenue Vehicle								
Armed Security Personnel								
Total								
FOLLOW-UP								
Revenue Vehicle Operation								
Revenue Vehicle and Equipment Maintenance								
Revenue Vehicle Control/Dispatch								
CDL/Non-Revenue Vehicle								
Armed Security Personnel								
Total								

Number of accidents, as defined by the FTA drug testing regulation, which resulted in a positive post-accident drug test:	FATAL	NON-FATAL

Number of fatalities resulting from accidents which resulted in a positive post-accident drug test:	
Number of employees returned to duty during this reporting period who had a verified positive drug test or refused a drug test required under the FTA rule:	

D. OTHER DRUG TESTING/PROGRAM INFORMATION

SPECIMENS VERIFIED POSITIVE FOR MORE THAN ONE DRUG						
EMPLOYEE CATEGORY	NUMBER OF VERIFIED POSITIVES	Marijuana (THC)	Cocaine	Phency-clidine (PCP)	Opiates	Amphet-amines

Number of employees administered drug and alcohol tests at the same time resulting in a verified positive drug test and an alcohol test indicating an alcohol concentration of 0.04 or greater:	

EMPLOYEES WHO REFUSED TO SUBMIT TO A DRUG TEST	Number
Covered employees who refused to submit to a random drug test required under the FTA regulation:	
Covered employees who refused to submit to a non-random drug test required under the FTA regulation:	

E. DRUG TRAINING/EDUCATION

TRAINING DURING CURRENT REPORTING PERIOD	Number
Covered employees who have received at least 60 minutes of initial training on the consequences, manifestations, and behavioral cues of drug use as required by the FTA drug testing regulation:	
Supervisory personnel who have received 60 minutes of initial training on the specific contemporaneous physical, behavioral, and performance indicators of probable drug use as required by the FTA drug testing regulation:	

F. FTA FUNDING SOURCES

FTA FUNDING SOURCES				
Check all sections that apply:	5307	5309	5310	5311

APPENDIX B TO PART 655 - DRUG TESTING MANAGEMENT INFORMATION SYSTEM (MIS) "EZ" DATA COLLECTION FORM

INSTRUCTIONS

The following instructions are to be used as a guide for completing the Federal Transit Administration (FTA) **Drug Testing MIS "EZ" Data Collection Form**. This form should only be used if there are **no positive tests** to be reported by your company. These instructions outline and explain the information requested and indicate the probable sources for this information. This reporting form includes four sections. These sections address the data elements required in the FTA and the U.S. Department of Transportation (DOT) drug testing regulations.

SECTION A - EMPLOYER INFORMATION requires the company name for which the report is done, a current address, contact name, and phone number. Below this, information must be entered for the consortium used (if applicable). Finally, a signature, title, and date are required certifying the correctness and completeness of the form. Also indicate the year covered by this report. Note: A separate report must be submitted by each FTA recipient for each of its contract service and contract maintenance providers covered by the FTA drug testing regulation.

SECTION B - COVERED EMPLOYEES requires a count for each employee category that must be tested under the FTA drug testing regulation. The employee categories are: Revenue Service Vehicle Operation, Revenue Service Vehicle and Equipment Maintenance, Revenue Service Vehicle Control/Dispatch, Commercial Driver License (CDL) Holders who operate Non-Revenue Service Vehicles, and Security Personnel who carry Firearms. The most likely source for this information is the employer's personnel department. These counts should be based on the recipient's or contractor's records for the reported year. The **TOTAL** is a count of **all** covered employees for **all** categories combined, i.e., the sum of the columns.

Additional information must be completed if the employer has personnel who perform duties also covered by the anti-drug rule of the United States Coast Guard (USCG). **NUMBER OF EMPLOYEES COVERED BY THE USCG**, requires that you identify the number of employees in each employee category.

SECTION C - DRUG TESTING INFORMATION requires information for drug testing, refusal for testing, and training. The first table requests information on the **NUMBER OF SPECIMENS COLLECTED AND VERIFIED NEGATIVE** in each category for testing. All numbers entered into the pre-employment category section of the table should be separated into the category of employment for which the person was applying or transferring. The other categories are for employee testing and require information for employees in **covered positions** only. Each part of this table must be completed for each category of testing. These categories include: (1) random, (2) post-accident, (3) reasonable suspicion, (4) return to duty, and (5) follow-up testing. "**COLL**" requires the number of specimens collected in each employee category for each category of testing. "**NEG**" requires a count for all completed tests by employee category that were verified negative by your Medical Review Officer (MRO). Do not include results of quality control (QC) samples submitted to the testing laboratory in any of the categories. Each column in the table should be added and the answer entered in the row marked "**TOTAL**".

Following the table that summarizes **DRUG TESTING INFORMATION**, you must provide a count of **employees returned to duty during this reporting period who had a verified positive drug test or refused a drug test required under the FTA rule**. This information should be available from the personnel office and/or drug program manager.

EMPLOYEES WHO REFUSED TO SUBMIT TO A DRUG TEST requires a count of the **NUMBER OF COVERED EMPLOYEES** who refused to submit to a **random** or **non-random** (pre-employment, post-accident, reasonable suspicion, return to duty, or follow-up) drug test required under the FTA regulation.

DRUG TRAINING/EDUCATION DURING CURRENT REPORTING PERIOD requires information on the number of covered employees and supervisory personnel who have received drug training during the current reporting period.

SECTION D - FTA FUNDING SOURCES asks for the sources of FTA funds for your organization. Simply place a check mark by each applicable funding section(s).

For FTA Use Only

FTA DRUG TESTING MIS "EZ" DATA COLLECTION FORM OMB No. 2132-0556

YEAR COVERED BY THIS REPORT: 20 __

A. EMPLOYER INFORMATION

Company Name _____

Address _____

_____

Contact _____

Phone _____

Consortium Used (if applicable)

Name _____

Address _____

_____

Contact _____

Phone _____

I, the undersigned, certify that the information provided on the attached Federal Transit Administration Drug Testing Management Information System "EZ" Data Collection Form is, to the best of my knowledge and belief, true, correct, and complete for the period stated.

_____ Signature

_____ Date of Signature

_____ Title

Title 18, U.S.C. Section 1001, makes it a criminal offense subject to a maximum fine of $10,000, or imprisonment for not more than 5 years, or both, to knowingly and willfully make or cause to be made any false or fraudulent statements or representations in any matter within the jurisdiction of any agency of the United States.

The Federal Transit Administration estimates that the average burden for this report form is 8 hours. You may submit any comments concerning the accuracy of this burden estimate or any suggestions for reducing the burden to: Office of Safety and Security TPM-30, Federal Transit Administration; 400 7th St., S.W.; Washington, D.C. 20590; OR Office of Management and Budget, Paperwork Reduction Project (2132-0556); Washington, D.C. 20503.

B. COVERED EMPLOYEES

COVERED EMPLOYEES		
EMPLOYEE CATEGORY	NUMBER OF FTA COVERED EMPLOYEES	NUMBER OF EMPLOYEES COVERED BY THE USCG
Revenue Vehicle Operation		
Revenue Vehicle and Equipment Maintenance		
Revenue Vehicle Control/Dispatch		
CDL/Non-Revenue Vehicle		
Armed Security Personnel		
TOTAL		

C. DRUG TESTING INFORMATION

NUMBER OF SPECIMENS COLLECTED AND VERIFIED NEGATIVE												
EMPLOYEE CATEGORY	PRE-EMPLOYMENT		RANDOM		POST-ACCIDENT		REASONABLE SUSPICION		RETURN TO DUTY		FOLLOW-UP	
	COLL	NEG	COLL	NEG	COLL	NEG	COLL	NEG	COLL	NEG	COLL	NEG
Revenue Vehicle Operation												
Revenue Vehicle and Equipment Maintenance												
Revenue Vehicle Control/Dispatch												
CDL/Non-Revenue Vehicle												
Armed Security Personnel												
TOTAL												

Number of employees returned to duty during this reporting period who had a verified positive drug test or refused a drug test required under the FTA rule:	
EMPLOYEES WHO REFUSED TO SUBMIT TO A DRUG TEST	Number
Covered employees who refused to submit to a random drug test required under the FTA regulation:	
Covered employees who refused to submit to a non-random drug test required under the FTA regulation:	
DRUG TRAINING/EDUCATION DURING CURRENT REPORTING PERIOD	Number
Covered employees who have received at least 60 minutes of initial training on the consequences, manifestations, and behavioral cues of drug use as required by the FTA drug testing regulation:	
Supervisory personnel who have received 60 minutes of initial training on the specific contemporaneous physical, behavioral, and performance indicators of probable drug use as required by the FTA drug testing regulation:	

D. FTA FUNDING SOURCES

FTA FUNDING SOURCES				
Check all sections that apply:	5307 ___	5309 ___	5310 ___	5311 ___

APPENDIX C TO PART 655 - ALCOHOL TESTING MANAGEMENT INFORMATION SYSTEM (MIS) DATA COLLECTION FORM

INSTRUCTIONS

The following instructions are to be used as a guide for completing the alcohol testing information in the Federal Transit Administration (FTA) **Alcohol Testing MIS Data Collection Form.** These instructions outline and explain the information requested and indicate the probable sources for this information. A sample testing results table with a narrative explanation is provided on pages iii-iv as an example to facilitate the process of completing the form correctly.

This reporting form includes six sections. Collectively, these sections address the data elements required in the FTA and the U.S. Department of Transportation (DOT) alcohol testing regulations. The six sections, the page number for the instructions, and the page location on the reporting form are:

Section	Instructions Page	Reporting Form Page
A. EMPLOYER INFORMATION	i	1
B. COVERED EMPLOYEES	i	2
C. ALCOHOL TESTING INFORMATION	ii-iv	3-4
D. OTHER ALCOHOL TESTING/PROGRAM INFORMATION	v	5
E. ALCOHOL TRAINING/EDUCATION	v	5
F. FTA FUNDING SOURCES	v	5

Page 1 **EMPLOYER INFORMATION** (Section A) requires the year covered by this report, the agency name for which the report is done, a current address, a person's name and phone number to contact if there are any questions about the report. Below this, information must be entered for the consortium used (if applicable). Finally, a signature, title and date are required certifying the correctness and completeness of the form. Note: A separate report must be submitted by each FTA recipient for each of its contract service and contract maintenance providers covered by the FTA alcohol testing regulation.

Page 2 **COVERED EMPLOYEES** (Section B) requires a count for each employee category that must be tested under the FTA alcohol testing regulation. The employee categories are: Revenue Service Vehicle Operation, Revenue Service Vehicle and Equipment Maintenance, Revenue Service Vehicle Control/Dispatch, Commercial Driver License (CDL) Holders who operate Non-Revenue Service Vehicles, and Security Personnel who carry Firearms. The most likely source for this information is the employer's personnel department. These counts should be based on the

recipient's or contractor's records for the reported year. The **TOTAL** is a count of **all** covered employees for **all** categories combined, i.e., the sum of the columns.

Page 3 **ALCOHOL TESTING INFORMATION** (Section C) requires information for alcohol testing by category of testing. All numbers entered into the pre-employment category section of the table should be separated into the category of employment for which the person was applying or transferring. The other categories are for employee testing and require information for employees in **covered positions** only. Each part of this table must be completed for each category of testing. These categories include: (1) random, (2) post-accident, (3) reasonable suspicion, (4) return to duty, and (5) follow-up testing. These numbers **do not** include refusals for testing. A sample section of the table with example numbers is presented on page iv.

Four types of information are necessary to complete this table. The first blank column with the heading "**NUMBER OF SCREENING TESTS**," requires a count for all screening tests conducted for each employee category. The second blank column with the heading "**NUMBER OF CONFIRMATION TESTS**," requires a count for all confirmation alcohol tests performed for each employee category.

The third blank column with the heading "**NUMBER OF CONFIRMATION TEST RESULTS EQUAL TO 0.02, BUT LESS THAN 0.04**," requires a count for each employee category of completed alcohol tests that resulted in an alcohol concentration equal to or greater than 0.02, but less than 0.04.

The fourth blank column with the heading "**NUMBER OF CONFIRMATION TEST RESULTS EQUAL TO OR GREATER THAN 0.04**," requires a count for each employee category of completed alcohol tests that resulted in an alcohol concentration equal to or greater than 0.04. **Note: For return to duty testing, a confirmation result equal to or greater than 0.02 is a violation of the alcohol rule. Therefore, if the number of results equal to or greater than 0.04 is unknown, you may report all results in the third column of the table.**

Each column in the table should be added and the answer entered in the row marked "**TOTAL**".

A sample table is provided on page iv with example numbers.

Page 3 Below the part of the table containing pre-employment testing information are three boxes. This information should be available from the safety program manager or the alcohol program manager.

1) "**Number of persons denied a position as a covered employee following a pre-employment alcohol test indicating an alcohol concentration of 0.04 or greater**". This is a count of those persons who were not placed in a covered position because they took a breath test that resulted in an alcohol concentration of 0.04 or higher.

2) **"Number of accidents, as defined by the FTA alcohol testing regulation, which resulted in a post-accident alcohol test indicating an alcohol concentration of 0.04 or greater"**. This is a count of fatal and non-fatal accidents which resulted in post-accident breath alcohol tests indicating a concentration of 0.04 or greater for any employees involved in the accident.

3) **"Number of fatalities resulting from accidents which resulted in a post-accident alcohol test indicating an alcohol concentration of 0.04 or greater"**. This is a count of fatalities in accidents which resulted in post-accident alcohol tests indicating a concentration of 0.04 or greater for any employees involved in the fatal accidents.

Page 4 Following the table that summarizes **ALCOHOL TESTING INFORMATION**, you must provide the **number of employees who engaged in alcohol misuse who were returned to duty in a covered position during this reporting period (having complied with the recommendations of a substance abuse professional as described in FTA regulations)**. This information should be available from the personnel office and/or alcohol program manager.

SAMPLE APPLICANT TEST RESULTS TABLE

The following example is for Section C, **ALCOHOL TESTING INFORMATION**, which summarizes pre-employment testing results. The procedures detailed here also apply to the other categories of testing in Section C which require you to summarize testing results for employees. This example uses the categories "Revenue Vehicle Operation" and "Armed Security Personnel" to illustrate the procedures for completing this section.

A Screening tests were performed on 157 job applicants for revenue vehicle operator positions during the reporting year. This information is entered in the first blank column of the table in the row marked "Revenue Vehicle Operation".

B Confirmation tests were necessary for 6 of the 157 applicants for revenue vehicle operator positions. Enter this information in the second blank column of the table in the row marked "Revenue Vehicle Operation". The confirmation test results for these 6 applicants were the following:

Applicant	Confirmation Result
#1	0.06
#2	0.01
#3	0.11
#4	0.04
#5	0.03
#6	0.02

C The confirmation test results for 2 of the applicants for revenue vehicle operator positions were equal to or greater than 0.02, but less than 0.04. Enter this information in the fourth blank column of the table in the row marked "Revenue Vehicle Operation".

D

The confirmation test results for 3 of the applicants for revenue vehicle operator positions were equal to or greater than 0.04. Enter this information in the third blank column of the table in the row marked "Revenue Vehicle Operation".

E

The last row, marked "TOTAL", requires you to add the numbers in each of the columns. With this example, 157 applicants for revenue vehicle operator positions and 107 applicants for armed security personnel positions were subjected to screening tests. The total for that column would be 264 (i.e., 157+107). The same procedure should be used for each column. (i.e., add all the numbers in that column and place the answer in the last row).

Please note that our sample data collection form also has information for armed security personnel on line two. The same procedures outlined for revenue vehicle operators should be followed for entering the data on armed security personnel. With applicants for armed security personnel positions, 107 screening tests were conducted resulting in 3 confirmation tests. No confirmation results were equal to or greater than 0.02, but less than 0.04; and the confirmation test result for 1 of the armed security personnel applicants was equal to or greater than 0.04. This information is entered in the row marked "Armed Security Personnel".

PRE-EMPLOYMENT				
EMPLOYEE CATEGORY	NUMBER OF SCREENING TESTS	NUMBER OF CONFIRMATION TESTS	NUMBER OF CONFIRMATION TEST RESULTS EQUAL TO OR GREATER THAN 0.02, BUT LESS THAN 0.04	NUMBER OF CONFIRMATION TEST RESULTS EQUAL TO OR GREATER THAN 0.04
Revenue Vehicle Operation	157	6	2	3
Armed Security Personnel	107	3	0	1
TOTAL	264	9	2	4

A B C D E

Note that adding up the numbers for confirmation results in columns three and four will not always match the number entered in the second column, "NUMBER OF CONFIRMATION TESTS". These numbers may differ since some confirmation test results may be less than 0.02.

Remember that the same procedures indicated above are to be used for completing all of the categories for testing in Section C.

Page 5 **OTHER ALCOHOL TESTING/PROGRAM INFORMATION** (Section D) requires information on employees tested for drugs and alcohol at the same time and that you complete a table dealing with violations of other alcohol provisions/prohibitions of the regulation and a table dealing with employees who refused to submit to an alcohol test.

Page 5 **Number of employees administered drug and alcohol tests at the same time resulting in a verified positive drug test and an alcohol test indicating an alcohol concentration of 0.04 or greater**, requires that a count of all such employees be entered in the indicated box.

Page 5 **VIOLATIONS OF OTHER ALCOHOL PROVISIONS/PROHIBITIONS OF THIS REGULATION** requires supplying the number of covered employees who used alcohol prior to performing a safety-sensitive function, while performing a safety-sensitive function, and before taking a required post-accident alcohol test. The action taken with covered employees who violate any of these FTA alcohol regulation provisions is also to be supplied. Other violations not delineated in this table may also be provided.

Page 5 **EMPLOYEES WHO REFUSED TO SUBMIT TO AN ALCOHOL TEST** requires information on the **NUMBER OF COVERED EMPLOYEES** who refused to submit to a **random** or **non-random** (pre-employment, post-accident, reasonable suspicion, return to duty, or follow-up) alcohol test required under the FTA regulation.

Page 5 **ALCOHOL TRAINING/EDUCATION** (Section E) requires information on the number of supervisory personnel who have received alcohol training during the current reporting period.

Page 5 **FTA FUNDING SOURCES** (Section F) asks for the sources of FTA funds for your organization. Simply place a check mark by each applicable funding section.

For FTA Use Only

FTA ALCOHOL TESTING MIS DATA COLLECTION FORM OMB No. 2132-0557

YEAR COVERED BY THIS REPORT: 20 ___

A. EMPLOYER INFORMATION

Name _____

Address _____

_____

Contact _____

Phone _____

Consortium Used (if applicable)

Name _____

Address _____

_____

Contact _____

Phone _____

I, the undersigned, certify that the information provided on this Federal Transit Administration Alcohol Testing Management Information System Data Collection Form is, to the best of my knowledge and belief, true, correct, and complete for the period stated.

_____ Signature

_____ Date of Signature

_____ Title

Title 18, U.S.C. Section 1001, makes it a criminal offense subject to a maximum fine of $10,000, or imprisonment for not more than 5 years, or both, to knowingly and willfully make or cause to be made any false or fraudulent statements or representations in any matter within the jurisdiction of any agency of the United States.

The Federal Transit Administration estimates that the average burden for this report form is 8 hours. You may submit any comments concerning the accuracy of this burden estimate or any suggestions for reducing the burden to: Office of Safety and Security TPM-30 Federal Transit Administration; 400 7th St., S.W.; Washington, D.C. 20590; OR Office of Management and Budget, Paperwork Reduction Project (2132-0557); Washington, D.C. 20503.

B. COVERED EMPLOYEES

COVERED EMPLOYEES	
EMPLOYEE CATEGORY	NUMBER OF FTA COVERED EMPLOYEES
Revenue Vehicle Operation	
Revenue Vehicle and Equipment Maintenance	
Revenue Vehicle Control/Dispatch	
CDL/Non-Revenue Vehicle	
Armed Security Personnel	
TOTAL	

READ BEFORE COMPLETING THE REMAINDER OF THIS FORM:

1. All items refer to the **current** reporting period **only** (for example, January 1, 1994 - December 31, 1994).

2. This report is only for testing REQUIRED BY THE FEDERAL TRANSIT ADMINISTRATION (FTA) AND THE U.S. DEPARTMENT OF TRANSPORTATION (DOT):

   - Results should be reported only for employees in COVERED POSITIONS as defined by the FTA alcohol testing regulation.

   - The information requested should only include testing for alcohol using the standard procedures required by DOT regulation 49 CFR Part 40.

3. Information on refusals for testing should only be reported in Section D ["OTHER ALCOHOL TESTING INFORMATION"]. Do not include refusals for testing in other sections of this report.

4. Complete all items; DO NOT LEAVE ANY ITEM BLANK. If the value for an item is zero (0), place a zero (0) on the form.

C. ALCOHOL TESTING INFORMATION

EMPLOYEE CATEGORY	NUMBER OF SCREENING TESTS	NUMBER OF CONFIRMATION TESTS	NUMBER OF CONFIRMATION TEST RESULTS EQUAL TO OR GREATER THAN 0.02, BUT LESS THAN 0.04	NUMBER OF CONFIRMATION TEST RESULTS EQUAL TO OR GREATER THAN 0.04
PRE-EMPLOYMENT				
Revenue Vehicle Operation				
Revenue Vehicle and Equipment Maintenance				
Revenue Vehicle Control/Dispatch				
CDL/Non-Revenue Vehicle				
Armed Security Personnel				
Total				
RANDOM				
Revenue Vehicle Operation				
Revenue Vehicle and Equipment Maintenance				
Revenue Vehicle Control/Dispatch				
CDL/Non-Revenue Vehicle				
Armed Security Personnel				
Total				
POST-ACCIDENT				
Revenue Vehicle Operation				
Revenue Vehicle and Equipment Maintenance				
Revenue Vehicle Control/Dispatch				
CDL/Non-Revenue Vehicle				
Armed Security Personnel				
Total				

Number of persons denied a position as a covered employee following a pre-employment alcohol test indicating an alcohol concentration of 0.04 or greater:	

	FATAL	NON-FATAL
Number of accidents, as defined by the FTA alcohol testing regulation, which resulted in a post-accident alcohol test indicating an alcohol concentration of 0.04 or greater:		

Number of fatalities resulting from accidents which resulted in a post-accident alcohol test indicating an alcohol concentration of 0.04 or greater:	

C. ALCOHOL TESTING INFORMATION (cont.)

EMPLOYEE CATEGORY	NUMBER OF SCREENING TESTS	NUMBER OF CONFIRMATION TESTS	NUMBER OF CONFIRMATION TEST RESULTS EQUAL TO OR GREATER THAN 0.02, BUT LESS THAN 0.04	NUMBER OF CONFIRMATION TEST RESULTS EQUAL TO OR GREATER THAN 0.04
REASONABLE SUSPICION				
Revenue Vehicle Operation				
Revenue Vehicle and Equipment Maintenance				
Revenue Vehicle Control/Dispatch				
CDL/Non-Revenue Vehicle				
Armed Security Personnel				
Total				
RETURN TO DUTY				
Revenue Vehicle Operation				
Revenue Vehicle and Equipment Maintenance				
Revenue Vehicle Control/Dispatch				
CDL/Non-Revenue Vehicle				
Armed Security Personnel				
Total				
FOLLOW-UP				
Revenue Vehicle Operation				
Revenue Vehicle and Equipment Maintenance				
Revenue Vehicle Control/Dispatch				
CDL/Non-Revenue Vehicle				
Armed Security Personnel				
Total				

Number of employees who engaged in alcohol misuse who were returned to duty in a covered position during this reporting period (having complied with the recommendations of a substance abuse professional as described in FTA regulations):	

D. OTHER ALCOHOL TESTING/PROGRAM INFORMATION

Number of employees administered drug and alcohol tests at the same time resulting in a verified positive drug test and an alcohol test indicating an alcohol concentration of 0.04 or greater:	

VIOLATIONS OF OTHER ALCOHOL PROVISIONS/PROHIBITIONS OF THIS REGULATION		
NUMBER OF COVERED EMPLOYEES	VIOLATION	ACTION TAKEN
	Covered employee used alcohol while performing safety-sensitive function.	
	Covered employee used alcohol within 4 hours of performing safety-sensitive function.	
	Covered employee used alcohol before taking a required post-accident alcohol test.	

EMPLOYEES WHO REFUSED TO SUBMIT TO AN ALCOHOL TEST	Number
Covered employees who refused to submit to a random alcohol test required under the FTA regulation:	
Covered employees who refused to submit to a non-random alcohol test required under the FTA regulation:	

E. ALCOHOL TRAINING/EDUCATION

TRAINING DURING CURRENT REPORTING PERIOD	Number
Supervisory personnel who have received at least 60 minutes of initial training on the specific contemporaneous physical, behavioral, and performance indicators of probable alcohol use as required by FTA alcohol testing regulations:	

F. FTA FUNDING SOURCES

FTA FUNDING SOURCES				
Check all sections that apply:	5307	5309	5310	5311

APPENDIX D TO PART 655 - ALCOHOL TESTING MANAGEMENT INFORMATION SYSTEM (MIS) "EZ" DATA COLLECTION FORM

INSTRUCTIONS

The following instructions are to be used as a guide for completing the Federal Transit Administration (FTA) **Alcohol Testing MIS "EZ" Data Collection Form**. This form should only be used if there is **no alcohol misuse** to be reported by your company. These instructions outline and explain the information requested and indicate the probable sources for this information. This reporting form includes four sections. These sections address the data elements required in the FTA and the U.S. Department of Transportation (DOT) alcohol testing regulations.

SECTION A - EMPLOYER INFORMATION requires the year covered by this report, the agency name for which the report is done, a current address, and a person's name and phone number to contact if there are any questions about the report. Below this, information must be entered for the consortium used (if applicable). Finally, a signature, title, and date are required certifying the correctness and completeness of the form. Note: A separate report must be submitted by each FTA recipient for each of its contract service and contract maintenance providers covered by the FTA alcohol testing regulation.

SECTION B - COVERED EMPLOYEES requires a count for each employee category that must be tested under the FTA alcohol testing regulation. The employee categories are: Revenue Service Vehicle Operation, Revenue Service Vehicle and Equipment Maintenance, Revenue Service Vehicle Control/Dispatch, Commercial Driver License (CDL) Holders who operate Non-Revenue Service Vehicles, and Security Personnel who carry Firearms. The most likely source for this information is the employer's personnel department. These counts should be based on the recipient's or contractor's records for the reported year. The **TOTAL** is a count of **all** covered employees for **all** categories combined, i.e., the sum of the columns.

SECTION C - ALCOHOL TESTING INFORMATION requires information for alcohol testing, refusals for testing, and training/education. The first table requests information on the **NUMBER OF ALCOHOL SCREENING TESTS CONDUCTED** in each category for testing. All numbers entered into the pre-employment category section of the table should be separated into the category of employment for which the person was applying or transferring. The other categories are for employee testing and require information for employees in **covered positions** only. Enter the number of alcohol screening tests conducted by employee category for each category of testing. Testing categories include: (1) random, (2) post-accident, (3) reasonable suspicion, (4) return to duty, and (5) follow-up testing. Each column in the table should be added and the answer entered in the row marked "TOTAL".

Following the table that summarizes **ALCOHOL TESTING INFORMATION**, you must provide a count of **employees who engaged in alcohol misuse who were returned to duty in a covered position (having complied with the recommendations of a substance abuse professional as described in the FTA regulation)**. This information should be available from the personnel office and/or alcohol program manager.

EMPLOYEES WHO REFUSED TO SUBMIT TO AN ALCOHOL TEST requires a count of the **NUMBER OF COVERED EMPLOYEES** who refused to submit to a **random** or **non-random** (pre-employment, post-accident, reasonable suspicion, return to duty, or follow-up) alcohol test required under the FTA regulation.

ALCOHOL TRAINING/EDUCATION DURING CURRENT REPORTING PERIOD requires information on the number of supervisory personnel who have received alcohol training during the current reporting period.

SECTION D - FTA FUNDING SOURCES asks for the sources of FTA funds for your organization. Simply place a check mark by each applicable funding section.

For FTA Use Only

FTA ALCOHOL TESTING MIS "EZ" DATA COLLECTION FORM OMB No. 2132-0557
(No Alcohol Misuse)

YEAR COVERED BY THIS REPORT: 20 __

A. EMPLOYER INFORMATION

Company Name _____

Address _____

_____

Contact _____

Phone _____

Consortium Used (if applicable)

Name _____

Address _____

_____

Contact _____

Phone _____

I, the undersigned, certify that the information provided on the attached Federal Transit Administration Alcohol Testing Management Information System "EZ" Data Collection Form is, to the best of my knowledge and belief, true, correct, and complete for the period stated.

_____ Signature

_____ Date of Signature

_____ Title

Title 18, U.S.C. Section 1001, makes it a criminal offense subject to a maximum fine of $10,000, or imprisonment for not more than 5 years, or both, to knowingly and willfully make or cause to be made any false or fraudulent statements or representations in any matter within the jurisdiction of any agency of the United States.

The Federal Transit Administration estimates that the average burden for this report form is 8 hours. You may submit any comments concerning the accuracy of this burden estimate or any suggestions for reducing the burden to: Office of Safety and Security TPM-30 Federal Transit Administration; 400 7th St., S.W.; Washington, D.C. 20590; OR Office of Management and Budget, Paperwork Reduction Project (2132-0557); Washington, D.C. 20503.

B. COVERED EMPLOYEES

COVERED EMPLOYEES	
EMPLOYEE CATEGORY	NUMBER OF FTA COVERED EMPLOYEES
Revenue Vehicle Operation	
Revenue Vehicle and Equipment Maintenance	
Revenue Vehicle Control/Dispatch	
CDL/Non-Revenue Vehicle	
Armed Security Personnel	
TOTAL	

C. ALCOHOL TESTING INFORMATION

NUMBER OF ALCOHOL SCREENING TESTS CONDUCTED						
EMPLOYEE CATEGORY	PRE-EMPLOYMENT	RANDOM	POST-ACCIDENT	REASONABLE SUSPICION	RETURN TO DUTY	FOLLOW-UP
Revenue Vehicle Operation						
Revenue Vehicle and Equipment Maintenance						
Revenue Vehicle Control/Dispatch						
CDL/Non-Revenue Vehicle						
Armed Security Personnel						
Total						

Number of employees who engaged in alcohol misuse who were returned to duty in a covered position (having complied with the recommendations of a substance abuse professional as described in the FTA regulation):	

EMPLOYEES WHO REFUSED TO SUBMIT TO AN ALCOHOL TEST	Number
Covered employees who refused to submit to a **random** alcohol test required under the FTA regulation:	
Covered employees who refused to submit to a **non-random** alcohol test required under the FTA regulation:	
ALCOHOL TRAINING/EDUCATION DURING CURRENT REPORTING PERIOD	**Number**
Supervisory personnel who have received at least 60 minutes of initial training on the specific contemporaneous physical, behavioral, and performance indicators of probable alcohol use as required by FTA alcohol testing regulations:	

D. FTA FUNDING SOURCES

FTA FUNDING SOURCES				
Check all sections that apply:	5307 ___	5309 ___	5310 ___	5311 ___

Issued on: April 2, 2001.

Hiram J. Walker,

Acting Deputy Administrator, Federal Transit Administration.

[FR Doc. 01–9415 Filed 4–27–01; 8:45 am]

BILLING CODE 4910–57–C

Federal Register

Monday,
April 30, 2001

Part IV

Department of Agriculture

Agricultural Marketing Service

7 CFR Part 1210

Watermelon Research and Promotion Plan: Referendum Procedures; Proposed Rule

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 1210

[FV–01–701 PR]

Watermelon Research and Promotion Plan: Referendum Procedures

ACTION: Proposed rule with request for comments.

SUMMARY: This proposed rule would establish procedures which the U.S. Department of Agriculture (USDA or the Department) would use to conduct referenda under the Watermelon Research and Promotion Plan (Plan). Initially, they will be used in a referendum on whether watermelon producers, handlers, and importers approve an amendment to the Plan which would require all handlers to pay assessments on all watermelons they handle, including any watermelons handled after their importation into the United States.

DATES: Comments must be received by June 29, 2001.

ADDRESSES: Interested persons are invited to submit written comments concerning the proposed rule to the Docket Clerk, Research and Promotion Branch, Fruit and Vegetable Programs (FV), Agricultural Marketing Service (AMS), USDA, Stop 0244, 1400 Independence Avenue, SW., Room 2535 South Building, Washington, DC 20250–0244. Comments should be submitted in triplicate and will be made available for public inspection at the above address during regular business hours, or on the Internet at www.ams.usda.gov/fv/rpdocketlist.htm. Comments may also be submitted electronically to: malinda.farmer@usda.gov. All comments should reference the docket number and the date and page number of this issue of the **Federal Register**. A copy of this rule may be found at the above Internet address.

Pursuant to the Paperwork Reduction Act of 1995 (PRA), also send comments regarding the accuracy of the burden estimate, ways to minimize the burden, including through the use of automated collection techniques or other forms of information technology, or any other aspect of this collection of information, to the above address. Comments concerning the information collection under the PRA should also be sent to the Desk Officer for Agriculture, Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Daniel R. Manzoni, Research and Promotion Branch, FV, AMS, USDA, Stop 0244, 1400 Independence Avenue, SW., Room 2535 South Building, Washington, DC 20250–0244; telephone (202) 720–9915; facsimile (202) 205–2800; or Daniel.Manzoni@usda.gov.

SUPPLEMENTARY INFORMATION: The National Watermelon Promotion Board (Board) administers the Watermelon Research and Promotion Plan (Plan) under the supervision of the U.S. Department of Agriculture (USDA). The Plan was issued under the Watermelon Research and Promotion Act (Act) in 1989.

The Board conducts promotional, consumer information, and industry information programs. To fund these activities, producers and first handlers pay 2 cents per hundredweight (cwt.) on the watermelon that they produce or handle, respectively, and importers pay 4 cents per cwt. on the foreign watermelons they import into the United States. First handlers collect the assessments from producers of fewer than 10 acres of watermelons and send the producer assessment to the Board along with their handler assessments. The assessments on imported watermelons are collected by the U.S. Customs Service (Customs) at the time the watermelons enter the United States. Customs remits the assessments to the Board. Importers of less than 150,000 pounds of watermelons annually may request reimbursement of their assessments.

The Board has recommended amending the Plan be amended to cover all handlers of domestic watermelons—not just first handlers—and that these handlers pay assessments on all watermelons they handle, including any watermelons handled after their importation into the United States. The additional handlers would be wholesalers, persons who arrange the sale or transfer of watermelons (such as brokers), and fresh-cut processors. Watermelon producers, handlers, and importers will vote in a referendum on whether the amendment will be adopted.

A proposed rule on the amendment is published separately in this issue of the **Federal Register**.

Question and Answer Overview

Why Are These Referendum Procedures Being Proposed?

USDA will conduct rulemaking and a national referendum on an amendment to the Plan. In order to conduct the referendum, procedures need to be established. Publishing this proposed rule provides the opportunity for public input on the procedures before they are finalized.

How Long Do I Have To Comment on the Proposed Rule?

You have 60 days to submit written comments to USDA on the proposed procedures or to OMB on the paperwork burden associated with the procedures. You may submit your comments by mail, fax, or e-mail as indicated above.

Who Is Eligible To Vote in the Referendum?

If the following persons produced, handled, or imported watermelons in calendar year 2000, they may vote in the referendum: Current producers of 10 or more acres of watermelons; watermelon handlers (including first handlers, wholesalers, fresh-cut processors, and anyone who arranges the sale or transfer of watermelons); and watermelon importers of 150,000 or more pounds of watermelons annually.

How Will the Vote in the Referendum Be Tabulated?

Each eligible producer, handler, and importer will be allowed one vote in the referendum. In order to be implemented, the amendment must be approved by a majority of the producers, handlers, and importers voting in the referendum.

When Will the Referendum Be Held?

After we have analyzed the comments on this rule and the comments on the proposed rule on the amendments to the Plan, we will issue final referendum procedures and a second proposed rule on amendments. The second proposed rule on the amendments will include a Referendum Order, which will announce the voting period for the referendum. The voting period will last 30 days and be announced 30 days in advance.

How Can I Vote in the Referendum?

Voting will take place by mail. All known eligible producers, handlers, and importers will receive a ballot and voting instructions in the mail from USDA. Producers, handlers, and importers who believe they are eligible to vote and who do not receive a ballot in the mail may request a ballot by calling a toll-free telephone number. The ballot must be received by USDA by close of business on the last day of the voting period.

How Will USDA Make Certain That Only Eligible Persons Vote in the Referendum?

USDA will use Board records to verify voter eligibility and may request

evidence of eligibility from persons unknown to the Board.

How Will USDA Make Certain That Every Eligible Person Has the Opportunity To Vote?

USDA will have a toll-free telephone number for persons to call to request a ballot if they do not receive a ballot and they believe they are eligible to vote. These persons will be required to provide documentation of their eligibility to vote.

Executive Orders 12866 and 12988

This proposed rule has been determined to be not significant for purposes of Executive Order (E.O.) 12866 and therefore has not been reviewed by the Office of Management and Budget (OMB).

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

Under Section 1650 of the Act, non-exempt producers, handlers, and importers of watermelons may file a written petition with the Secretary of Agriculture (Secretary) if they believe that the Plan, any provision of the Plan, or any obligation imposed in connection with the Plan, is not in accordance with law. In the petition, the person may request a modification of the Plan or an exemption from the Plan. The petitioner will have the opportunity for a hearing on the petition. Afterwards, an Administrative Law Judge (ALJ) will issue a decision. If the petitioner disagrees with the ALJ's decision, the petitioner has 30 days to appeal to the Judicial Officer, who will issue a ruling on behalf of the Secretary. If the petitioner disagrees with the Secretary's ruling, the petitioner may file, within 20 days, an appeal in the U.S. District Court for the district where the petitioner resides or conducts business.

Regulatory Flexibility Act and Paperwork Reduction Act

Initial Regulatory Flexibility Analysis

In accordance with the Regulatory Flexibility Act (RFA) [5 U.S.C. 601 *et seq.*], the Agricultural Marketing Service (AMS) is required to examine the impact of this proposed rule on small entities. The purpose of the RFA is to fit regulatory actions to the scale of businesses subject to such actions so that small businesses will not be disproportionately burdened.

In 13 CFR 121.201, the Small Business Administration defines small agricultural service firms (handlers and importers) as those having annual receipts of less than $5 million and small agricultural producers as those having annual receipts of not more than $500,000.

There would be approximately 2,220 domestic watermelon producers, 1,170 domestic watermelon handlers, and 280 importers of foreign watermelons who would be eligible to vote under these referendum procedures. Currently, there are approximately 620 first handlers who are subject to the provisions of the Plan. An additional estimated 480 wholesalers and persons who arrange the sale or transfer of watermelons (such as brokers) and 70 fresh-cut processors would also be subject to the Plan if the amendment is approved in the referendum. A majority of these producers, handlers, and importers may be classified as small entities.

This proposed rule would create a new Subpart D-Referendum Procedures [7 CFR 1210.600–1210.607] under the Plan. The procedures would be used in conducting referenda under the Act and the Plan. Initially, the proposed procedures will be used for a referendum during which eligible watermelon producers, handlers, and importers will vote on a proposed amendment to the Plan. The amendment would revise the Plan and the regulations under the Plan to include all handlers. A proposed rule on the amendment is published separately in this issue of the **Federal Register**.

USDA will keep the watermelon industry informed throughout the referendum process to ensure that they are aware of and are able to participate in the referendum. USDA will also publicize information regarding the referendum process, so that trade associations and related industry media can be kept informed.

Voting in the referendum is optional. However, if producers, handlers, and importers choose to vote, the burden of casting a ballot would be offset by the benefits of having the opportunity to vote on whether the Plan should be amended.

The information collection requirements contained in this proposed rule are designed to minimize the burden on producers, handlers and importers voting in referenda. The estimated additional annual cost of providing the information by the estimated 3,670 persons eligible to vote in referenda would be $2,290 or $0.62 per voter.

The Secretary considered requiring eligible voters vote in person at various USDA offices across the country. The Secretary also considered electronic voting, but the use of computers is not universal. Conducting the referendum from one central location by mail ballot will be more cost-effective and reliable. The Department will provide easy access to information for potential voters through a toll-free telephone line.

There are no federal rules that duplicate, overlap, or conflict with this rule.

AMS has performed this initial Regulatory Flexibility Analysis regarding the impact of this proposed rule on small entities. However, in order to have additional data that may be helpful in evaluating the effects of this rule on small entities, we are inviting comments concerning potential effects. In particular, we are interested in determining the number of wholesalers, fresh-cut processors, and persons who arrange the sale or transfer of watermelons. In the past, these persons have not been eligible to vote in referenda on the watermelon program.

Paperwork Reduction Act

In accordance with the Office of Management and Budget (OMB) regulation [5 CFR 1320] which implements the Paperwork Reduction Act of 1995 [44 U.S.C. Chapter 35], the referendum ballot represents the information collection that may be imposed by this rule.

Approximately 2,220 watermelon producers, 1,170 domestic watermelon handlers, and 280 importers of foreign watermelons would be eligible to vote in the referendum.

The ballot has been previously approved for use under OMB Number 0581–0093. However, the number of producers, handlers, and importers eligible to vote in referenda has changed. Therefore, the new burden has been submitted to OMB.

Title: National Research, Promotion, and Consumer Information Programs.

OMB Number: 0581–0093.

Expiration Date of Approval: January 31, 2001.

Type of Request: Revision of a currently approved information collection for advisory committees and boards and for research and promotion programs.

Abstract: The information collection requirements in this request are essential to carry out the intent of the Act. The new burden associated with the ballot is as follows:

Estimate of Burden: Public reporting burden for this collection of information is estimated to average 0.5 hours per response.

Respondents: Eligible producers, handlers, and importers.

Estimated Number of Respondents: 3,670.

Estimated Number of Responses per Respondent: 1 every 8 years (0.125).

Estimated Total Annual Burden on Respondents: 229 hours.

The estimated additional annual cost of providing the information by the estimated 3,670 persons eligible to vote in referenda would be $2,290 or $0.62 per voter. The currently approved burden for the ballot is 149.5. Therefore, the new burden estimate represents an increase of 79.5 hours which would be added under OMB No. 0581–0093.

Comments are invited on: (a) Whether the proposed additional collection of information is necessary and whether it will have practical utility; (b) the accuracy of USDA's estimate of the burden of the proposed increase in the collection of information, including the validity of the methodology and assumption used; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

Comments concerning the information collection requirements contained in this action should reference OMB No. 0581–0093, the docket number, and the date and page number of this issue of the **Federal Register**. Comments should be sent to the USDA Docket Clerk and OMB Desk Officer for Agriculture at the addresses and within the time frames specified above. All comments received will be available for public inspection during regular business hours at the same address. All responses to this notice will be summarized and included in the request for OMB approval.

OMB is required to make a decision concerning the increase in the collection of information contained in this rule between 30 and 60 days after publication. Therefore, a comment to OMB is best assured of having its full effect if OMB receives it within 30 days of publication.

Background

The Board conducts promotional, consumer information, and industry information programs. To fund these activities, producers and handlers pay 2 cents per hundredweight (cwt.) on the watermelon that they produce or handle, respectively, and importers pay 4 cents per cwt. on the foreign watermelons they import into the United States. Handlers collect the assessments from producers of 10 acres or more of watermelons and send the producer assessment to the Board along with their handler assessments. The assessments on imported watermelons are collected by the U.S. Customs Service (Customs) at the time the watermelons enter the United States. Customs remits the assessments to the Board. Importers of less than 150,000 pounds of watermelons annually may request reimbursement of their assessments.

The Board has recommended that the Plan and its rules and regulations be amended to cover all handlers of watermelons. A proposed rule on the amendment is published separately in this issue of the **Federal Register**.

Section 1655(a) of the Act requires that amendments to the Plan must be approved by the industry in a referendum. Section 1653(b) provides that amendments will not take effect unless they are approved by a majority of eligible voters who vote. Therefore, a referendum is required for the proposed amendment.

The proposed referendum procedures provide that the following persons would be eligible to vote in referenda: producers of 10 or more acres of watermelons; all handlers; and importers of 150,000 pounds or more annually. In the referendum to determine whether the industry favors expanding coverage of the Plan to all handlers (not just first handlers), the additional handlers will be allowed to vote as if this amendment were in place during the representative period and at the time of the referendum. The additional handlers include wholesalers, anyone who arranges the sale or transfer of watermelons (such as brokers), and fresh-cut processors. If the proposed amendment is approved in the referendum, the additional handlers would vote in subsequent referenda. If the proposed amendment is not approved in the referendum, the additional handlers would not vote in future referenda.

This proposed rule would add a new Subpart D—Referendum Procedures [7 CFR 1210.600–1210.607] to 7 CFR part 1210. The proposed procedures cover definitions, voting, instructions, subagents, ballots, referendum report, and confidential information.

In addition, this rule would: (1) Redesignate Subpart—Watermelon Research and Promotion Plan [7 CFR 1210.301–1210.367] as Subpart A; (2) redesignate and rename Subpart—Procedures for Nominating Members to the National Watermelon Promotion Board [7 CFR 1210.400–1210.405] as Subpart B—Nomination Procedures; and redesignate Subpart—Rules and Regulations [7 CFR 1210.500–1210.540] as Subpart C.

All written comments received in response to this proposal by the date specified will be considered prior to finalizing this action. The industry is asked to pay particular attention to the definitions to be sure that they are appropriate for purposes of determining voter eligibility. The industry is also encouraged to comment on any other practical considerations with regard to conducting the referendum within the parameters set forth in this proposed rule and the Act.

List of Subjects in 7 CFR Part 1210

Administrative practice and procedure, Advertising, Consumer information, Marketing agreements, Reporting and recordkeeping requirements, Watermelon promotion.

For the reasons set forth in the preamble, it is proposed that Title 7, chapter XI of the Code of Federal Regulations, be amended as follows:

PART 1210—WATERMELON RESEARCH AND PROMOTION

1. The authority citation for 7 CFR part 1210 continues to read as follows:

Authority: 7 U.S.C. 4901–4912.

2. Revise the subpart heading for ''Subpart—Watermelon Research and Promotion Plan'' to read as follows:

Subpart A—Watermelon Research and Promotion Plan

3. Revise the subpart heading for ''Subpart—Procedures for Nominating Members to the National Watermelon Promotion Board'' to read as follows:

Subpart B—Nominating Procedures

4. Revise the subpart heading for ''Subpart—Rules and Regulations'' to read as follows:

Subpart C—Rules and Regulations

5. Add a new Subpart D—Referendum Procedures to read as follows:

Subpart D—Referendum Procedures

Sec.

1210.600 General.
1210.601 Definitions.
1210.602 Voting.
1210.603 Instructions.
1210.604 Subagents.
1210.605 Ballots.
1210.606 Referendum report.
1210.607 Confidential information.

Subpart D—Referendum Procedures

§ 1210.600 General.

Referenda to determine whether eligible producers, handlers, and importers favor the continuation, suspension, termination, or amendment of the Watermelon Research and Promotion Plan shall be conducted in accordance with this subpart.

§ 1210.601 Definitions.

Unless otherwise defined below, the definition of terms used in these procedures shall have the same meaning as the definitions in the Plan.

(a) *Administrator* means the Administrator of the Agricultural Marketing Service, with power to redelegate, or any officer or employee of the Department to whom authority has been delegated or may hereafter be delegated to act in the Administrator's stead.

(b) *Department* means the United States Department of Agriculture.

(c) *Eligible handler* means any person (except a common contract carrier of watermelons owned by another person) who handles watermelons, including a producer who handles watermelons of the producer's own production, subject to the provisions of § 1210.602(a), who handles watermelons as a person performing a handling function and either:

(1) Takes title or possession of watermelons from a producer and directs the grading, packing, transporting, and selling of the watermelons in the current of commerce;

(2) Purchases watermelons from producers;

(3) Purchases watermelons from handlers;

(4) Purchases watermelons from importers; or

(5) Arranges the sale or transfer of watermelons from one party to another and takes title or possesssion of the watermelons: *Provided,* That harvest crews and common carriers who collect and transport watermelons from the field to a handler are not handlers and that retailers, wholesale retailers, foodservice distributors, and foodservice operators are not handlers.

(d) *Eligible importer* means any person who imports 150,000 pounds or more watermelons annually into the United States as principal or as an agent, broker, or consignee for any person who produces watermelons outside the United States for sale in the United States. An importer who imports less than 150,000 pounds of watermelons annually and did not apply for and receive reimbursement of assessments is also an eligible importer.

(e) *Eligible producer* means any person who is engaged in the growing of 10 or more acres of watermelons, including any person who owns or shares the ownership and risk of loss of such watermelon crop. A person who shares the ownership and risk of loss includes a person who:

(1) Owns and farms land, resulting in ownership, by said producer, of the watermelons produced thereon;

(2) Rents and farms land, resulting in ownership, by said producer, of all or a portion of the watermelons produced thereon; or

(3) Owns land which said producer does not farm and, as rental for such land, obtains the ownership of a portion of the watermelons produced thereon. Ownership of, or leasehold interest in land, and the acquisition, in any manner other than set forth in this subpart, of legal title to the watermelons grown on said land, shall not be deemed to result in such owners or lessees becoming producers. Persons who produce watermelons for non-food uses are not producers for the purposes of this subpart.

(f) *Person* means any individual, group of individuals, partnership, corporation, association, cooperative, or any other entity. For the purpose of this definition, the term partnership includes, but is not limited to:

(1) A husband and wife who have title to, or leasehold interest in, land as tenants in common, joint tenants, tenants by the entirety, or, under community property laws, as community property, and

(2) So-called *joint ventures* wherein one or more parties to the agreement, informal or otherwise, contributed land and others contributed capital, labor, management, equipment, or other services, or any variation of such contributions by two or more parties, so that it results in the production, handling, or importation of watermelons for market and the authority to transfer title to the watermelons so produced, handled, or imported.

(g) *Referendum agent* or *agent* means the individual or individuals designated by the Secretary to conduct the referendum.

(h) *Representative period* means the period designated by the Secretary pursuant to the Act.

§ 1210.602 Voting.

(a) Each person who is an eligible producer, handler, or importer as defined in this subpart, at the time of the referendum and who also was a producer, handler, or importer during the representative period, shall be entitled to one vote in the referendum: *Provided*, That each producer in a landlord-tenant relationship or a divided ownership arrangement involving totally independent entities cooperating only to produce watermelons in which more than one of the parties is a producer, shall be entitled to one vote in the referendum covering only that producer's share of the ownership: *Provided further*, That the vote of a person who both produces and handles watermelons will be counted as a handler vote if the producer purchased watermelons from other producers, in a combined total volume that is equal to 25 percent or more of the producer's own production; or the combined total volume of watermelon handled by the producer from the producer's own production and purchased from other producer's production is more than 50 percent of the producer's own production: *Provided further*, That the vote of a person who both imports and handles watermelons will be counted as an importer vote if that person imports 50 percent or more of the combined total volume of watermelons handled and imported by that person.

(b) Proxy voting is not authorized, but an officer or employee of a corporate producer, handler, or importer, or an administrator, executor, or trustee of a producing, handling, or importing entity may cast a ballot on behalf of such entity. Any individual so voting in a referendum shall certify that the individual is an officer, employee of the producer, handler, or importer, or an administrator, executor, or trustee of a producing, handling, or importing entity and that the individual has the authority to take such action. Upon request of the referendum agent, the individual shall submit adequate evidence of such authority.

(c) *Casting of ballots.* All ballots are to be cast as instructed by the Secretary.

§ 1210.603 Instructions.

The referendum agent shall conduct the referendum, in the manner herein provided, under the supervision of the Administrator. The Administrator may prescribe additional instructions, not inconsistent with the provisions hereof, to govern the procedure to be followed by the referendum agent. Such agent shall:

(a) Determine the period during which ballots may be cast.

(b) Provide ballots and related material to be used in the referendum. The ballot shall provide for recording essential information, including that needed for ascertaining whether the

person voting, or on whose behalf the vote is cast, is an eligible voter.

(c) Give reasonable public notice of the referendum:

(1) By utilizing available media or public information sources, without incurring advertising expense, to publicize the voting period, method of voting, eligibility requirements, and other pertinent information. Such sources of publicity may include, but are not limited to, print and radio; and

(2) By such other means as said agent may deem advisable.

(d) Mail to eligible producers; importers; and in the case of an order assessing handlers, handlers whose names and addresses are known to the referendum agent; the instructions on voting; a ballot; and a summary of the terms and conditions to be voted upon. No person who claims to be eligible to vote shall be refused a ballot. However, such persons may be required to submit evidence of their eligibility.

(e) At the end of the voting period, collect, open, number, and review the ballots and tabulate the results in the presence of an agent of a third party authorized to monitor the referendum process.

(f) Prepare a report on the referendum.

(g) Announce the results to the public.

§ 1210.604 Subagents.

The referendum agent may appoint any individual or individuals necessary to assist the agent in performing such agent's functions hereunder. Each individual so appointed may be authorized by the agent to perform any or all of the functions which, in the absence of such appointment, shall be performed by the agent.

§ 1210.605 Ballots.

The referendum agent and subagents shall accept all ballots cast. However, if an agent or subagent deems that a ballot should be questioned for any reason, the agent or subagent shall endorse above their signature, on the ballot, a statement to the effect that such ballot was questioned, by whom questioned, why the ballot was questioned, the results of any investigation made with respect to the questionable ballot, and the disposition of the questionable ballot. Ballots invalid under this subpart shall not be counted.

§ 1210.606 Referendum report.

Except as otherwise directed, the referendum agent shall prepare and submit to the Administrator a report on the results of the referendum, the manner in which it was conducted, the extent and kind of public notice given, and other information pertinent to analysis of the referendum and its results.

§ 1210.607 Confidential information.

All ballots cast and their contents and all other information or reports furnished to, compiled by, or in possession of, the referendum agent or subagents that reveal, or tend to reveal, the identity or vote of any producer, handler, or importer of watermelons shall be held strictly confidential and shall not be disclosed.

Dated: April 23, 2001.

Kenneth C. Clayton,

Acting Administrator, Agricultural Marketing Service.

[FR Doc. 01–10601 Filed 4–27–01; 8:45 am]

BILLING CODE 3410–02–P

Federal Register

Monday,
April 30, 2001

Part V

Department of Agriculture

Agricultural Marketing Service

7 CFR Part 1210

Watermelon Research and Promotion Plan; Amendment To Cover All Handlers; Proposed Rule

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 1210

[FV–01–702 PR1]

Watermelon Research and Promotion Plan; Amendment To Cover All Handlers

ACTION: Proposed rule with request for comments.

SUMMARY: This proposed rule would amend the Watermelon Research and Promotion Plan (Plan) and the regulations issued under the Plan to cover all handlers of watermelons—including wholesalers, persons who arrange the sale or transfer of watermelons, and fresh-cut processors in addition to the first handlers who are currently covered. Under this rule, all handlers would pay assessments and file reports on all watermelons they handle, including any watermelons handled domestically after their importation. All handlers would also be eligible to seek nomination to the National Watermelon Promotion Board and vote in referenda. The amendment would increase assessment income under the watermelon program. In order to become effective, the amendment must be approved by a majority of the watermelon producers, handlers, and importers voting in a referendum.

DATES: Comments must be received by June 29, 2001.

ADDRESSES: Interested persons are invited to submit written comments concerning the proposed rule to the Docket Clerk, Research and Promotion Branch, Fruit and Vegetable Programs (FV), Agricultural Marketing Service (AMS), USDA, Stop 0244, 1400 Independence Avenue, S.W., Room 2535 South Building, Washington, DC 20250–0244. Comments should be submitted in triplicate and will be made available for public inspection at the above address during regular business hours, or on the Internet at www.ams.usda.gov/fv/rpdocketlist.htm. Comments may also be submitted electronically to: malinda.farmer@usda.gov. All comments should reference the docket number and the date and page number of this issue of the **Federal Register**. A copy of this rule may be found at the above Internet address.

Pursuant to the Paperwork Reduction Act of 1995 (PRA), also send comments regarding the accuracy of the burden estimate, ways to minimize the burden, including the use of automated collection techniques or other forms of information technology, or any other aspect of this collection of information, to the above address. Comments concerning the information collection under the PRA should also be sent to the Desk Officer for Agriculture, Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Daniel R. Manzoni, Research and Promotion Branch, FV, AMS, USDA, Stop 0244, 1400 Independence Avenue, SW., Room 2535 South Building, Washington, DC 20250–0244; telephone (202) 720–9915; facsimile (202) 205–2800; or e-mail Daniel.Manzoni@USDA.GOV.

SUPPLEMENTARY INFORMATION: The National Watermelon Promotion Board (Board) administers the Watermelon Research and Promotion Plan (Plan) [7 CFR part 1210] under the supervision of the U.S. Department of Agriculture (USDA or the Department). The Plan was implemented in June 1989 under the Watermelon Research and Promotion Act (Act) [Pub. L. 99–198; enacted January 1, 1986; 7 U.S.C. 4901–4916, as amended].

Under the Plan, the National Watermelon Promotion Board (Board) conducts promotional, consumer information, and industry information programs. To fund these activities, producers and handlers pay 2 cents per hundredweight (cwt.) on the domestic watermelons that they produce or handle, respectively, and importers pay 4 cents per cwt. on the foreign watermelons they import into the United States. Handlers collect the assessments from producers of 10 or more acres of watermelons and send the producer assessment to the Board along with their handler assessments. The assessments on imported watermelons are collected by the U.S. Customs Service (Customs) at the time the watermelons enter the United States. Customs remits the assessments to the Board. Importers of less than 150,000 pounds of watermelons annually may request the Board to reimburse them for the assessments collected by Customs and remitted to the Board.

Question and Answer Overview

Why Should All Handlers of Watermelons Pay Assessments Under the Plan?

Between the farm and retail markets, watermelons are handled several times. The Plan currently only covers first handlers of watermelons—those who first put watermelons into the marketing chain. However, wholesalers, fresh-cut processors, and other persons who arrange the sale or transfer of watermelons perform similar functions and benefit from the Board's promotion of watermelons. Therefore, the Board recommended that these additional handlers also be covered by the Plan. Including all handlers would simplify the assessment process because all—not just some—handlers would be required to pay assessments.

What Would Be the Overall Impact of This Rule?

Currently, there are approximately 619 first handlers required to pay assessments to the Board on the domestic watermelons they handle. If this amendment is approved, first handlers would be required by pay assessments on all watermelons they handle, including any watermelons handled domestically after their importation.

Also, an additional estimated 550 handlers—wholesalers, fresh-cut processors, and persons who arrange the sale or transfer of watermelons (such as brokers)—would be required to pay assessments for the first time. The additional handlers would not include retailers, wholesale retailers, foodservice distributors, or foodservice operators. If you are one of these handlers, you would be expected to pay an assessment to the Board of 2 cents per cwt. on the watermelons they handle, including any watermelons handled domestically after their importation into the United States. The assessment would be due not later than 30 days after the end of the month in which the watermelons were handled. You would also be required to submit to the Board with your assessments a report containing your name, address, and telephone number, the period covered by the report, and the total quantity of watermelons handled during the reporting period. If assessments are not paid on time, late payment charges and interest would be applied to the amount due, and you might be subject to civil penalties.

On the other hand, you will be eligible to be nominated and to serve as a handler member of the Board for the district in which you reside. This provides the opportunity to participate in the development and implementation of marketing and research projects which can impact all aspects of the industry, from field to store. You will also be eligible to vote in referenda relating to the Plan—including the referendum on this amendment.

How Will This Change Affect Board Operations?

The main impact on the Board would be the availability of an additional $900,000 in assessment income which would be used to benefit the watermelon industry as a whole through more marketing, public relations, education, and research activities. This has the potential to increase demand for watermelons.

How Can I Express My Opinion—Either For or Against—the Proposed Amendment?

You have 60 days to submit a comment in writing to the address listed at the beginning of this rule Comments may be submitted by mail, fax, or e-mail. In addition, if you are a watermelon producer, handler, or importer, you will have the opportunity to vote either ''yes'' or ''no'' in the national referendum which will be held on the amendment.

Why Is There Going To Be a National Referendum on the Amendment?

The Act requires USDA to conduct a referendum on amendments to the Plan. Conducting a referendum allows the persons affected or potentially affected by the amendments the opportunity to vote on whether it should be adopted.

When Will the Vote Be Taken?

It is expected that the referendum will be held in Fall 2001.

How Can I Vote in the Referendum?

Referendum voting on this program normally takes place by mail. However, USDA is exploring the possibility of providing watermelon producers, handlers, and importers the opportunity to vote electronically. If adequate reliability and security can be obtained, voting will take place by mail and electronically. If adequate reliability and security cannot be obtained, voting will take place by mail. Regardless, all known eligible producers, handlers, and importers will receive a ballot and voting instructions in the mail from USDA. Producers, handlers, and importers who believe they are eligible to vote and who do not receive a ballot in the mail will be able to request a ballot by calling the USDA referendum agent at a toll-free telephone number. The voting period will last about one month.

What Criteria Will USDA Use To Decide Whether the Industry Wants the Amendment or Not?

The amendment must be approved by a simple majority of the voters in the referendum.

If the Watermelon Industry Approves This Amendment, When Will It Become Effective?

Most likely, the amendment would become effective for the 2002 marketing year which begins on April 1, 2002.

Executive Orders 12866 and 12988

This proposed rule has been determined to be not significant for purposes of Executive Order (E.O.) 12866 and therefore has not been reviewed by the Office of Management and Budget (OMB).

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

Section 1645 of the Act allows producers, handlers, and importers of watermelons who are subject to the Plan to file a written petition with the Secretary of Agriculture (Secretary) if they believe that the Plan, any provision of the Plan, or any obligation imposed in connection with the Plan, is not in accordance with law. In the petition, the person may request a modification of the Plan or an exemption from the Plan. The petitioner will have the opportunity for a hearing on the petition. Afterwards, an Administrative Law Judge (ALJ) will issue a decision. If the petitioner disagrees with the ALJ's decision, the petitioner has 30 days to appeal to the Judicial Officer, who will issue a ruling on behalf of the Secretary. If the petitioner disagrees with the Secretary's ruling, the petitioner may file, within 20 days, an appeal in the U.S. District Court for the district where the petitioner resides or conducts business.

Regulatory Flexibility Act and Paperwork Reduction Act

Initial Regulatory Flexibility Analysis

In accordance with the Regulatory Flexibility Act (RFA) [5 U.S.C. 601 *et seq.*], the Agricultural Marketing Service (AMS) is required to examine the impact of this proposed rule on small entities. The purpose of the RFA is to fit regulatory actions to the scale of businesses subject to such actions so that small businesses will not be disproportionately burdened.

In 13 CFR 121.201, the Small Business Administration defines small agricultural service firms (handlers and importers) as those having annual receipts of less than $5 million and small agricultural producers as those having annual receipts of not more than $500,000.

Currently, there are approximately 2,220 producers of 10 or more acres of watermelons, 620 handlers, and 280 importers of more than 150,000 pounds of watermelons annually. If this rule is implemented, there would be an additional 550 handlers subject to the Plan: 480 wholesalers and persons who arrange the sale or transfer of watermelons and 70 fresh-cut processors. A majority of the producers, handlers, and importers may be classified as small entities.

This proposed rule would amend the Plan to cover all handlers of watermelons. If it is adopted, wholesalers, persons who arrange the sale or transfer of watermelons, and fresh-cut processors of watermelons-in addition to first handlers—would pay an assessment of 2 cents per cwt. on all watermelons they handle (including any watermelons handled domestically after their importation), file reports with the Board, keep records on their handling transactions, and be subject to penalties for noncompliance with the Plan. These additional handlers will also be eligible to be nominated to serve as handler members on the Board and to vote in referenda.

The watermelon industry as a whole could benefit from this rule. Covering all handlers under the Plan would simplify the assessment process and provide more income to the Board. The assessment process would be simplified because all handlers would be treated equally. No longer would the first handler be the only person paying the handler assessment. Covering all handlers is more workable in an actual business setting. Also, an additional 550 handlers paying assessments is likely to increase the income of the Board from $1.3 million to $2.2 million annually. As a result, there would be more funds available to the Board to increase the demand for watermelons, which would benefit producers, handlers, and importers alike, without increasing the rate of assessment.

The Board would use the additional revenue to increase post harvest research and to enhance its category management project. Category management is a new system used by major supermarket chains to manage supplies of the various products they sell. Each section of a supermarket is considered a category, and some sections—such as the produce section—contain several categories. With category management, the supermarket chains are less flexible in how much of a given product they want within a given time frame. In order to maintain or increase market share, the suppliers to the retail chains need to develop their

own category management plans. It is much more difficult for producers and suppliers of perishable items to fit into this system than producers and suppliers of non-perishable goods. This means that an effective category management program may be essential for a perishable agricultural commodity group. However, developing an effective category management program is expensive. The Board began developing its category management program in 2000. The Board's goal is to position watermelons as the leader in the melon category of the produce section. In order to maintain its category management program, the Board needs to purchase additional sales data and conduct additional consumer research. An effective category management plan has the potential to increase demand for watermelons. This would benefit producers, handlers, and importers.

The Board considered raising the assessment rate for producers, handlers, and importers by 50 percent in order to generate additional funds to grow demand for watermelons. However, watermelon producers are not in the position to increase their burden under the program, given the state of the industry. Therefore, this alternative was not considered viable. In the watermelon industry, just as in other fruit and vegetable industries, there are handlers that cover the assessment cost as a business expense, handlers that pass the cost back to producers, and handlers that pass the cost along to retailers and, hence, consumers. Therefore, it is likely that some of the additional assessments collected from the newly covered handlers would be passed back to first handlers, who may pass it back to producers. However, it is not anticipated that this will represent a majority of the additional assessments that would be collected. Any increased cost for producers is expected to be less than an overall increase in the producer assessment. In addition, any increased cost for producers or handlers is likely to be offset by the benefit of increased demand for watermelons.

The information collection requirements contained in this proposed rule are designed to minimize the burden on handlers covered by the watermelon research and promotion program. The estimated additional annual cost of providing the information by 550 new handlers would be $2,750 or $5 per new handler as discussed below.

There are no federal rules that duplicate, overlap, or conflict with this rule.

AMS has performed this initial Regulatory Flexibility Analysis regarding the impact of this proposed rule on small entities. However, in order to have additional data that may be helpful in evaluating the effects of this rule on small entities, we are inviting comments concerning potential effects. In particular, we are interested in determining the number and kind of small entities that may incur benefits or costs from implementation of this proposed rule and information on the expected benefits and costs.

Paperwork Reduction Act

In accordance with the Office of Management and Budget (OMB) regulation [5 CFR 1320] which implements the Paperwork Reduction Act of 1995 [44 U.S.C. Chapter 35], the information collection and recordkeeping requirements that would be imposed by this rule have been submitted to OMB.

The information collection burden associated with current producers, handlers, and importers is already reflected in the information collection approved for use under OMB Number 0581–0093.

This proposed rule would add an information collection burden on the additional 550 handlers who would be subject to the Plan. The information collection burden includes filing reports and maintaining books and records under the Plan. Handlers are required to maintain such records for two fiscal years beyond the fiscal period of their applicability. The additional handlers would also be eligible to vote in referenda under the Plan, but the voting burden is associated with the ballot which is included in the proposed referendum procedures which are being published separately in this issue of the **Federal Register**.

Title: National Research, Promotion, and Consumer Information Programs.

OMB Number: 0581–0093.

Expiration Date of Approval: March 31, 2001.

Type of Request: Revision of a currently approved information collection for research and promotion programs.

Abstract: The information collection requirements in this request are essential to carry out the intent of the Act.

The increase in burden associated with this rule is as follows:

1. Handler's Report

Estimate of Burden: Public reporting burden for this collection of information is estimated to average .75 hours per response.

New Respondents: Handlers.

Estimated Number of New Respondents: 550.

Estimated Number of Responses per New Respondent: 4 times a year.

Estimated Total Annual Burden on New Respondents: 1,650 hours

2. A Requirement to Maintain Records Sufficient to Verify Reports Submitted Under the plan

Estimate of Burden: Public reporting burden for this collection of information is estimated to average .50 hours per response.

New Respondents: Handlers.

Estimated Number of New Respondents: 550.

Estimated Total Annual Burden on New Respondents: 275 hours.

The estimated additional annual cost of providing the information by 550 new handlers would be $2,750 or $5 per new handler. The increase of 275 total burden hours would be added to the previous burden total of 314.5 hours under OMB No. 0581–0093.

Comments are invited on: (a) Whether the proposed additional collection of information is necessary and whether it will have practical utility; (b) the accuracy of USDA's estimate of the burden of the proposed increase in the collection of information, including the validity of the methodology and assumption used; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

Comments concerning the information collection requirements contained in this action should reference OMB No. 0581–0093, the docket number, and the date and page number of this issue of the **Federal Register**. Comments should be sent to the USDA Docket Clerk and the OMB Desk Officer for Agriculture at the addresses and within the time frames specified above. All comments received will be available for public inspection during regular business hours at the same address. All responses to this notice will be summarized and included in the request for OMB approval.

OMB is required to make a decision concerning the increase in the collection of information contained in this rule between 30 and 60 days after publication. Therefore, a comment to OMB is best assured of having its full effect if OMB receives it within 30 days of publication.

Background

The National Watermelon Promotion Board (Board) has recommended that the Watermelon Research and Promotion Plan (Plan) be amended to include all handlers of domestic watermelons due to an increased need to promote watermelons. In 1999, domestic production of watermelons totaled 4.1 billion pounds. This was a 12-percent increase over 1998. At the same time, the season average price of watermelons fell from $7.71 per hundredweight (cwt.) in 1998 to $6.49 per cwt. in 1999. This indicates that additional promotion of watermelons is needed.

The proposed amendment would increase the Board's assessment income by approximately $900,000 to approximately $2.2 million annually. It would also streamline the assessment payment and collection processes because all handlers would be covered—not just the first handler—because they perform similar functions in the marketing chain.

Section 1210.305 of the Plan currently defines a handler as any person (except a common or contract carrier of watermelons owned by another person) who handles watermelons, including a producer who handles watermelons of the producer's own production. This means the first person who performs the handling function. Under § 1210.307 of the Plan, to handle means to grade, pack, process, sell, transport, purchase, or in any other way to place or cause watermelons to which one has title or possession to be placed in the current of commerce. The handling function does not include the transportation or delivery of field run watermelons by a producer to a handler for grading, sizing, or processing.

Currently, 691 first handlers pay an assessment of 4 cents per cwt. on the watermelons that they handle, file reports with the Board for the months in which they handle watermelons, and maintain records of their handling transactions for a period of two years after the year in which they occurred. In 1999, the average handler assessment was $1,640.

Assessment payments and a report must be postmarked not later than 30 days after the end of the month in which the watermelons are handled. If a handler does not remit the assessments to the Board on time, the Board imposes a one-time late payment charge of 10 percent. In addition, handlers are charged 1.5 percent per month interest on the outstanding balance. The failure to pay assessments is considered a violation of the Act and the Plan. If a handler does not pay the assessments which are due, the Board may audit the handler's records and request USDA to take legal action against the handler. If USDA takes legal action, the handler may be subject to civil penalties from $550 to $5,500 per violation.

The Board has identified additional 550 handlers who would be required to pay the same assessment, file the same reports, and maintain the same records as first handlers on all they handle, including any watermelons handled domestically after their importation, if this amendment is adopted. The additional handlers are wholesalers, fresh-cut processors, and other persons who arrange the sale or transfer of watermelons. These handlers would also be subject to the same penalties for non-payment of assessments.

The additional handlers would also be eligible to serve as handler members on the Board and vote in referenda. Serving on the Board provides the opportunity to participate in the development and implementation of marketing and research projects which can impact all aspects of the industry, from the field to the consumer's table. Voting in referenda provides the right to vote on changes in the program—including the current proposed amendment—and on whether the program should continue or be terminated.

To include all handlers under the Plan, this proposed rule would revise § 1210.305 by eliminating the reference to the first person who performs the handling function and by adding a statement that handler does not mean a retailer, wholesale retailer, foodservice distributor, or foodservice operator.

In addition, this rule would amend §§ 1210.308 and 1210.341(a) of the Plan, §§ 1210.402(b) and 1210.404(d) of the nominating procedures issued under the Plan, and §§ 1210.515(a) and 1210.518(a) and (b) of the rules and regulations issued under the Plan in order to remove references to first handlers. It is also necessary to amend §§ 1210.341(c) and 1210.350(a) of the Plan to clarify the assessment and reporting requirements for all handlers. Since § 1210.517 (which concerns determining first handlers) would no longer be necessary if all handlers are covered by the Plan, that section would be removed and reserved. In addition, this rule would add a new § 1210.518(b)(3) to state that the handling party is responsible for the payment of assessments on any handling of watermelons.

This rule would also redesignate §§ 1210.301 through 1210.314 of the Plan as necessary to arrange the definitions in alphabetical order.

A proposed rule to establish procedures for the referendum on these amendments to the Plan and future referenda is published separately in this issue of the **Federal Register**.

The proposed rule on referendum procedures also adds letter designations to the various subparts of the watermelon research and promotion program as follows: the Plan (§§ 1210.301 through 1210.367) would become Subpart A; the Procedures for Nominating Members to the National Watermelon Promotion Board (§§ 1210.400 through 1210.405) would become Subpart B; the Rules and Regulations (§§ 1210.500 through 1210.540) would become Subpart C; and the proposed Referendum Procedures (proposed §§ 1210.600 through 1210.607) would become Subpart D.

The Act requires a referendum for all amendments to the Plan (Subpart A) except a change in the rate of assessment, which may be made after notice-and-comment rulemaking. The Act does not require a referendum for changes to Subparts B, C, and D. Therefore, the proposed amendments to the Plan which are contained in this rule would be the subject of the upcoming referendum. The proposed amendments to Subpart B (nominating procedures) and Subpart C (rules and regulations) which are contained in this rule can be made without a referendum. However, since they are needed only if the amendments to the Plan are approved in the referendum, they will be adopted only if the amendments to the Plan are approved in the referendum.

List of Subjects in 7 CFR Part 1210

Administrative practice and procedure, Advertising, Consumer information, Marketing agreements, Reporting and recordkeeping requirements, Watermelon promotion.

For the reasons set forth in the preamble, it is proposed that 7 CFR Part 1210 be amended as follows:

PART 1210—WATERMELON RESEARCH AND PROMOTION

1. The authority citation for 7 CFR part 1210 continues to read as follows:

Authority: 7 U.S.C. 4901–4916.

2. Redesignate §§ 1210.301 through 1210.314 as follows:

Old section	New section
1210.301	1210.313
1210.302	1210.301
1210.303	1210.308

Old section	New section
1210.304	1210.302
1210.305	1210.314
1210.306	1210.309
1210.307	1210.304
1210.308	1210.305
1210.309	1210.307
1210.310	1210.303
1210.311	1210.310
1210.312	1210.311
1210.313	1210.312
1210.314	1210.306

3. Newly designated § 1210.305 is revised to read as follows:

§ 1210.305 Handler.

Handler means any person (except a common or contract carrier of watermelons owned by another person) who handles watermelons, including a producer who handles watermelons of the producer's own production. *Handler* shall not mean a retailer, wholesale retailer, foodservice distributor, or foodservice operator.

4. In § 1210.341, paragraphs (a) and (c) are revised to read as follows:

§ 1210.341 Assessments.

(a) Assessments shall be levied on all watermelons produced and handled in and imported into the United States for consumption as human food. Producers shall be assessed 2 cents per hundredweight on the watermelons that they produce. Handlers shall be assessed 2 cents per hundredweight on all watermelons that they handle, including any watermelons handled after their importation into the United States. If a person performs both a producing and a handling function on any lot of domestic watermelons, the person shall pay both the producer assessment and the handler assessment on those watermelons. Importers shall be assessed 4 cents per hundredweight on the watermelons they import at the time of entry of the watermelons into the United States.

* * * * *

(c) Each handler is responsible for payment of the handler assessment to the Board, and each handler who purchases watermelons from a producer is responsible for the collection and payment to the Board of both the producer assessment and the handler's own assessment. A handler who purchases watermelons from a producer may collect the producer assessment from the producer or deduct the assessment from the proceeds paid to the producer on whose watermelons the assessments are made. A handler who purchases from a producer shall maintain separate records for each producer's watermelons handled, including watermelons produced by the handler. In addition, all handlers shall maintain records that indicate the total quantity of watermelons handled by the handler, including those that are exempt under this Plan, and such other information as may be prescribed by the Board.

* * * * *

5. In § 1210.350, paragraph (a) introductory text is revised to read as follows:

§ 1210.350 Reports.

(a) Handlers shall report to the Board at such times and in such manner as the Board may prescribe by regulations whatever information may be necessary in order for the Board to perform its duties. In addition, each handler who purchases watermelons from a producer shall maintain a record with respect to each producer for whom watermelons were handled and for watermelons produced and handled by the handler. Such reports may include, but shall not be limited to, the following information:

* * * * *

6. In § 1210.402, paragraph (b) is revised to read as follows:

§ 1210.402 Voter and board member nominee eligibility.

* * * * *

(b) Any individual, group of individuals, partnership, corporation, association, cooperative, or any other entity which is engaged in the production or handling of watermelons is considered a person and as such is entitled to only one vote, except that such person may cast proxy votes as provides in § 1210.403 and § 1210.404 of this subpart.

* * * * *

7. In § 1210.404, paragraph (d) is revised to read as follows:

§ 1210.404 Importer member nomination and selection.

* * * * *

(d) Any individual, group of individuals, partnership, corporation, association, cooperative, or any other entity which is engaged in the importing of watermelons is considered a person and as such is entitled to only one vote, except that such person may cast proxy votes as provided in paragraph (e)(1) of this section.

* * * * *

8. In § 1210.515, paragraph (a) is revised to read as follows:

§ 1210.515 Levy of assessments.

(a) An assessment of 2 cents per hundredweight shall be levied on all watermelon produced in the United States for ultimate consumption as human food. An assessment of 2 cents per hundredweight shall be levied on all watermelons handled for ultimate consumption as human food. An assessment of 4 cents per hundredweight shall be levied on all watermelons imported into the United States for ultimate consumption as human food at the time of entry into the United States.

* * * * *

9. Section 1210.517 is removed and reserved.

10. In § 1210.518, paragraphs (a) and (b)(1) are revised and a new paragraph (b)(3) is added to read as follows:

§ 1210.518 Payment of assessments.

(a) *Time of payment.* The assessment of domestically produced watermelons shall become due at the time of each handling of the watermelons for non-exempt purposes. The assessment on imported watermelons shall become due at the time of entry, or withdrawal, into the United States and at the time of each subsequent handling.

(b) *Responsibility of payment.* (1) A handler who purchases watermelons from a producer is responsible for collection and payment of both the producer's and the handler's assessment. A handler may collect the producer's assessment from the producer or deduct the producer's assessment from the proceeds paid to the producer on whose watermelons the producer assessment is made. Any such collection or deduction of producer assessment shall be made not later than the time when the handler handles the watermelons.

* * * * *

(3) The payment of assessments on any handling of watermelons is the responsibility of the handling party.

* * * * *

Dated: April 23, 2001.

Kenneth C. Clayton,

Acting Administrator, Agricultural Marketing Service.

[FR Doc. 01–10600 Filed 4–27–01; 8:45 am]

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Federal Register

Monday,
April 30, 2001

Part VI

Department of Agriculture

7 CFR Part 26

Outreach and Assistance for Socially Disadvantaged Farmers and Ranchers Program; Proposed Rule and Notice

DEPARTMENT OF AGRICULTURE

Office of the Secretary

7 CFR Part 26

RIN#0503–AA22

Outreach and Assistance for Socially Disadvantaged Farmers and Ranchers Program

AGENCY: Office of Outreach, Office of the Secretary, USDA.

ACTION: Proposed rule.

SUMMARY: The United States Department of Agriculture (USDA or the Department) is proposing to add regulations at 7 CFR part 26 to govern the Outreach and Assistance for Socially Disadvantaged Farmers and Ranchers Program whereby the 1890 Land Grant Colleges, including Tuskegee University, Indian tribal community colleges and Alaska native cooperative colleges, Hispanic serving post-secondary educational institutions and or other qualifying educational institutions and community-based organizations are eligible to compete for grants and cooperative agreements to provide outreach and technical assistance to socially disadvantaged farmers and ranchers. The program's objective is to reverse the decline of socially disadvantaged farmers and ranchers across the United States. The recipients of these awards will provide services to encourage and assist socially disadvantaged farmers and ranchers to own and operate their own farms and ranches, participate in agricultural programs, and thus allow them to become an integral part of the agricultural community and strengthen the rural economy.

DATES: Comments on the proposed rule must be received on or before May 30, 2001.

ADDRESSES: Submit written comments, in duplicate, to Director, USDA Office of Outreach, Ag STOP 1710, 1400 Independence Avenue, SW., Washington, DC 20250–1710, fax number (202) 720–7489, or via e-mail to *2501rfp@usda.gov.* Comments hand-delivered or those delivered by overnight express mail or courier service should be brought to the following address: USDA Office of Outreach, 501 School Street, SW., First Floor, Washington, DC 20024 between the hours of 8:00 a.m. and 5:00 p.m. Monday through Friday, excluding Federal holidays. All written comments made pursuant to this notice will be available for public inspection during regular working hours at the above address.

FOR FURTHER INFORMATION CONTACT: Geraldine Herring, Special Outreach Program Coordinator, USDA Office of Outreach, telephone (202) 720–6350 or 1–800–880–4183, fax number (202) 720–7489, e-mail: *2501rfp@usda.gov.*

SUPPLEMENTARY INFORMATION:

Executive Orders 12866 and 12988

The Office of Management and Budget (OMB) has determined that the proposed rule is not a ''significant regulatory action'' as defined in Executive Order 12866 because the proposed rule will not have an annual effect on the economy of $100 million or more or have any other adverse affects on the economy or any sector thereof, will not create a serious inconsistency or otherwise interfere with prior or intended actions of another agency, will not materially alter the budgetary impact of grants or similar programs or the rights or recipients thereof, and does not raise novel legal or policy issues. Therefore, Executive Order 12866 does not require review of the proposed rule by OMB, and such review has not occurred.

USDA has reviewed this proposed rule in accordance with Executive Order 12998, Civil Justice Reform. The proposed rule meets the applicable standards in section 3 of Executive Order 12988.

Executive Order 12372

For the same reasons contained in the Final rule related notice to 7 CFR part 3015, subpart V (48 FR 29114, June 24, 1983), the Secretary has determined that this program does not directly affect State and local governments, and thus is not subject to the provisions of Executive Order 12372 which requires intergovernmental consultation with State and local officials.

Executive Order 13132

Executive Order 13132, Federalism, imposes requirements on USDA in the development of regulatory policies that have Federalism implications. USDA has determined that the proposed rule will not have substantial direct effects on the States, on the relationship between the Federal Government and the States, or on the distribution of power and responsibilities among the various levels of government. This rule also will not impose substantial costs on States and localities. Accordingly, the proposed rule is not subject to the requirements of Executive Order 13132.

Executive Order 13175

Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, imposes requirements on USDA in the development of regulatory policies that have tribal implications or preempt tribal law. USDA has determined that the proposed regulation does not have a substantial direct effect on one or more Indian tribes or on either the relationship or the distribution of powers and responsibilities between the Federal Government and the Indian Tribes. Thus, the proposed rule is not subject to the requirements of Executive Order 13175.

Regulatory Flexibility Act

In compliance with the Regulatory Flexibility Act (5 U.S.C. 601, *et seq.*), the undersigned has determined and certified by signature of this document that the proposed rule will not have a significant economic impact on a substantial number of small entities. Eligibility and guidelines for this program are dictated by statute. Educational institutions are not small entities as defined in the Regulatory Flexibility Act. Community-based organizations may or may not qualify as small entities. The amount of annual funding for this program thus far typically ranges from $3 million to $6 million, including awards to both educational institutions and community-based organizations, and thus does not have a large economic impact on small entities. This program does not impose requirements on small entities which are not eligible and do not affirmatively elect to apply for a competitive award under this program, and imposes on small entities receiving applying for and receiving awards only minimal requirements necessary for proper administration, oversight, and fiscal accountability of this program. Therefore, a regulatory flexibility analysis is not required and was not performed.

The Unfunded Mandates Reform Act of 1995

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), 2 U.S.C. 1531–1538, established requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments or the private sector. Under section 202 of the UMRA, 2 U.S.C. 1532, agencies must prepare a written statement, including a cost benefit analysis, before promulgating a notice of proposed rulemaking that includes any Federal mandates that may result in expenditures to State, local, and tribal governments, in the aggregate, or to the private sector, of $100 million or more in any one year. The proposed rule contains no Federal mandates that would result in such expenditures for State, local, and Tribal governments or

the private sector. Therefore, no written statement, including cost-benefit analysis, is required under the UMRA for this proposed rule.

National Environmental Policy Act

It is the determination of USDA that this action is not a major Federal action significantly affecting the quality of the human environment. Therefore, in accordance with the National Environmental Policy Act of 1969, Public Law 91–190, an Environmental Impact Statement is not required.

Paperwork Reduction Act

This proposed rule does not impact existing approved collections. This rule contains no new reporting or recordkeeping burdens under OMB control number 0560–0163 that would require approval under the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35).

Discussion of Proposed Rule

Background

The Department is proposing regulations in 7 CFR Part 26 to reflect the transfer of the Outreach and Assistance for Socially Disadvantaged Farmers and Ranchers Program to the USDA Departmental Administration, Office of Outreach. The USDA Office of Outreach administers the Outreach and Assistance for Socially Disadvantaged Farmers and Ranchers Program pursuant to section 2501(a) of the Food, Agriculture, Conservation, and Trade Act of 1990, 7 U.S.C. 2279(a) (the FACT Act). Congress intended to make funds available to provide outreach and technical assistance to encourage and assist socially disadvantaged farmers and ranchers to own and operate farms and ranches and to participate in agricultural programs. This outreach and assistance should enable socially disadvantaged farmers and ranchers to obtain information on application and bidding procedures, farm management, and other essential information to participate in agricultural programs.

Prior to 1997, USDA administered this program through other agencies. When USDA last competed awards under this program, the predecessor to the Farm Service Agency (FSA) administered the competition in conjunction with its administration of other outreach, training and technical assistance programs. In August 1997, the Secretary delegated to the USDA Office of Outreach responsibility solely for the section 2501 Outreach and Assistance for Socially Disadvantaged Farmers and Ranchers Program. Therefore, the new regulations proposed by the USDA Office of Outreach are limited exclusively to the section 2501 authority and thus narrower in scope than the prior combination of program authorities administered by the predecessor to FSA.

The definition of ''Agricultural programs'' contained in § 26.4 of this subpart is based on the programs authorized by the statutes referenced in Section 2501 (e)(3) (7 U.S.C. 2279 (e)(3)). Section 2501 (e)(3)(G) also authorizes the Secretary of Agriculture, who has delegated this authority to the Office of Outreach, to designate additional USDA programs as ''Agricultural programs'' for purposes of this program as appropriate. The USDA Office of Outreach bases the designation of additional Acts, and thereby the programs in those Acts on a belief that the participation of socially disadvantaged farmers and ranchers in such programs will serve an important public purpose. The definition of ''Agricultural programs'' references many USDA programs, however, the list is not intended to be all inclusive. Rather, the regulation intends to increase participation by socially disadvantaged farmers and ranchers in all relevant USDA agricultural programs. The public may request the Director, USDA Office of Outreach to include additional Acts and programs within this definition. Requests must be submitted in writing and include an explanation of the reasons for inclusion. The Director will make determinations on a case-by-case basis. During the project period, the USDA Office of Outreach will need to work with USDA field offices to provide information to the recipients regarding each USDA Agency's relevant agricultural programs within the scope of the funded project.

Specific Agricultural programs include but are not limited to the following, identified by the Catalog of Federal Domestic Assistance number and program title: (10.054) Emergency Conservation Program; (10.055) Production Flexibility Payments for Contract Commodities; (10.064) Forestry Incentives Program; (10.069) Conservation Reserve Program; (10.404) Emergency Loans; (10.406) Farm Operating Loans; (10.407) Farm Ownership Loans; (10.900) Great Plains Conservation; and (10.903) Soil Survey.

Program Description

The program's objective is to reverse through the use of the outreach and assistance the decline of socially disadvantaged farmers and ranchers throughout the United States. This outcome will be reached by encouraging and assisting socially disadvantaged farmers and ranchers to own and operate their own farms, participate in agricultural programs, and thus allow them to become an integral part of the agricultural community.

The recipients of the Federal assistance will provide services to socially disadvantaged farmers and ranchers through such means as outreach and technical assistance in farm and ranch management, recordkeeping, marketing techniques, and testing innovative solutions to existing or anticipated issues or problems that these farmers and ranchers may encounter.

When funds are available, the USDA Office of Outreach will publish a request for proposals for the Outreach and Assistance for Socially Disadvantaged Farmers and Ranchers Program. The USDA Office of Outreach will make competitive awards to eligible organizations and institutions to implement a one-year plan for outreach and technical assistance to encourage and assist socially disadvantaged farmers and ranchers to own and operate farms and ranches and to participate in agricultural programs.

The USDA Office of Outreach will select peer reviewers to evaluate individually the technical merit of responsive proposals. The peer reviewers are necessary to evaluate what is expected to be a variety of very technical proposals. The USDA Office of Outreach staff will use these evaluations to make recommendations for funding to the Director, USDA Office of Outreach. The Director will make final funding decisions. To assure consistency and fairness in the evaluation process, the proposed rule establishes proposal guidelines, evaluation criteria and the decision-making process for reviewing responsive proposals.

The accounting for the funds awarded under the section 2501 program is subject to the applicable rules for USDA assistance awards in parts 3015 and 3019 of this title. The proposal content and format regulations are intended to assure that applicants provide sufficient information to evaluate proposals and make awards. The application format and evaluation process is similar to that used by other USDA agencies for their competitive assistance programs.

Section by Section analysis

Section 26.1 states the general purpose of the program pursuant to section 2501 (a) of the FACT Act and explains what the implementing regulations are intended to accomplish and why compliance is necessary. The USDA Office of Outreach has no

discretion regarding the purpose of the program and is repeating the terms of the statute.

Section 26.2 states the objectives of assistance awards under this program. These objectives come from the statute and legislative history for this program.

Section 26.3 addresses the project period for awards under this program. Awards under this program previously were for five-year periods, with funding provided for the first year and annual renewal of each award based on the progress of the awardee and the availability of funds. Because of the substantial fluctuation in the amount of funding available for this program from year to year, the USDA Office of Outreach made an administrative determination that the limiting of the project periods for a duration of one year with full funding for each project at the time of award would carry out this program in the most effective and efficient manner. The USDA Office of Outreach considers a shorter period with full funding to provide more certainty to the awardees and to ensure that projects will be carried out in their entireties. Shorter project periods also allow the USDA Office of Outreach to fund more projects and provide greater flexibility to respond better to ever-changing societal needs in terms of socially disadvantaged groups, geographic areas, and agricultural programs.

Section 26.4 defines relevant terms for purposes of this program. These definitions are limited to this program. Many terms are defined by statute. The USDA Office of Outreach has no discretion regarding the definitions of statutorily-defined terms and has merely repeated the statutory definitions. The statutorily-defined terms are ''socially disadvantaged group'' and ''socially disadvantaged farmer or rancher.'' The definition of ''socially disadvantaged group'' establishes the criteria for a group to qualify. The Secretary determines which groups meet the criteria. The proposed regulation allows the public to submit requests for the designation of additional groups for purposes of this program. The term ''agricultural programs'' also is defined by statute, but that definition too still provides limited discretion to the Secretary of Agriculture to expand the definition to include similar programs. Again, the proposed regulation provides for the public to submit requests for inclusion of additional Acts and programs, with case-by-case determinations by the USDA Office of Outreach on such requests.

The USDA Office of Outreach used statutory definitions applicable to U.S. Department of Education programs to define the various educational institutions eligible to compete for awards under this program. Use of the same definitions as the Department of Education promotes uniformity and consistency among Federal programs, which is intended to benefit the public. Furthermore, those statutory definitions, while not directly applicable to this program, shed light on the congressional intent in using these terms. The USDA Office of Outreach found no indication in the section 2501 program authority or legislative history to suggest that the Congress intended for these terms to have a distinct meaning for this program. The definitions are 1890 Land Grant Colleges, Indian tribal community college, Alaska Native cooperative college, Alaska Native, Hispanic serving post-secondary educational institution, post secondary educational institution, full-time equivalent student, junior or community college, and low-income individual. Grant and cooperative agreement are defined by statute at 31 U.S.C. 6304 and 6305. The remaining definitions in section 26.4 reflect terms and definitions commonly used for USDA competitive assistance programs.

Section 26.5 lists the eligible entities as set by the statute. The USDA Office of Outreach has no discretion regarding eligibility for this program. The proposed regulations describe the type of documentary evidence required from a community-based organization to show prior relevant experience.

Section 26.6 discusses substantial involvement on cooperative agreements. As noted in section 26.1, USDA Office of Outreach has the authority to award assistance through grants or cooperative agreements under this program. USDA Office of Outreach may determine that the responsibility for the management, control, or direction of the project will be shared both by the USDA Office of Outreach and the awardee. If so, the USDA Office of Outreach will award a cooperative agreement as the instrument to distribute the award and will be substantially involved in the implementation and performance of the project. It is important to understand that such an agreement will be a cooperative venture in which each party has a substantial role to play. Being substantially involved can enable a better understanding and knowledge of how well the project is performing, whether it is meeting its goals and objectives, and what types of assistance the recipient needs to do a better job.

Section 26.7 is reserved.

Section 26.8 addresses solicitation of proposals through the program announcement. USDA Office of Outreach has decided to publish program announcements soliciting proposals in the **Federal Register** which is consistent with general USDA practice for competitive assistance programs. The USDA also reserves the right to publish the program announcement in other publications as appropriate which will be determined for each new competition.

Section 26.9 provides guidance on how to prepare a proposal for this program. This section sets guidelines for the proposal format and content. The proposed requirements are similar to those established for other USDA assistance programs. Uniform proposal format and content are necessary for fair comparative evaluation and review of competitive proposals.

Section 26.10 outlines the proposal review process, including the evaluation criteria. The USDA Office of Outreach will specify the weight of the evaluation criteria in the program announcement. Not indicating the weight in the regulations allows the USDA Office of Outreach the ability to vary the relative weights of these criteria for each competition as necessary to best achieve the program objectives. The USDA Office of Outreach decided to use peer reviewers to assess the merits of applications. Peer reviewers contribute expert judgment and objectivity to the proposal review process. Prior to any technical review, USDA Office of Outreach staff will review each proposal for responsiveness to the request for proposals. The USDA Office of Outreach will review for technical merit only those proposals submitted by eligible entities for projects within the scope of this program.

Section 26.11 discusses the fundamental aspects of the award procedure. USDA Office of Outreach staff will use the evaluations by the individual reviewers to rank the proposals and make recommendations to the Director, USDA Office of Outreach for funding. The USDA Office of Outreach reserves the right to make awards to ensure the necessary variety among funded projects to best achieve the program objectives. Necessary variety refers to both types of entities receiving award and types of projects, including targeted populations and regions. Based on the limited resources available for this program, the USDA Office of Outreach also reserves the right to negotiate with applicants the scope of projects recommended for funding. For example, a proposal may have substantial merit, but at a very high cost. Funding of that one proposal would preclude funding of several other meritorious proposals. The Director,

USDA Office of Outreach, could negotiate with that applicant in an effort to reduce the scope and funding requirements of that proposal, perhaps focusing on one or two discrete components of the project. The Director, USDA Office of Outreach will take great care during any such negotiations not to engage in any actions that would undermine the competitive nature of this program. All revisions must be within the scope of the original proposal. No revisions will be allowed to enlarge the project or funding originally proposed.

Sections 26.12–26.14 are reserved.

Section 26.15 discusses the authorized use of funds. The statute limits the purposes for which USDA can award funds. Once USDA awards a grant or cooperative agreement, the awardee can use those funds only in accordance with the terms of the agreement, i.e. for the identified project and as specified in the approved budget.

Sections 26.16 through 26.25 are reserved.

Section 26.26 lists some of the other applicable Federal statutes and regulations that govern the actions of the awardee and the Federal agency for assistance programs. The USDA Office of Outreach has no discretion regarding the mandated laws and regulations governing the USDA assistance programs.

Section 26.27 discusses the payment mechanism and payment method. The U.S. Department of the Treasury regulations at 31 CFR part 208 establish the payment mechanism for recipients of Federal funds. These regulations implement the Debt Collection Improvement Act of 1996 (P.L. 104–134, Title III, Chapter 10) which amended 31 U.S.C. 3332 to require federal agencies to convert their payments (including assistance payments) from check to electronic funds transfer (EFT) beginning January 1, 1999. The USDA Office of Outreach has decided to require the SF–270, Request for Advance or Reimbursement, be used by the recipients to request payments under this program pursuant to their awards and reimbursement will be by EFT.

Section 26.28 sets forth the procedures for monitoring and reporting on the awardee's financial management systems and program performance and the necessary standard reporting forms. The USDA Office of Outreach proposes the frequency for the financial management and program performance reporting to be quarterly.

Sections 26.29 through 26.36 are reserved.

Section 26.37 discusses the monitoring process to assure compliance with the terms and conditions of the award, including compliance with applicable Federal statutes and regulations. The USDA Office of Outreach has chosen to monitor performance of the recipient and assess compliance with laws, regulations, and policies by conducting site visits to monitor business management capability and performance. The monitoring methods will also include the reviews of audit reports, performance reports, financial status reports, recipient correspondence and information received from USDA field offices, the intended project beneficiaries and the public. These are standard methods used in administering similar USDA assistance programs to meet the provisions of pertinent statutes, regulations, agency administrative requirements, and relevant OMB circulars to ensure project success.

Sections 26.38 through 26.40 are reserved.

Section 26.41 notifies the applicant of the applicable USDA policies and regulations on nondiscrimination. Whenever an individual or organization accepts federal funds under an assistance award, there are certain public requirements, established by Congress or the President, with which the recipient must comply. The USDA Office of Outreach has no discretion regarding these requirements and has a duty to enforce compliance.

Sections 26.42 through 26.50 are reserved.

List of Subjects in 7 CFR Part 26

Grant programs—agriculture.

For reasons set out in the preamble, USDA proposes to add 7 CFR part 26 as set forth below.

Sec.

PART 26—OUTREACH AND ASSISTANCE FOR SOCIALLY DISADVANTAGED FARMERS AND RANCHERS PROGRAM

26.1 General.
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26.26 Other applicable Federal statutes and regulations.
26.27 Fund disbursement.
26.28 Financial management systems and reporting requirements.
26.29–26.36 [Reserved].
26.37 Monitoring compliance and penalty for noncompliance.
26.38–26.40 [Reserved].
26.41 Nondiscrimination.
26.42–26.50 [Reserved].

Authority: 5 U.S.C. 301; 7 U.S.C. 2279(a); 7 CFR 2.24.

PART 26—OUTREACH AND ASSISTANCE FOR SOCIALLY DISADVANTAGED FARMERS AND RANCHERS PROGRAM

§ 26.1 General.

This part establishes procedures for the administration of the Outreach and Assistance for Socially Disadvantaged Farmers and Ranchers Program whereby eligible entities enter into a grant or cooperative agreement with the USDA Office of Outreach (OR) to provide outreach and technical assistance to encourage and assist socially disadvantaged farmers and ranchers to own and operate farms and ranches and to participate in agricultural programs. The Catalog of Federal Domestic Assistance (CFDA) number for this program is 10.443.

§ 26.2 Objectives.

OR will fund grant agreements or cooperative agreements with eligible entities for outreach and assistance to socially disadvantaged farmers and ranchers projects, which are determined to meet the following program objectives:

(a) To encourage and assist members of socially disadvantaged groups to own and operate farms and ranches and to participate in agricultural programs.

(b) To keep socially disadvantaged farmers and ranchers on the farm and to ensure diversified ownership of agricultural land and farm operations throughout the United States, thus strengthening the rural economy.

§ 26.3 Project period.

An agreement under this program will specify a project period for a duration not to exceed one year, subject to the availability of funds or termination of the project either by mutual agreement or for material noncompliance with the terms and conditions of an award.

§ 26.4 Definitions.

For the purpose of the Outreach and Assistance for Socially Disadvantaged Farmers and Ranchers Program, the following definitions apply:

1890 Land-Grant Colleges means one of those institutions eligible to receive funds under the Act of August 30, 1890, as amended (7 U.S.C. 321 *et seq.*), including Tuskegee University.

Agricultural programs means those activities established or authorized by the Agricultural Act of 1949; the Consolidated Farm and Rural Development Act; the Agricultural Adjustment Act of 1938; the Soil Conservation Act; the Domestic Allotment Assistance Act; the Food Security Act of 1985; and other such Acts as determined by the Director, USDA Office of Outreach, on a case-by-case basis either at the Director's initiative or in response to a written request with supporting explanation for inclusion of an Act. Covered programs include, but are not limited to, agricultural conservation program, programs comprising the environmental conservation acreage reserve program (ECARP), conservation technical assistance program, emergency conservation program, forestry incentives program, Great Plains Conservation Program, integrated farm management option program, price support and production adjustment programs, rural environmental conservation program, soil survey program, and water bank program; and USDA farm loan programs (farm ownership, operating, soil and water, and emergency loans).

Alaska Native means a citizen of the United States who is a person of one-fourth degree or more Alaska Indian (including Tsimshian Indians not enrolled in the Metlaktla Indian Community) Eskimo, or Aleut blood, or combination thereof. It also includes, in the absence of proof of a minimum blood quantum, any citizen of the United States who is regarded as an Alaska Native by the Native village or Native group of which he claims to be a member and whose father or mother is (or, if deceased, was) regarded as Native by any village or group.

Alaska Native cooperative colleges means any post-secondary education institution that at the time of application, has an enrollment of undergraduate students that is at least 20 percent Alaska Native students.

Authorized organizational representative means the president or chief executive officer of the applicant organization or the official, designated by the president or chief executive officer of the applicant organization, who has the authority to commit the resources of the organization.

Awardee means the recipient designated in the grant award document as the responsible legal entity to which the Federal assistance is awarded.

Awarding official means the Director of the USDA Office of Outreach or the Director's designee, who has been delegated the authority to issue or modify program agreements on behalf of the Secretary of Agriculture for this program.

Budget period means the interval of time (usually 12 months) into which the project period is divided for budgetary and reporting purposes.

Community-based organization means a nonprofit, nongovernmental organization with a well-defined constituency that includes all or part of a particular community, *e.g.,* communities consisting of socially disadvantaged farmers and ranchers.

Cooperative agreement means an award of funds to an eligible entity with the following characteristics:

(1) The principal purpose of the award is to transfer a thing of value to the awardee to accomplish a public purpose of support or stimulation authorized by statute, rather than acquisition, by purchase, lease, or barter, of property or services for the direct benefit or use of the Federal Government; and

(2) At the time of award, substantial involvement is anticipated between OR and the awardee in performing the activity under the agreement.

Department or USDA means the United States Department of Agriculture.

Enrollment of needy students means an enrollment at an institution with respect to which:

(1) At least 50 percent of the degree students so enrolled are receiving need-based Federal financial assistance, including the Federal work-study program, in the second fiscal year preceding the fiscal year for which the determination is made (other than loans for which an interest subsidy is paid pursuant to 20 U.S.C. 1078); or

(2) A substantial percentage of the students so enrolled are receiving Federal Pell Grants in the second fiscal year preceding the fiscal year for which determination is made, compared to the percentage of students receiving Federal Pell Grants at all such institutions in the second fiscal year preceding the fiscal year for which the determination is made.

Full-time equivalent students means the sum of the number of students enrolled full time at an institution, plus the full-time equivalent of the number of students enrolled part time (determined on the basis of the quotient of the sum of the credit hours of all part-time students divided by 12) at such institution.

Grant means an award of funds to an eligible entity with the following characteristics:

(1) The principal purpose of the award is to transfer a thing of value to the awardee to accomplish a public purpose of support or stimulation authorized by statute, rather than acquisition, by purchase, lease, or barter, of property or services for the direct benefit or use of the Federal Government; and

(2) At the time an award is made, no substantial involvement is anticipated between OR and the awardee in performing the activity under the agreement.

Hispanic serving post-secondary educational institutions means a post-secondary educational institution that:

(1) At the time of application, has an enrollment of undergraduate full-time equivalent students that is at least 25 percent Hispanic students; and

(2) Provides assurances that not less than 50 percent of the institution's Hispanic students are low-income individuals.

Indian Tribal Community Colleges means a post-secondary educational institution which:

(1) Is formally controlled, or has been formally sanctioned, or chartered, by the governing body of an Indian tribe or tribes, except that no more than one such institution shall be recognized with respect to any such tribe; and

(2) Includes an institution listed in the Equity in Educational Land Grant Status Act of 1994, as amended (7 U.S.C. 301 note). The 1994 Land-Grant Institutions are: Bay Mills Community College, Blackfeet Community College, Cankdeska Cikana Community College, Cheyenne River Community College, Dine Community College, D-Q University, Dullknife Memorial College, Fond Du Lac Community College, Fort Belknap Community College, Fort Berthold Community College, Fort Peck Community College, LacCourte Orielles Ojibwa Community College, Little Big Horn Community College, Little Priest Community College, Nebraska Indian Community College, Northwest Indian College, Oglala Lakota College, Salish Kootenai College, Sinte Gleska University, Sisseton Wahpeton Community College, Sitting Bull College, Stonechild Community College, Turtle Mountain Community College, United Tribes Technical College, Southwest Indian Polytechnic Institute, Institute of American Indian Arts, Crownpoint Institute of Technology, Haskell Indian Nations University, Leech Lake Tribal College, and College of the Menominee Nation.

Junior or community college means an institution of higher education:

(1) That admits as regular students persons who are beyond the age of compulsory school attendance in the State in which the institution is located

and who have the ability to benefit from the training offered by the institution;

(2) That does not provide an educational program for which the institution awards a bachelor's degree (or an equivalent degree); and

(3) That—

(i) Provides an educational program of not less than 2 years in duration that is acceptable for full credit toward such a degree; or

(ii) Offers a 2-year program in engineering, mathematics, or the physical or biological sciences, designed to prepare a student to work as a technician or at the semiprofessional level in engineering, scientific, or other technological fields requiring the understanding and application of basic engineering, scientific, or mathematical principles of knowledge.

Low-income individual means an individual from a family whose taxable income for the preceding year did not exceed 150 percent of an amount equal to the poverty level determined by using criteria of poverty established by the Bureau of the Census.

Peer reviewers means experts from the public and private sectors qualified by training and experience in particular fields and designated by the Director, USDA Office of Outreach or other designated official to evaluate eligible proposals.

Post-secondary educational institutions means an institution of higher education in any State which:

(1) Admits as regular students only persons having a certificate of graduation from a school providing secondary education, or the recognized equivalent of such a certificate;

(2) Is a public or other nonprofit institution;

(3) Which has an enrollment of needy students as defined in the definition of ''low-income individual'';

(4) The average educational and general expenditures of which are low, per full-time equivalent undergraduate student, in comparison with the average educational and general expenditures per full-time equivalent undergraduate student of institutions that offer similar instruction;

(5) Which is—

(i) Legally authorized to provide, and provides within the State, an educational program for which such institution awards a bachelor's degree;

(ii) A junior or community college; or

(iii) The College of the Marshall Islands, the College of Micronesia/ Federated States of Micronesia, and Palau Community College;

(6) Which is accredited by a nationally recognized accrediting agency or association determined by the Secretary to be reliable authority as to the quality of training offered or which is, according to such an agency or association, making reasonable progress toward accreditation;

(7) Which meets such other requirements as the Secretary may prescribe; and

(8) Located in a State. Any branch of any institution of higher education described above which satisfies the criteria in paragraphs (3) and (4) of this definition. For purposes of the determination of whether an institution is an eligible institution under this paragraph, the factor in paragraph (3) of this definition shall be given twice the weight of the factor in paragraph (4) of this definition.

Prior approval means written, prior consent by the awarding official.

Project means the total activities within the scope of the program as identified in the grant or cooperative agreement.

Project director means the individual responsible for the direction and management of the project, as designated by the awardee in the project proposal and approved by the awarding official. The project director will devote full time to the administration of the project.

Project period means the total time approved by the awarding official for conducting the proposed project as outlined in an approved project proposal or the approved portions thereof and as specified in the grant or cooperative agreement.

Recipient means an entity as defined in § 26.5 of this part that has entered into a grant or cooperative agreement with OR.

Requests for Proposals (RFP) means an invitation to submit proposals for consideration for funding under this program.

Socially disadvantaged farmer or rancher means a farmer or rancher who is a member of a socially disadvantaged group.

Socially disadvantaged group means a group whose members have been subjected to racial or ethnic prejudice because of their identity as members of a group without regard to their individual qualities. Socially disadvantaged groups include, but are not limited to, African-Americans, Native Americans, Alaskan Natives, Hispanics, Asians, and Pacific Islanders. The Secretary will determine on a case-by-case basis whether additional groups qualify under this definition, either at the Secretary's initiative or in response to a written request with supporting explanation.

§ 26.5 Eligible entities.

The statute limits eligibility under this program to the following institutions and organizations:

(a) 1890 Land-Grant Colleges, including Tuskegee University;

(b) Indian tribal community colleges;

(c) Alaska Native cooperative colleges;

(d) Hispanic-serving post-secondary educational institutions;

(e) Other post-secondary educational institutions with demonstrated experience in providing agricultural education or other agriculturally-related services to socially disadvantaged family farmers or ranchers in their region; and

(f) Any community-based organization that:

(1) Has demonstrated experience in providing agricultural education or other agriculturally-related services to socially disadvantaged farmers and ranchers;

(2) Provides documentary evidence of its past experience in working with socially disadvantaged farmers and ranchers during the 2 years preceding its application for assistance. Documentary evidence shall include a narrative providing specific information regarding the scope of past projects (including the number of socially disadvantaged farmers and ranchers served or the area served by the organization), activities conducted, and community involvement and copies of prior agreements, press releases, news articles, and other contemporaneous documents supporting the narrative; and

(3) Does not engage in activities prohibited under Section 501 (c)(3) of the Internal Revenue Code of 1986.

§ 26.6 Substantial federal involvement.

The USDA Office of Outreach may award cooperative agreements under this program. By statute, the Federal awarding agency must be substantially involved in the project to enter into a cooperative agreement to provide assistance. The USDA Office of Outreach anticipates the following involvement, which it has deemed substantial, in carrying out projects funded with Federal assistance provided through a cooperative agreement under this program:

(a) The USDA Office of Outreach will serve as liaison and coordinate the close collaboration between awardees and USDA agencies that administer agricultural programs targeted for outreach under the project;

(b) The USDA Office of Outreach will facilitate and coordinate training and continuing updates for awardees regarding the regulatory requirements,

application procedures, and compliance for targeted agricultural programs;

(c) USDA Office of Outreach will assist awardees in planning workshops for targeted socially disadvantaged groups, including coordinating the provision of available information (e.g., application forms and instructions) from USDA necessary to accomplish workshop objectives;

(d) The USDA Office of Outreach must approve position descriptions and the selection of key personnel as identified in the project proposal if such personnel are hired or replaced during the project period;

(e) The USDA Office of Outreach will work closely with awardees to obtain the significant amounts of information necessary for the USDA Office of Outreach to comply with its statutory requirements to provide reports regarding this program to the Congress; and

(f) The USDA Office of Outreach will monitor projects closely and may request changes in project direction as necessary.

§ 26.7 [Reserved]

§ 26.8 Program announcement.

A program announcement for each new competition will be published in the Federal Register and such other publication(s) as deemed appropriate.

§ 26.9 Proposal content.

The project proposal must contain at a minimum the following information:

(a) *Background and need for the project.* Explain the circumstances that necessitate an Outreach and Technical Assistance Project within a county, region, State or other geographic area to serve socially disadvantaged farmers and ranchers.

(b) *Objectives and goals proposed to meet the objectives.* Clearly state the objectives of the project and explain the goals proposed to meet the objectives. Identify all important project milestones and dates as they relate to project start-up, execution, evaluation, dissemination, and close out. Indicate the specific agricultural programs for which the proposed project will provide outreach and assistance.

(c) *Statement of Work, including staffing.* Describe the plan of action for meeting the objectives of the Outreach and Technical Assistance Program and the necessary staffing. Describe and explain the nature of any proposed collaborative or subcontractural arrangements necessary to carry out the project.

(d) *Proposed budget.*

(1) Submit a detailed budget accompanied by a narrative description outlining and justifying the listed costs, for one year (12 months).

(2) Show all funding sources and itemize costs by the following line items: Personnel costs, equipment, material and supplies, travel, and all other costs.

(3) Salaries of project personnel who will be working on the project may be requested in proportion to the effort that they will devote to the project.

(4) Funds may be requested under any of the line items listed above provided that the item or source for which support is requested is identified as necessary for the successful conduct of the project, is allowable under the authorizing legislation and applicable Federal cost principles, and is not prohibited under any applicable Federal statute or regulation.

(5) The program announcement will specify any limitations on indirect costs under this program. The General Provisions of the annual Appropriations Act funding USDA ordinarily limit indirect costs under cooperative agreements between USDA and non-profit institutions, including institutions of higher education, to ten percent of the total direct costs of the agreement, with an exception when an institution computes its direct cost rates on a similar basis for all agencies covered by that Act (typically referred to as the Federal negotiated indirect cost rate).

(e) *Personnel.* Include the resumes of all anticipated personnel, including the Project Director in the proposal package. Also discuss the experience, qualifications, and availability of all personnel, including the Project Director, to direct and carry out the project.

§ 26.10 Proposal review.

(a) Prior to the technical examination, a preliminary review will be made by the USDA Office of Outreach staff for responsiveness to this solicitation. Proposals that do not fall within the solicitation guidelines will be eliminated from competition. All responsive proposals will be reviewed by peer reviewers using the evaluation criteria stated below. The peer reviewers will be selected to provide maximum expertise and objective judgment in the evaluation of proposals.

(b) To assist in the evaluation and obtain the best possible balance of viewpoints for funding consideration, peer reviewers will evaluate responsive proposals. The proposal review panel will be selected and organized to provide maximum expertise and objective judgment in the evaluation of proposals. The peer reviewers will evaluate each proposal using the following evaluation criteria. The weight of each criterion will be specified in the program announcement:

(1) *Institutional commitment and resources.* Degree to which the institution or organization is committed to the project. Experience, qualifications, competence, and availability of personnel and resources to direct and carry out the project.

(2) *Feasibility and policy consistency.* Degree to which the proposal clearly describes its objectives and evidences a high level of feasibility and consistency with the USDA policy and mission. This criterion relates to the adequacy, soundness of the proposed approach to the solution of the problem and evaluates the plan of operation, timetable, evaluation and dissemination plans.

(3) *Number of socially disadvantaged farmers and ranchers served and collaboration.* Degree to which the proposal reflects partnerships and collaborative initiatives with other agencies or organizations to enhance the quality and effectiveness of the program. Additionally, the areas and number of socially disadvantaged farmers and ranchers who would benefit from the services offered.

(4) *Socially disadvantaged applicants-outreach.* Degree to which the proposal contains efforts to reach persons identified as socially disadvantaged farmers and ranchers in targeted counties. Potential for encouraging and assisting socially disadvantaged farmers and ranchers to own and operate farms and ranches and to participate in agricultural programs. Elements considered include impact, continuation plans, innovation, and expected products and results.

(5) *Preparatory features—statement of work.* Degree to which the proposal reflects innovative strategies for reaching the population targeted in the proposal and achieving the project objectives. Elements evaluated include originality, practicality, and creativity in developing and testing innovative solutions to existing or anticipated issues or problems of socially disadvantaged farmers and ranchers. Responsiveness to the need to provide socially disadvantaged farmers and ranchers with information and assistance on application and bidding procedures, farm management, other essential information to enhance participation of agricultural programs and conducting a successful farming operation.

(6) *Overall quality of the proposal.* Degree to which the proposal complies with the Application Guidelines and is of high quality. Elements considered

include adherence to instructions, accuracy and completeness of forms, clarity and organization of ideas, thoroughness and sufficiency of detail in the budget narrative, specificity of allocations between targeted areas if the proposal addresses more than one area, and completeness of vitae for all key personnel associated with the project.

§ 26.11 Award process.

(a) OR will use the views of the individual reviewers to determine which proposals to recommend to the awarding official for funding. Evaluated proposals will be ranked by OR based on merit. The awarding official reserves the right to make awards to ensure the variety among successful applicants and the nature of the projects funded in order to accomplish the program objectives. The awarding official also reserves the right to negotiate with applicants recommended for funding regarding project revisions (e.g., reductions in scope of work), funding level, or period of support prior to an award, based on the amount of resources available to achieve the broad program objectives. Revisions to proposals recommended for funding may not increase the proposed scope of or funding for a project or otherwise undermine or circumvent the competitive nature of the award process.

(b) The final decision to award is at the discretion of the awarding official. The awarding official shall consider the peer reviewers' comments and the recommendations by the OR staff and any other pertinent information before making a final decision.

(c) After a decision regarding funding is made, OR and the awardee which is selected will enter into a grant or cooperative agreement. The awarding official will notify the awardee of approval and inform it of the necessary documents needed to execute the agreement.

(d) Once all award decisions are made, OR will notify all unsuccessful applicants that their proposals did not receive an award.

§§ 26.12–26.14 [Reserved]

§ 26.15 Authorized use of funds.

Any funds authorized by the Outreach and Assistance for Socially Disadvantaged Farmers and Ranchers program must be used only for the project under the grant or cooperative agreement. There is no other authorized use of the funds. Eligible costs are limited to those line items specified in the approved budget.

§§ 26.16—26.25 [Reserved]

§ 26.26 Other applicable Federal statutes and regulations.

Several other Federal statutes and regulations apply to this program. These include, but are not limited to, the following:

(a) 7 CFR part 1b—USDA Implementation of the National Environmental Policy Act;

(b) 7 CFR part 3—USDA implementation of OMB Circular A–129 regarding debt collection;

(c) 7 CFR part 1.1—USDA implementation of the Freedom of Information Act;

(d) 7 CFR part 15, Subpart A—USDA implementation of Title VI of the Civil Rights Act of 1964;

(e) 7 CFR part 3015—USDA Uniform Federal Assistance Regulations, implementing OMB Directives (*i.e.,* Circular Nos. A–110, A–21, and A–122) and incorporating provisions of 31 U.S.C. 6301–6308 as well as general policy requirements applicable to awardees of Departmental financial assistance;

(f) 7 CFR part 3017—USDA implementation of Government-wide Debarment and Suspension (nonprocurement) and Governmentwide Requirements for Drug-Free Workplace (Grants);

(g) 7 CFR part 3018—USDA implementation of New Restrictions on Lobbying. Imposes prohibitions and requirements for disclosure and certification related to lobbying on awardees of Federal contracts, grants, cooperative agreements, and loans;

(h) 7 CFR part 3019—USDA Uniform Administrative Requirements for Grants and Agreements with Institutions of Higher Education, Hospitals, and Other Non-Profit Organizations;

(i) 29 U.S.C. 794, Section 504 of the Rehabilitation Act of 1973, and 7 CFR part 156 (USDA implementation of the statute)—Prohibits discrimination based upon physical or mental handicap in Federally assisted programs; and

(j) 35 U.S.C. 200 *et seq.*—Bayh-Dole Act, controlling allocation of rights to inventions made by employees of small business firms and domestic nonprofit organizations, including universities, in Federally assisted programs (implementing regulations are contained in 37 CFR part 401).

§ 26.27 Fund disbursement.

The method of payment will be by reimbursement by Electronic Fund Transfer (EFT), and payment will be requested on Standard Form (SF) 270, ''Request for Advance or Reimbursement.'' Payments will be processed in accordance with 7 CFR parts 3015 and 3019, as applicable.

§ 26.28 Financial management systems and reporting requirements.

(a) Awardees must comply with standards for the financial management and reporting and program performance reporting found in 7 CFR parts 3015 and 3019, as applicable.

(b) Awardees must provide to the OR quarterly financial and program performance reports. The reports are due 30 days after the reporting period, and an original and two copies of each report will be submitted. The financial report will be presented on SF–269, ''Financial Status Report,'' and the financial and program performance reports will be prepared in accordance with 7 CFR parts 3015 and 3019, as applicable.

(c) The program performance report should also address progress on the activities under each of the areas of outreach and technical assistance, as stipulated in the grant or cooperative agreement.

§§ 26.29–26.36 [Reserved]

§ 26.37 Monitoring compliance and penalty for noncompliance.

(a) *OR monitoring.* OR will monitor compliance of the Outreach and Assistance for Socially Disadvantaged Farmers and Ranchers projects through the reports received in accordance with § 26.28 of this part, through information received from USDA field offices and the public, and through on-site visits to observe the operation and administration of the program.

(b) *Audits.* Awardees are subject to the audit requirements of 7 CFR parts 3015 and 3019, as applicable. An audit report will be submitted to OR annually in accordance with OMB Circular A–133. All records of the awardees will be subject to audit by appropriate USDA Office of Outreach staff or other responsible authority.

(c) *Penalty for noncompliance.* If the Director, OR determines that a project does not meet or no longer meets the objective of the program, that there has been a violation of the grant or cooperative agreement, that reporting requirements are not being met, or that funds are not being used only for the operation and administration of the authorized project, the awarding official is authorized to impose any penalties or sanctions established in 7 CFR parts 3015 and 3019, as applicable. Penalties may include withholding payments, suspension of the grant or cooperative agreement, or termination for cause. If a penalty for noncompliance is enforced, the reason(s) will be stated in a letter to

the awardee along with appeal procedures.

§§ 26.38–26.40 [Reserved]

§ 26.41 Nondiscrimination.

The policies and regulations contained in 7 CFR parts 15, 15a, and 15b apply to grants and cooperative agreements made under this part.

§§ 26.42–26.50 [Reserved]

Done at Washington, DC, this 23rd day of April, 2001.

Ann M. Veneman,

Secretary of Agriculture.

[FR Doc. 01–10523 Filed 4–27–01; 8:45 am]

BILLING CODE 3410–01–U

DEPARTMENT OF AGRICULTURE

Outreach and Assistance for Socially Disadvantaged Farmers and Ranchers Program

AGENCY: Office of Outreach, USDA.

ACTION: Notice

SUMMARY: The USDA Office of Outreach announces the availability of Grants for the Outreach and Assistance for Socially Disadvantaged Farmers and Ranchers Program for Fiscal Year (FY) 2001. Proposals are hereby requested from eligible institutions and organizations for competitive consideration of Outreach and Assistance cooperative agreement awards. This program aims to promote diversified ownership of agricultural land and farm operations by encouraging and assisting socially disadvantaged farmers and ranchers to participate in Federal technical and financial assistance programs. The intended outcome is to encourage and assist socially disadvantaged farmers and ranchers to own and operate farms and ranches, participate in agricultural programs, and thus allow them to become an integral part of the agricultural community.

This notice sets out the objectives for the cooperative agreement funds, the eligibility criteria for projects and applicants, the application procedures and instructions, and the project selection process and evaluation criteria.

DATES: Proposals must be received on or before June 29, 2001. Proposals received after June 29, 2001 will not be considered for funding.

ADDRESSES: Submit proposals to the U.S. Department of Agriculture, Office of Outreach, Ag STOP 1710, 1400 Independence Avenue, SW., Washington, DC 20250. Applicants may request application packages from the above address marked to the attention of: Geraldine Herring, by telephone on 1–800–880–4183, or by E-mail at *2501rfp@usda.gov.*

FOR FURTHER INFORMATION CONTACT: Director, USDA Office of Outreach, Telephone 202–720–6350, Facsimile (202) 720–7489 or Geraldine Herring, Special Outreach Program Coordinator, Telephone 202–720–1637, Facsimile 202–720–7489.

SUPPLEMENTARY INFORMATION:

Stakeholder Input:

The USDA Office of Outreach is soliciting comments regarding this request for proposals from any interested party. These comments will be considered in the development of the next request for proposals for this program. Such comments will be forwarded to the Secretary or her designee for use in meeting the requirements of section 2501 of the Food, Agriculture, Conservation and Trade Act of 1990. Written comments should be submitted by first-class mail to: USDA Office of Outreach, 1400 Independence Avenue, SW., Ag Stop 1710, Washington, DC 20250, or via e-mail to *2501rfp@usda.gov.* In your comments, please include the name of the program and the fiscal year of the request for proposals to which you are responding. Comments are requested within six months from the issuance of the request for proposals. Comments received after that date will be considered to the extent practicable.

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Part I—General Information

A. Authority

Section 2501 (a) of the Food, Agriculture, Conservation, and Trade Act of 1990, 7 U.S.C. 2279 (a), authorizes the Secretary of Agriculture, who has delegated the authority to the Director of the USDA Office of Outreach, to make awards to eligible institutions and organizations for outreach and technical assistance to encourage and assist socially disadvantaged farmers and ranchers to own and operate farms and ranches and to participate in agricultural programs. The program is administered by the U.S. Department of Agriculture, Office of Outreach under the Outreach and Assistance for Socially Disadvantaged Farmers and Ranchers Program.

USDA Office of Outreach published in this same edition of the **Federal Register** proposed regulations governing the administration of this program. The proposed regulations set forth how the USDA Office of Outreach will administer this program, including procedures to be followed when submitting proposals, rules governing the evaluation of proposals and the awarding of cooperative agreements, and regulations relating to the post-award administration of projects. The USDA Office of Outreach anticipates finalizing the proposed regulations prior to the award of cooperative agreements under this Notice of Request for Proposals (RFP). Awards resulting from this RFP will be subject to the final regulations.

Currently, the RFP and the proposed regulations are consistent. Because of the nature of the rule making process, these requirements are subject to change based upon comments received. Applicants whose proposals are recommended for funding must agree to be bound by the final rule as a condition of receiving an award under this program.

B. Definitions

For this program, the following definitions apply:

1890 Land-Grant Colleges means one of those institutions eligible to receive funds under the Act of August 30, 1890, as amended (7 U.S.C. 321 *et seq.*), including Tuskegee University.

Agricultural programs means those activities established or authorized by: The Agricultural Act of 1949; the Consolidated Farm and Rural Development Act; the Agricultural Adjustment Act of 1938; the Soil Conservation Act; the Domestic Allotment Assistance Act; the Food Security Act of 1985; and other such Acts as determined by the Director, USDA Office of Outreach, on a case-by-case basis either at the Director's initiative or in response to a written request with supporting explanation for inclusion of an Act. Covered programs include, but are not limited to, agricultural conservation program,

programs comprising the environmental conservation acreage reserve program (ECARP), conservation technical assistance program, emergency conservation program, forestry incentives program, Great Plains Conservation Program, integrated farm management option program, price support and production adjustment programs, rural environmental conservation program, soil survey program, and water bank program; and the farm loan programs (farm ownership, operating, soil and water, and emergency loans).

Alaska Native means a citizen of the United States who is a person of one-fourth degree or more Alaska Indian (including Tsimshian Indians not enrolled in the Metlaktla Indian Community) Eskimo, or Aleut blood, or combination thereof. It also includes, in the absence of proof of a minimum blood quantum, any citizen of the United States who is regarded as an Alaska Native by the Native village or Native group of which he claims to be a member and whose father or mother is (or, if deceased, was) regarded as Native by any village or group.

Alaska Native cooperative colleges means any post-secondary education institution that at the time of application, has an enrollment of undergraduate students that is at least 20 percent Alaska Native students.

Authorized organizational representative means the president or chief executive officer of the applicant organization or the official, designated by the president or chief executive officer of the applicant organization, who has the authority to commit the resources of the organization.

Awardee means the recipient designated in the cooperative agreement as the responsible legal entity to which the Federal assistance is awarded.

Awarding official means the Director of the USDA Office of Outreach or the Director's designee, who has been delegated the authority to issue or modify program agreements on behalf of the Secretary of Agriculture for this program.

Budget Period means the interval of time (usually 12 months) into which the project period is divided for budgetary and reporting purposes.

Community-based organization means a nonprofit, nongovernmental organization with a well-defined constituency that includes all or part of a particular community, *e.g.,* communities consisting of socially disadvantaged farmers and ranchers.

Cooperative agreement means an award of funds to an eligible entity with the following characteristics:

(1) The principal purpose of the award is to transfer a thing of value to the awardee to accomplish a public purpose of support or stimulation authorized by statute, rather than acquisition, by purchase, lease, or barter, of property or services for the direct benefit or use of the Federal Government; and

(2) At the time of award, substantial involvement is anticipated between the USDA Office of Outreach and the awardee in performing the activity under the agreement.

Department or USDA means the United States Department of Agriculture.

Enrollment of needy students means an enrollment at an institution with respect to which:

(1) At least 50 percent of the degree students so enrolled are receiving need-based Federal financial assistance, including the Federal work-study program, in the second fiscal year preceding the fiscal year for which the determination is made (other than loans for which an interest subsidy is paid pursuant to section 1078 of this title); or

(2) A substantial percentage of the students so enrolled are receiving Federal Pell Grants in the second fiscal year preceding the fiscal year for which determination is made, compared to the percentage of students receiving Federal Pell Grants at all such institutions in the second fiscal year preceding the fiscal year for which the determination is made.

Full-time equivalent students means the sum of the number of students enrolled full time at an institution, plus the full-time equivalent of the number of students enrolled part time (determined on the basis of the quotient of the sum of the credit hours of all part-time students divided by 12) at such institution.

Grant means an award of funds to an awardee with the following characteristics:

(1) The principal purpose of the award is to accomplish a public purpose authorized by statute, rather than acquisition, by purchase, lease, or barter, of property or services for the direct benefit or use of the Federal Government; and

(2) At the time an award is made, no substantial involvement is anticipated between OR and the awardee.

Hispanic Serving Post-Secondary Educational Institutions means a post-secondary educational institution that:

(1) At the time of application, has an enrollment of undergraduate full-time equivalent students that is at least 25 percent Hispanic students; and

(2) Provides assurances that not less than 50 percent of the institution's Hispanic students are low-income individuals.

Indian Tribal Community Colleges means a post-secondary educational institution which:

(1) Is formally controlled, or has been formally sanctioned, or chartered, by the governing body of an Indian tribe or tribes, except that no more than one such institution shall be recognized with respect to any such tribe; and

(2) Includes an institution listed in the Equity in Educational Land Grant Status Act of 1994, as amended (7 U.S.C. 301 note). The 1994 Land-Grant Institutions are: Bay Mills Community College, Blackfeet Community College, Cankdeska Cikana Community College, Cheyenne River Community College, Dine Community College, D-Q University, Dullknife Memorial College, Fond Du Lac Community College, Fort Belknap Community College, Fort Berthold Community College, Fort Peck Community College, LacCourte Orielles Ojibwa Community College, Little Big Horn Community College, Little Priest Community College, Nebraska Indian Community College, Northwest Indian College, Oglala Lakota College, Salish Kootenai College, Sinte Gleska University, Sisseton Wahpeton Community College, Sitting Bull College, Stonechild Community College, Turtle Mountain Community College, United Tribes Technical College, Southwest Indian Polytechnic Institute, Institute of American Indian Arts, Crownpoint Institute of Technology, Haskell Indian Nations University, Leech Lake Tribal College, and College of the Menominee Nation.

Junior or community college means an institution of higher education:

(1) That admits as regular students persons who are beyond the age of compulsory school attendance in the State in which the institution is located and who have the ability to benefit from the training offered by the institution;

(2) That does not provide an educational program for which the institution awards a bachelor's degree (or an equivalent degree); and

(3) That—

(i) provides an educational program of not less than 2 years in duration that is acceptable for full credit toward such a degree; or

(ii) offers a 2-year program in engineering, mathematics, or the physical or biological sciences, designed to prepare a student to work as a technician or at the semiprofessional level in engineering, scientific, or other technological fields requiring the understanding and application of basic

engineering, scientific, or mathematical principles of knowledge.

Low-income individual means an individual from a family whose taxable income for the preceding year did not exceed 150 percent of an amount equal to the poverty level determined by using criteria of poverty established by the Bureau of the Census.

Peer Reviewers means experts from public and private sectors qualified by training and experience in particular fields and designated by the Director, USDA Office of Outreach or other designated official to evaluate eligible proposals.

Post-Secondary Educational Institutions means an institution of higher education in any State which:

(1) Admits as regular students only persons having a certificate of graduation from a school providing secondary education, or the recognized equivalent of such a certificate;

(2) Is a public or other nonprofit institution;

(3) Has an enrollment of needy students as defined above;

(4) The average educational and general expenditures of which are low, per full-time equivalent undergraduate student, in comparison with the average educational and general expenditures per full-time equivalent undergraduate student of institutions that offer similar instruction;

(5) Is—

(i) legally authorized to provide, and provides within the State, an educational program for which such institution awards a bachelor's degree;

(ii) a junior or community college; or

(iii) the College of the Marshall Islands, the College of Micronesia/ Federated States of Micronesia, and Palau Community College;

(6) Is accredited by a nationally recognized accrediting agency or association determined by the Secretary to be reliable authority as to the quality of training offered or which is, according to such an agency or association, making reasonable progress toward accreditation;

(7) Meets such other requirements as the Secretary may prescribe; and

(8) Is located in a State. Any branch of any institution of higher education described above which satisfies criteria (3) and (4) above. For purposes of the determination of whether an institution is an eligible institution under this paragraph, the factor (3) shall be given twice the weight of the factor (4).

Prior approval means written, prior consent by the awarding official.

Project means the total activities within the scope of the program as identified in the grant or cooperative agreement.

Project Director means the individual responsible for the technical direction and management of the project, as designated by the awardee in the proposal and approved by the awarding official. The project director will devote full time to the administration of the project.

Project Period means the total time approved by the awarding official for conducting the proposed project as outlined in an approved project proposal or the approved portions thereof and as specified in the cooperative agreement.

Recipient means an entity as defined in § 26.5 of this part that has entered into a grant or cooperative agreement with the USDA Office of Outreach.

Requests for Proposals (RFP) means an invitation to submit proposals for consideration for funding under this program.

Socially Disadvantaged Farmer or Rancher means a farmer or rancher who is a member of a socially disadvantaged group.

Socially Disadvantaged Group means a group whose members have been subjected to racial or ethnic prejudice because of their identity as members of a group without regard to their individual qualities. Socially disadvantaged groups include, but are not limited to, African Americans, Native Americans, Alaskan Natives, Hispanics, Asians, and Pacific Islanders. The Secretary will determine on a case-by-case basis whether additional groups qualify under this definition, either at the Secretary's initiative or in response to a written request with supporting explanation.

C. Eligibility

1. Proposals may be submitted by:

a. 1890 Land-Grant Colleges, including Tuskegee University, Indian tribal community colleges and Alaska native cooperative colleges, Hispanic serving post-secondary educational institutions, and other post-secondary educational institutions with demonstrated experience in providing agricultural education or other agriculturally related services to socially disadvantaged family farmers and ranchers in their region; and

b. Any community-based organization that:

(i) has demonstrated experience in providing agricultural education or other agriculturally related services to socially disadvantaged farmers and ranchers;

(ii) provides documentary evidence of its past experience in working with socially disadvantaged farmers and ranchers during the two years preceding its application for assistance. Documentary evidence shall include a narrative providing specific information regarding the scope of past projects (including the number of socially disadvantaged farmers and ranchers served or in the area served by the organization), activities conducted, and community involvement and copies of prior agreements, press releases, news articles, and other contemporaneous documents supporting the narrative; and

(iii) does not engage in activities prohibited under section 501(c)(3) of the Internal Revenue Code of 1986.

2. In addition to the above, an applicant must qualify as a responsible applicant. Applicants not qualifying as responsible may be subject to special award conditions pursuant to 7 CFR 3019.14. To qualify as responsible, an applicant must meet the following standards:

(a) Adequate financial resources for performance, the necessary experience, organizational and technical qualifications, and facilities, or a firm commitment, arrangement, or ability to obtain same (including any to be obtained through sub-agreement(s));

(b) Ability to comply with the proposed or required completion schedule for the project;

(c) Adequate financial management system and audit procedures that provide efficient and effective accountability and control of all funds, property, and other assets;

(d) Satisfactory record of integrity, judgment, and performance, including, in particular, any prior performance under grants and contracts from the Federal government; and

(e) Otherwise be qualified and eligible to receive an award under the applicable laws and regulations.

Although an applicant may be eligible to compete for an award based on its status as an eligible entity, other factors may exclude an applicant from receiving Federal assistance under this program (e.g., debarment and suspension, a determination of non-responsibility based on the information submitted).

D. Program Application Materials

Program application materials will be made available upon request. These materials include information on the purpose of the program, how the program will be conducted, the required contents of a proposal, and the forms needed to prepare and submit applications.

Part II—Program Description

A. Purpose of Program

Proposals are requested for cooperative agreements for outreach and assistance to socially disadvantaged farmers and ranchers. Cooperative agreements will be awarded competitively to eligible organizations and institutions for a one-year project to conduct outreach and technical assistance to encourage and assist socially disadvantaged farmers and ranchers to own and operate farms and ranches, and to provide information on application and bidding procedures, farm management, and other essential information to participate in agricultural programs.

Agricultural programs include but are not limited to the following, identified by the Catalog of Federal Domestic Assistance number and program title: (10.054) Emergency Conservation Program; (10.055) Production Flexibility Payments for Contract Commodities; (10.064) Forestry Incentives Program; (10.069) Conservation Reserve Program; (10.404) Emergency Loans; (10.406) Farm Operating Loans; (10.407) Farm Ownership Loans; (10.900) Great Plains Conservation; and (10.903) Soil Survey.

B. Available Funding

For fiscal year (FY) 2001, $3 million has been appropriated for this program. An additional $3 million has been authorized from the Fund for Rural America. Therefore, the total funds available for this program in FY 2001 are about $6 million and the total of all awards will not exceed this amount. The amount of funds available for this program in subsequent years is not fixed and may vary considerably from the current funding level.

C. Indirect Costs

Section 708 of the Agriculture, Rural Development, Food and Drug Administration, and Related Agencies Appropriations Act, 2001, Public Law 106–387, limits indirect costs under cooperative agreements between USDA and non-profit institutions, including institutions of higher education, to ten percent of the total direct costs of the agreement. Section 708 authorizes an exception to the ten percent limit for institutions that compute indirect cost rates on a similar basis for all agencies for which the Act makes appropriations.

If requested, indirect costs must be justified and may not exceed the ten percent limitation or the current rate negotiated with the cognizant Federal-negotiating agency. Applications from colleges and universities must provide a statement in the budget narrative verifying that the indirect costs requested are in accordance with institutional policies.

D. Substantial Federal Involvement

The USDA Office of Outreach will award cooperative agreements under this RFP. By statute, the Federal awarding agency must be substantially involved in the project to enter into a cooperative agreement to provide assistance. The USDA Office of Outreach anticipates the following involvement, which it has deemed substantial, in carrying out projects funded with Federal assistance provided through a cooperative agreement under this program:

(a) The USDA Office of Outreach will serve as liaison and coordinate the close collaboration between awardees and USDA agencies that administer agricultural programs targeted for outreach under the project;

(b) The USDA Office of Outreach will facilitate and coordinate training and continuing updates for awardees regarding the regulatory requirements, application procedures, and compliance for targeted agricultural programs;

(c) USDA Office of Outreach will assist awardees in planning workshops for targeted socially disadvantaged groups, including coordinating the provision of available information (e.g., application forms and instructions) from USDA necessary to accomplish workshop objectives;

(d) The USDA Office of Outreach must approve position descriptions and the selection of key personnel as identified in the project proposal if such personnel are hired or replaced during the project period;

(e) The USDA Office of Outreach will work closely with awardees to obtain the significant amounts of information necessary for the USDA Office of Outreach to comply with its statutory requirements to provide reports regarding this program to the Congress; and

(f) The USDA Office of Outreach will monitor projects closely and may request changes in project direction as necessary.

Part III—Proposal Content

A. Cover Page

1. Complete the ''Application for Funding'' form in its entirety.
2. Note that providing a Social Security Number is voluntary.
3. One copy of the ''Application for Funding'' form must contain the pen and ink signatures of the project director and authorized organizational representative for the applicant organization.
4. Note that by signing the ''Application for Funding'' form the applicant is providing the required certifications set forth in 7 CFR Part 3017 regarding Debarment and Suspension and Drug-Free Workplace, and 7 CFR Part 3018, regarding Lobbying.
5. Provide the name, address, telephone and fax numbers of applicant and project director.
6. The title of the proposal must be brief (80-character maximum) yet represent the major thrust of the project.

B. Project Summary

Each proposal must contain a concise project summary, which may not exceed two (2) pages in length. The project summary should contain the following:

1. Brief summary of the needs (including the estimated numbers expected to be served) of socially disadvantaged farmers and ranchers in the area to be served to enhance their ability to participate in agricultural programs;
2. Goals of the one-year plan and overall project goal(s) and supporting objectives with proposed outcomes; and
3. Relevance or significance of the one-year plan to enhancing the participation of socially disadvantaged farmers and ranchers in agriculture and USDA agricultural programs.

C. Project Narrative

The specific aims of the project must be included in all proposals. The text of the project narrative may not exceed fifteen (15) pages and must contain the following components:

1. *Introduction:* A clear statement of the goal(s) and supporting objectives with proposed outcomes of the proposed project should preface the project description.
2. *Background and Existing Situation:* Provide a detailed description of the circumstances giving rise to the need for the proposed activity to assist socially disadvantaged farmers and ranchers within the State or region.
3. *Objectives:* The objectives of the one-year plan should be clear, complete, and logically arranged. The statements should detail the major steps necessary to develop the plan with specific milestones and planned accomplishments. The objectives should contain details of how the accomplishments will advance the goal for assisting socially disadvantaged farmers and ranchers in obtaining information on application and bidding procedures, farm management, and other essential information to participate in agricultural programs. List the specific agricultural programs for

which the proposed project will provide outreach and assistance.

4. *Procedures.* Describe the steps necessary to implement the proposed one-year plan including the methods or plan of action to attain the stated objectives.

5. *Evaluation:* Describe the evaluation plan for the proposed activity, including impact factors and indicators of effectiveness and efficiency in accomplishing objectives.

D. Scope of Program

All projects must contain explicit information indicating how results from the project will be measured, evaluated, and reported. The indicators used to measure results of the project should be clear and objective and focus on the anticipated impacts on socially disadvantaged farmers and ranchers.

E. Program Delivery

Program delivery is providing instruction and materials directly to the socially disadvantaged farmers and ranchers. A successful proposal will include the use of strong organizational skills to reach the socially disadvantaged farmers and ranchers in a specific region. Proposals should show how public or private sector (or both) delivery points would be used to reach socially disadvantaged farmers and ranchers.

F. Collaborative Arrangements

If the nature of the proposed project requires collaboration or subcontractural arrangements with other entities, the applicant must identify the collaborator or subcontractor and provide a full explanation of the nature of the relationship.

G. Budget

A budget and a detailed narrative in support of the budget are required for the overall project period. Show all funding sources and itemized costs by the following line items on the budget form: personnel, equipment, material and supplies, travel and all other costs. Funds may be requested under any of the line items listed above provided that the item or service for which support is requested is identified as necessary for successful conduct of the proposed project, is allowable under the authorizing legislation and the applicable Federal cost principles, and is not prohibited under any applicable Federal statute. Salaries of project personnel who will be working on the project may be requested in proportion to the effort that they will devote to the project.

H. Personnel

Summarize the relevant experience of key project personnel that will enable them to successfully complete the project. Include brief vitae, which provide enough information so that proposal reviewers can make an informed judgment as to their capabilities and experience. An organizational chart for the project should be provided, if available.

I. Current and Pending Support

All proposals must list any other current public or private support to which key personnel identified in the proposal have committed portions of their time, whether or not salary support for person(s) involved is included in the budget. Analogous information must be provided for any pending proposals that are being considered by, or that will be submitted in the near future to, other possible sponsors, including other USDA programs or agencies. Concurrent submission of identical or similar proposals to other possible sponsors will not prejudice proposal review or evaluation for this program.

Part IV—Submission of Proposal

A. What To Submit

An original and two (2) copies of the proposal must be submitted. Each copy of each proposal must be stapled securely in the upper left-hand corner (Do Not Bind). All copies of the proposal including all necessary forms must be submitted in one package.

B. When and Where To Submit

Proposals must be received by close of business on (DATE). A proposal's postmark date is not a factor in whether an application is timely received. The applicant assumes the risk of any delays in proposal delivery. Proposals sent by First Class mail must be sent to the following address: U.S. Department of Agriculture, Office of Outreach, Ag STOP 1710, 1400 Independence Avenue, SW., Washington, DC 20250. Hand-delivered proposal and those delivered by overnight express mail or courier service should be brought to the following address: U.S. Department of Agriculture, Office of Outreach, 501 School Street, SW., 1st Floor, Washington, DC 20024.

C. Acknowledgment of Proposals

The receipt of all proposals will be acknowledged in writing and this acknowledgment will contain an identifying proposal number. Once a proposal has been assigned an identification number, the number should be referred to in future correspondence.

Part V—Proposal Review, Selection Process and Evaluation Criteria

A. Proposal Review

Prior to technical examination, a preliminary review will be made by the USDA Office of Outreach staff for responsiveness to this solicitation. Proposals that do not fall within the solicitation guidelines will be eliminated from competition. All responsive proposals will be reviewed by peer reviewers using the evaluation criteria stated below. The peer reviewers will be selected to provide maximum expertise and objective judgment in the evaluation of proposals.

The USDA Office of Outreach staff will use the views of the individual reviewers to determine which proposals to recommend to the Director, USDA Office of Outreach for funding. Evaluated proposals will be ranked by the USDA Office of Outreach staff based on merit. Final approval for those proposals will be made by the Director.

B. Evaluation Criteria and Weight

The USDA Office of Outreach considers all applications received in response to this solicitation as outreach, training and technical assistance project applications. All responsive proposals will be reviewed based on the following criteria:

1. Institutional Commitment and Resources (20 points)

Degree to which the institution or organization is committed to the project. Experience, qualifications, competence, and availability of personnel and resources to direct and carry out the project.

2. Feasibility and Policy Consistency (20 points)

Degree to which the proposal clearly describes its objectives and evidences a high level of feasibility and consistency with the USDA policy and mission. This criterion relates to the adequacy, soundness of the proposed approach to the solution of the problem and evaluates the plan of operation, timetable, evaluation and dissemination plans.

3. Number of Socially Disadvantaged farmers and Ranchers Served and Collaboration (20 points)

Degree to which the proposal reflects partnerships and collaborative initiatives with other agencies or organizations to enhance the quality and effectiveness of the program. Additionally, the areas and number of

socially disadvantaged farmers and ranchers who would benefit from the services offered.

4. Socially Disadvantaged Applicants—Outreach (20 points)

Degree to which the proposal contains efforts to reach persons identified as socially disadvantaged farmers and ranchers in targeted counties. Potential for encouraging and assisting socially disadvantaged farmers and ranchers to own and operate farms and ranches and to participate in agricultural programs. Elements considered include impact, continuation plans, innovation, and expected products and results.

5. Preparatory Features—Statement of Work (15 points)

Degree to which the proposal reflects innovative strategies for reaching the population targeted in the proposal and achieving the project objectives. Elements evaluated include originality, practicality, and creativity in developing and testing innovative solutions to existing or anticipated issues or problems of socially disadvantaged farmers and ranchers. Responsiveness to the need to provide socially disadvantaged farmers and ranchers with information and assistance on application and bidding procedures, farm management, other essential information to enhance participation of agricultural programs and conducting a successful farming operation.

6. Overall Quality of the Proposal (5 points)

Degree to which the proposal complies with the Application Guidelines and is of high quality. Elements considered include adherence to instructions, accuracy and completeness of forms, clarity and organization of ideas, thoroughness and sufficiency of detail in the budget narrative, specificity of allocations between targeted areas if the proposal addresses more than one area, and completeness of vitae for all key personnel associated with the project.

C. Selection Process

When the peer reviewers have completed their individual evaluations, the USDA Office of Outreach staff, based on the individual reviews will make recommendations to the Director, USDA Office of Outreach that each responsive proposal be (a) approved for support from currently available funds or (b) declined due to insufficient funds or unfavorable review (low evaluation score). The Director, USDA Office of Outreach, reserves the right to make awards to ensure variety among both successful applicants and the nature of the projects funded in order to accomplish the program objectives. The Director, USDA Office of Outreach also reserves the right to negotiate with an applicant whose project is recommended for funding regarding project revisions (e.g., reductions in scope of work), funding level, or period of support prior to any award. A proposal may be withdrawn at any time before a final funding decision is made.

Part VI—Program Administration

A. Access to Peer Review Information

After the final decisions have been announced, the Director, USDA Office of Outreach will, upon request, inform the applicant of the basis for the decision on a proposal. Copies of summary reviews, not including the identity of the reviewers, will be made available to respective project directors.

B. Cooperative Agreement Awards

1. General

Within the limit of funds available for such purpose, the Director, USDA Office of Outreach shall enter into cooperative agreements with successful applicants. The date specified by the Director, USDA Office of Outreach as the effective date of the award shall not be later than September 30 of the federal fiscal year in which the project is approved for support and funds are appropriated for such purpose, unless otherwise permitted by law. It should be noted that the project period need not be initiated on the award effective date, but as soon as practicable thereafter so that project goals may be attained within the funded project period. All funds awarded and administered by the USDA Office of Outreach under this request for proposals shall be expended solely for the purpose for which the funds are awarded in accordance with the approved application and budget, the terms and conditions of any resulting award, the applicable Federal cost principles, and the USDA Federal assistance regulations. Funds for fiscal year 2001 are limited to proposals with a one-year plan for outreach and technical assistance to socially disadvantaged farmers or ranchers.

2. Cooperative Agreement Award Document

The cooperative agreement shall include at a minimum the following:

(a) Legal name and address of performing organization or institution to whom the Director, USDA Office of Outreach has entered into a cooperative agreement under the terms of this request for proposals;

(b) Title of Project;

(c) Name(s) and address(es) of project director(s) chosen to direct and control approved activities;

(d) Identifying cooperative agreement number assigned by the USDA Office of Outreach;

(e) Project period; specifying the amount of time the USDA Office of Outreach intends to support the project without requiring recompetition for funds;

(f) Total amount of the financial assistance approved by the USDA Office of Outreach during the project period.

(g) Legal authority(ies) under which the cooperative agreement is awarded.

(h) Approved budget plan for categorizing allocable project funds to accomplish the stated purpose of the cooperative agreement; and

(i) Other information or provisions deemed necessary by the USDA Office of Outreach to carry out its assistance activities or to accomplish the purpose of a particular cooperative agreement.

3. Notice of Award

The notice of award, in the form of a letter, will be prepared and will provide pertinent instructions or information to the awardee that is not included in the cooperative agreement.

C. Use of Funds; Changes

1. Delegation of Fiscal Responsibility

The awardee may not in whole or in part delegate or transfer to another person, institution, or organization the responsibility for use or expenditure of cooperative agreement award funds.

2. Changes in Project Plans

(a) The permissible changes by the awardee, project director(s), or other key project personnel in the approved project cooperative agreement shall be limited to changes to aspects of the project to expedite achievement of the project's approved goals. If the awardee is uncertain as to whether a change complies with this provision, the question must be referred to the Director, USDA Office of Outreach for final determination.

(b) Changes in approved goals or objectives shall be requested by the awardee and approved in writing by the Director, USDA Office of Outreach prior to effecting such changes. In no event shall requests for such changes be approved which are outside the scope of the original approved project.

(c) Changes in approved project leadership or the replacement or reassignment of other key project

personnel shall be requested by the awardee and approved in writing by the Director, USDA Office of Outreach prior to effecting such changes.

(d) Changes in Project Period: An awardee is obligated to complete the proposed project within the specified project period. However, if additional time is needed to complete activities under the agreement, the Director, USDA Office of Outreach has authority to extend one time the duration of an agreement for an additional period of up to 12 months. Entities desiring an extension of the agreement project period must request such extensions in writing at least ten (10) days prior to the expiration of the agreement project period. The request will include the reason for the requested extension, the requested period of extension, a description of the effect(s) on the program if the extension is not granted, and a statement that no additional federal funds would be necessary to support the agreement activities during the extension period. No additional Federal funds will be provided for the extension period. This one-time extension is not available merely for this purpose of using unobligated balances.

(e) Changes in Approved Budget: Changes in an approved budget must be requested by the awardee and approved in writing by the Director, USDA Office of Outreach prior to instituting such changes if the revision will:

(1) Involve transfers of amounts budgeted for indirect costs to absorb an increase in direct costs.

(2) Involve transfers of amounts budgeted for direct costs to accommodate changes in indirect cost rates negotiated during a budget period and not approved when a cooperative agreement was awarded; or

(3) Involve transfers or expenditures of amounts requiring prior approval as set forth in the applicable Federal cost principles, Departmental regulations, or the cooperative agreement.

D. Obligation of the Federal Government

Neither the approval of any application nor the award of any cooperative agreement commits or obligates the United States to provide further support of a project or any portion thereof. Acceptance by the USDA Office of Outreach of any proposal pursuant to this program does not ensure further support of a project or any portion thereof.

E. Environmental and Other Applicable Federal Statutes and Regulations

1. Environmental requirements: The policies and regulations contained in 7 CFR part 1b apply to cooperative agreements made under this RFP.

2. Several other Federal statutes and regulations apply to this program. These include, but are not limited to the following:

7 CFR Part 3—USDA implementation of OMB Circular A–129 regarding debt collection;

7 CFR Part 1, subpart A—USDA implementation of the Freedom of Information Act;

7 CFR Part 15, subpart A—USDA implementation of Title VI of the Civil Rights Act of 1964;

7 CFR Part 3015—USDA Uniform Federal Assistance Regulations, implementing OMB directives (i.e., Circular Nos. A–110, A–21, and A–122) and incorporating provisions of 31 U.S.C. 6301–6308, as well as general policy requirements applicable to recipients of Departmental financial assistance;

7 CFR Part 3017—USDA implementation of Governmentwide Debarment and Suspension (nonprocurement) and Governmentwide Requirements for Drug-Free Workplace (Grants);

7 CFR Part 3018—USDA implementation of New Restrictions on Lobbying. Imposes prohibitions and requirements for disclosure and certification related to lobbying on recipients of Federal contracts, grants, cooperative agreements, and loans;

7 CFR Part 3019—USDA Uniform Administrative Requirements for Grants and Agreements with Institutions of Higher Education, Hospitals and Other Non-Profit Organizations;

29 U.S.C. 794, section 504 of the Rehabilitation Act of 1973, and 7 CFR Part 15b (USDA implementation of the statute), prohibiting discrimination based upon physical or mental handicap in Federally assisted programs;

48 CFR Part 31—Contract Cost Principles and Procedures of the Federal Acquisition Regulation; and

35 U.S.C. 200 *et seq.*—Bayh-Dole Act, controlling allocation of rights to inventions made by employees of small business firms and domestic nonprofit organizations, including universities, in Federally assisted programs (implementing regulations are contained in 37 CFR Part 401).

F. Confidential Aspects of Proposals and Awards

When a proposal results in a cooperative agreement, it becomes a part of the record of the Agency's transactions, available to the public upon specific request. Information that the Director, USDA Office of Outreach determines to be of a privileged nature will be held in confidence to the extent permitted by law. Therefore, any information that the applicant wishes to have considered as privileged should be clearly marked as such and sent in a separate statement, two copies of which should accompany the proposal.

The original copy of each proposal that is not selected for funding (including those that are withdrawn) will be retained by the USDA Office of Outreach for one year. Other copies will be destroyed. After one year, the retained copy will be destroyed.

G. Standards of Conduct for Employees of Awardee

1. Awardees must establish safeguards and guidelines for the award and administration of contracts in order to prevent employees, consultants, or members of governing bodies from using their positions for purposes that are, or give the appearance of being, motivated by a desire for private financial gain for themselves or others such as those with whom they have family, business, or other ties. Therefore, awardees receiving financial support must have written policy guidelines on conflict of interest and the avoidance thereof. These guidelines should reflect State and local laws and must cover financial interests, gifts, gratuities and favors, nepotism, and other areas such as political participation and bribery. These rules must also indicate the conditions under which outside activities, relationships, or financial interests are proper or improper, and provide for notification of these kinds of activities, relationships, or financial interests to a responsible and objective awardee official. For the requirements of a code of conduct applicable to procurements under grants and cooperative agreements, see the procurement standards prescribed by 7 CFR 3015.181 and 7 CFR 3019.42.

2. The rules of conduct must contain a provision for prompt notification of violations to a responsible and objective awardee official and must specify the type of administrative action that may be taken against an individual for violations.

3. A copy of the rules of conduct must be given to each officer, employee, board member, and consultant of the awardee who is working on the USDA Office of Outreach financed project, and the rules must be enforced to the extent permissible under State and local law or to the extent to which the awardee determines it has legal and practical enforcement capacity. The rules need not be formally submitted and approved by the awarding official; however, they must be made available for review upon request, for example, during a site visit.

Done at Washington, DC, this 23rd day of April 2001.

Ann M. Veneman,

Secretary of Agriculture.

[FR Doc. 01–10524 Filed 4–27–01; 8:45 am]

BILLING CODE 3410–01–U

Federal Register

Monday,
April 30, 2001

Part VII

Department of Transportation

Federal Aviation Administration

14 CFR Part 121, et al.
Service Difficulty Reports; Final Rule

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Parts 121, 125, 135, and 145

[Docket No. 28293 (FAA–2000–7952); Amendment No. 121–284, 125–37, 135–81 and 145–26]

RIN 2120–AF71

Service Difficulty Reports

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule; delay of effective date.

SUMMARY: The Federal Aviation Administration (FAA) is further delaying the effective date of a final rule that amends the reporting requirements for air carriers and certificated domestic and foreign repair station operators concerning failures, malfunctions, and defects of aircraft, aircraft engines, systems, and components. This action was prompted by questions being raised by industry on the reporting in the new requirements.

DATES: The effective date of the rule amending 14 CFR parts 121, 125, 135, and 145 published at 65 FR 56192, September 15, 2000, is delayed until January 16, 2002.

FOR FURTHER INFORMATION CONTACT: Jose Figueroa, AFS–300, Federal Aviation Administration, 800 Independence Ave. SW., Washington, DC 20591, 202–267–3797.

SUPPLEMENTARY INFORMATION:

Background

The FAA requested that comments on the information collection requirements of the Service Difficulty Reporting (SDR) final rule (65 FR 56192, September 15, 2000) be submitted by November 14, 2000. The FAA has received extensive written comments on the SDR reporting requirements and duplicate reporting of certain failures, malfunctions, and defects. On November 30, 2000 (65 FR 71247), the FAA announced that a public meeting on this rulemaking would be held on December 11, 2000. As a result of this public meeting, novel issues were presented that the FAA was not aware of during the comment period to the supplemental notice of proposed rulemaking.

The SDR final rule, as published, had an effective date of January 16, 2001. On December 22, 2000, (65 FR 80743), the FAA published a notice of delay of the effective date of the final rule. In that notice, the effective date of the final rule was delayed until July 16, 2001.

The FAA has determined that it will need more time to further evaluate the commenter's concerns. Therefore, the FAA is delaying the effective date of the final rule until January 16, 2002. The existing rules will remain in effect until the new effective date.

Since this delay of the effective date is not a new requirement and does not impose any additional burden, I find that notice and public procedures thereon are unnecessary and that good cause exists for extending the effective date on less than 30 days notice.

Issued in Washington DC, on April 24, 2001.

Jane F. Garvey,

Administrator.

[FR Doc. 01–10567 Filed 4–27–01; 8:45 am]

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Federal Register

Monday,
April 30, 2001

Part VIII

The President

Proclamation 7429—Loyalty Day, 2001

Federal Register
Vol. 66, No. 83
Monday, April 30, 2001

Presidential Documents

Title 3—

The President

Proclamation 7429 of April 25, 2001

Loyalty Day, 2001

By the President of the United States of America

A Proclamation

Two hundred and twenty-five years ago, America's founders faced a decisive crossroads. Thomas Jefferson later remembered ''the bold and doubtful election we were to make for our country, between submission or the sword.'' They chose the sword, and a Nation was born.

Today, we celebrate our loyalty to this country and to the principles for which America stands. Americans demonstrate their dedication by protecting our Nation and its people, promoting our commonly held ideals, and passing these values on to future generations.

Many Americans display their loyalty through careers in public service. Members of our Armed Forces ensure that our Nation remains strong and secure, as well as defend democracy around the world. Domestically, law enforcement officers and the professionals working in our judicial system maintain the peace and uphold the rule of law on which our society depends. Countless other Americans also work to protect us from dangers that threaten our safety and resources.

Americans have not let the dream of ''a more perfect Union'' fade with the passing of time. Rather, each new generation, along with millions of immigrants, has promoted ideals that lead to the archetype that the founders envisioned. Heroes have risen to fight for freedom, abolition of slavery, universal suffrage, civil rights, and other principles that form the foundation of our Nation. Today, citizens across the country continue this tradition by giving their time and effort to causes greater than themselves. Whether through charitable, civic, or church activities, Americans demonstrate their loyalty by working to improve our country and the lives of its people.

Perhaps the most basic and important means by which we display loyalty to our country is by passing on to our children the hope and idealism that is an important part of the American spirit. Parents have the important task in ensuring that our Nation's future leaders are prepared to assume the responsibilities they will face. Teachers play essential roles in molding our young people, and they deserve our gratitude and respect for their dedication. Ministers and other mentors also give of themselves by introducing children to the vast opportunities that our Nation holds. By spending time with a child, Americans invest in the future of our country.

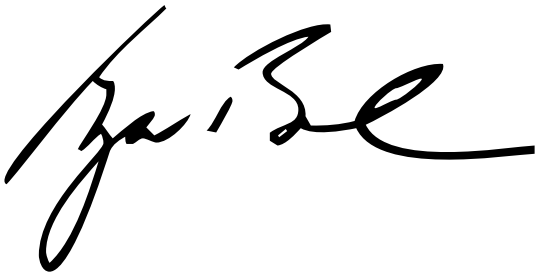
Loyalty Day recognizes the solemn bond between America and its citizens. It provides an opportunity to recognize those who demonstrate their loyalty every day and challenges all of us to find more ways to contribute to the greater good of our country.

The Congress, by Public Law 85–529, has designated May 1 of each year, as ''Loyalty Day,'' and I encourage all Americans to join me this day in reaffirming our allegiance to our blessed Nation.

NOW, THEREFORE, I, GEORGE W. BUSH, President of the United States of America, by virtue of the authority vested in me by the Constitution and laws of the United States of America, do hereby proclaim May 1,

2001, as Loyalty Day. I call upon all the people of the United States in support of this national observance.

IN WITNESS WHEREOF, I have hereunto set my hand this twenty-fifth day of April, in the year of our Lord two thousand one, and of the Independence of the United States of America the two hundred and twenty-fifth.



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REMINDERS

The items in this list were editorially compiled as an aid to Federal Register users. Inclusion or exclusion from this list has no legal significance.

RULES GOING INTO EFFECT APRIL 30, 2001

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  - Gulf of Mexico and South Atlantic coastal migratory pelagic resources; published 3-30-01

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- California; published 3-29-01

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- State and Federal operating permits programs—
  - Compliance certification requirements; amendments; published 3-1-01

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  - PCP waste return from U.S. territories outside U.S. Customs Territory; published 3-30-01

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  - 746-764 and 776-794 MHz bands; information collection; correction; published 4-30-01

Radio stations; table of assignments:
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Food and Drug Administration

Animal drugs, feeds, and related products:
- Ceftiofur sterile powder for injection; published 4-30-01
- Oxytetracycline hydrochloride soluble powder; published 4-30-01
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- Sarafloxacin for poultry; approval withdrawn; published 4-30-01

Children's Health Act; implementation:
- Clinical investigations of FDA-regulated products; additional safeguards for children; published 4-24-01

Human drugs and biological products:
- Postmarketing studies; status reports; effective date delay; published 2-20-01

HOUSING AND URBAN DEVELOPMENT DEPARTMENT

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- Operating fund formula; operating subsidies allocation; published 3-29-01

POSTAL SERVICE

International Mail Manual:
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TRANSPORTATION DEPARTMENT

National Highway Traffic Safety Administration

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LIST OF PUBLIC LAWS

This is a continuing list of public bills from the current session of Congress which have become Federal laws. It may be used in conjunction with ''P L U S'' (Public Laws Update Service) on 202–523–6641. This list is also available online at http://www.nara.gov/fedreg.

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H.R. 132/P.L. 107–6

To designate the facility of the United States Postal Service located at 620 Jacaranda Street in Lanai City, Hawaii, as the ''Goro Hokama Post Office Building''. (Apr. 12, 2001; 115 Stat. 8)

H.R. 395/P.L. 107–7

To designate the facility of the United States Postal Service located at 2305 Minton Road in West Melbourne, Florida, as the ''Ronald W. Reagan Post Office of West Melbourne, Florida''. (Apr. 12, 2001; 115 Stat. 9)

Last List March 21, 2001

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[1] Because Title 3 is an annual compilation, this volume and all previous volumes should be retained as a permanent reference source.

[2] The July 1, 1985 edition of 32 CFR Parts 1–189 contains a note only for Parts 1–39 inclusive. For the full text of the Defense Acquisition Regulations in Parts 1–39, consult the three CFR volumes issued as of July 1, 1984, containing those parts.

[3] The July 1, 1985 edition of 41 CFR Chapters 1–100 contains a note only for Chapters 1 to 49 inclusive. For the full text of procurement regulations in Chapters 1 to 49, consult the eleven CFR volumes issued as of July 1, 1984 containing those chapters.

[4] No amendments to this volume were promulgated during the period January 1, 2000, through January 1, 2001. The CFR volume issued as of January 1, 2000 should be retained.

[5] No amendments to this volume were promulgated during the period April 1, 1999, through April 1, 2000. The CFR volume issued as of April 1, 1999 should be retained.

[6] No amendments to this volume were promulgated during the period July 1, 1999, through July 1, 2000. The CFR volume issued as of July 1, 1999 should be retained..