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Federal Register

10–3–01 Wednesday
Vol. 66 No. 192 Oct. 3, 2001
Pages 50287–50524

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Presidential Documents

Title 3—

The President

Proclamation 7473 of September 28, 2001

National Public Lands Day, 2001

By the President of the United States of America

A Proclamation

The United States has the world's greatest public lands. The National Park System, established in 1916, protects some of America's most beautiful and essential natural resources. Our parks connect Americans with their land, giving us a common landscape and shared national treasures. With more than 80 million acres, these majestic and diverse parks, home to thousands of species of flora and fauna, represent our Nation's most important natural legacy to future generations.

Our national parks provide outstanding recreational possibilities for Americans, and more than 287 million visitors each year come to these beautiful places to explore those possibilities. My Administration recognizes and accepts the importance of making these great lands more accessible to all our citizens. Our Government bears a clear and direct responsibility for the stewardship of our parks. The Government alone, however, cannot fulfill the promise of preserving this outdoor legacy—a legacy first bequeathed to us by President Theodore Roosevelt and other early visionaries who understood the importance of these great landscapes, ecosystems, and historic and cultural settings. Only by developing partnerships among States, local communities, tribal governments, public agencies, the nonprofit sector, the private sector, and individual landowners can we truly maintain and protect our Nation's best places.

National Public Lands Day provides every American with a unique and valuable opportunity to promote environmental education and, more importantly, to put their hands to work on projects directly benefiting public lands. I encourage Americans to volunteer to build trails, restore habitat, improve accessibility for visitors with special needs, and repair weather-related damage. This year, more than 60,000 volunteers are expected to work at approximately 335 sites in all 50 States, the District of Columbia, and Puerto Rico. In cooperation with their community partners, these individuals will contribute nearly $9 million of needed improvements to America's public lands.

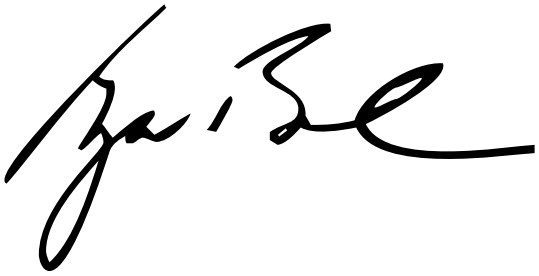
National Public Lands Day also serves as a special time for our country to recognize the accomplishments of the Civilian Conservation Corps, the hard-working men who built more than 800 of America's national and State parks during the 1930s and 1940s. Ceremonies honoring the Corps will be held at Virginia's Shenandoah National Park, as well as at 30 other locations throughout the country.

I encourage Americans to follow the worthy example set by those CCC members and pitch in by volunteering to improve our parks. Through these efforts, we can all do our part to ensure that the Nation's parks, forests, lakes, fields, and rivers remain vibrant and enduring legacies of America's natural beauty for ages to come.

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, do hereby proclaim September 29, 2001, as National Public Lands Day. I call upon the people of the United States

to observe this day with appropriate programs and activities to improve the public lands they use for recreation, education, and enjoyment.

IN WITNESS WHEREOF, I have hereunto set my hand this twenty-eighth day of September, in the year of our Lord two thousand one, and of the Independence of the United States of America the two hundred and twenty-sixth.



[FR Doc. 01–24915
Filed 10–2–01; 8:45 am]
Billing code 3195–01–P

Presidential Documents

Proclamation 7474 of September 28, 2001

Gold Star Mother's Day, 2001

By the President of the United States of America

A Proclamation

Since its inception, this Nation has relied upon courageous young men and women to fight willingly for our country's ideals. Time and again, these men and women have secured America's liberty and prosperity. In defense of freedom and the values Americans hold sacred, many have paid the ultimate sacrifice. Over the course of the last 226 years, more than 1 million American mothers have endured the loss of a son or daughter in service to our Nation.

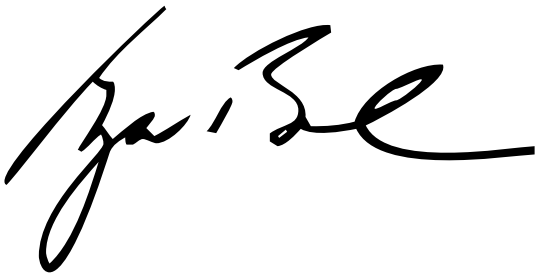
In the aftermath of World War I, President Woodrow Wilson first used the term ''Gold Star Mother.'' It signified not only the remembrance of a young life sacrificed in service to America, but the pride, dignity, and devotion of one who had first given life to that heroic young American. Since 1928, Gold Star Mothers have sustained themselves through their profound sorrow by lovingly serving others. From civic education and community service, to the care of veterans and those in need, the Gold Star Mothers promote patriotism, serve their country, and perpetuate the memories of their lost loved ones. Today, the Nation's Gold Star Mothers still stand as symbols of purpose, perseverance, and grace in the face of personal tragedy. Each year, the Nation remembers their sacrifice by honoring the Gold Star Mothers for their steadfast commitment to the legacy of their fallen children and their devotion to the United States of America.

The Congress, by Senate Joint Resolution 115 of June 23, 1936 (49 Stat. 1895), has designated the last Sunday in September as Gold Star Mother's Day and has authorized and requested the President to issue a proclamation in observance of this day.

NOW, THEREFORE, I, GEORGE W. BUSH, President of the United States of America, do hereby proclaim Sunday, September 30, 2001, as Gold Star Mother's Day. I call upon all Government officials to display the United States flag over Government buildings on this solemn day. I also encourage the American people to display the flag and to hold appropriate meetings in their homes, places of worship, or other suitable places as a public expression of the sympathy and respect that our Nation holds for our Gold Star Mothers.

IN WITNESS WHEREOF, I have hereunto set my hand this twenty-eighth day of September, in the year of our Lord two thousand one, and of the

Independence of the United States of America the two hundred and twenty-sixth.



[FR Doc. 01–24916
Filed 10–2–01; 8:45 am]
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Presidential Documents

Executive Order 13225 of September 28, 2001

Continuance of Certain Federal Advisory Committees

By the authority vested in me as President by the Constitution and the laws of the United States of America, and in accordance with the provisions of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), it is hereby ordered as follows:

Section 1. Each advisory committee listed below is continued until September 30, 2003.

(a) Committee for the Preservation of the White House; Executive Order 11145, as amended (Department of the Interior).

(b) Federal Advisory Council on Occupational Safety and Health; Executive Order 12196, as amended (Department of Labor).

(c) President's Advisory Commission on Educational Excellence for Hispanic Americans; Executive Order 12900 (Department of Education).

(d) President's Board of Advisors on Historically Black Colleges and Universities; Executive Order 13021, as amended, (Department of Education).

(e) President's Board of Advisors on Tribal Colleges and Universities; Executive Order 13021, as amended (Department of Education).

(f) President's Commission on White House Fellowships; Executive Order 11183, as amended (Office of Personnel Management).

(g) President's Committee on the Arts and the Humanities; Executive Order 12367, as amended (National Endowment for the Arts).

(h) President's Committee on the International Labor Organization; Executive Order 12216, as amended (Department of Labor).

(i) President's Committee on the National Medal of Science; Executive Order 11287, as amended (National Science Foundation).

(j) President's Committee on Mental Retardation; Executive Order 12994 (Department of Health and Human Services).

(k) President's Council on Physical Fitness and Sports; Executive Order 12345, as amended (Department of Health and Human Services).

(l) President's Export Council; Executive Order 12131, as amended (Department of Commerce).

(m) President's National Security Telecommunications Advisory Committee; Executive Order 12382, as amended (Department of Defense).

(n) Trade and Environment Policy Advisory Committee; Executive Order 12905 (Office of the United States Trade Representative).

Sec. 2. Notwithstanding the provisions of any other Executive Order, the functions of the President under the Federal Advisory Committee Act that are applicable to the committees listed in section 1 of this order shall be performed by the head of the department or agency designated after each committee, in accordance with the guidelines and procedures established by the Administrator of General Services.

Sec. 3. The following Executive Orders, or sections thereof, which established committees that have terminated and whose work is completed, are revoked:

(a) Sections 3 and 4 of Executive Order 13134 pertaining to the establishment and administration of the Advisory Committee on Biobased Products

and Bioenergy, superseded by the Biomass Research and Development Technical Advisory Committee established pursuant to section 306 of the Biomass Research and Development Act of 2000 (Title III of Public Law 106-224);

(b) Executive Order 13080, establishing the American Heritage Rivers Initiative Advisory Committee;

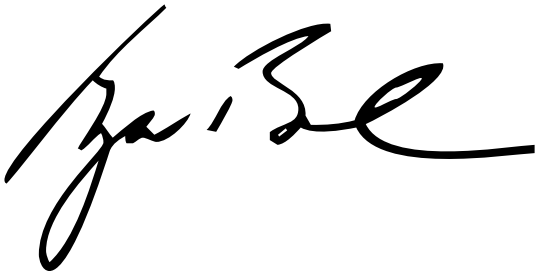
(c) Executive Order 13090, as amended by Executive Order 13136, establishing the President's Commission on the Celebration of Women in American History;

(d) Executive Order 13168, establishing the President's Commission on Improving Economic Opportunity in Communities Dependent on Tobacco Production While Protecting Public Health; and

(e) Executive Order 13075, establishing the Special Oversight Board for Department of Defense Investigations of Gulf War Chemical and Biological Incidents.

Sec. 4. Sections 1 through 4 of Executive Order 13138 are superseded.

Sec. 5. This order shall be effective September 30, 2001.



THE WHITE HOUSE,
September 28, 2001.

[FR Doc. 01–24917
Filed 10–2–01; 8:45 am]
Billing code 3195–01–P

Rules and Regulations

Federal Register

Vol. 66, No. 192

Wednesday, October 3, 2001

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

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

FEDERAL HOUSING FINANCE BOARD

12 CFR Parts 950 and 952

[No. 2001–19]

RIN 3069–AA99

Amendment of Community Investment Cash Advance Programs Regulation

AGENCY: Federal Housing Finance Board.

ACTION: Final rule.

SUMMARY: The Federal Housing Finance Board (Finance Board) is amending its regulation on Community Investment Cash Advance (CICA) Programs (CICA Regulation) to make certain technical revisions clarifying CICA Program requirements and improving the operation of CICA Programs. The final rule clarifies that the Federal Home Loan Banks (Banks) may offer grants, in addition to advances, under certain CICA Programs, and amends the definition of ''median income for the area'' to include additional sources of median income data that may be used to determine income eligibility for projects and households funded under CICA programs.

EFFECTIVE DATE: The final rule shall be effective on November 2, 2001.

FOR FURTHER INFORMATION CONTACT: Charles E. McLean, Deputy Director, (202) 408–2537, or Melissa L. Allen, Program Analyst, (202) 408–2524, Program Assistance Division, Office of Policy, Research and Analysis; or Sharon B. Like, Senior Attorney-Advisor, Office of General Counsel, (202) 408–2930, Federal Housing Finance Board, 1777 F Street, N.W., Washington, D.C. 20006.

SUPPLEMENTARY INFORMATION:

I. Statutory and Regulatory Background

Section 10(j)(10) of the Federal Home Loan Bank Act (Bank Act) authorizes the Banks to establish CICA Programs to support community investment. *See* 12 U.S.C. 1430(j)(10). In order to facilitate and encourage targeted community lending under section 10(j)(10), in 1998, the Finance Board adopted a final regulation providing the Banks with parameters for the establishment of CICA Programs. *See* 63 FR 65536, Nov. 27, 1998; 12 CFR part 952 (formerly 12 CFR part 970).

In the course of implementing CICA Programs under the new CICA Regulation, the Banks and Finance Board staff have identified several technical issues, the resolution of which would clarify CICA Program requirements and improve the effectiveness of CICA Programs. Accordingly, on July 13, 2001, the Finance Board published a proposed rule requesting comment on proposed amendments to the CICA Regulation. *See* 66 FR 36715, July 13, 2001. The proposed rule provided for a 30-day comment period, which closed on August 13, 2001.

The Finance Board received five comment letters on the proposed rule. Commenters included: three Banks; one trade association; and one lender. The comments are discussed in the Analysis of Final Rule section below.

II. Analysis of Final Rule

A. Providing Grants under Certain CICA Programs—§§ 950.1, 952.2, 952.3, 952.5, 952.7

As discussed in the **SUPPLEMENTARY INFORMATION** section of the proposed rule, a number of Banks have asked whether the CICA Regulation does or could authorize the Banks to provide grants, in addition to advances, to members under certain CICA Programs. The current CICA Regulation defines an ''RDA program or Rural Development Advance program'' and a ''UDA program or Urban Development Advance program'' as a program offered by a Bank for community lending in rural or urban areas, respectively. *See* 12 CFR 952.3. Even though these programs are styled as ''advance'' programs in the CICA Regulation, the definitions do not specify the types of financing, such as advances or grants, that a Bank may offer under such programs nor do they limit financing to advances. Accordingly, the Finance Board has interpreted these definition provisions to mean programs under which a Bank offers advances or grants to members. *See* Finance Board Regulatory Interpretation 2000–RI–2 (April 10, 2000).

The proposed rule would amend the definitional provisions and terminology in § 950.1 of the Finance Board's Advances Regulation and §§ 952.2, 952.3, 952.5 and 952.7 of the CICA Regulation to incorporate the Finance Board's interpretation, thereby specifying and clarifying the grant authority in the rule.[1] Specifically, references to the authority to provide grants under RDA and UDA Programs would be added, and the word ''funding,'' which incorporates the concept of grants, would be substituted for the word ''advance,'' where applicable. Thus, the ''RDA program or Rural Development Advance program'' would be renamed the ''RDF program or Rural Development Funding program,'' and the ''UDA program or Urban Development Advance program'' would be renamed the ''UDF program or Urban Development Funding program.'' The definitions of ''RDA or Rural Development Advance'' and ''UDA or Urban Development Advance'' would be deleted as redundant. Certain other technical amendments would be made to provide greater clarity to the language.

Under the current CICA Regulation, members receiving grants from a Bank must use the proceeds of such grants to ''provide financing'' to targeted beneficiaries, which is defined to include certain types of financing, including making loans to targeted beneficiaries. *See* 12 CFR 952.3. If a Bank chooses to provide grants under its RDF or UDF Programs, the Bank may establish requirements with which members must comply in order to obtain and use the grants.

Commenters generally supported the proposed clarification of grant authority. Accordingly, the final rule adopts without change the proposed amendments clarifying the Bank's grant authority in §§ 950.1, 952.2, 952.3, 952.5, and 952.7.

B. Definition of ''Median Income for the Area''—§ 952.3

Under the current CICA Regulation, economic development projects and

[1] This interpretation and the proposed amendments, however, would not apply to the Banks' Community Investment Programs (CIP), which remain exclusively advance programs.

manufactured housing parks are eligible for CICA funding if they are located in areas or neighborhoods with a median income at or below the targeted income level of the specific CICA Program (*e.g.,* 80% for CIP, 100% for UDA Programs, 115% for RDA Programs). *See id.* § 952.3. Section 952.3 defines ''median income for the area'' generally as one or more of the following, as determined by the Bank: (1) The median income for the area, as published annually by the Department of Housing and Urban Development (HUD); (2) the applicable median family income, as determined under 26 U.S.C. 143(f) and published by a state mortgage revenue bond program; (3) the median income for the area, as published by the U.S. Department of Agriculture; or (4) the median income for any definable geographic area, as published by a Federal, state or local government entity for purposes of that entity's housing and economic development programs, and approved by the Finance Board, at the request of a Bank. *See id.* § 952.3. These are the same median income data sources as those adopted by the Finance Board in the revised Affordable Housing Program (AHP) Regulation in 1997. *See id.* § 951.1 (formerly 12 CFR 960.1). However, the AHP Regulation does not incorporate the concept of ''neighborhood'' in its median income standards. A ''neighborhood'' is defined in the CICA Regulation as a small geographic area, *i.e.,* a census tract, block numbering area (BNA), unit of local government with a population of 25,000 or less, rural county, or other geographic location designated in comprehensive plans, ordinances, or other local documents as a neighborhood, village, or similar geographic designation that is within, but smaller than, a unit of general local government. *Id.* § 952.3.

As discussed in the **SUPPLEMENTARY INFORMATION** section of the proposed rule, the Finance Board has determined that the median income data provided by the above sources for determining the median income for an area are not sufficient for the Banks to determine the median income for a neighborhood, as defined in the CICA Regulation. The sources provide current median income data on an annual basis for areas, such as counties, Metropolitan Statistical Areas (MSAs), non-metropolitan areas and states, but not for smaller geographical areas defined as ''neighborhoods'' in the CICA Regulation. HUD does publish annually the 1990 Census information for median income for census tracts, but this data is not updated from the 1990 figures. The Finance Board believes that up-to-date income data will enhance the Banks' capacity to implement effectively the ''neighborhood'' provisions of the CICA Regulation, an important tool in meeting local economic development needs. Consequently, the proposed rule would add a definition of ''median income for the neighborhood'' to the CICA Regulation to enable the Banks to obtain median income data for neighborhoods from: (1) The Federal Financial Institutions Examination Council (FFIEC); or (2) other public or private sources with the approval of the Finance Board. The proposed rule specified FFIEC because it is a Federal government source that publishes updated median income data for neighborhoods and other areas, based on existing HUD median income data. The proposed rule did not specify any of the possible private sources, but allowed the Banks to obtain Finance Board approval for the use of a source other than FFIEC if one can be identified.

The proposed rule would allow the use of these additional sources of median income data only for economic development projects and manufactured housing parks located in neighborhoods, as defined in the CICA Regulation, and only when current median income data for the applicable neighborhood is unavailable from the sources prescribed in the definition of ''median income for the area'' in the CICA Regulation.

Commenters generally supported allowing the Banks to use FFIEC and other sources of median income data for economic development projects and manufactured housing parks located in neighborhoods. One commenter recommended allowing FFIEC to be used as a primary source of median income data, even if current median income data for the applicable neighborhood is available from the sources already prescribed in the regulation. The commenter stated that the FFIEC data is readily available, objective information, and that the Banks should not have to verify for each project that median income data is not otherwise available from the sources listed in the regulation. The Finance Board believes that these points have merit, and, therefore, the final rule allows FFIEC to be used as a primary source for median income data for economic development projects and manufactured housing parks located in neighborhoods, regardless of the availability of other median income data sources.

In addition, because the updated FFIEC median income data is derived from existing HUD data, which is a permissible source of area median income data for housing projects under the current CICA Regulation, the Finance Board believes that the Banks should be able to use such FFIEC data not only for economic development projects and manufactured housing parks, but also for housing projects. Therefore, instead of adding a separate definition of ''Median income for the neighborhood,'' the final rule adds new paragraphs (1)(ii) and (2)(ii) to the existing definition of ''Median income for the area'' in § 952.3 to include FFIEC as a primary data source, and renumbers the remaining paragraphs accordingly.

As noted above, under the current CICA regulation, a Bank may use median income data published by a government entity for purposes of that entity's own housing and economic development programs, subject to Finance Board approval. *See id.* § 952.3 (definition of ''Median income for the area'' (paragraphs (1)(iv), (2)(ii))). The proposed rule would expand this authority by allowing the Banks to use other public or private median income data sources for economic development projects and manufactured housing parks located in neighborhoods, subject to Finance Board approval, without the requirement that such data be published for purposes of the entity's own housing and economic development programs. Since these alternative public or private sources may also calculate area median income data for areas other than neighborhoods, the Finance Board believes that the Banks should be able to use such data not only for economic development projects and manufactured housing parks located in neighborhoods, but also for housing projects. Accordingly, the final rule replaces existing paragraphs (1)(iv) and (2)(ii) of the definition of ''Median income for the area'' with this new broader authority in renumbered paragraphs (1)(v) and (2)(iii).

A commenter suggested that the requirement for Finance Board approval of alternative sources of median income data be removed, on the basis that the Banks are in the best position to determine whether such a source of median income data is acceptable, subject to Finance Board review and examination. The Finance Board believes that Finance Board approval of alternative sources of median income data continues to be important for consistency and reliability in implementing CICA programs. Therefore, the commenter's suggestion is not adopted in the final rule.

Another commenter stated that Finance Board approval should not be required for a Bank if an alternative

median income data source has been previously approved by the Finance Board for another Bank. The language of the proposed rule, which is adopted without change in the final rule, does not require additional Finance Board approval under such circumstances.

C. Technical Clarification of Definition of ''Housing Projects''—§ 952.3

Section 952.3 of the current CICA Regulation defines ''Housing projects'' as projects or activities that involve the purchase, construction or rehabilitation of, or predevelopment financing for, certain types of housing. *See id.* § 952.3. Section 952.5(c) of the current CICA Regulation states that CICA funding other than AHP funding also may be used to refinance economic development projects and housing projects under certain conditions. *See id.* § 952.5(c). As discussed in the **SUPPLEMENTARY INFORMATION** section of the proposed rule, the proposed rule would add refinancing (subject to the conditions in § 952.5(c)) to the definition of ''Housing projects'' in § 952.3 to clarify, consistent with § 952.5(c), that housing projects involving refinancing also are eligible projects for CICA funding. Commenters generally supported the proposed clarification.

Accordingly, the final rule adopts the proposed amendment to § 952.3 without change.

D. Technical Clarification of Definition of ''Geographically Defined Beneficiaries''—§ 952.3 (par. (1)(ix))

A ''Geographically defined beneficiary'' is defined in the current CICA Regulation to include a ''project [that] is located in a state declared disaster area, or qualifies for assistance under another Federal or state targeted economic development program, approved by the Finance Board.'' *Id.* § 952.3 (definition of ''Targeted beneficiaries'' (par. (1)(ix))). As discussed in the **SUPPLEMENTARY INFORMATION** section of the proposed rule, the proposed rule would insert the words ''other area that'' before the word ''qualifies'' in this sentence to clarify that, to be a geographically defined beneficiary, it is not the project itself, but rather the area in which the project is located, that must qualify for such targeted economic development assistance. Commenters generally supported the proposed clarification.

Accordingly, the final rule adopts the proposed amendment to § 952.3 (par. (1)(ix)) without change.

III. Regulatory Flexibility Act

The final rule applies only to the Banks, which do not come within the meaning of ''small entities,'' as defined in the Regulatory Flexibility Act (RFA). *See* 5 U.S.C. 601(6). Therefore, in accordance with section 605(b) of the RFA, *see id.* section 605(b), the Finance Board hereby certifies that the final rule will not have a significant economic impact on a substantial number of small entities.

IV. Paperwork Reduction Act

The final rule does not contain any collections of information pursuant to the Paperwork Reduction Act of 1995. *See* 44 U.S.C. 3501 *et seq.* Therefore, the Finance Board has not submitted any information to the Office of Management and Budget for review.

List of Subjects

12 CFR Part 950

Credit, Federal home loan banks, Housing, Reporting and recordkeeping requirements.

12 CFR Part 952

Community development, Credit, Federal home loan banks, Housing, Reporting and recordkeeping requirements.

Accordingly, chapter IX, title 12, Code of Federal Regulations, is hereby amended, as set forth below:

Subchapter G—Federal Home Loan Bank Assets and off-Balance Sheet Items

PART 950—ADVANCES

1. The authority citation for part 950 continues to read as follows:

Authority: 12 U.S.C. 1422a(a)(3), 1422b(a)(1), 1426, 1429, 1430, 1430b, and 1431.

§ 950.1 [Amended]

2. Amend § 950.1 in the definition of *Community Investment Cash Advance or CICA* by:

a. Removing the words ''advances for targeted community lending'' and adding, in their place, the words ''funding for targeted community lending''; and

b. Removing the words ''Rural Development Advance (RDA)'' and ''Urban Development Advance (UDA)'' and adding, in their place, the words ''Rural Development Funding (RDF)'' and ''Urban Development Funding (UDF)'', respectively.

PART 952—COMMUNITY INVESTMENT CASH ADVANCE PROGRAMS

3. The authority citation for part 952 continues to read as follows:

Authority: 12 U.S.C. 1422b(a)(1) and 1430.

§ 952.2 [Amended]

4. Amend § 952.2 by:

a. Removing the words ''Rural Development Advance (RDA)'' and ''Urban Development Advance (UDA)'' and adding, in their place, the words ''Rural Development Funding (RDF)'' and ''Urban Development Funding (UDF)'', respectively; and

b. Adding a sentence at the end of the section to read as follows:

§ 952.2 Purpose.

* * * A Bank may provide advances or grants under its CICA programs except for CIP programs, under which a Bank may only provide advances.

§ 952.3 [Amended]

5. Amend § 952.3 by:

a. In the definition of *CICA program* or *Community Investment Cash Advance program*, in paragraph (3), removing the term ''REA'' and adding, in its place, the word ''A'', and removing the terms ''RDA'' and ''UDA'' and adding, in their place, the terms ''RDF'' and ''UDF'', respectively; and in paragraph (4), adding the words ''advance or grant'' between the words ''other'' and ''program'';

b. In the definition of *CIP*, removing the words ''a CICA program'' and adding, in their place, the words ''an advance program under CICA'';

c. In the introductory text of the definition of *Housing projects*, removing the words ''purchase, construction or rehabilitation'' and adding, in their place, the words ''purchase, construction, rehabilitation or refinancing (subject to § 952.5(c) of this part)'';

d. In the definition of ''Median income for the area'', redesignating paragraphs (1)(ii) through (1)(iv) and paragraph (2)(ii) as paragraphs (1)(iii) through (1)(v) and (2)(iii), respectively; adding new paragraphs (1)(ii) and (2)(ii); and revising newly redesignated paragraphs (1)(v) and (2)(iii);

e. In the definition of *Provide financing*, removing the words ''an advance'' in paragraphs (4) and (5) and the word ''advance'' in paragraph (6), and adding, in their place, the word ''funding'';

f. Removing the definition of *RDA* or *Rural Development Advance*;

g. In the definition of *RDA program* or *Rural Development Advance program*, removing the terms ''RDA'' and ''Advance'' and adding, in their place, the terms ''RDF'' and ''Funding'', respectively, and removing the words ''a program'' and adding, in their place, the words ''an advance or grant program'';

h. In paragraph (1)(ix) of the definition of *Targeted beneficiaries*, adding the words ''other area that'' between the words ''or'' and ''qualifies'';

i. In the definition of *Targeted income level*, amending the introductory text of paragraph (3) by removing the term ''CICA''; and amending paragraph (4) by removing the words ''CICA advances'' and adding, in their place, the words ''advances or grants'';

j. Removing the definition of *UDA* or *Urban Development Advance*; and

k. In the definition of *UDA program* or *Urban Development Advance program*, removing the terms ''UDA'' and ''Advance'' and adding, in their place, the terms ''UDF'' and ''Funding'', respectively, and removing the words ''a program'' and adding, in their place, the words ''an advance or grant program''.

The additions and revisions read as follows:

§ 952.3 Definitions.

* * * * *

Median income for the area.

(1) * * *

(ii) The median income for the area obtained from the Federal Financial Institutions Examination Council;

* * * * *

(v) The median income for the area obtained from another public entity or a private source and approved by the Board of Directors, at the request of a Bank, for use under the Bank's CICA programs.

(2) * * *

(ii) The median income for the area obtained from the Federal Financial Institutions Examination Council;

(iii) The median income for the area obtained from another public entity or a private source and approved by the Board of Directors, at the request of a Bank, for use under the Bank's CICA programs.

* * * * *

§ 952.5 [Amended]

6. Amend § 952.5 by:

a. In paragraph (a)(3), removing the terms ''RDA'' and ''UDA'' and adding, in their place, the terms ''RDF'' and ''UDF'', respectively;

b. In paragraph (c), removing the word ''advances'' and adding, in its place, the word ''funding'';

c. In the heading of paragraph (d), and in paragraphs (d)(2) and (d)(3), removing the term ''CICA'' wherever it appears; and

d. In paragraphs (d)(5) and (d)(6)(i), removing the words ''CICA advances'' wherever they appear and adding, in their place, the words ''advances made under CICA programs''.

§ 952.7 [Amended]

7. Amend § 952.7 by:

a. In paragraph (a), removing the words ''by a CICA advance'' and adding, in their place, the words ''under a CICA program''; and

b. In paragraph (c), removing the word ''lending'' and adding, in its place, the word ''funding''.

Dated: September 26, 2001.

By the Board of Directors of the Federal Housing Finance Board.

J. Timothy O'Neill,

Chairman.

[FR Doc. 01–24587 Filed 10–2–01; 8:45 am]

BILLING CODE 6725–01–P

FEDERAL HOUSING FINANCE BOARD

12 CFR Part 951

[No. 2001–18]

RIN 3069–AB04

Affordable Housing Program Amendments

AGENCY: Federal Housing Finance Board.

ACTION: Final rule.

SUMMARY: The Federal Housing Finance Board (Finance Board) is amending its regulation governing the operation of the Affordable Housing Program (AHP) to improve the operation and effectiveness of the AHP. The changes include: increasing the maximum amount of money that may be set aside annually, in the aggregate, under a Federal Home Loan Bank's (Bank) homeownership set-aside programs to the greater of $3.0 million or 25 percent of the Bank's annual required AHP contribution; removing one of the criteria for use of homeownership set-aside funds to pay for counseling costs in order to equalize the criteria with that of the competitive AHP application program; permitting members drawn from community and not-for-profit organizations actively involved in providing or promoting community lending in a Bank's district to serve on the Bank's Advisory Council; making the AHP outlay adjustment requirements applicable to any reduction or increase in the amount of AHP subsidy approved for a project, regardless of whether a direct subsidy writedown is involved; removing the requirement for annual project sponsor certifications on household income eligibility for owner-occupied projects; removing the requirements for project sponsor certifications to the member and member certifications to the Bank on tenant income and rent targeting commitments and project habitability within the first year of completion of a rental project; and allowing projects modifications to be eligible for AHP funds that remain uncommitted or unused by the end of the year.

EFFECTIVE DATE: The final rule shall be effective on November 2, 2001.

FOR FURTHER INFORMATION CONTACT: Charles E. McLean, Deputy Director, (202) 408–2537, Melissa L. Allen, Program Analyst, (202) 408–2524, Office of Policy, Research and Analysis; or Sharon B. Like, Senior Attorney-Advisor, (202) 408–2930, Office of General Counsel, Federal Housing Finance Board, 1777 F Street, NW., Washington, DC 20006.

SUPPLEMENTARY INFORMATION:

I. Statutory and Regulatory Background

Section 10(j)(1) of the Federal Home Loan Bank Act (Bank Act) requires each Bank to establish a program to subsidize the interest rate on advances to members of the Bank System engaged in lending for long-term, low- and moderate-income, owner-occupied and affordable rental housing at subsidized interest rates. *See* 12 U.S.C. 1430(j)(1). The Finance Board is required to promulgate regulations governing the AHP. *See id.* The Finance Board's existing regulation governing the operation of the AHP, which made comprehensive revisions to the AHP, was adopted in August 1997 and became effective January 1, 1998. *See* 62 FR 41812 (Aug. 4, 1997) (*now codified at* 12 CFR part 951).

Various amendments have been made to the AHP regulation since 1998 in order to clarify AHP requirements and improve the operation and effectiveness of the AHP. Over the course of implementation of the AHP, the Banks and Finance Board staff have identified additional amendments that could improve the operation and effectiveness of the AHP. Accordingly, on May 10, 2001, the Finance Board published a proposed rule requesting comment on these proposed amendments to the AHP regulation. *See* 66 FR 23864 (May 10, 2001). The proposed rule provided for a 30-day comment period, which closed on June 11, 2001.

The Finance Board received 23 comment letters on the proposed rule. Commenters included: 5 Banks; 3 Bank Advisory Councils; 6 trade associations; and 9 nonprofit housing developers. Comments that raised issues beyond the scope of the proposed rule are not addressed in this final rule, but will be considered by the Finance Board in any future rulemaking under the AHP. The provisions of the proposed rule on

which significant comments were received are discussed below.

II. Analysis of Final Rule

A. Homeownership Set-Aside Programs—§§ 951.3(a)(1), 951.5(a)(7)(iii)

1. Increase in Maximum Allowable Annual Homeownership Set-Aside Amount—§ 951.3(a)(1)

Section 951.3(a)(1) of the existing AHP regulation provides that each Bank, after consultation with its Advisory Council, may set aside annually, in the aggregate, up to the greater of $1.5 million or 15 percent of its annual required AHP contribution to provide funds to members participating in the Bank's homeownership set-aside programs. 12 CFR 951.3(a)(1). In cases where the amount of homeownership set-aside funds applied for by members in a given year exceeds the amount available for that year, a Bank may allocate up to the greater of $1.5 million or 15 percent of its annual required AHP contribution for the subsequent year to the current year's homeownership set-aside programs. *Id.* Section 951.3(a)(1) of the proposed rule would increase the maximum allowable annual homeownership set-aside amount to the greater of $3.0 million or 25 percent of a Bank's annual required AHP contribution. In addition, in cases where the amount of homeownership set-aside funds applied for by members in a given year exceeds the amount available for that year, the proposed rule would allow a Bank to allocate up to the greater of $3.0 million or 25 percent of its annual required AHP contribution for the subsequent year to the current year's homeownership set-aside programs.

As discussed in the **SUPPLEMENTARY INFORMATION** section of the proposed rule, AHP homeownership set-aside programs have proven to be an efficient and effective means for the Banks and their members to provide homeownership opportunities for low- and moderate-income households, consistent with the goals of the Bank System and the AHP. Ten Banks currently offer homeownership set-aside programs, eight of which set aside the maximum amount allowable under the current AHP regulation.

Experience with the homeownership set-aside programs over the past two years has shown that the demand for homeownership set-aside funds for low- and moderate-income families is such that an increase in the maximum allowable annual homeownership set-aside amount is warranted. The Banks have demonstrated that there is market demand and member demand for financing for low- and moderate-income homeownership, with most homeownership set-aside programs being oversubscribed within the first three to seven months of the year. In 2000, the Finance Board approved a waiver request from one Bank to increase its maximum allowable homeownership set-aside amount to 25 percent of its total annual AHP contribution. A similar waiver for 2001 was approved for all Banks to implement at their discretion.

The homeownership set-aside programs also are consistent with the cooperative structure of the Bank System, by involving members in financing the mortgages of low- and moderate-income households receiving downpayment assistance with homeownership set-aside funds. The homeownership set-aside programs can provide an important Bank service for members by enabling a greater number of members to become involved in the AHP, by helping members to establish banking relationships with new customers, and by exposing more members to opportunities to help meet low- and moderate-income housing needs in their markets.

The homeownership set-aside programs also are consistent with the goals of the Bank System and the AHP to help finance affordable housing in underserved areas and for underserved households. Homeownership set-aside funds often are the only way to effectively meet scattered-site, affordable housing needs in rural areas or tribal areas, which have difficulty scoring well under the competitive AHP application program and where rental projects are not feasible. In addition, homeownership set-aside funds often are the only way to meet the need for homeownership opportunities for very low-income families, which require larger per-unit subsidies and, therefore, may not score well under the competitive AHP application program. Homeownership set-aside programs also allow a member to use AHP funds to finance housing for individual eligible households on an as-needed basis, even if it is only for one household in the member's market area. These are households that the competitive AHP application program might not otherwise reach.

Most commenters supported the proposed increase in the maximum allowable annual homeownership set-aside amount. Commenters cited: the increasing demand for homeownership funds that, in some cases, has exhausted the Banks' annual set-aside allocation within months; the efficient and effective delivery of subsidy under the set-aside program; greater member achievement of Community Reinvestment Act (CRA) goals; and the positive impacts of homeownership on communities.

One commenter suggested that an increase in homeownership set-aside funds above 15 percent should require written approval of a majority of the Advisory Council membership and not just consultation with the Advisory Council. The Finance Board supports Advisory Council input into the Banks' implementation of the AHP. The Banks' boards of directors, however, have ultimate responsibility for the AHP and, therefore, should make the ultimate decisions on how much AHP funds to allocate to homeownership set-aside programs.

Several commenters opposed the proposed increase in the maximum allowable annual homeownership set-aside amount on the basis that the need for affordable rental housing is rising, especially in certain Bank districts, and an increase in the annual allocation of AHP funds to homeownership set-aside funds could result in less funding of rental housing under the competitive application program. The decision whether or not to establish homeownership set-aside programs is within the discretion of each Bank. Thus, a Bank, in consultation with its Advisory Council, may decide not to establish homeownership set-aside programs if it determines that such programs are inappropriate for its district, or, if a Bank decides to establish such programs, it need not allocate to the programs the maximum amount allowable under the regulation.

Another commenter recommended that, as a way to balance the goals of homeownership and rental funding, the Banks be allowed to increase their homeownership set-aside allocation provided they agree to hold the allocations to their AHP competitive application program to at least the funding levels of 2001. Historically, approximately two-thirds of affordable housing units funded under the AHP competitive application program have been rental units. The commenter's proposal would not ensure that AHP funding for rental projects under the competitive application program would remain at 2001 levels. In addition, the comment presumes that annual AHP contributions will always increase each year, which has not always been the case.

A number of commenters suggested that the regulation include a priority for homeownership projects that remain affordable in perpetuity for future buyers without additional future

subsidies, such as projects involving land trusts. The AHP regulation requires a fixed retention period of five years for homeownership projects, which does not allow for a scoring priority for projects with retention periods longer than five years. *See id.* §§ 951.1, 951.5(b)(7)(i), 951.13(c)(4), 951.13(d)(1). A Bank, under its second district scoring priority, could choose to adopt a scoring priority for homeownership projects that use land trusts, but the retention period would still have to be five years. *See id.* § 951.6(b)(4)(iv)(G).

Accordingly, for the reasons discussed above, the final rule adopts without change the proposed amendment to § 951.3(a)(1) increasing the maximum allowable annual homeownership set-aside amount.

2. CPI Adjustment—§ 951.3(a)(1)

Section 951.3(a)(1) of the proposed rule also provided that, beginning in 2002 and for subsequent years, the maximum homeownership set-aside dollar limits would be adjusted annually by the Finance Board to reflect any percentage increase in the preceding year's Consumer Price Index (CPI) for all urban consumers, as published by the Department of Labor. Each year, as soon as practicable after the publication of the previous year's CPI, the Finance Board would be required to publish notice by **Federal Register**, distribution of a memorandum, or otherwise, of the CPI-adjusted limits on the maximum set-aside dollar amount.

A number of commenters supported the proposed CPI adjustment provision, with one commenter stating that indexing the dollar limit increase to the rate of inflation will help cause the supply of available funds to more closely match the needs of Bank members and customers.

Accordingly, the final rule adopts the proposed CPI adjustment amendment to § 951.3(a)(1) without change.

3. Removal of Criterion for Funding of Counseling Costs—§ 951.5(a)(7)(iii)

Section 951.5(a)(7) of the existing AHP regulation provides that homeownership set-aside funds may be used to pay for counseling costs only where:

(i) Such costs are incurred in connection with counseling of homebuyers who actually purchase an AHP-assisted unit;

(ii) the cost of the counseling has not been covered by another funding source, including the member; and

(iii) the homeownership set-aside funds are used to pay only for the amount of such reasonable and customary costs that exceeds the highest amount the member has spent annually on homebuyer counseling costs within the preceding three years. *Id.* § 951.5(a)(7).

By contrast, § 951.5(b)(5) of the existing AHP regulation requires satisfaction of only the first two of the above three criteria in authorizing the use of AHP subsidies to pay for counseling costs under the competitive application program. *Id.* § 951.5(b)(5). As discussed in the **SUPPLEMENTARY INFORMATION** section of the proposed rule, the criterion in paragraph (a)(7)(iii) was intended to prevent homeownership set-aside funds from being used to pay for counseling costs that, in the absence of such funds, customarily would be funded by members participating in a homeownership set-aside program. In this way, AHP funds would be used to expand the pool of resources available to pay for counseling costs, rather than simply replace existing sources of funding for counseling costs.

The Banks have suggested that the criterion in paragraph (a)(7)(iii) be removed, so that the criteria applicable to the use of AHP funds for counseling costs would be the same under both the homeownership set-aside and competitive application programs. Because the competitive application program does not have a comparable counseling costs criterion, it is possible that AHP subsidies are already being used under that program to pay for counseling costs that the member, project sponsor or another funding source otherwise would have funded. Further, contrary to the intent of the criterion, the criterion may actually be inducing members not to pay for homebuyer counseling costs in order to be eligible for AHP funding of the counseling costs. In addition, the Banks have maintained that it can be difficult to determine the amount that members have spent over a three-year period on counseling costs, especially where the costs are indirect or combined with the costs of other services also provided to the homebuyer. The potential to be cited for noncompliance with the AHP regulation if the accounting for the costs is not accurate could discourage members from paying any counseling costs themselves. Requiring that the Banks monitor these costs, which generally are small in amount, arguably is not an efficient use of the Banks' resources. Homebuyer counseling is vital to ensuring that AHP subsidies are used successfully to provide homeownership opportunities to low- and moderate-income households. The Finance Board believes that the assurance that homebuyers will get such counseling, regardless of how it is funded, outweighs any concerns that AHP subsidies may be funding counseling costs that otherwise would be paid for by the member. For all of these reasons, the proposed rule would remove the homeownership set-aside counseling criterion in § 951.5(a)(7)(iii).

A number of commenters supported the proposed amendment, citing various reasons discussed above. One commenter opposed the proposed change, arguing that it would result in AHP funds being used as a substitute for other funds that were being used in the past for counseling costs, and urged instead that the counseling costs criterion be added to the competitive application program. As discussed above, the Finance Board believes that assuring homebuyers will get such counseling, regardless of how it is funded, outweighs the commenter's concern. Accordingly, the final rule adopts without change the proposed amendment removing § 951.5(a)(7)(iii).

B. Advisory Council Membership—§ 951.4

Section 951.4(f) of the existing AHP regulation uses two terms—''community investment'' and ''community development''—in describing the role of the Advisory Councils in this area. *See id.* § 951.4(f). Specifically, § 951.4(f)(1) provides that representatives of the board of directors of each Bank shall meet with the Advisory Council at least quarterly to obtain the Advisory Council's advice on ways in which the Bank can better carry out its housing finance and community investment mission, including advice on the low- and moderate-income housing and community investment programs and needs in the Bank's district. *Id.* § 951.4(f)(1). Section 951.4(f)(3) provides that each Advisory Council shall submit to the Finance Board annually by March 1 its analysis of the low- and moderate-income housing and community development activity of the Bank by which it is appointed. *Id.* § 951.4(f)(3).

The proposed rule would replace the terms ''community investment'' and ''community development,'' wherever they appear in § 951.4, with the term ''community lending,'' which encompasses both terms and is the term used in the Finance Board's recently adopted mission statement for the Banks. See *id.* § 940.2.[1] ''Community

[1] Section 940.2 states:

The mission of the Banks is to provide to their members and [housing] associates financial products and services, including but not limited to

lending'' is defined in part 900 of the Finance Board's existing regulations as ''providing financing for economic development projects for targeted beneficiaries, and, for community financial institutions, purchasing or funding small business loans, small farm loans or small agri-business loans, as defined in § 950.1 of this chapter.'' *Id.* § 900.1. ''Providing financing'' is defined to include various lending activities and purchases of eligible assets. *Id.* § 952.3.

In addition, because the Advisory Councils are required to give advice on community lending, as well as housing finance, matters, the proposed rule would revise § 951.4(a) to provide that members shall be drawn from community and not-for-profit organizations actively involved in providing or promoting low- and moderate-income housing, and community and not-for-profit organizations actively involved in providing or promoting community lending, in the Bank's district. The proposed rule also would revise § 951.4(b) to provide that, in appointing Advisory Council members, a Bank shall give consideration to the diversity of low- and moderate-income housing, as well as community lending, needs and activities within the Bank's district.

A number of commenters supported the proposed changes, on the basis that they would add expertise in community lending to the Advisory Council, thereby enabling the Advisory Council to address broader community needs, consistent with the Bank's housing finance and community lending mission.

One commenter opposed the proposed changes, stating that they would dilute the role of affordable housing practitioners and advocates on the Advisory Councils and potentially diminish the Advisory Councils' focus on housing. Because the regulation requires that the Advisory Council membership include persons drawn from a diverse range of organizations with no undue proportionate membership for any one group, and that the Advisory Council provide advice on both housing finance and community lending, this concern appears to be unwarranted. *See id.* § 951.4(c), (f)(1).

Another commenter interpreted the term ''community lending'' as narrower than the terms ''community investment'' and ''community development,'' limiting the Advisory Council's role to advice on lending. In fact, the definition of ''community lending'' encompasses a wide range of economic development activities beyond just lending. *See id.* §§ 900.1, 952.3.

One commenter recommended that the final rule clarify that private, for-profit providers of affordable housing are eligible to serve on the Advisory Councils. Under the existing AHP regulation, such housing providers are eligible to serve on the Advisory Councils, and the Finance Board has previously provided this clarification to the Banks. Accordingly, the final rule adopts the proposed amendments to § 951.4 without change.

C. AHP Outlay Adjustment—§ 951.8(c)(4)

Section 951.8(c)(3)(ii) of the existing AHP regulation provides that if a Bank reduces the amount of AHP subsidy approved for a project, the amount of such reduction shall be returned to the Bank's AHP fund. *Id.* § 951.8(c)(3)(ii). If a Bank increases the amount of AHP subsidy approved for a project, the amount of such increase shall be drawn first from any currently uncommitted or repaid AHP subsidies, and then from the Bank's required AHP contribution for the next year. *Id.* This section is included under the overall heading for paragraph (c)(3), which addresses changes in the approved AHP subsidy amount where a direct subsidy is used to write down prior to closing the principal amount or interest rate on a loan. Therefore, the requirements in paragraph (c)(3)(ii) would appear to apply only in cases where a direct subsidy is used to write down prior to closing the principal amount or interest rate on a loan. As discussed in the **SUPPLEMENTARY INFORMATION** section of the proposed rule, in practice, the Banks have returned to the AHP fund the amount of any reduction in AHP subsidy approved for a project under the competitive application program, regardless of the reason for the reduction, such as a project modification. The question arose whether the provision in paragraph (c)(3)(ii) regarding the funding of a subsidy increase should apply to an increase in approved AHP subsidy for a project modification that does not involve a direct subsidy writedown of principal or interest. A Bank has indicated that, in its district, demand for increases in approved AHP subsidies for project modifications not involving direct subsidy writedowns is now exceeding the amount of repaid or uncommitted AHP subsidies available to fund such modifications. Therefore, the Bank would like to be able to fund such subsidy increases from the Bank's required AHP contribution for the next year. Accordingly, the proposed rule would make § 951.8(c)(3)(ii) applicable to any reduction or increase in the amount of AHP subsidy approved for a project, regardless of whether a direct subsidy writedown is involved, by taking the paragraph out from under the paragraph (c)(3) heading and redesignating it as § 951.8(c)(4). The Banks, therefore, would be able to fund subsidy increases for project modifications using subsidies drawn first from any currently uncommitted or repaid AHP subsidies, and then from the Bank's required AHP contribution for the next year.

As discussed in the **SUPPLEMENTARY INFORMATION** section of the proposed rule, if a Bank is permitted to use uncommitted AHP funds from the following year, before such funds are made available under the competitive application program for that year, there will be fewer AHP funds available for new projects to be approved under the competitive application program for that year. The overall effect on the amount of AHP funds available for the following year, however, is not likely to be significant. Moreover, funding a new project in the next year, as opposed to funding a modification of an existing project from a prior year, would not necessarily result in producing more affordable housing. It would be beneficial to have AHP funding available for modifications of existing projects that are meeting the goals of the AHP. The existing AHP regulation already allows the Banks to commit AHP funds from the following year's homeownership set-aside allocation to fund current year needs under the Banks' homeownership set-aside programs, and the Banks arguably should have similar flexibility in funding subsidy increases for project modifications approved under the competitive application program. Finally, the decision whether to approve an increase in AHP subsidy for a project modification is within the discretion of each Bank. *See id.* § 951.7. If a Bank does not want to fund project modifications with subsidies from the next year's AHP allocation, it can choose to approve the project modifications only if additional repaid or uncommitted funds become available.

A number of commenters supported the proposed change because of the additional flexibility it would provide the Banks to fund subsidy increases for project modifications. One commenter

advances, that assist and enhance such members' and [housing] associates' financing of:

(a) Housing, including single-family and multi-family housing serving consumers at all income levels; and

(b) *Community lending.*

Id. § 940.2 (emphasis added).

stated that the proposed change should not be made until the Finance Board has studied past trends in uncommitted funds and past success rates of new projects and makes projections as to the impact of the proposed change based on those figures. Because the conditions applicable to each project differ significantly, the Finance Board believes that the Banks are the best judges of whether or not to approve subsidy increases for project modifications from the required AHP contribution for the next year.

Several commenters also expressed concern that the proposed change would enable project sponsors to game the scoring system by seeking modifications to their low-income targeting commitments after approval. Because the AHP regulation provides that approved projects seeking additional AHP subsidy must, as modified, continue to score successfully in the funding period in which they were originally approved, gaming of the scoring system should not be a problem. *See id.*

Accordingly, for the reasons discussed above, the final rule adopts the proposed amendment making newly redesignated § 951.8(c)(4) applicable to any reduction or increase in the amount of AHP subsidy approved for a project, regardless of whether a direct subsidy writedown is involved. In addition, in order to more accurately reflect the nature of the adjustments addressed in § 951.8(c)(4), the final rule removes the paragraph heading ''Reconciliation of AHP fund'' and adds, in its place, the revised heading ''AHP outlay adjustment''.

D. Initial Monitoring Requirements—§ 951.10

1. Removal of Requirement for Annual Owner-Occupied Project Sponsor Certifications—§ 951.10(a)(1)(ii)

Section 951.10(a)(1)(ii) of the existing AHP regulation provides that where AHP subsidies are used to finance the purchase of owner-occupied units, the project sponsor must certify annually to the member and the Bank, until all approved AHP subsidies are provided to eligible households in the project, that those households receiving AHP subsidies during the year were eligible households, and such certifications shall be supported by household income verification documentation maintained by the project sponsor and available for review by the member or the Bank. *Id.* § 951.10(a)(1)(ii).

As discussed in the **SUPPLEMENTARY INFORMATION** section of the proposed rule, the Banks maintain that this project sponsor certification requirement is not necessary because the certification merely reiterates more extensive documentation of income eligibility previously provided by the project sponsor to the Bank and member at the time of each request for disbursement of AHP funds from the Bank. Under the existing AHP regulation, a Bank is required to verify prior to each disbursement of AHP subsidies for an approved project that the project meets the eligibility requirements of § 951.5(b) and all obligations committed to in the approved AHP application. *See id.* §§ 951.5(b), 951.8(c)(2). Because the project sponsor's annual certification is based on the information provided to the Bank at the time of disbursement requests, the certification requirement in § 951.10(a)(1)(ii) does not add any new information or independent verification to the monitoring process. For these reasons, the proposed rule would remove the requirement for annual owner-occupied project sponsor certifications from § 951.10(a)(1)(ii). A number of commenters supported the proposed change on the basis that it would remove redundant monitoring requirements. The proposed rule would retain the requirement in § 951.10(a)(1)(ii) that the project sponsor maintain household income verification documentation available for review by the member or the Bank. A number of commenters supported retention of this requirement.

Accordingly, the final rule adopts without change the proposed amendment to § 951.10(a)(1)(ii) removing the requirement for annual owner-occupied project sponsor certifications.

2. Removal of Requirements for Project Owner Certification to Member and Member Certification to Bank Within the First Year of Rental Project Completion— §§ 951.10(a)(2)(ii), 951.10(b)(2)(ii)

Section 951.10(a)(2)(ii) of the existing AHP regulation provides that within the first year after completion of an AHP-assisted rental project, the project owner must make a certification to the member and the Bank on services and activities commitments, tenant income targeting and rent commitments, and project habitability. *See Id.* § 951.10(a)(2)(ii). Section 951.10(b)(2)(ii) of the existing AHP regulation provides that within the first year after completion of an AHP-assisted rental project, the member must review the project documentation and make a certification to the Bank on tenant income targeting and rent commitments, and project habitability. *See Id.* § 951.10(b)(2)(ii). The Banks maintain that this member certification requirement is essentially redundant with the requirement in § 951.10(a)(2)(ii) that the project owners make a certification to the member and the Bank on the same items. *See Id.* § 951.10(a)(2)(ii).

Because the member is essentially duplicating the certification already made by the project owner to the member and the Bank, it seems reasonable to eliminate the requirements for project owner certification to the member and member certification to the Bank, and simply retain the requirement for project owner certification directly to the Bank. Accordingly, the proposed rule would remove the requirements for project owner certification to the member and member certification to the Bank in §§ 951.10(a)(2)(ii) and 951.10(b)(2)(ii), respectively. A number of commenters supported the proposed changes on the basis that they would remove redundant monitoring requirements.

Accordingly, the final rule adopts the proposed amendments to §§ 951.10(a)(2)(ii) and 951.10(b)(2)(ii) without change.

E. Uncommitted or Unused AHP Funds—§ 951.15(a)(2)

As discussed in the **SUPPLEMENTARY INFORMATION** section of the proposed rule, a higher allowable annual homeownership set-aside amount increases the possibility that demand for such funds may not exhaust the available funds by the end of the year. Under section 10(j)(7) of the Bank Act, 90 percent of such uncommitted or unused AHP funds generally would be required to be deposited by the Bank in an Affordable Housing Reserve Fund established and administered by the Finance Board. *See* 12 U.S.C. 1430(j)(7); 12 CFR 951.15(a)(2). No such Reserve Fund has been established to date. In order to minimize the possibility of having to create such a Reserve Fund, the proposed rule would have amended § 951.3(a)(1) to clarify that any homeownership set-aside funds that are not committed or used by the end of the year in which they were set aside shall be committed or used by the end of such year to fund project modifications or the next highest scoring AHP applications in the Bank's final funding period of the year for its competitive application program. A number of commenters generally supported the proposed amendment. Several commenters recommended allowing uncommitted or unused homeownership set-aside funds to be carried over for use in the Bank's

homeownership set-aside programs during the following year.

Because § 951.15(a)(2) of the existing AHP regulation already addresses the treatment of uncommitted or unused AHP funds in general, the final rule amends that section instead of § 951.3(a)(1). *See* 12 CFR 951.15(a)(2). Section 951.15(a)(2) currently provides that any homeownership set-aside or competitive application funds that remain uncommitted or unused at year-end are deemed to be used or committed if, in combination with AHP subsidies that have been returned to the Bank or de-committed from canceled projects, they are insufficient to fund: (i) the next highest scoring AHP applications in the Bank's final funding period of the year for its competitive application program; or (ii) pending applications for funds under the Bank's homeownership set-aside programs. *See Id.* The insufficient amounts shall be carried over for use or commitment during the following year. *See Id.* Because there also may be uncommitted or unused funds remaining at year-end under the competitive application program, it is reasonable to amend the regulation to provide that approved competitive application projects seeking modifications shall be eligible for such remaining competitive application funds, in addition to being eligible for any remaining homeownership set-aside funds. The final rule adopts this amendment in § 951.15(a)(2)(iii). In addition, while the current regulation does not restrict the carried over amounts to commitment or use in specific AHP programs, the final rule amends the last paragraph of § 951.15(a)(2) to clarify that such carried over amounts may be committed or used in either the Bank's competitive application program or homeownership set-aside programs during the following year.

III. Paperwork Reduction Act

As part of the proposed rulemaking, the Finance Board published a request for comments concerning the proposed revisions to the collection of information in §§ 951.3(a)(1), 951.10(a)(1)(ii), and 951.10(b)(2)(ii) of the proposed rule. *See* 66 FR 23864, 23867. The Finance Board submitted the proposed revisions to the information collection, and accompanying analysis, to the Office of Management and Budget (OMB) for review in accordance with section 3507(d) of the Paperwork Reduction Act of 1995. *See* 44 U.S.C. 3507(d). The Finance Board received no comments on the proposed revisions to the information collection. OMB has approved the proposed revisions to the information collection without conditions and assigned control number 3069–0006 with an expiration date of June 30, 2004.

Likely respondents and/or record keepers are Banks, Bank members, project sponsors, and project owners. The Banks will use the information collection to determine whether respondents satisfy statutory and regulatory requirements under the AHP. Responses are mandatory and are required to obtain or retain a benefit. The final rule does not substantively or materially modify the approved information collection. Potential respondents are not required to respond to the collection of information unless the regulation collecting the information displays a currently valid control number assigned by OMB. *See Id.* section 3512(a). The final rule revises the statements in the AHP regulation displaying the OMB control number to reflect the new expiration date. The title, description of need and use, and a description of the information collection requirements in the final rule are discussed in parts I and II of the **SUPPLEMENTARY INFORMATION** section of the final rule.

The following is the estimated annual reporting and recordkeeping hour burden as approved by OMB:

a. *Number of respondents:* 7,720.

b. *Total annual responses:* 10,749. Percentage of these responses collected electronically: 0.

c. *Total annual hours requested:* 65,461.

d. *Current OMB inventory:* 64,274.

3. *Difference:* 1,187.

The following is the estimated annual reporting and recordkeeping cost burden as approved by OMB:

a. *Total annualized capital/startup costs:* 0.

b. *Total annual costs (O&M):* 0.

c. *Total annualized cost requested:* $2,169,795.

d. *Current OMB inventory:* $2,118,170.

e. *Difference:* $51,625.

Comments regarding the collection of information may be submitted in writing to the Federal Housing Finance Board at 1777 F Street, NW., Washington, DC 20006, and to the Office of Information and Regulatory Affairs of OMB, Attention: Desk Officer for Federal Housing Finance Board, Washington, DC 20503.

IV. Regulatory Flexibility Act

The final rule applies only to the Banks, which do not come within the meaning of ''small entities,'' as defined in the Regulatory Flexibility Act (RFA). *See* 5 U.S.C. 601(6). Thus, in accordance with section 605(b) of the RFA, *id.* section 605(b), the Finance Board hereby certifies that the final rule will not have a significant economic impact on a substantial number of small entities.

List of Subjects in 12 CFR Part 951

Community development, Credit, Federal home loan banks, Housing, Reporting and recordkeeping requirements.

Accordingly, the Finance Board hereby amends part 951, title 12, chapter IX, Code of Federal Regulations, as follows:

PART 951—AFFORDABLE HOUSING PROGRAM

1. The authority citation for part 951 continues to read as follows:

Authority: 12 U.S.C. 1430(j).

2. In part 951, remove the date ''January 31, 2003'' wherever it appears and, in its place, add the date ''June 30, 2004''.

3. Amend § 951.3 by revising paragraph (a)(1) to read as follows:

§ 951.3 Operation of Program and adoption of AHP implementation plan.

(a) *Allocation of AHP contributions*—(1) *Homeownership set-aside programs.* Each Bank, after consultation with its Advisory Council, may set aside annually, in the aggregate, up to the greater of $3.0 million or 25 percent of its annual required AHP contribution to provide funds to members participating in the Bank's homeownership set-aside programs, pursuant to the requirements of this part. In cases where the amount of homeownership set-aside funds applied for by members in a given year exceeds the amount available for that year, a Bank may allocate up to the greater of $3.0 million or 25 percent of its annual required AHP contribution for the subsequent year to the current year's homeownership set-aside programs pursuant to written policies adopted by the Bank's board of directors. Beginning in 2002 and for subsequent years, the maximum dollar limits set forth in this paragraph shall be adjusted annually by the Finance Board to reflect any percentage increase in the preceding year's Consumer Price Index (CPI) for all urban consumers, as published by the Department of Labor. Each year, as soon as practicable after the publication of the previous year's CPI, the Finance Board shall publish notice by **Federal Register**, distribution of a memorandum, or otherwise, of the CPI-adjusted limits on the maximum set-aside dollar amount. A Bank may establish one or more homeownership

set-aside programs pursuant to written policies adopted by the Bank's board of directors. A Bank's board of directors shall not delegate to Bank officers or other Bank employees the responsibility for adopting such policies.

* * * * *

§ 951.4 [Amended]

4. Amend § 951.4 by:

a. In paragraph (a), after the term ''housing'', adding the words '', and community and not-for-profit organizations actively involved in providing or promoting community lending,'';

b. In paragraph (b), after the term ''housing'', adding the term ''and community lending'';

c. In paragraph (f)(1), removing the term ''community investment'' wherever it appears and adding, in its place, the term ''community lending''; and

d. In paragraph (f)(3), removing the term ''community development'' and adding, in its place, the term ''community lending''.

§ 951.5 [Amended]

5. Amend § 951.5 by removing paragraph (a)(7)(iii).

§ 951.8 [Amended]

6. Amend § 951.8(c)(3) by:

a. Removing the heading for paragraph (c)(3)(i);

b. Removing paragraph designation (c)(3)(i); and

c. Redesignating paragraph (c)(3)(ii) as paragraph (c)(4); and removing the paragraph heading ''Reconciliation of AHP fund'' and adding, in its place, the revised heading ''AHP outlay adjustment''.

7. Amend § 951.10 by:

a. Revising paragraph (a)(1)(ii);

b. In paragraph (a)(2)(ii), removing the words ''the member and'' and the words ''the member or'' wherever they appear; and

c. In paragraph (b)(2), removing paragraph (b)(2)(ii), and removing paragraph designation (b)(2)(i).

The revision reads as follows:

§ 951.10 Initial monitoring requirements.

(a) * * *

(1) * * *

(ii) Where AHP subsidies are used to finance the purchase of owner-occupied units, the project sponsor must maintain household income verification documentation available for review by the member or the Bank.

* * * * *

8. Amend § 951.15(a)(2) by:

a. In paragraph (a)(2)(ii), removing the period and adding a semicolon in its place;

b. Adding a paragraph (a)(2)(iii); and

c. Redesignating the last sentence of the section as paragraph (a)(3) and revising it.

The addition and revisions read as follows:

§ 951.15 Affordable Housing Reserve Fund.

(a) * * *

(2) * * *

(iii) Project modifications approved by the Bank pursuant to the requirements of this part.

(3) *Carryover of insufficient amounts.* Such insufficient amounts as described in paragraph (a)(2) of this section shall be carried over for use or commitment in the following year in the Bank's competitive application program or homeownership set-aside programs.

* * * * *

Dated: September 26, 2001.

By the Board of Directors of the Federal Housing Finance Board.

J. Timothy O'Neill,

Chairman.

[FR Doc. 01–24586 Filed 10–2–01; 8:45 am]

BILLING CODE 6725–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 35

[Docket No. NE124; Special Conditions No. 35–002–SC]

Special Conditions: Hartzell Propeller Incorporated, Model HC–E5A–2/E8991 Propeller

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final special conditions; request for comments.

SUMMARY: The FAA is issuing special conditions for the Hartzell Propeller Incorporated model HC–E5A–2/E8991 constant speed propeller. This five-bladed propeller has blades constructed of composite materials. This design feature is novel and unusual. The applicable airworthiness regulations do not contain adequate or appropriate safety standards for this design feature. These special conditions contain the additional safety standards for propeller blades constructed of composite materials that the Administrator considers necessary to establish a level of safety equivalent to that established by the existing airworthiness standards.

DATES: The effective date of these special conditions is December 1, 2001. Comments must be received on or before November 19, 2001.

ADDRESSES: Comments on these special conditions may be mailed in duplicate to: Federal Aviation Administration, Office of the Regional Counsel, Attn: Rules Docket No. NE124, 12 New England Executive Park, Burlington, Massachusetts, 01803–5299. Comments must be marked: Docket No. NE124. Comments may be inspected in the Rules Docket between 8 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Jay Turnberg, FAA, Engine and Propeller Standards Staff, Engine and Propeller Directorate, Aircraft Certification Service, ANE–110, 12 New England Executive Park, Burlington, Massachusetts, 01803–5229; telephone: (781) 238–7116; fax: (781) 238–7199; e-mail: *jay.turnberg@faa.gov.*

SUPPLEMENTARY INFORMATION:

Comments Invited

The FAA has determined that good cause exists for making these special conditions effective December 1, 2001; however, the FAA invites interested parties to submit comments on the special conditions. Comments should identify the Rules Docket and special conditions number and be submitted in duplicate to the address specified above. The FAA will consider all comments received by the closing date. These special conditions may be changed in light of the comments received. All comments submitted will be available in the Rules Docket for examination by interested persons, both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerning this proposal will be filed in the docket. Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must include a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket No. NE124.'' The postcard will be date-stamped and returned to the commenter.

Background

On May 3, 2000, Hartzell Propeller Incorporated applied for an amendment to type certificate (TC) number P20NE to add a new model HC–E5A–2/E8991 propeller. The HC–E5A–2/E8991 propeller, which is a derivative of the HC–E5 propeller currently approved under TC P20NE, has blades constructed of composite material. These special conditions address the following airworthiness issues for the Hartzell Propeller Incorporated model HC–E5A–2/E8991 propeller:

1. Centrifugal load tests;
2. Fatigue limits and evaluation;
3. Bird impact; and
4. Lightning strike.

The Hartzell Propeller Incorporated model HC–E5A–2/E8991 propeller incorporates blades constructed of composite material. This material has fibers that are woven or aligned in specific directions to give the material directional strength properties. These properties depend on the type of fiber, the orientation and concentration of fiber, and the resin matrix material that binds the fibers together. Composite materials introduce fatigue characteristics and failure modes that differ from metallic materials.

Type Certification Basis

Under the provisions of 14 CFR 21.101, Hartzell Propeller Incorporated must show that the model HC–E5A–2/E8991 propeller meets the applicable provisions of the regulations incorporated by reference in TC P20NE or the applicable regulations in effect on the date of application for the change. The regulations incorporated by reference in the TC are commonly referred to as the ''original type certification basis.'' The original type certification basis for the HC–E5 series propeller is 14 CFR part 35, effective October 14, 1980, as amended by Amendments 35–1 through 35–5. Effective August 18, 1990, the HC–E5B–5 propeller was added to the type certificate, using Amendments 35–1 through 35–6 as the certification basis.

Section 21.16 authorizes the FAA to issue special conditions, using the procedure prescribed in 14 CFR part 11, when the applicable airworthiness regulations do not contain adequate or appropriate safety standards. Special conditions are initially applicable to the model for which they are issued. Should the type certificate for that model be amended later to include any other model that incorporates the same novel or unusual design feature, or should any other model already included on the same type certificate be modified to incorporate the same novel or unusual design feature, the special conditions would also apply to the other model under the provisions of § 21.101(a)(1). Special conditions become part of the type certification basis for that product in accordance with § 21.17(a)(2).

Novel or Unusual Design Features

The FAA finds that the HC–E5A–2/E8991 propeller incorporates blades constructed of composite materials, a novel and unusual design feature for which the airworthiness regulations in part 35 do not contain adequate or appropriate safety standards. Special conditions for centrifugal load tests, fatigue limits and evaluation, bird impact, and lightning strike address this novel and unusual design feature.

Centrifugal Load Tests

Section 35.35 currently requires that the hub and blade retention arrangement of propellers with detachable blades be tested to a centrifugal load of twice the maximum centrifugal force to which the propeller would be subjected during operation. This requirement is limited to the blade and hub retention hardware and does not address composite materials and composite construction of the propeller assembly or changes in materials due to service degradation and environmental factors.

Fatigue Limits and Evaluation

The current requirement does not adequately address composite materials, as it is limited to metallic hubs and blades and primary load-carrying metal components of non-metallic blades. The special conditions expand the requirements to include all materials and to account for material degradation expected in service, material property variations, manufacturing variations, and environmental effects. The special conditions clarify that the fatigue limits may be determined by tests or analysis based on tests.

The special conditions require the applicant to conduct fatigue evaluation on a typical aircraft or on an aircraft used during aircraft certification to conduct the vibration tests and evaluation required by either §§ 23.907 or 25.907. The typical aircraft may be one used to develop design criteria for the propeller or another appropriate aircraft.

Bird Impact

Currently there are no bird impact requirements in part 35. The existing requirements only address the airworthiness considerations associated with propellers that use wood or metal blades. Propeller blades of this type have demonstrated good service experience following a bird strike. Propeller blade and spinner construction now uses composite materials that have a higher potential for damage from bird impact.

The need for bird impact requirements was recognized when composite blades were introduced in the 1970s; the safety issue has been addressed by special tests and special conditions for composite blade certifications. These special conditions were unique for each propeller and effectively stated that the propeller must be able to withstand a four pound bird impact without contributing to a hazardous propeller effect. These special tests and special conditions have been effective for over forty million flight hours. There have not been any accidents attributed to bird impact on composite propellers. The selection of a four pound bird has been substantiated by the extensive service history of blades that have been designed using the four pound bird criteria.

Lightning Strike

Currently there are no lightning strike requirements in part 35. The need for lightning strike requirements was recognized when composite blades were first introduced in the 1970s; the safety issue has been addressed by special tests and special conditions for each design using composite blades. The special tests and special conditions, which were unique for each propeller, effectively stated that the propeller must be able to withstand a lightning strike without contributing to a hazardous propeller effect. These special tests and special conditions have been effective for over forty million flight hours. There have not been any accidents attributed to a lightning strike on composite propellers.

Applicability

These special conditions are applicable to the Hartzell Propeller Incorporated model HC–E5A–2/E8991 propeller. Should Hartzell Propeller Incorporated apply at a later date for a change to the type certificate to include another model incorporating the same novel or unusual design features, the special conditions would apply to that model as well under the provisions of § 21.101(a)(1).

Conclusion

This action affects only certain novel or unusual design features on one model of propellers. It is not a rule of general applicability, and it affects only the applicant who applied to the FAA for approval of these features on the propeller.

The substance of these special conditions has been subjected to the notice and comment period in several prior instances and has been derived without substantive change from those previously issued. The FAA has determined that prior public notice and comment are unnecessary and that good cause exists for adopting these special conditions immediately. Therefore, these special conditions are being made effective December 1, 2001. The FAA is, however, requesting comments to allow

interested parties to submit views that may not have been submitted in response to the prior opportunities for comment described above.

List of Subjects in 14 CFR Part 35

Air transportation, Aircraft, Aviation safety, Safety.

The authority citation for these special conditions is as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701–44702, 44704.

The Special Conditions

Accordingly, pursuant to the authority delegated to me by the Administrator, the following special conditions are issued as part of the type certification basis for the Hartzell Propeller Incorporated model HC–E5A–2/E8991 propeller.

In addition to the requirements of part 35, the following requirements apply to the propeller:

(a) *Definitions*. Unless otherwise approved by the Administrator and documented in the appropriate manuals and certification documents, for the purpose of these special conditions the following definitions apply to the propeller:

(1) Hazardous propeller effects. The following are regarded as hazardous propeller effects:

(i) Significant overspeed of the propeller.

(ii) Development of excessive drag.

(iii) Thrust in the direction opposite to that commanded by the pilot.

(iv) Release of the propeller or any major portion of the propeller.

(v) Failure that results in excessive unbalance.

(vi) Unintended movement of the propeller blades below the established minimum in-flight low pitch position.

(2) Major propeller effects. The following are regarded as major propeller effects:

(i) Inability to feather the propeller (for feathering propellers).

(ii) Inability to command a change in propeller pitch.

(iii) Significant uncommanded change in pitch.

(iv) Significant uncontrollable torque or speed fluctuation.

(b) *Centrifugal load tests*. It must be demonstrated that a propeller, accounting for environmental degradation expected in service, complies with paragraphs (b)(1), (b)(2) and (b)(3) of these special conditions without evidence of failure, malfunction, or permanent deformation that would result in a major or hazardous propeller effect. Environmental degradation may be accounted for by adjustment of the loads during the tests.

(1) The hub, blade retention system, and counterweights must be tested for a period of one hour to a load equivalent to twice the maximum centrifugal load to which the propeller would be subjected during operation at the maximum rated rotational speed.

(2) If appropriate, blade features associated with transitions to the retention system (e.g., a composite blade bonded to a metallic retention) may be tested either during the test required by paragraph (b)(1) or in a separate component test.

(3) Components used with or attached to the propeller (e.g., spinners, de-icing equipment, and blade erosion shields) must be subjected to a load equivalent to 159 percent of the maximum centrifugal load to which the component would be subjected during operation at the maximum rated rotational speed. This must be performed by either:

(i) Testing at the required load for a period of 30 minutes; or

(ii) Analysis based on test.

(c) *Fatigue limits and evaluation.*

(1) Fatigue limits must be established by tests or analysis based on tests, for propeller:

(i) Hubs;

(ii) Blades; and

(iii) Blade retention components.

(2) The fatigue limits must take the following into account:

(i) All known and reasonably foreseeable vibration and cyclic load patterns that are expected in service; and

(ii) Expected service deterioration, variations in material properties, manufacturing variations, and environmental effects.

(3) A fatigue evaluation of the propeller must be conducted to show that hazardous propeller effects due to fatigue will be avoided throughout the intended operational life of the propeller on either:

(i) The intended aircraft, by complying with §§ 23.907 or 25.907 as applicable; or

(ii) A typical aircraft.

(d) *Bird impact*. It must be demonstrated, by tests or analysis based on tests or experience on similar designs, that the propeller is capable of withstanding the impact of a four pound bird at the critical location(s) and critical flight condition(s) of the intended aircraft without causing a major or hazardous propeller effect.

(e) *Lightning strike*. It must be demonstrated, by tests or analysis based on tests or experience on similar designs, that the propeller is capable of withstanding a lightning strike without causing a major or hazardous propeller effect.

Issued in Burlington, Massachusetts on September 17, 2001.

Jay J. Pardee,

Manager, Engine and Propeller Directorate, Aircraft Certification Service.

[FR Doc. 01–24429 Filed 10–2–01; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2000–SW–37–AD; Amendment 39–12449; AD 2001–20–03]

RIN 2120–AA64

Airworthiness Directives; Bell Helicopter Textron Canada Model 206L–4 Helicopters

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD) for Bell Helicopter Textron Canada (BHTC) Model 206L–4 helicopters that requires installing a high altitude tail rotor static stop yield indicator (indicator) to allow operators to detect excessive bending loads sustained by the tail rotor yoke. A preflight check of the indicator is also required. This amendment is prompted by a determination that a tail rotor yoke with a high altitude rotor system is susceptible to a static and dynamic overload. Static overload could occur after the tail rotor yoke sustains an excessive bending load due to a strike from a ground vehicle. Dynamic overload could occur as a result of a hard landing. The actions specified by this AD are intended to prevent failure of the tail rotor yoke in flight and subsequent loss of control of the helicopter.

DATES: Effective November 7, 2001.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of November 7, 2001.

ADDRESSES: The service information referenced in this AD may be obtained from Bell Helicopter Textron Canada, 12,800 Rue de l'Avenir, Mirabel, Quebec J7J1R4, telephone (450) 437–2862 or (800) 363–8023, fax (450) 433–0272. This information may be examined at the FAA, Office of the Regional Counsel, Southwest Region, 2601 Meacham Blvd., Room 663, Fort Worth, Texas; or

at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Sharon Miles, Aviation Safety Engineer, FAA, Rotorcraft Directorate, Regulations Group, Fort Worth, Texas 76193–0111, telephone (817) 222–5122, fax (817) 222–5961.

SUPPLEMENTARY INFORMATION: A proposal to amend 14 CFR part 39 to include an AD for BHTC Model 206L–4 helicopters was published in the **Federal Register** on June 25, 2001 (66 FR 33649). That action proposed to require installing an indicator, P/N 206–011–752–101, within 100 hours time-in-service. Requiring a preflight visual check for damage to the indicator was also proposed.

Interested persons have been afforded an opportunity to participate in the making of this amendment. No comments were received on the proposal or the FAA's determination of the cost to the public. The FAA has determined that air safety and the public interest require the adoption of the rule as proposed.

The FAA estimates that 16 helicopters of U.S. registry will be affected by this AD, that it will take approximately 0.5 work hour per helicopter to accomplish the required actions, and that the average labor rate is $60 per work hour. Required parts will cost approximately $1,753. Based on these figures, the total cost impact of this AD on U.S. operators is estimated to be $28,528.

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

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

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

2. Section 39.13 is amended by adding a new airworthiness directive to read as follows:

2001–20–03 Bell Helicopter Textron Canada: Amendment 39–12449. Docket No. 2000–SW–37–AD.

Applicability: Model 206L–4 helicopters, with High Altitude Tail Rotor Kit, part number (P/N) 206–704–722–101 (BHT–206–SI–2054), installed, certificated in any category.

Note 1: This AD applies to each helicopter 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 helicopters 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 failure of the tail rotor yoke in flight and subsequent loss of control of the helicopter, accomplish the following:

(a) Within 100 hours time-in-service, install a high altitude tail rotor static stop yield indicator (indicator), P/N 206–011–752–101, in accordance with the Accomplishment Instructions, Part II, Bell Helicopter Textron Alert Service Bulletin No. 206L–96–104, Revision B, dated July 24, 1998.

(b) Before each engine start, check the indicator for damage in accordance with Figure 1 of this AD. If damage is found, before further flight, replace the damaged indicator with an airworthy indicator, and replace the tail rotor yoke, P/N 406–012–102–107, with an airworthy tail rotor yoke.

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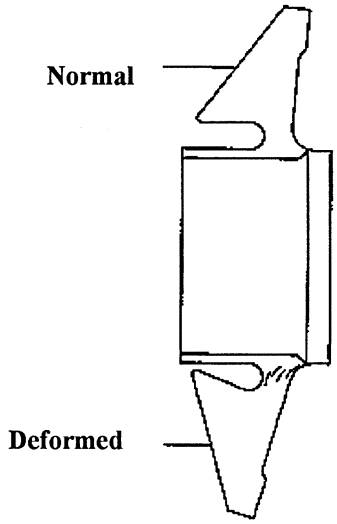

Normal and Deformed (damaged) Indications of the High Altitude Tail Rotor Static Stop Yield Indicator (P/N 206-011-752-101)

Figure 1

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(c) An owner/operator (pilot) holding at least a private pilot certificate may perform the visual check required by paragraph (b) of this AD and must record compliance in the helicopter maintenance records in accordance with 14 CFR 43.11 and 91.417(a)(2)(v)).

(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, Rotorcraft Certification Office, Rotorcraft Directorate, FAA. Operators shall submit their requests through an FAA Principal Maintenance Inspector, who may concur or comment and then send it to the Manager, Rotorcraft Certification Office.

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

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

(f) The modification shall be done in accordance with the Accomplishment Instructions, Part II, Bell Helicopter Textron Alert Service Bulletin No. 206L–96–104, Revision B, dated July 24, 1998. 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 Bell Helicopter Textron Canada, 12,800 Rue de l'Avenir, Mirabel, Quebec J7J1R4, telephone (450) 437–2862 or (800) 363–8023, fax (450) 433–0272. Copies may be inspected at the FAA, Office of the Regional Counsel, Southwest Region, 2601 Meacham Blvd., Room 663, Fort Worth, Texas; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

(g) This amendment becomes effective on November 7, 2001.

Note 3: The subject of this AD is addressed in Transport Canada (Canada) AD CF–98–11, dated June 16, 1998.

Issued in Fort Worth, Texas, on September 24, 2001.

David A. Downey,

Manager, Rotorcraft Directorate, Aircraft Certification Service.

[FR Doc. 01–24622 Filed 10–2–01; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2001–SW–09–AD; Amendment 39–12450; AD 2001–20–04]

RIN 2120–AA64

Airworthiness Directives; Agusta S.p.A. Model A109E Helicopters

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD) for Agusta S.p.A. (Agusta) Model A109E helicopters that requires modifying the passenger compartment sliding doors by installing certain locking mechanism kits. This amendment is prompted by accidental opening of a passenger compartment sliding door (door) in flight due to a door locking mechanism that is too easy to accidentally open. The actions specified by this AD are intended to prevent accidental opening of a door in flight and subsequent loss of objects that could damage the rotor system.

DATES: Effective November 7, 2001.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of November 7, 2001.

ADDRESSES: The service information referenced in this AD may be obtained from Agusta, 21017 Cascina Costa di Samarate (VA) Italy, Via Giovanni Agusta 520, telephone 39 (0331) 229111, fax 39 (0331) 229605–222595. This information may be examined at the FAA, Office of the Regional Counsel, Southwest Region, 2601 Meacham Blvd., Room 663, Fort Worth, Texas; or at the Office of the Federal Register, 800

North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Richard Monschke, Aviation Safety Engineer, FAA, Rotorcraft Directorate, Rotorcraft Standards Staff, Fort Worth, Texas 76193–0110, telephone (817) 222–5116, fax (817) 222–5961.

SUPPLEMENTARY INFORMATION: A proposal to amend 14 CFR part 39 to include an AD for Agusta Model A109E helicopters was published in the **Federal Register** on June 25, 2001 (66 FR 33651). That action proposed to require modifying the doors installed on Agusta S.p.A. Model A109E helicopters up to and including serial number 11099 by installing door-locking mechanism kits, part number 109–0823–03–101 and –102, within 90 days.

Interested persons have been afforded an opportunity to participate in the making of this amendment. No comments were received on the proposal or the FAA's determination of the cost to the public. The FAA has determined that air safety and the public interest require the adoption of the rule as proposed.

The FAA estimates that 11 helicopters of U.S. registry will be affected by this AD and that it will take approximately 8 work hours per helicopter to modify the doors. The average labor rate is $60 per work hour. The manufacturer states in its alert service bulletin that it will reimburse 8 work hours at $40 per work hour and will supply the parts to modify the locking mechanism on the doors. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $1760.

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

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

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

2. Section 39.13 is amended by adding a new airworthiness directive to read as follows:

2001–20–04 Agusta S.p.A.: Amendment 39–12450. Docket No. 2001 SW–09 AD.

Applicability: Model A109E helicopters, up to and including serial number 11099, certificated in any category.

Note 1: This AD applies to each helicopter 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 helicopters 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 within 90 days, unless accomplished previously.

To prevent accidental opening of a passenger compartment door (door) during flight, accomplish the following:

(a) Modify each passenger compartment sliding door by installing locking mechanism kits, part number (P/N) 109–0823–03–101 and –102, in accordance with the Compliance Instructions of Agusta Bollettino Tecnico No. 109EP–16, dated December 21, 2000.

(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, Regulations Group, Rotorcraft Directorate, FAA. Operators shall submit their requests through an FAA Principal Maintenance Inspector, who may concur or comment and then send it to the Manager, Regulations Group.

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

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

(d) The modification shall be done in accordance with the Compliance Instructions of Agusta Bollettino Tecnico No. 109EP–16, dated December 21, 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 Agusta, 21017 Cascina Costa di Samarate (VA) Italy, Via Giovanni Agusta 520, telephone 39 (0331) 229111, fax 39 (0331) 229605–222595. Copies may be inspected at the FAA, Office of the Regional Counsel, Southwest Region, 2601 Meacham Blvd., Room 663, Fort Worth, Texas; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

(e) This amendment becomes effective on November 7, 2001.

The subject of this AD is addressed in Ente Nazionale per l'Aviazione Civile (Italy) AD 2001–019, dated January 5, 2001.

Issued in Fort Worth, Texas, on September 24, 2001.

David A. Downey,

Manager, Rotorcraft Directorate, Aircraft Certification Service.

[FR Doc. 01–24623 Filed 10–2–01; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 99–SW–34–AD; Amendment 39–12452; AD 2000–10–08 R1]

RIN 2120–AA64

Airworthiness Directives; Eurocopter France Model SA–365N1, AS–365N2, and SA–366G1 Helicopters

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment revises an existing airworthiness directive (AD) for Eurocopter France (ECF) Model SA–365N1, AS–365N2, and SA–366G1 helicopters. That AD currently requires inspecting each tail rotor blade for bonding separation, measuring the clearance between the tip of each tail rotor blade and the circumference of the air duct, and replacing the blade if necessary. This amendment requires the same actions but allows the pilot to perform the daily visual check and contains a damage allowance for certain blades. This amendment is prompted by FAA determination that the pilot can

check for a cracked, blistered, or wrinkled blade and that some debonding of the blade is acceptable. The actions specified by this AD are intended to allow a pilot check, to prevent unacceptable damage to a tail rotor blade, and to prevent loss of tail rotor control and subsequent loss of control of the helicopter.

EFFECTIVE DATE: November 7, 2001.

FOR FURTHER INFORMATION CONTACT: Sharon Miles, Aviation Safety Engineer, FAA, Rotorcraft Directorate, Regulations Group, Fort Worth, Texas 76193–0111, telephone (817) 222–5122, fax (817) 222–5961.

SUPPLEMENTARY INFORMATION: A proposal to amend 14 CFR part 39 by revising AD 2000–10–08, Amendment 39–11732 (65 FR 31256, May 17, 2000), for ECF Model SA–365N1, AS–365N2, and SA–366G1 helicopters, was published in the **Federal Register** on June 11, 2001 (66 FR 31189). The action proposed to revise AD 2000–10–08 to allow a ''visual'' check of each tail rotor blade for a crack, wrinkling, or a blister, within 10 hours time-in-service (TIS) and thereafter before the first flight of each day. Also proposed was allowing some debonding in blades, part number 365A12–0020–02 and 365A12–0020–03.

Interested persons have been afforded an opportunity to participate in the making of this amendment. No comments were received on the proposal or the FAA's determination of the cost to the public. The FAA has determined that air safety and the public interest require the adoption of the rule as proposed.

The FAA estimates that 136 helicopters of U.S. registry will be affected by this AD. If a tapping inspection is required, it will take approximately 1 work hour per helicopter to conduct, and the average labor rate is $60 per work hour. If necessary, replacing a blade would take approximately 4 hours and required parts would cost approximately $1,000 per helicopter. Based on these figures, the total cost impact of this AD on U.S. operators is estimated to be $176,800, assuming a blade must be replaced on each affected helicopter.

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

For the reasons discussed above, I certify that this action (1) is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket at the FAA, Office of the Regional Counsel, Southwest Region, 2601 Meacham Blvd., Room 663, Fort Worth, Texas.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

2. Section 39.13 is amended by removing Amendment 39–11732 (65 FR 31256, May 17, 2000), and by adding a new airworthiness directive (AD), Amendment 39–12452, to read as follows:

2000–10–08 R1 Eurocopter France: Amendment 39–12452. Docket No. 99–SW–34–AD. Revises AD 2000–10–08, Amendment 39–11732, Docket No. 99–SW–34–AD.

Applicability: Model SA–365N1, AS–365N2, and SA–366G1 helicopters, with a tail rotor blade, part number (P/N) 365A33–2131, 365A12–0010, or 365A12–0020, all dash numbers, installed, certificated in any category.

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

Compliance: Required as indicated, unless accomplished previously.

To prevent damage to a tail rotor blade (blade), loss of tail rotor control, and subsequent loss of control of the helicopter:

(a) Within 10 hours time-in-service (TIS) and thereafter before the first flight of each day, visually check each blade (see Figure 1) for a crack, blister, or wrinkling. An owner/operator (pilot), holding at least a private pilot certificate, may perform the visual check and must enter compliance into the aircraft maintenance records in accordance with 14 CFR sections 43.11 and 91.417(a)(2)(v)).

(b) If a crack, blister, or wrinkling is found as a result of the visual check, accomplish the following before further flight (see Figure 1):

(1) *Zone A:* If a blister is detected on the blade suction face, conduct a tapping test inspection on the whole blade for bonding separation.

(i) For blades, P/N 365A33–2131—all dash numbers, 365A12–0010—all dash numbers, and 365A12–0020–00, and –01, if bonding separation or a crack is found, replace the blade with an airworthy blade before further flight.

(ii) For blades, P/N 365A12–0020–02, and –03, if bonding separation exceeds 900 mm^2 in a 30×30 mm square or if there is a crack, replace the blade with an airworthy blade before further flight.

(2) *Zone B:* If a crack, wrinkling, or a blister is found, replace the blade with an airworthy blade before further flight.

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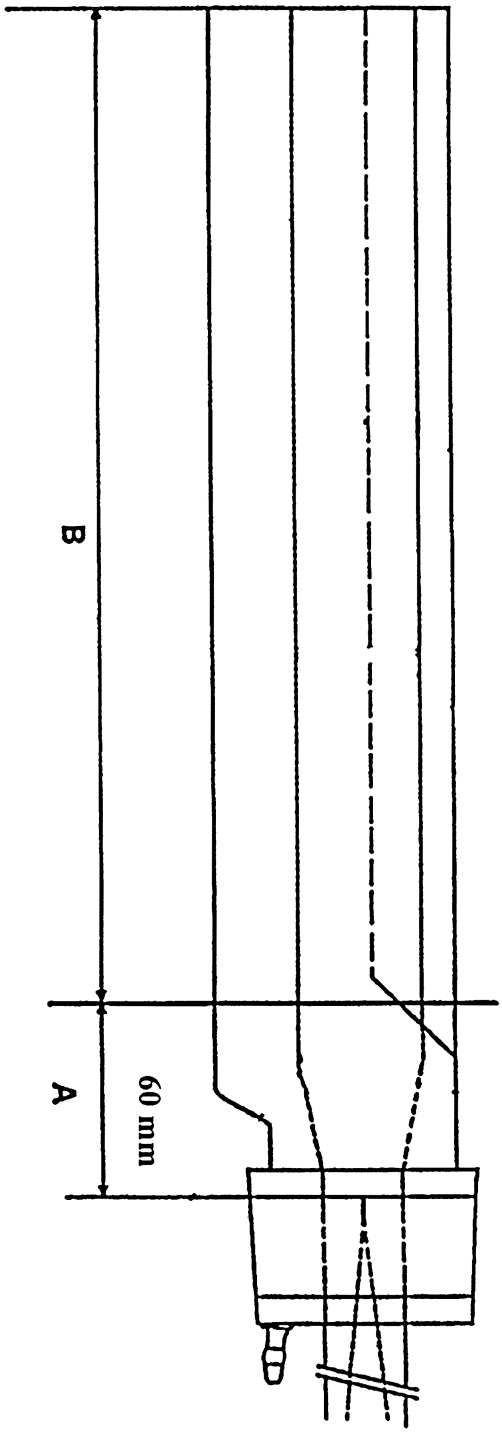

FIGURE 1

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(c) Within 10 hours TIS, conduct a tapping test inspection on each blade. If there is bonding separation that exceeds the criteria in paragraph b(1) of this AD, replace the blade with an airworthy blade before further flight.

Note 2: Revisions 5 of Eurocopter France Service Bulletins 05.09 and 05.00.17, both dated December 18, 1998, pertain to the subject of this AD.

(1) Thereafter, at intervals not to exceed 25 hours TIS or every 50 cycles (each takeoff and landing equals 1 cycle), whichever occurs first, conduct a tapping test inspection for bonding separation on all blades with a serial number (S/N) less than 18912, and blades, P/N 365A12–0020–00 or 365A12–0020–01, with a S/N equal to or greater than 18912. If bonding separation or a crack is found, replace the blade with an airworthy blade before further flight.

(2) Thereafter, at intervals not to exceed 100 hours TIS or 200 cycles, whichever occurs first, conduct a tapping test inspection for bonding separation on blades, P/N 365A12–0020–02 or 365A12–0020–03. For Zone A, if bonding separation exceeds the criteria specified in paragraph (b)(1)(ii) of

this AD or if a crack is found, replace the blade with an airworthy blade before further flight. For Zone B, if a crack, wrinkling, or a blister is found, replace the blade with an airworthy blade before further flight.

(d) Within 10 hours TIS, and thereafter at intervals not to exceed 100 hours TIS or 200 cycles, whichever occurs first, measure the blade-to-air duct clearance. If the clearance is less than 3 mm, replace the blade with an airworthy blade before further flight.

(e) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Regulations Group, Rotorcraft Directorate FAA. Operators shall submit their requests through an FAA Principal Maintenance Inspector, who may concur or comment and then send it to the Manager, Regulations Group.

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

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

(g) This amendment becomes effective on November 7, 2001.

Note 4: The subject of this AD is addressed in Direction Generale De L'Aviation Civile AD's 88–152–010(A)R5 and 88–153–023(A)R5, both dated December 30, 1998.

Issued in Fort Worth, Texas, on September 25, 2001.

David A. Downey,

Manager, Rotorcraft Directorate, Aircraft Certification Service.

[FR Doc. 01–24624 Filed 10–2–01; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 73

[Airspace Docket No. 99–ANM–15]

RIN 2120–AA66

Establishment and Revision of Restricted Areas, ID

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule; correction.

SUMMARY: This action corrects a final rule published in the **Federal Register** on July 2, 2001 (66 FR 34808). In that rule, the legal description of Restricted Area 3204A (R–3204A) contained an inadvertent error in a coordinate. This action corrects that error.

EFFECTIVE DATE: October 3, 2001.

FOR FURTHER INFORMATION CONTACT: Ken McElroy, Airspace and Rules Division, ATA–400, Office of Air Traffic Airspace Management, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone: (202) 267–8783.

SUPPLEMENTARY INFORMATION: On July 2, 2001, Airspace Docket No. 99–ANM–15 (66 FR 34808) was published in the **Federal Register** establishing R–3204A Juniper Buttes, ID. The legal description of R–3204A contained an inadvertent error in a coordinate. This action corrects that error.

Correction to Final Rule

Accordingly, pursuant to the authority delegated to me, the legal description for R–3204A Juniper Buttes, ID, as published in the **Federal Register** July 2, 2001, (65 FR 34808), and incorporated by reference in 14 CFR 73, is corrected as follows:

§ 73.32 [Corrected]

On page 34809, correct the legal description of R–3204A to read as follows:

* * * * *

R–3204A Juniper Buttes, ID [New]

Boundaries: Beginning at lat. 42°20′00″N., long. 115°22′30″W.; at lat. 42°20′00″N., long. 115°18′00″W.; at lat. 42°19′00″N., long. 115°17′00″W.; at lat. 42°16′35″N., long. 115°17′00″W.; at lat. 42°16′35″N., long. 115°22′30″W.; to point of beginning.

* * * * *

Issued in Washington, DC, on September 27, 2001.

Reginald C. Matthews,

Manager, Airspace and Rules Division.

[FR Doc. 01–24728 Filed 10–2–01; 8:45 am]

BILLING CODE 4910–13–M

NATIONAL LABOR RELATIONS BOARD

29 CFR Part 102

Revisions of Freedom of Information Act Regulations andImplementation of Electronic Freedom of Information Act Amendments of 1996

AGENCY: National Labor Relations Board.

ACTION: Final rule.

SUMMARY: The National Labor Relations Board is amending its regulations under the Freedom of Information Act (FOIA) governing the public disclosure of information to reflect changes in FOIA as a result of the enactment of the Electronic Freedom of Information Act Amendments of 1996 (E–FOIA). Among other things, this rule implements expedited FOIA processing procedures; implements the processing deadlines and appeal rights created by E–FOIA; and describes the expanded range of records available to the public through the NLRB's Public Reading Room and the NLRB's Internet World Wide Web page.

DATES: Effective: October 3, 2001.

FOR FURTHER INFORMATION CONTACT: John J. Toner, Executive Secretary, (202) 273–1936.

SUPPLEMENTARY INFORMATION: This document describes revisions by the National Labor Relations Board of its regulations under the Freedom of Information Act which include new provisions to implement the Electronic Freedom of Information Act Amendments of 1996 (Pub. L. 104–231). New provisions implementing the amendments are found at § 102.117 (a)(2) (electronic reading rooms), 102.117(c)(2)(i) and (ii) (timing of responses and expedited processing), 102.117(c)(2)(iii) (deletion marking and volume estimation), and 102.117(c)(2)(vi) (unusual circumstances). For specific sections and subsections of the regulations implementing the Electronic Freedom of Information Act Amendments of 1996, the following dates apply:

102.117(a)(2)—electronic reading rooms—November 1, 1997;

102.117(c)(2)(ii) and (c)(2)(vi)—processing requests with expedited treatment, and under unusual circumstances—October 2, 1997; and

102.117(c)(2)(iii)—volume estimation—October 2, 1997.

Regulatory Flexibility Act

The National Labor Relations Board, in accordance with the Regulatory Flexibility Act (5 U.S.C. 606(b)), has reviewed these regulations and by approving them certifies that they will not have a significant economic impact on a substantial number of small entities. Under the Freedom of Information Act, agencies may recover only the direct costs of searching for, reviewing, and duplicating the records processed for requesters. Thus, fees assessed by the Agency are nominal. Further, the ''small entities'' that make FOIA requests, as compared with individual requesters and other requesters, are relatively few in number.

Executive Order 12866

The regulatory review provisions of Executive Order 12866 do not apply to independent regulatory agencies. However, because the Office of Management and Budget has determined that this rule is a ''significant regulatory action'' under

Executive Order 12866, section 3(f), Regulatory Planning and Review, we consulted with that Office prior to issuing this rule.

Unfunded Mandates Reform Act of 1995

This rule will not result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of $100,000,000 or more in any one year, and it will not significantly or uniquely affect small governments. Therefore, no actions were deemed necessary under the provisions of the Unfunded Mandates Reform Act of 1995.

Small Business Regulatory Enforcement Fairness Act of 1996

This rule is not a major rule as defined by section 804 of the Small Business Regulatory Enforcement Fairness Act of 1996. This rule will not result in an annual effect on the economy of $100,000,000 or more; a major increase in costs or prices; or significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States based companies to compete with foreign-based companies in domestic and export markets.

Paperwork Reduction Act

This part does not impose any reporting or recordkeeping requirements under the Paperwork Reduction Act of 1995.

List of Subjects in 29 CFR Part 102

Administrative practice and procedure, Freedom of Information.

For the reasons set forth in the preamble, the National Labor Relations Board is amending 29 CFR Chapter I, Part 102, as follows:

PART 102—RULES AND REGULATIONS, SERIES 8

1. The authority citation for part 102 continues to read as follows:

Authority: Sec. 6, National Labor Relations Act, as amended (29U.S.C. 151, 156). Section 102.117 also issued under sec. 552(a)(4)(A) of the Freedom of Information Act, as amended (5 U.S.C. 552(a)(4)(A)), and section 442a(j) and (k) of the Privacy Act (5 U.S.C. 55a(j) and (k)). Sections 102.143 through 102.155 also issued under sec. 504(c)(1) of the Equal Access to Justice Act as amended (5 U.S.C. 504(c)(1)).

2. Section 102.117 is amended by revising paragraphs (a) through (d) to read as follows:

§ 102.117 Board materials and formal documents available for public inspection and copying; requests for described records; time limit for response; appeal from denial of request; fees for document search and duplication; files and records not subject to inspection.

(a)(1) This subpart contains the rules that the National Labor Relations Board follows in processing requests for records under the Freedom of Information Act (FOIA), 5 U.S.C. 552. Information routinely provided to the public as part of a regular Agency activity (for example, press releases issued by the Division of Information) may be provided to the public without following this subpart. Such records may also be made available in the Agency's reading room in paper form, as well as electronically to facilitate public access. As a matter of policy, the Agency will consider making discretionary disclosures of records or information exempt under the FOIA whenever disclosure would not foreseeably harm an interest protected by a FOIA exemption, but this policy does not create any right enforceable in court.

(2) The following materials are available to the public for inspection and copying during normal business hours:

(i) All final opinions and orders made in the adjudication of cases;

(ii) Statements of policy and interpretations that are not published in the **Federal Register**;

(iii) Administrative staff manuals and instructions that affect any member of the public (excepting those establishing internal operating rules, guidelines, and procedures for investigation, trial, and settlement of cases);

(iv) A current index of final opinions and orders in the adjudication of cases;

(v) A record of the final votes of each Member of the Board in every Agency proceeding;

(vi) Records which have been released and which the Agency determines, because of their subject matter, have become or are likely to become the subject of subsequent requests for substantially the same records; and

(vii) A general index of records referred to in paragraph (a)(2)(vi) of this section. Items in paragraphs (a)(2)(i) through (vii) of this section are available for inspection and copying during normal business hours at the Board's offices in Washington, DC. Items in paragraph (a)(2)(iii) of this section are also available for inspection and copying during normal business hours at each Regional, Subregional, and Resident Office of the Board. Final opinions and orders made by Regional Directors in the adjudication of representation cases pursuant to the delegation of authority from the Board under section 3(b) of the Act are available to the public for inspection and copying in the original office where issued. Records encompassed within paragraphs (a)(2)(i) through (a)(2)(vii) of this section created on or afterNovember 1, 1996, will be made available by November 1, 1997, to the public by computer telecommunications or, if computer telecommunications means have not been established by the Agency, by other electronic means. The Agency shall maintain and make available for public inspection and copying a current subject matter index of all reading room materials which shall be updated regularly, at least quarterly, with respect to newly included records. Copies of the index are available upon request for a fee of the direct cost of duplication. The index of FOIA-processed records referred to in paragraph (a)(2)(vii) of this section will be available by computer telecommunications by December 31, 1999.

(3) Copies of forms prescribed by the board for the filing of charges under section 10 alleging violations of the Act under section 8, or petitions under section 9, may be obtained without charge from any Regional, Subregional, or Resident Office of the Board. These forms are available electronically through the Agency's World Wide Web site (which can be found at http://www.nlrb.gov).

(4) The Agency shall, on or before February 1, 1998, and annually thereafter, submit a FOIA report covering the preceding fiscal year to the Attorney General of the United States. The report shall include those matters required by 5 U.S.C. 552(e), and shall be made available electronically.

(b)(1) The formal documents constituting the record in a case or proceeding are matters of official record and, until officially destroyed pursuant to applicable statutory authority, are available to the public for inspection and copying during normal business hours at the appropriate Regional Office of the Board or at the Board's office in Washington, DC, as the case may be. If the case or proceeding has been closed for more than 2 years, the appropriate Regional Office of the Board or the Board's office in Washington, DC, upon request, will contact the Federal Records Center to obtain the records.

(2) The Executive Secretary shall certify copies of all formal documents upon request made a reasonable time in advance of need and payment of lawfully prescribed costs.

(c)(1) Requests for the inspection and copying of records other than those specified in paragraphs (a) and (b) of this section must be in writing and must reasonably describe the record in a manner to permit its identification and location. The envelope and the letter, or the cover sheet of any fax transmittal, should be clearly marked to indicate that it contains a request for records under the Freedom of Information Act (FOIA). The request must contain a specific statement assuming financial liability in accordance with paragraph (d)(2) of this section for the direct costs of responding to the request. If the request is made for records in a Regional or Subregional Office of the Agency, it should be made to that Regional or Subregional Office; if for records in the Office of the General Counsel and located in Washington, DC, it should be made to the Freedom of Information Officer, Office of the General Counsel, Washington, DC; if for records in the offices the Board or the Inspector General in Washington, DC, to the Executive Secretary of the Board, Washington, DC. Requests made to other than the appropriate office will be forwarded to that office by the receiving office, but in that event the applicable time limit for response set forth in paragraph (c)(2)(i) of this section shall be calculated from the date of receipt by the appropriate office. Requesters may be given an opportunity to discuss their request so that requests may be modified to meet the requirements of this section. In the case of records generated by the Inspector General and in possession of another office, or in the possession of the Inspector General but generated by another office of the Agency, the request may be referred to the generating office for decision. If the Agency determines that a request does not reasonably describe records, it may contact the requester to inform the requester either what additional information is needed or why the request is insufficient. Similar referrals may, in the Agency's discretion, be made between other offices.

(2)(i) The Agency ordinarily shall respond to requests according to their order of receipt. Effective October 2, 1997, an initial response shall be made within 20 working days (i.e. exempting Saturdays, Sundays, and legal public holidays) after the receipt of a request for a record under this part by the Freedom of Information Officer or his designee. An appeal under paragraph (c)(2)(v) of this section shall be decided within 20 days (excepting Saturdays, Sundays, and legal public holidays) after the receipt of such an appeal by the Office of Appeals or the Chairman of the Board. Because the Agency has been able to process its requests without a backlog of cases, the Agency will not institute a multitrack processing system.

(ii) Requests and appeals will be taken out of order and given expedited treatment whenever it is determined that they involve: Circumstances in which the lack of expedited treatment could reasonably be expected to pose an imminent threat to the life or physical safety of an individual; an urgency to inform the public about an actual or alleged federal government activity, if made by a person primarily engaged in disseminating information; the loss of substantial due process rights; or a matter of widespread and exceptional media interest in which there exist possible questions about the government's integrity which affect public confidence. A request for expedited processing may be made at the time of the initial request for records or at any later time. A requester who seeks expedited processing must submit a statement, certified to be true and correct to the best of that person's knowledge and belief, explaining in detail the basis for requesting expedited processing. The formality of certification may be waived as a matter of administrative discretion. Within ten calendar days of its receipt of a request for expedited processing, the Agency shall decide whether to grant it and shall notify the requester of the decision. Once the determination has been made to grant expedited processing, the request shall be given priority and shall be processed as soon as practicable. If a request for expedited processing is denied, the Agency shall act expeditiously on any appeal of that decision.

(iii) Within 20 working days after receipt of a request by the appropriate office of the Agency a determination shall be made whether to comply with such request, and the person making the request shall be notified in writing of that determination. In the case of requests made to the Executive Secretary for Inspector General Records, that determination shall be made by the Inspector General. In the case of all other requests, that determination shall be made by the General Counsel's office, the Regional or Subregional Office, or the Executive Secretary's office, as the case may be. If the determination is to comply with the request, the records shall be made promptly available to the person making the request and, at the same time, a statement of any charges due in accordance with the provisions of paragraph (d)(2) of this section will be provided. If the determination is to deny the request in any respect, the requester shall be notified in writing of that determination. Adverse determinations, or denials of requests, consist of: A determination to withhold any requested record in whole or in part; a determination that a requested record does not exist or cannot be located; a determination that what has been requested is not a record subject to the Act; a determination on any disputed fee matter, including a denial of a request for a fee waiver or reduction or placement in a particular fee category; and a denial of a request for expedited treatment. For a determination to deny a request in any respect, the notification shall set forth the reasons therefor and the name and title or position of each person responsible for the denial, shall provide an estimate of the volume of records or information withheld, in number of pages or in some other reasonable form of estimation (this estimate does not need to be provided if the volume is otherwise indicated through deletions on records disclosed in part, or if providing an estimate would harm an interest protected by an applicable exemption), and shall notify the person making the request of the right to appeal the adverse determination under provisions of paragraph (c)(2)(v) of this section.

(iv) Business information obtained by the Agency from a submitter will be disclosed under the FOIA only consistent with the procedures established in this section.

(A) For purposes of this section:

(*1*) Business information means commercial or financial information obtained by the Agency from a submitter that may be protected from disclosure under Exemption 4 of the FOIA.

(*2*) Submitter means any person or entity from whom the Agency obtains business information, directly or indirectly. The term includes corporations; state, local, and tribal governments; and foreign governments.

(B) A submitter of business information will use good faith efforts to designate, by appropriate markings, either at the time of submission or at a reasonable time thereafter, any portions of its submission that it considers to be protected from disclosure under Exemption 4. These designations will expire ten years after the date of the submission unless the submitter requests, and provides justification for, a longer designation period. The Agency shall provide a submitter with prompt written notice of a FOIA request or administrative appeal that seeks its business information wherever required

under paragraph (c)(2)(iv)(C) of this section, except as provided in paragraph (c)(2)(iv)(F) of this section, in order to give the submitter an opportunity to object to disclosure of any specified portion of that information under paragraph (c)(2)(iv)(D) of this section. The notice shall either describe the business information requested or include copies of the requested records or record portions containing the information. When notification of a voluminous number of submitters is required, notification may be made by posting or publishing the notice in a place reasonably likely to accomplish notification.

(C) Notice shall be given to a submitter wherever: the information has been designated in good faith by the submitter as information considered protected from disclosure under Exemption 4; or the Agency has reason to believe that the information may be protected from disclosure under Exemption 4.

(D) The Agency will allow a submitter a reasonable time to respond to the notice described in paragraph (c)(2)(iv)(B) of this section. If a submitter has any objection to disclosure, it is required to submit a detailed written statement. The statement must specify all grounds for withholding any portion of the information under any exemption of the FOIA and, in the case of Exemption 4, it must show why the information is a trade secret or commercial or financial information that is privileged or confidential. In the event that a submitter fails to respond to the notice within the time specified in it, the submitter will be considered to have no objection to disclosure of the information. Information provided by a submitter under this paragraph may itself be subject to disclosure under the FOIA.

(E) The Agency shall consider a submitter's objections and specific grounds for nondisclosure in deciding whether to disclose business information. Whenever the Agency decides to disclose business information over the objection of a submitter, the Agency shall give the submitter written notice, which shall include: A statement of the reason(s) why each of the submitter's disclosure objections was not sustained; a description of the business information to be disclosed; and a specified disclosure date, which shall be a reasonable time subsequent to the notice.

(F) The notice requirements of paragraphs (c)(2)(iv)(B) and (E) of this section shall not apply if: The Agency determines that the information should not be disclosed; the information lawfully has been published or has been officially made available to the public; disclosure of the information is required by statute (other than the FOIA) or by a regulation issued in accordance with the requirements of Executive Order 12600 (3 CFR, 1988 Comp., p. 235); or the designation made by the submitter under paragraph (c)(2)(iv)(B) of this section appears obviously frivolous-except that, in such a case, the Agency shall, within a reasonable time prior to a specified disclosure date, give the submitter written notice of any final decision to disclose the information.

(G) Whenever a requester files a lawsuit seeking to compel the disclosure of business information, the Agency shall promptly notify the submitter.

(H) Whenever the Agency provides a submitter with notice and an opportunity to object to disclosure under paragraph (c)(2)(iv)(B) of this section, the Agency shall also notify the requester(s). Whenever the Agency notifies a submitter of its intent to disclose requested information under paragraph (c)(2)(iv)(E) of this section, the Agency shall also notify the requester(s). Whenever a submitter files a lawsuit seeking to prevent the disclosure of business information, the Agency shall notify the requester(s).

(v) An appeal from an adverse determination made pursuant to paragraph (c)(2)(iii) of this section must be filed within 20 working days of the receipt by the person making the request of the notification of the adverse determination where the request is denied in its entirety; or, in the case of a partial denial, within 20 working days of the receipt of any records being made available pursuant to the request. If the adverse determination was made in a Regional Office, a Subregional Office, or by the Freedom of Information Officer, Office of the General Counsel, the appeal shall be filed with the General Counsel in Washington, DC. If the adverse determination was made by the Executive Secretary of the Board or the Inspector General, the appeal shall be filed with the Chairman of the Board in Washington, DC. Within 20 working days after receipt of an appeal the General Counsel or the Chairman of the Board, as the case may be, shall make a determination with respect to such appeal and shall notify the person making the request in writing. If the determination is to comply with the request, the record shall be made promptly available to the person making the request upon receipt of payment of any charges due in accordance with the provisions of paragraph (d)(2) of this section. If on appeal the denial of the request for records is upheld in whole or in part, the person making the request shall be notified of the reasons for the determination, the name and title or position of each person responsible for the denial, and the provisions for judicial review of that determination under the provisions of 5 U.S.C. 552(4)(B). Even though no appeal is filed from a denial in whole or in part of a request for records by the person making the request, the General Counsel or the Chairman of the Board may, without regard to the time limit for filing of an appeal, sua sponte initiate consideration of an adverse determination under this appeal procedure by written notification to the person making the request. In such event the time limit for making the determination shall commence with the issuance of such notification. An adverse determination by the General Counsel or the Chairman of the Board, as the case may be, will be the final action of the Agency. If the requester wishes to seek review by a court of any adverse determination, the requester must first appeal it under this section.

(vi) In unusual circumstances as specified in this paragraph, the time limits prescribed in either paragraph (c)(2)(i) or (iv) of this section may be extended by written notice to the person requesting the record setting forth the reasons for such extension and the date on which a determination is expected to be dispatched. No such notice or notices shall specify a date or dates that would result in an extension or extensions totaling more than 10 working days with respect to a particular request, except as set forth below in this paragraph. As used in this paragraph, unusual circumstances means, but only to the extent reasonably necessary to the proper processing of the particular request:

(A) The need to search for and collect the requested records from field facilities or other establishments that are separate from the office processing the request;

(B) The need to search for, collect, and appropriately examine a voluminous amount of separate and distinct records which are demanded in a single request;

(C) The need for consultation, which shall be conducted with all practicable speed, with another agency having a substantial interest in the determination of the request or with two or more components of the Agency having a substantial subject matter interest in the request. Where the extension is for more than ten working days, the Agency shall provide the requester with an opportunity either to modify the request so that it may be processed within the

time limits or to arrange an alternative time period for processing the request or a modified request.

(vii) The Agency shall preserve all correspondence pertaining to the requests that it receives under this subpart, as well as copies of all requested records, until disposition or destruction is authorized by title 44 of the United States Code or the National Archives and Records Administration's General Records Schedule 14. Records will not be disposed of while they are the subject of a pending request, appeal, or lawsuit under the FOIA.

(d)(1) For purposes of this section, the following definitions apply:

(i) Direct costs means those expenditures which are actually incurred in searching for and duplicating and, in the case of commercial use requests, reviewing documents to respond to a FOIA request.

(ii) Search refers to the process of looking for and retrieving records or information responsive to a request. It includes page-by-page or line-by-line identification of material within documents and also includes reasonable efforts to locate and retrieve information from records maintained in electronic form or format. The Agency shall ensure that searches are done in the most efficient and least expensive manner reasonably possible.

(iii) Duplication refers to the process of making a copy of a record, or the information contained in it, necessary to respond to a FOIA request. Such copies can take the form of paper, microfilm, videotape, audiotape, or electronic records (e.g., magnetic tape or disk), among others. The Agency shall honor a requester's specified preference of form or format of disclosure if the record is readily reproducible with reasonable efforts in the requested form or format by the office responding to the request.

(iv) Review refers to the process of examining documents located in response to a request that is for commercial use to determine whether any portion of it is exempt from disclosure. It includes processing any documents for disclosure, e.g., doing all that is necessary to redact and prepare them for disclosure. Review time includes time spent considering any formal objection to disclosure made by a business submitter under paragraph (c)(2)(iv) of this section, but does not include time spent resolving general legal or policy issues regarding the application of exemptions.

(v) Commercial use request refers to a request from or on behalf of a person who seeks information for a use or purpose that furthers the commercial, trade, or profit interests of the requester or the person on whose behalf the request is made, which can include furthering those interests through litigation.

(vi) Educational institution refers to a preschool, a public or private elementary or secondary school, an institution of undergraduate higher education, an institution of graduate higher education, an institution of professional education, or an institution of vocational education, that operates a program of scholarly research. To be in this category, a requester must show that the request is authorized by and is made under the auspices of a qualifying institution and that the records are not sought for a commercial use but are sought to further scholarly research.

(vii) Representative of the news media refers to any person actively gathering news for an entity that is organized and operated to publish or broadcast news to the public. The term news means information that is about current events or that would be of current interest to the public. Examples of news media entities include television or radio stations broadcasting to the public at large and publishers of periodicals (but only in instances where they can qualify as disseminators of ''news'') who make their products available for purchase or subscription by the general public. For ''freelance'' journalists to be regarded as working for a news organization, they must demonstrate a solid basis for expecting publication through that organization. A publication contract would be the clearest proof, but the Agency shall also look to the past publication record of a requester in making this determination. To be in this category, a requester must not be seeking the requested records for commercial use. However, a request for records supporting the news dissemination function of the requester shall not be considered to be for a commercial use.

(viii) Working days, as used in this paragraph, means calendar days excepting Saturdays, Sundays, and legal holidays.

(2) Persons requesting records from this Agency shall be subject to a charge of fees for the full allowable direct costs of document search, review, and duplicating, as appropriate, in accordance with the following schedules, procedures, and conditions:

(i) Schedule of charges:

(A) For each one-quarter hour or portion thereof of clerical time * * * $3.10.

(B) For each one-quarter hour or portion thereof of professional time * * * $9.25.

(C) For each sheet of duplication (not to exceed 8½ by 14 inches) of requested records * * * $0.12.

(D) All other direct costs of preparing a response to a request shall be charged to the requester in the same amount as incurred by the Agency. Such costs shall include, but not be limited to: Certifying that records are true copies; sending records to requesters or receiving records from the Federal records storage centers by special methods such as express mail; and, where applicable, the cost of conducting computer searches for information and for providing information in electronic format.

(ii) Fees incurred in responding to information requests are to be charged in accordance with the following categories of requesters:

(A) Commercial use requesters will be assessed charges to recover the full direct costs for searching for, reviewing for release, and duplicating the records sought. Requesters must reasonably describe the records sought.

(B) Educational institution requesters will be assessed charges for the cost of reproduction alone, excluding charges for the first 100 pages. To be eligible for inclusion in this category, requesters must show that the request is being made under the auspices of a qualifying institution and that the records are not sought for commercial use, but are sought in furtherance of scholarly research. Requesters must reasonably describe the records sought.

(C) Requesters who are representatives of the news media will be assessed charges for the cost of reproduction alone, excluding charges for the first 100 pages. To be eligible for inclusion in this category, a requester must meet the criteria in paragraph (d)(1)(vii) of this section, and the request must not be made for commercial use. In reference to this class of requester, a request for records supporting the news dissemination function of the requester shall not be considered to be a request that is for commercial use. Requesters must reasonably describe the records sought.

(D) All other requesters, not elsewhere described, will be assessed charges to recover the full reasonable direct cost of searching for and reproducing records that are responsive to the request, except that the first 100 pages of reproduction and the first 2 hours of search time shall be furnished without charge. Requesters must reasonably describe the records sought.

(E) Absent a reasonably based factual showing that a requester should be placed in a particular user category, fees will be imposed as provided for in the commercial use requester category.

(iii)(A) In no event shall fees be imposed on any requester when the total charges are less than $5, which is the Agency's cost of collecting and processing the fee itself.

(B) If the Agency reasonably believes that a requester or a group of requesters acting together is attempting to divide a request into a series of requests for the purpose of avoiding fees, the Agency may aggregate those requests and charge accordingly. The Agency may presume that multiple requests of this type made within a 30-day period have been made in order to avoid fees. Where requests are separated by a longer period, the Agency will aggregate them only where there exists a solid basis for determining that aggregation is warranted under all the circumstances involved. Multiple requests involving unrelated matters will not be aggregated.

(iv) Documents are to be furnished without charge or at reduced levels if disclosure of the information is in the public interest because it is likely to contribute significantly to public understanding of the operations or activities of the Government and is not primarily in the commercial interest of the requester. Disclosure to data brokers or others who merely compile and market government information for direct economic return shall not be presumed to primarily serve the public interest. A fee waiver or reduction is justified where the public interest standard is satisfied and that public interest is greater in magnitude than that of any identified commercial interest in disclosure. Where only some of the requested records satisfy the requirements for a waiver of fees, a waiver shall be granted for those records.

(v) If a requester fails to pay chargeable fees that were incurred as a result of the Agency's processing of the information request, beginning on the 31st day following the date on which the notification of charges was sent, the Agency may assess interest charges against the requester in the manner prescribed in 31 U.S.C. 3717. Where appropriate, other steps permitted by federal debt collection statutes, including disclosure to consumer reporting agencies, use of collection agencies, and offset, will be used by the Agency to encourage payment of amounts overdue.

(vi) Each request for records shall contain a specific statement assuming financial liability, in full or to a specified maximum amount, for charges, in accordance with paragraphs (d)(2)(i) and (ii) of this section, which may be incurred by the Agency in responding to the request. If the anticipated charges exceed the maximum limit stated by the person making the request or if the request contains no assumption of financial liability or charges, the person shall be notified and afforded an opportunity to assume financial liability. In either case, the request for records shall not be deemed received for purposes of the applicable time limit for response until a written assumption of financial liability is received. The Agency may require a requester to make an advance payment of anticipated fees under the following circumstances:

(A) If the anticipated charges are likely to exceed $250, the Agency shall notify the requester of the likely cost and obtain satisfactory assurance of full payment when the requester has a history of prompt payment of FOIA fees, or require an advance payment of an amount up to the full estimated charges in the case of requesters with no history of payment.

(B) If a requester has previously failed to pay fees that have been charged in processing a request within 30 days of the date of the notification of fees was sent, the requester will be required to pay the entire amount of fees that are owed, plus interest as provided for in paragraph (d)(2)(v) of this section, before the Agency will process a further information request. In addition, the Agency may require advance payment of fees that the Agency estimates will be incurred in processing the further request before the Agency commences processing that request. When the Agency acts under paragraph (d)(2)(vi)(A) or (B) of this section, the administrative time limits for responding to a request or an appeal from initial denials will begin to run only after the Agency has received the fee payments required above.

(vii) Charges may be imposed even though the search discloses no records responsive to the request, or if records located are determined to be exempt from disclosure.

* * * * *

Dated, Washington, DC, September 28, 2001.

By direction of the Board.

John J. Toner,

Executive Secretary, National Labor Relations Board.

[FR Doc. 01–24739 Filed 10–2–01; 8:45 am]

BILLING CODE 7545–01–P

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Parts 110 and 165

[CGD05–01–060]

RIN 2115–AA97 and 2115–AA98

Anchorage Grounds and Safety Zone; Delaware Bay and River

AGENCY: Coast Guard, DOT.

ACTION: Temporary final rule.

SUMMARY: The Army Corps of Engineers will begin dredging parts of the Delaware River including the Marcus Hook Range Ship Channel. Because of the dredging operations, temporary additional requirements will be imposed in Anchorage 7 off Marcus Hook, Anchorage 6 off Deepwater Point, and Anchorage 9 near entrance to Mantua Creek. The Coast Guard is also establishing a temporary moving safety zone around the dredge vessel ESSEX that will be working in the Marcus Hook Range Ship Channel adjacent to Anchorage 7 off Marcus Hook. Vessels desiring to use these anchorage grounds will need to observe these temporary requirements and no vessels will be permitted in the safety zone without the permission of the Captain of the Port.

DATES: This rule is effective from September 24, 2001 until November 19, 2001.

ADDRESSES: Comments and material received from the public, as well as documents indicated in this preamble as being available in the docket, are part of docketCGD05–01–060 and are available for inspection or copying at Coast Guard Marine Safety Office/Group Philadelphia, One Washington Avenue, Philadelphia, Pennsylvania 19147 between 8 a.m. and 3 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Lieutenant Junior Grade Wade Kirschner or Senior Chief Robert Ward, Coast Guard Marine Safety Office/Group Philadelphia, (215) 271–4889 or (215) 271–4888.

SUPPLEMENTARY INFORMATION:

Regulatory Information

A Notice of Proposed Rule Making (NPRM) was not published for this regulation. In keeping with 5 U.S.C. 553 (b)(B), the Coast Guard finds that good cause exists for not publishing an NPRM. In keeping with the requirements of 5 U.S.C. 553 (d)(3), the Coast Guard also finds good cause exists for making this regulation effective less than 30 days after publication in the **Federal Register**. Publishing a NPRM

and delaying its effective date would be contrary to the public interest, since action is needed to protect mariners against potential hazards associated with the dredging operations in the Marcus Hook Range Ship Channel and to modify the anchorage regulations to facilitate vessel traffic. In addition, notifications will be made via Notice to Mariners.

Background and Purpose

The U.S. Army Corps of Engineers (ACOE) notified the Coast Guard that it needed to conduct dredging operations on the Delaware River, in the vicinity of the Marcus Hook Range Ship Channel. The dredging is needed to maintain the project depth of the channel. Dredging begins September 18, 2001 and is anticipated to end on November 19, 2001.

To reduce the hazards associated with dredging the channel, vessel traffic that would normally transit through the Marcus Hook Range Ship Channel will be diverted through part of Anchorage 7 off Marcus Hook (Anchorage 7) during the dredging operations. This necessitates additional requirements/restrictions on the use of Anchorage 7. For the protection of mariners transiting in the vicinity of dredging operations, the Coast Guard is also establishing a safety zone around the dredging vessel ESSEX. The safety zone will ensure mariners remain a safe distance from the potentially dangerous dredging equipment.

Discussion of the Regulation

Section 110.157(b)(2) allows vessels to anchor for up to 48 hours in the anchorage grounds listed in § 110.157(a), which includes Anchorage 7. However, because of the limited space available in Anchorage 7, the Coast Guard is adding a temporary paragraph in 33 CFR 110.157(b)(11) to provide additional requirements and restrictions on vessels utilizing Anchorage 7. During the effective period, vessels desiring to use Anchorage 7 must obtain permission from the Captain of the Port Philadelphia at least 24 hours in advance. The Captain of the Port will permit only one vessel at a time to anchor in Anchorage 7 and will grant permission on a ''first come, first serve'' basis. A vessel will be directed to a location within Anchorage 7 where it may anchor, and will not be permitted to remain in the Anchorage 7 for more than 12 hours.

The Coast Guard expects that vessels normally permitted to anchor in Anchorage 7 will use Anchorage 6 off Deepwater Point (Anchorage 6) or Anchorage 9 near entrance to Mantua Creek (Anchorage 9), because they are the closest anchorage grounds to Anchorage 7. To control access to Anchorage 7, the Coast Guard is requiring a vessel desiring to anchor in Anchorage 7 obtain advance permission from the Captain of the Port. To control access to Anchorages 6 and 9, the Coast Guard is requiring any vessel 700 feet or greater in length to obtain advance permission from the Captain of the Port before anchoring. The Coast Guard is also concerned that the holding ground in Anchorages 6 and 9 is not as good as in Anchorage 7. Therefore, a vessel 700 to 750 feet in length is required to have one tug standing alongside while at anchor, and a vessel of over 750 feet in length must have two tugs standing alongside. The tug(s) must have sufficient horsepower to prevent the vessel they are attending from swinging into the channel.

The Coast Guard is also establishing a safety zone within a 150-yard radius of the dredging operations being conducted in the Marcus Hook Range Ship Channel in the vicinity of Anchorage 7 by the dredge vessel ESSEX. The safety zone will protect mariners transiting the area from the potential hazards associated with dredging operations. Vessels transiting the Marcus Hook Range Ship Channel will have to divert from the main ship channel through Anchorage 7, and must operate at the minimum safe speed necessary to maintain steerage and reduce wake. No vessel may enter the safety zone unless it receives permission from the Captain of the Port.

Regulatory Evaluation

This temporary final rule is not a ''significant regulatory action'' under section 3(f) of Executive Order 12866 and does not require an assessment of potential costs and benefits under section 6(a)(3) of that order. The Office of Management and Budget has exempted it from review 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 proposal 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 requires certain vessels to have one or two tugs alongside while at anchor, the requirement only applies to vessels 700 feet or greater in length, that choose to anchor in Anchorages 6 and 9. Alternate anchorage grounds such as Anchorage A off the entrance to the Mispillion River (''Anchorage A,'' described in § 110.157(a)(1)) or Anchorage 1 off Bombay Hook Point (''Anchorage 1,'' described in § 110.157(a)(2)) in Delaware Bay, are also reasonably close and generally available. Vessels anchoring in Anchorages A and 1 are not required to have tugs alongside, except when specifically directed to do so by the Captain of the Port because of a specific hazardous condition. Furthermore, few vessels 700 feet or greater are expected to enter the port during the effective period. The majority of vessels expected are less than 700 feet and thus will not be required to have tugs alongside.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601–612), we have considered whether this rule would have a significant economic impact on a substantial number of small entities. The term ''small entities'' comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000.

The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities. This regulation's greatest impact is on vessels 700 feet and greater in length which choose to anchor in Anchorages 6 and 9 and will have virtually no impact on any small entities.

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 the rule so that they could better evaluate its effects on them and participate in the rulemaking process.

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

Collection of Information

This rule calls for no new collection of information under the Paperwork

Reduction Act of 1995 (44 U.S.C. 3501–3520).

Federalism

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

Unfunded Mandates Reform Act

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

Taking of Private Property

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

Civil Justice Reform

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

Protection of Children

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

Indian Tribal Governments

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

Energy Effects

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

Environment

We considered the environmental impact of this rule and concluded that, under figure 2–1, paragraphs (34)(f) and (g), of Commandant Instruction M16475.1C, this rule is categorically excluded from further environmental documentation.

List of Subjects

33 CFR Part 110

Anchorage grounds.

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 amends 33 CFR parts 110 and 165 as follows:

PART 110—ANCHORAGE REGULATIONS

1. The authority citation for part 110 continues to read as follows:

Authority: 33 U.S.C. 471, 1221 through 1236, 2030, 2035, 2071; 49 CFR 1.46 and 33 CFR 1.05–1(g).

2. A new temporary § 110.157(b)(11) is added to read as follows:

§ 110.157 Delaware Bay and River.

* * * * *

(b) * * *

(11) Additional requirements and restrictions for the anchorage grounds defined in paragraphs (a)(7), (a)(8), and (a)(10).

(i) Prior to anchoring in Anchorage 7 off Marcus Hook, as described in paragraph (a)(8) of this section, a vessel must first obtain permission from the Captain of the Port, Philadelphia, at least 24 hours in advance of arrival. Permission to anchor will be granted on a ''first-come, first-serve'' basis. The Captain of the Port will allow only one vessel at a time to anchor in Anchorage 7, and no vessel may remain within Anchorage 7 for more than 12 hours.

(ii) For Anchorage 6 off Deepwater Point as described in paragraph (a)(7) of this section, and Anchorage 9 near entrance to Mantua Creek as described in paragraph (a)(10) of this section.

(A) Any vessel 700 feet or greater in length requesting anchorage shall obtain permission from the Captain of the Port, Philadelphia, Pennsylvania, at least 24 hours in advance.

(B) Any vessel from 700 to 750 feet in length shall have one tug alongside at all times while the vessel is at anchor.

(C) Any vessel greater than 750 feet in length shall have two tugs alongside at all times while the vessel is at anchor.

(D) The master, owner or operator of a vessel at anchor shall ensure that a tug required by this section is of sufficient horsepower to assist with necessary maneuvers to keep the vessel clear of the navigation channel.

(iii) For the purposes of paragraph (b)(11), Captain of the Port means the Commanding Officer of the Coast Guard Marine Safety Office/Group Philadelphia or any Coast Guard commissioned, warrant, or petty officer who has been authorized by the Captain of the Port to act on his behalf. The Captain of the Port can be reached at telephone number (215) 271–4940.

(iv) *Effective dates.* Paragraph (b) (11) is effective from September 24, 2001 until November 19, 2001.

* * * * *

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

3. 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 1.46.

4. Add temporary § 165.T05–060 to read as follows:

§ 165.T05–060 Safety Zone; Delaware Bay and River.

(a) *Location.* The following area is a safety zone: All waters within the arc of a circle with a 150-yard radius of the dredging vessel ESSEX operating in or near the Marcus Hook Range Ship Channel in the vicinity of Anchorage 7 off Marcus Hook.

(b) *Regulations.*

(1) All persons are required to comply with the general regulations governing safety zones in § 165.23 of this part.

(2) The Coast Guard vessels enforcing this section can be contacted on VHF Marine Band Radio, channels 13 and 16. The Captain of the Port can be contacted at telephone number (215) 271–4940.

(3) The Captain of the Port will notify the public of any changes in the status

of this safety zone by Marine Safety Radio Broadcast on VHF–FM marine band radio, channel 22 (157.1 MHZ).

(c) *Definition.* For the purposes of this temporary section, Captain of the Port means the Commanding Officer of the Coast Guard Marine Safety Office/Group Philadelphia or any Coast Guard commissioned, warrant, or petty officer who has been authorized by the Captain of the Port to act on his behalf.

(d) *Effective dates.* This section is effective from September 24, 2001 until November 19, 2001.

Dated: September 24, 2001.

T.W. Allen,

Vice Admiral, U.S. Coast Guard, Commander, Fifth Coast Guard District.

[FR Doc. 01–24738 Filed 10–2–01; 8:45 am]

BILLING CODE 4910–15–U

DEPARTMENT OF VETERANS AFFAIRS

38 CFR Part 20

RIN 2900–AK54

Board of Veterans' Appeals: Rules of Practice—Time for Filing Substantive Appeal

AGENCY: Department of Veterans Affairs.

ACTION: Final rule.

SUMMARY: This document amends the Rules of Practice of the Board of Veterans' Appeals (Board) relating to the time limit for filing a ''substantive appeal.'' The amendment implements an opinion by the General Counsel of the Department of Veterans Affairs (VA) that, in some cases, when a claimant files additional evidence, the deadline for filing a substantive appeal may be extended.

DATES: *Effective date:* This amendment is effective February 11, 1997.

FOR FURTHER INFORMATION CONTACT: Steven L. Keller, Acting Vice Chairman, Board of Veterans' Appeals, Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420, (202) 565–5978.

SUPPLEMENTARY INFORMATION: The Board is an administrative body within VA that decides appeals from denials of claims for veterans' benefits.

An appeal to the Board is initiated by filing a ''notice of disagreement'' with the ''agency of original jurisdiction'' (AOJ), usually one of VA's 58 regional offices. 38 U.S.C. 7105(a), (b); 38 CFR 20.200 and 20.201. In response, the AOJ provides the claimant with a ''statement of the case,'' that sets forth the reasons for the decision. 38 U.S.C. 7105(d)(1); 38 CFR 19.26 and 19.29. The claimant must file a substantive appeal within 60 days from the date of the mailing of the statement of the case, or within the remainder of the one-year period from the date VA mailed the original decision to the claimant, whichever is later. 38 U.S.C. 7105(d)(3); 38 CFR 20.302(b).

If, however, a claimant submits additional pertinent evidence after the AOJ issues the statement of the case, the AOJ must issue a ''supplemental statement of the case'' (SSOC). 38 CFR 19.31 and 19.37(a). VA's regulations give the claimant 60 days to respond to the SSOC. 38 CFR 20.302(c). However, the previous version of 38 CFR 20.304 provided that filing additional evidence after receipt of notice of an adverse determination did not extend the time limit for completing an appeal from that determination. Accordingly, if a claimant submitted (1) pertinent additional evidence within one year of the AOJ's determination and (2) a substantive appeal within 60 days of the issuance of the SSOC, but more than one year after the date of the AOJ's adverse determination, then the appeal would have been untimely under the prior version of 38 CFR 20.304.

In a precedent opinion, however, the General Counsel held that VA must provide the claimant with a 60-day period of time in which to file a substantive appeal following issuance of an SSOC even if the one-year appeal period will expire before the 60-day period ends. VAOPGCPREC 9–97; 62 FR 15565, 15567 (Apr. 1, 1997). The Board is bound in its decisions by the precedent opinions of the General Counsel. 38 U.S.C. 7104(c).

Accordingly, we are amending 38 CFR 20.302 and 20.304 to conform to that General Counsel opinion. As amended, these rules clarify that, where a claimant submits additional pertinent evidence within one year of the challenged AOJ decision, and that evidence requires the preparation of an SSOC, the time to file a substantive appeal shall end not sooner than 60 days after the AOJ mails that SSOC.

Because this is a rule of agency practice, this rule would be published as a final rule. 5 U.S.C. 553(b)(3)(A). In addition, because this amendment constitutes a liberalizing change relieving a restriction and is an interpretative rule, this amendment is not required to be published 30 days prior to its effective date. 5 U.S.C. 553(d). In this case, since the Board is bound by the precedent opinions of the General Counsel, 38 U.S.C. 7104(c), the amendment would be retroactively effective to February 11, 1997, the effective date of the precedent opinion upon which it is based.

Paperwork Reduction Act

This document contains no provisions constituting a collection of information under the Paperwork Reduction Act (44 U.S.C. 3501–3520).

Unfunded Mandates

The Unfunded Mandates Reform Act requires (in section 202) that agencies prepare an assessment of anticipated costs and benefits before developing any rule that may result in an expenditure by State, local, or tribal governments, in the aggregate, or by the private sector of $100 million or more in any given year. This rule would have no consequential effect on State, local, or tribal governments.

Regulatory Flexibility Act

The Secretary hereby certifies that this rule does not have a significant economic impact on a substantial number of small entities as they are defined in the Regulatory Flexibility Act, 5 U.S.C. 601–612. This rule would affect only the processing of claims by VA and would not affect small businesses. Therefore, pursuant to 5 U.S.C. 605(b), this final rule is exempt from the initial and final regulatory flexibility analyses requirements of sections 603 and 604.

List of Subjects in 38 CFR Part 20

Administrative practice and procedure, Claims, Veterans.

Approved: September 21, 2001.

Anthony J. Principi,

Secretary of Veterans Affairs.

For the reasons set out in the preamble, 38 CFR part 20 is amended as follows:

PART 20—BOARD OF VETERANS' APPEALS: RULES OF PRACTICE

1. The authority citation for part 20 continues to read as follows:

Authority: 38 U.S.C. 501(a) and as noted in specific sections.

2. In § 20.302, paragraph (b) is revised to read as follows:

§ 20.302 Rule 302. Time limit for filing Notice of Disagreement, Substantive Appeal, and response to Supplemental Statement of the Case.

* * * * *

(b) *Substantive Appeal.* (1) *General.* Except in the case of simultaneously contested claims, a Substantive Appeal must be filed within 60 days from the date that the agency of original jurisdiction mails the Statement of the Case to the appellant, or within the

remainder of the 1-year period from the date of mailing of the notification of the determination being appealed, whichever period ends later. The date of mailing of the Statement of the Case will be presumed to be the same as the date of the Statement of the Case and the date of mailing the letter of notification of the determination will be presumed to be the same as the date of that letter for purposes of determining whether an appeal has been timely filed.

(2) *Special rule in certain cases where additional evidence is submitted.* Except in the case of simultaneously contested claims, if (i) a claimant submits additional evidence within 1 year of the date of mailing of the notification of the determination being appealed, and (ii) that evidence requires, in accordance with § 19.31 of this title, that the claimant be furnished a Supplemental Statement of the Case, then the time to submit a Substantive Appeal shall end not sooner than 60 days after such Supplemental Statement of the Case is mailed to the appellant, even if the 60-day period extends beyond the expiration of the 1-year appeal period.

(Authority: 38 U.S.C. 7105 (b)(1), (d)(3).)

* * * * *

3. In § 20.304 is revised to read as follows:

§ 20.304 Rule 304. Filing additional evidence does not extend time limit for appeal.

Except as provided in Rule 302(b) (§ 20.302(b) of this part), the filing of additional evidence after receipt of notice of an adverse determination does not extend the time limit for initiating or completing an appeal from that determination.

(Authority: 38 U.S.C. 7105.)

[FR Doc. 01–24766 Filed 10–2–01; 8:45 am]

BILLING CODE 8320–01–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[CA242–0291a; FRL–7058–9]

Revisions to the California State Implementation Plan, Imperial County Air Pollution Control District, Monterey Bay Unified Air Pollution Control District

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: EPA is taking direct final action to approve revisions to the Imperial County Air Pollution Control District (ICAPCD) and Monterey Bay Unified Air Pollution Control District (MBUAPCD) portions of the California State Implementation Plan (SIP). These revisions concern volatile organic compound (VOC) emissions from automotive refinishing operations, metal parts and products coating, and applications of nonarchitectural coatings. We are approving local rules that regulate these emission sources under the Clean Air Act as amended in 1990 (CAA or the Act).

DATES: This rule is effective on December 3, 2001, without further notice, unless EPA receives adverse comments by November 2, 2001. If we receive such comment, we will publish a timely withdrawal in the **Federal Register** to notify the public that this rule will not take effect.

ADDRESSES: Mail comments to Andy Steckel, Rulemaking Office Chief (AIR–4), U.S. Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105–3901.

You can inspect copies of the submitted SIP revisions and EPA's technical support documents (TSDs) at our Region IX office during normal business hours. You may also see copies of the submitted SIP revisions at the following locations:

Environmental Protection Agency, Air Docket (6102), Ariel Rios Building, 1200 Pennsylvania Avenue, N.W., Washington D.C. 20460;
California Air Resources Board, Stationary Source Division, Rule Evaluation Section, 1001 ''I'' Street, Sacramento, CA 95814;
Imperial County Air Pollution Control District, 150 South 9th Street, El Centro, CA 92243; and,
Monterey Bay Unified Air Pollution Control District, 24580 Silver Cloud Court, Monterey, CA 93940.

FOR FURTHER INFORMATION CONTACT: Jerald S. Wamsley, Rulemaking Office (AIR–4), U.S. Environmental Protection Agency, Region IX, (415) 744–1226.

SUPPLEMENTARY INFORMATION: Throughout this document, ''we,'' ''us'' and ''our'' refer to EPA.

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I. The State's Submittal

A. What rules did the State submit?

Table 1 lists the rules we are approving with the dates that they were adopted by the local air agencies and submitted by the California Air Resources Board (CARB).

TABLE 1—SUBMITTED RULES

Local agency	Rule #	Rule title	Adopted	Submitted
ICAPCD	427	Automotive Refinishing Operations	9/14/99	5/26/00
MBUAPCD	429	Applications of Nonarchitectural Coatings	1/17/01	5/8/01
MBUAPCD	434	Coating of Metal Parts and Products	1/17/01	5/8/01

On the following dates, EPA found these rule submittals met the completeness criteria in 40 CFR part 51, appendix V: October 6, 2000, ICAPCD Rule 427; and, July 20, 2001, MBUAPCD Rules 434 and 429. These criteria must be met before formal EPA review may begin.

B. Are there other versions of these rules?

There is no previous version of ICAPCD 427 in the SIP. We approved versions of MBUAPCD Rules 429 and 434 into the SIP on March 22, 2000 and August 18, 1999, respectively. CARB has not made an intervening submittal of these rules.

C. What is the purpose of the submitted rule revisions?

ICAPCD Rule 427, Automotive Refinishing Operations, is a rule designed to reduce volatile organic compound (VOC) emissions at industrial sites engaged in the auto coating operations. As a new SIP rule,

Rule 427 includes the following provisions:

—a description of rule purpose and applicability;

—definitions under the rule;

—rule standards and limits covering application, transfer efficiency, surface preparation and clean-up;

—exemptions from the rule;

—administrative requirements;

—source monitoring and recordkeeping requirements; and,

—test methods for determining compliance with the standards and limits of the rule.

MBUAPCD Rule 429, Applications of Nonarchitectural Coatings, is a rule designed to regulate industrial sites engaged in spraying nonarchitectural coatings. VOCs are emitted during the spray application process used to apply the coating. Rule 429 requires the use of a spray booth or enclosure while applying the coatings. The recent amendments to Rule 429 include new definitions for high transfer efficiency methods and a new test method for determining the control efficiency of particulate matter control devices.

MBUAPCD Rule 434, Coating of Metal Parts and Products, is a rule designed to reduce volatile organic compound (VOC) emissions at industrial sites engaged in metal coating operations. The recent amendments to Rule 434 include a definition of aerosol container, an exemption for aerosol container use, and added test methods for determining the VOC content of water-based coatings.

The TSD has more information about these rules and their specific changes.

II. EPA's Evaluation and Action

A. How is EPA evaluating the rules?

Generally, SIP rules must be enforceable (see section 110(a) of the Act), must require Reasonably Available Control Technology (RACT) for major sources in nonattainment areas (see section 182(a)(2)(A)), and must not relax existing requirements (see sections 110(l) and 193). ICAPCD regulates an ozone nonattainment area (see 40 CFR part 81), so its Rules must fulfill RACT. MBUAPCD regulates an ozone attainment and maintenance area. Consequently, MBUAPCD VOC RACT rules that maintain the ozone standard are subject to the anti-backsliding provisions of the CAA.

Guidance and policy documents that we used to define specific enforceability and RACT requirements include the following:

1. Portions of the proposed post-1987 ozone and carbon monoxide policy that concern RACT, 52 FR 45044, November 24, 1987.

2. ''Issues Relating to VOC Regulation Cutpoints, Deficiencies, and Deviations; Clarification to Appendix D of November 24, 1987 **Federal Register** Document,'' (Blue Book), notice of availability published in the May 25, 1988 **Federal Register**.

3. ''National Volatile Organic Compound Emission Standards for Automobile Refinish Coatings,'' at 40 CFR (Code of Federal Regulations) part 59, subpart B.

These standards apply to the manufacture of auto refinishing coatings and not to their application. Consequently, these Subpart B standards are not binding on body shops and auto painters. So, EPA is using these standards, California statewide guidance and other auto refinishing rules adopted in California to advise our review of ICAPCD Rule 427.

4. ''Control of Volatile Organic Emissions from Existing Stationary Sources Volume VI: Surface Coating of Miscellaneous Metal Parts and Products,'' USEPA, June 1978, EPA–450/2–78–015.

B. Do the rules meet the evaluation criteria?

We believe ICAPCD Rule 427 and MBUAPCD Rules 429 and 434 are consistent with the relevant policy and guidance regarding enforceability, RACT, and SIP relaxations. The respective TSD for each rule has more information on our evaluation.

C. EPA recommendations to further improve the rules

The TSD describes additional rule revisions that do not affect EPA's current action but are recommended for the next time the local agency modifies the rules.

D. Public comment and final action

As authorized in section 110(k)(3) of the Act, EPA is fully approving the submitted rules because we believe they fulfill all relevant requirements. We do not think anyone will object to this approval, so we are finalizing it without proposing it in advance. However, in the Proposed Rules section of this **Federal Register**, we are simultaneously proposing approval of the same submitted rules. If we receive adverse comments by November 2, 2001, we will publish a timely withdrawal in the **Federal Register** to notify the public that the direct final approval will not take effect and we will address the comments in a subsequent final action based on the proposal. If we do not receive timely adverse comments, the direct final approval will be effective without further notice on December 3, 2001. This will incorporate these rules into the federally enforceable SIP.

III. Background Information

Why were these rules submitted?

VOCs help produce ground-level ozone and smog, which harm human health and the environment. Section 110(a) of the CAA requires states to submit regulations that control VOC emissions. Table 2 lists some of the national milestones leading to the submittal of these local agency VOC rules.

TABLE 2.—OZONE NONATTAINMENT MILESTONES

Date	Event
March 3, 1978.	EPA promulgated a list of ozone nonattainment areas under the Clean Air Act as amended in 1977. 43 FR 8964; 40 CFR 81.305.
May 26, 1988	EPA notified Governors that parts of their SIPs were inadequate to attain and maintain the ozone standard and requested that they correct the deficiencies (EPA's SIP-Call). See section 110(a)(2)(H) of the pre-amended Act.
November 15, 1990.	Clean Air Act Amendments of 1990 were enacted. Pub. L. 101–549, 104 Stat. 2399, codified at 42 U.S.C. 7401–7671q.
May 15, 1991	Section 182(a)(2)(A) requires that ozone nonattainment areas correct deficient RACT rules by this date.

IV. Administrative Requirements

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is not a ''significant regulatory action'' and therefore is not subject to review by the Office of Management and Budget. For this reason, this action is also not subject to Executive Order 32111, ''Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use'' (66 FR 28355, May

22, 2001). This action merely approves state law as meeting federal requirements and imposes no additional requirements beyond those imposed by state law. Accordingly, the Administrator certifies that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Because this rule approves pre-existing requirements under state law and does not impose any additional enforceable duty beyond that required by state law, it does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4). This rule also does not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes, as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), nor will it have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999), because it merely approves a state rule implementing a federal standard, and does not alter the relationship or the distribution of power and responsibilities established in the Clean Air Act. This rule also is not subject to Executive Order 13045 (62 FR 19885, April 23, 1997), because it is not economically significant.

In reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the Clean Air Act. In this context, in the absence of a prior existing requirement for the State to use voluntary consensus standards (VCS), EPA has no authority to disapprove a SIP submission for failure to use VCS. It would thus be inconsistent with applicable law for EPA, when it reviews a SIP submission, to use VCS in place of a SIP submission that otherwise satisfies the provisions of the Clean Air Act. Thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply. As required by section 3 of Executive Order 12988 (61 FR 4729, February 7, 1996), in issuing this rule, EPA has taken the necessary steps to eliminate drafting errors and ambiguity, minimize potential litigation, and provide a clear legal standard for affected conduct. EPA has complied with Executive Order 12630 (53 FR 8859, March 15, 1988) by examining the takings implications of the rule in accordance with the ''Attorney General's Supplemental Guidelines for the Evaluation of Risk and Avoidance of Unanticipated Takings'' issued under the executive order. This rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

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

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by December 3, 2001. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Hydrocarbons, Incorporation by reference, Intergovernmental relations, Ozone, Reporting and recordkeeping requirements, Volatile organic compounds.

Dated: August 24, 2001.

Sally Seymour,

Acting Regional Administrator, Region IX.

Part 52, Chapter I, Title 40 of the Code of Federal Regulations is amended as follows:

PART 52—[AMENDED]

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

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

Subpart F—California

2. Section 52.220 is amended by adding paragraphs (c)(279)(i)(A)(*5*) and (284) to read as follows:

§ 52.220 Identification of plan.

* * * * *

(c) * * *

(279) * * *

(i) * * *

(A) * * *

(*5*) Rule 427, adopted on September 14, 1999.

* * * * *

(284) New and amended regulations for the following APCDs were submitted on May 8, 2001, by the Governor's designee.

(i) Incorporation by reference.

(A) Monterey Bay Unified Air Pollution Control District.

(*1*) Rules 429 adopted on September 16, 1987 and amended on January 17, 2001 and Rule 434 adopted on June 15, 1994 and amended on January 17, 2001.

[FR Doc. 01–24483 Filed 10–2–01; 8:45 am]

BILLING CODE 6560–50–U

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 70

[DE–T5–2001–01a; FRL–7072–7]

Clean Air Act Full Approval of Operating Permit Program; Delaware

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: EPA is taking direct final action to fully approve the operating permit program of the State of Delaware. Delaware's operating permit program was submitted in response to the Clean Air Act (CAA) Amendments of 1990 that required States to develop, and submit to EPA, programs for issuing operating permits to all major stationary sources and to certain other sources within the States' jurisdiction. The EPA granted final interim approval of Delaware's operating permit program on December 4, 1995. Delaware amended its operating permit program to address deficiencies identified in the interim approval action and this action approves those amendments. Any parties interested in commenting on this action granting full approval of Delaware's title V operating permit program should do so at this time. A more detailed description of Delaware's submittals and EPA's evaluation are included in a Technical Support

Document (TSD) in support of this rulemaking action. A copy of the TSD is available, upon request, from the EPA Regional Office listed in the **ADDRESSES** section of this document.

DATES: This rule is effective on November 19, 2001 without further notice, unless EPA receives adverse written comment by November 2, 2001. If EPA receives such comments, it will publish a timely withdrawal of the direct final rule in the **Federal Register** and inform the public that the rule will not take effect.

ADDRESSES: Written comments may be mailed to Makeba Morris, Chief, Permits and Technical Assessment Branch, Mailcode 3AP11, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103. Copies of the documents relevant to this action are available for public inspection during normal business hours at the Air Protection Division, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103 and Delaware Department of Natural Resources & Environmental Control, 89 Kings Highway, PO Box 1401, Dover, Delaware 19903.

FOR FURTHER INFORMATION CONTACT: David Campbell, Permits and Technical Assessment Branch at (215) 814–2196 or by e-mail at *campbell.dave@.epa.gov*.

SUPPLEMENTARY INFORMATION: On November 14, 2000 and November 20, 2000, the State of Delaware submitted amendments to its State operating permit program. These amendments are the subject of this document and this section provides additional information on the amendments by addressing the following questions:

What is the State operating permit program?
What are the State operating permit program requirements?
What is being addressed in this document?
What is not being addressed in this document?
What changes to Delaware's operating permit program is EPA approving?
What action is being taken by EPA?

What Is the State Operating Permit Program?

The Clean Air Act Amendments of 1990 required all States to develop operating permit programs that meet certain federal criteria. When implementing the operating permit programs, the States require certain sources of air pollution to obtain permits that contain all of their applicable requirements under the Clean Air Act (CAA). The focus of the operating permit program is to improve enforcement by issuing each source a permit that consolidates all of its applicable CAA requirements into a federally-enforceable document. By consolidating all of the applicable requirements for a given air pollution source into an operating permit, the source, the public, and the State environmental agency can more easily understand what CAA requirements apply and how compliance with those requirements is determined.

Sources required to obtain an operating permit under this program include ''major'' sources of air pollution and certain other sources specified in the CAA or in EPA's implementing regulations. For example, all sources regulated under the acid rain program, regardless of size, must obtain operating permits. Examples of ''major'' sources include those that have the potential to emit 100 tons per year or more of volatile organic compounds, carbon monoxide, lead, sulfur dioxide, nitrogen oxides, or particulate matter (PM10); those that emit 10 tons per year of any single hazardous air pollutant (HAP) specifically listed under the CAA; or those that emit 25 tons per year or more of a combination of HAPs. In areas that are not meeting the national ambient air quality standards (NAAQS) for ozone, carbon monoxide, or particulate matter, major sources are defined by the gravity of the nonattainment classification.

What Are the State Operating Permit Program Requirements?

The minimum program elements for an approvable operating permit program are those mandated by title V of the Clean Air Act Amendments of 1990 and established by EPA's implementing regulations at title 40, part 70—''State Operating Permit Programs'' in the Code of Federal Regulations (40 CFR part 70). Title V required state and local air pollution control agencies to develop operating permit programs and submit them to EPA for approval by November 15, 1993. Under title V, State and local air pollution control agencies that implement operating permit programs are called ''permitting authorities''.

Where an operating permit program substantially, but not fully, met the program approval criteria outlined at 40 CFR part 70, EPA granted interim approval contingent on the permit authority revising its program to correct those programmatic deficiencies that prevented full approval. Delaware's original operating permit program substantially, but not fully, met the requirements of 40 CFR part 70. Therefore, EPA granted final interim approval of the program in a rulemaking published on December 4, 1995. [See 60 FR 62032.] The interim approval notice identified five outstanding deficiencies that had to be corrected in order for Delaware's program to receive full approval. On November 14, 2000 and November 20, 2000, the State of Delaware submitted amendments to its operating permit program to EPA to address its outstanding program deficiencies.

Delaware's November 14, 2000 and November 20, 2000 submittals satisfy the State's requirement to submit program amendments to EPA by June 1, 2001. This deadline was established by EPA in order to allow for time for EPA review and action on program amendments such that operating permit programs with interim approval status could be considered for full approval by December 1, 2001. After December 1, 2001, those jurisdictions lacking fully-approved operating permit programs will, by operation of law, be subject to a federal operating permit program implemented by EPA under 40 CFR part 71. [See 65 FR 32035.]

What Is Being Addressed in This Document?

On November 14, 2000 and November 20, 2000, Delaware submitted amendments to its currently EPA-approved title V operating permit program. In general, Delaware amended its operating permit program regulations to address deficiencies identified by EPA when it granted final interim approval of Delaware's program in 1995.

What Is Not Being Addressed in This Document?

On December 11, 2000, EPA announced a 90-day comment period for members of the public to identify deficiencies they perceive exist in State and local agency operating permits programs. [See 65 FR 77376.] The public was able to comment on all currently-approved operating permit programs, regardless of whether they have been granted full or interim approval. The December 11, 2000 notice instructed the public to not include in their comments any program deficiencies that were previously identified by EPA when the subject program was granted interim approval. Since those program deficiencies have already been identified and permitting authorities have been working to correct them, EPA will solicit comments when taking action on those corrective measures.

The EPA stated that it will consider information received from the public pursuant to the December 11, 2000 notice and determine whether it agrees or disagrees with the purported deficiencies. Where EPA agrees there is a deficiency, it will publish a notice of

deficiency consistent with 40 CFR 70.4(i) and 40 CFR 70.10(b). The Agency will at the same time publish a notice identifying any alleged problems that we do not agree are deficiencies. For programs that have not yet received full approval, such as Delaware's program, EPA will publish these notices by December 1, 2001.

The EPA received numerous comments in response to the December 11, 2000 notice announcing the start of the 90-day public comment period. As part of those comments, EPA Region III received comments germane to Delaware's currently-approved operating permit program. The Agency will respond to those comments in a separate notice(s) by December 1, 2001 as required by the December 11, 2000 notice.

The EPA is not addressing any comments received pursuant to the December 11, 2000 notice in this document. As mentioned above, comments provided in accordance with the December 11, 2000 notice were to address shortcomings that had not previously been identified by EPA as deficiencies necessitating interim, rather than full, approval of a state's operating permit program. This action granting full approval of Delaware's operating permit program only addresses program deficiencies identified when EPA granted interim approval to Delaware's program in 1995. Therefore, any persons wishing to comment on this action should do so at this time.

What Changes to Delaware's Program Is EPA Approving?

The EPA has reviewed Delaware's November 14, 2000 and November 20, 2000 program amendments in conjunction with the portion of Delaware's program that was earlier approved on an interim basis. Based on this review, EPA is granting full approval of Delaware's amended operating permit program. The EPA has determined that the amendments to Delaware's operating permit program adequately address the five deficiencies identified by EPA in its December 4, 1995 rulemaking granting interim approval. Delaware's operating permit program, including the amendments submitted on November 14, 2000 and November 20, 2000, fully meets the minimum requirements of 40 CFR part 70.

Changes to Delaware's Program that Correct Interim Approval Deficiencies

1. Revise Regulation 30, Section 6(f) To Be Consistent With the Scope of the Permit Shield Provision of 40 CFR 70(f)(1)

The extent of Delaware's permit shield was originally too broad and allowed the permit shield to apply to any air contaminant specifically identified in the permit application as well as to any requirement of a State regulation, the Delaware Water and Air Resources Act, rather than any applicable requirement of the final permit as required by 40 CFR 70(f)(1). Delaware revised Regulation 30, Section 6(f) to delete applicability of the permit shield to the permit application and the Delaware Water and Air Resources Act. In lieu thereof, Delaware included a provision for the permit shield to apply to any applicable requirement specifically identified in the permit as of the day of permit issuance. With this amendment, Delaware's program is consistent with 40 CFR 70.6(f)(1) with regard to the permit shield.

2. Revise Regulation 30, Section 7(d)(1)(v) To Ensure That Any Preconstruction Review Permit Requirements That Are Incorporated Into a Title V Permit Through the Administrative Permit Amendment Procedure Meet the Provisions of 40 CFR 70.7(d)(1)(v)

Delaware's Regulation 30, Section 7(d)(1)(v) allowed the requirements from preconstruction review permits to be incorporated into the title V permit as an administrative permit amendment, when such permits were issued meeting only the public participation requirements of Regulation 30. It did not require that a preconstruction permit meet the other procedural requirements set forth in 40 CFR 70.7(d)(5) in order to be incorporated as an administrative amendment. In addition to public participation requirements, 40 CFR 70.7(d) requires procedures substantially equivalent to those in 40 CFR 70.7 and 70.8 which would apply if the preconstruction review permit were subject to review as a permit modification, and compliance requirements substantially equivalent to those in 40 CFR 70.6. Delaware revised Regulation 30 Section 7(d)(1)(v) to require that preconstruction review permits meet Sections 11.2(j), 11.5, 12.4, 12.5, and 12.6 of Regulation No. 2, Delaware's program for minor new source review. Regulation 2 was previously revised and updated on June 1, 1997. Regulation 2, Sections 11.2(j), and 11.5 set forth the requirements for a permit which is desired by an applicant to have its terms or conditions transferred into a Regulation 30 permit. These requirements for compliance certifications, information to be provided in a permit application, and information regarding the compliance status and compliance schedule for all applicable requirements, allow the permit to substantially meet the compliance requirements of 40 CFR 70.6. Sections 12.4, 12.5, and 12.6 set forth the procedural requirements for public participation and EPA and affected state review, which are substantially equivalent to the procedural requirements of 40 CFR 70.7 and 70.8.

3. Revise Regulation 30, Section 7(f)(4) To Require That Permits for Major Sources With a Permit Term of Three Years or More Shall Be Reopened For Cause Within 18 Months After a New Applicable Requirement Is Promulgated, Consistent With 40 CFR 70.7(f)

Regulation 30, Section 7(f)(4) originally required reopening for cause upon new applicable requirements for affected sources only under the acid rain program. It has been revised to apply to all major sources having a remaining permit term of more than three years. With this amendment, Delaware's program is consistent with 40 CFR 70.7(f).

4. Revise Regulation 30, Section 7(j)(4) To Require That The Department Shall Give Notice of any Public Hearing at Least 30 Days in Advance of the Hearing, Consistent With 40 CFR 70.7(h)(4)

Regulation 30, Section 7(j)(4) has been revised to require that a public hearing will be held no earlier than the 31st day following publication of a public notice for that hearing. This amendment make Delaware's program consistent with 40 CFR 70.7(h)(4) with regard to public notification.

5. Revise the Delaware Water and Air Resources Act, 7 Del. C., Chapter 60, Section 6013(b) To Provide That Each Day of Violation Shall Be Considered as a Separate Violation, Consistent With 40 CFR 70.11

The Delaware Water and Air Resources Act, 7 Del. C., section 6013(b), Criminal Penalties, did not include the requirement that each day of violation also be considered a separate violation. Effective July 3, 1997, Delaware amended 7 Del. C., section 6013(b) to include that each day of violation shall constitute a separate offense. The slight variance in language, that is, the term ''offense'' in lieu of

''violation'', does not change its meaning, and requires that each day of violation be considered separately. This amendment to Delaware's statute is consistent with the penalty requirements of 40 CFR 70.11.

What Action Is Being Taken By EPA?

The State of Delaware has satisfactorily addressed the program deficiencies identified when EPA granted final interim approval of its operating permit program on December 4, 1995. The operating permit program amendments that are the subject of this document considered together with that portion of Delaware's operating permit program that was earlier approved on an interim basis fully satisfy the minimum requirements of 40 CFR part 70 and the Clean Air Act. Therefore, EPA is taking direct final action to fully approve the Delaware title V operating permit program in accordance with 40 CFR 70.4(e).

The EPA is publishing this rule without prior proposal because the Agency views this as a noncontroversial amendment and anticipates no adverse comment. However, in the ''Proposed Rules'' section of today's **Federal Register**, EPA is publishing a separate document that will serve as the proposal to approve the operating permit program approval if adverse comments are filed relevant to the issues discussed in this action. This rule will be effective on November 19, 2001 without further notice unless EPA receives adverse comment by November 2, 2001. If EPA receives adverse comment, EPA will publish a timely withdrawal in the **Federal Register** informing the public that the rule will not take effect. The EPA will address all public comments in a subsequent final rule based on the proposed rule. The EPA will not institute a second comment period on this action. Any parties interested in commenting must do so at this time. Please note that if EPA receives adverse comment on an amendment, paragraph, or section of this rule and if that provision may be severed from the remainder of the rule, EPA may adopt as final those provisions of the rule that are not the subject of an adverse comment.

Administrative Requirements

A. General Requirements

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is not a ''significant regulatory action'' and therefore is not subject to review by the Office of Management and Budget. For this reason, this action is also not subject to Executive Order 13211, ''Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use'' (66 FR 28355 (May 22, 2001)). This action merely approves State law as meeting Federal requirements and imposes no additional requirements beyond those imposed by State law. Accordingly, the Administrator certifies that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Because this rule approves pre-existing requirements under State law and does not impose any additional enforceable duty beyond that required by State law, it does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104–4). This rule also does not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes, as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), nor will it have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999), because it merely approves a State rule implementing a Federal standard, and does not alter the relationship or the distribution of power and responsibilities established in the Clean Air Act. This rule also is not subject to Executive Order 13045 (62 FR 19885, April 23, 1997), because it is not economically significant.

In reviewing State operating permit program submissions, EPA's role is to approve State choices, provided that they meet the criteria of the Clean Air Act. In this context, in the absence of a prior existing requirement for the State to use voluntary consensus standards (VCS), EPA has no authority to disapprove an operating permit program for failure to use VCS. It would thus be inconsistent with applicable law for EPA, when it reviews an operating permit program submission, to use VCS in place of an operating permit program submission that otherwise satisfies the provisions of the Clean Air Act. Thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply. As required by section 3 of Executive Order 12988 (61 FR 4729, February 7, 1996), in issuing this rule, EPA has taken the necessary steps to eliminate drafting errors and ambiguity, minimize potential litigation, and provide a clear legal standard for affected conduct. The EPA has complied with Executive Order 12630 (53 FR 8859, March 15, 1988) by examining the takings implications of the rule in accordance with the ''Attorney General's Supplemental Guidelines for the Evaluation of Risk and Avoidance of Unanticipated Takings'' issued under the executive order. This rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

B. Submission to Congress and the Comptroller General

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

C. Petitions for Judicial Review

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by December 3, 2001. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action fully approving Delaware's title V operating permit program may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 70

Environmental protection, Administrative practice and procedure, Air pollution control, Intergovernmental relations, Operating permits, Reporting and recordkeeping requirements.

Dated: September 25, 2001.

Donald S. Welsh,

Regional Administrator, Region III.

Appendix A of part 70 of title 40, chapter I, of the Code of Federal Regulations is amended as follows:

PART 70—[AMENDED]

1. The authority citation for part 70 continues to read as follows:

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

2. Appendix A to part 70 is amended by adding paragraph (b) in the entry for Delaware to read as follows:

Appendix A to Part 70—Approval Status of State and Local Operating Permits Programs

* * * * *

Delaware

* * * * *

(b) The Delaware Department of Natural Resources and Environmental Control submitted program amendments on November 14, 2000 and November 20, 2000. The rule amendments contained in the November 14, 2000 and November 20, 2000 submittals adequately addressed the conditions of the interim approval effective on January 3, 1996. The State is hereby granted final full approval effective on November 19, 2001.

* * * * *

[FR Doc. 01–24707 Filed 10–2–01; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 70

[WV–T5–2001–01a; FRL–7073–7]

Clean Air Act Full Approval of Operating Permit Program; West Virginia

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: EPA is taking direct final action to fully approve the operating permit program of the State of West Virginia. West Virginia's operating permit program was submitted in response to the Clean Air Act (CAA) Amendments of 1990 that required States to develop, and submit to EPA, programs for issuing operating permits to all major stationary sources and to certain other sources within the States' jurisdiction. The EPA granted final interim approval of West Virginia's operating permit program on November 15, 1995. West Virginia amended its operating permit program to address deficiencies identified in the interim approval action and this action approves those amendments. Any parties interested in commenting on this action granting full approval of West Virginia's title V operating permit program should do so at this time. A more detailed description of West Virginia's submittal and EPA's evaluation are included in a Technical Support Document (TSD) in support of this rulemaking action. A copy of the TSD is available, upon request, from the EPA Regional Office listed in the **ADDRESSES** section of this document.

DATES: This rule is effective on November 19, 2001 without further notice, unless EPA receives adverse written comment by November 2, 2001. If EPA receives such comments, it will publish a timely withdrawal of the direct final rule in the **Federal Register** and inform the public that the rule will not take effect.

ADDRESSES: Written comments may be mailed to Makeba Morris, Chief, Permits and Technical Assessment Branch, Mailcode 3AP11, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103. Copies of the documents relevant to this action are available for public inspection during normal business hours at the Air Protection Division, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103 and West Virginia Department of Environmental Protection, Office of Air Quality, 1558 Washington Street, East, Charleston, West Virginia, 25311.

FOR FURTHER INFORMATION CONTACT: David Campbell, Permits and Technical Assessment Branch at (215) 814–2196 or by e-mail at *campbell.dave@.epa.gov.*

SUPPLEMENTARY INFORMATION: On June 1, 2001, the State of West Virginia submitted amendments to its State operating permit program. These amendments are the subject of this document and this section provides additional information on the amendments by addressing the following questions:

What is the State operating permit program?

What are the State operating permit program requirements?

What is being addressed in this document?

What is not being addressed in this document?

What changes to West Virginia's operating permit program is EPA approving?

What action is being taken by EPA?

What Is the State Operating Permit Program?

The Clean Air Act Amendments of 1990 required all States to develop operating permit programs that meet certain federal criteria. When implementing the operating permit programs, the States require certain sources of air pollution to obtain permits that contain all of their applicable requirements under the Clean Air Act (CAA). The focus of the operating permit program is to improve enforcement by issuing each source a permit that consolidates all of its applicable CAA requirements into a federally-enforceable document. By consolidating all of the applicable requirements for a given air pollution source into an operating permit, the source, the public, and the State environmental agency can more easily understand what CAA requirements apply and how compliance with those requirements is determined.

Sources required to obtain an operating permit under this program include ''major'' sources of air pollution and certain other sources specified in the CAA or in EPA's implementing regulations. For example, all sources regulated under the acid rain program, regardless of size, must obtain operating permits. Examples of ''major'' sources include those that have the potential to emit 100 tons per year or more of volatile organic compounds, carbon monoxide, lead, sulfur dioxide, nitrogen oxides, or particulate matter (PM10); those that emit 10 tons per year of any single hazardous air pollutant (HAP) specifically listed under the CAA; or those that emit 25 tons per year or more of a combination of HAPs. In areas that are not meeting the national ambient air quality standards (NAAQS) for ozone, carbon monoxide, or particulate matter, major sources are defined by the gravity of the nonattainment classification.

What Are the State Operating Permit Program Requirements?

The minimum program elements for an approvable operating permit program are those mandated by title V of the Clean Air Act Amendments of 1990 and established by EPA's implementing regulations at title 40, part 70—''State Operating Permit Programs'' in the Code of Federal Regulations (40 CFR part 70). Title V required state and local air pollution control agencies to develop operating permit programs and submit them to EPA for approval by November 15, 1993. Under title V, State and local air pollution control agencies that implement operating permit programs are called ''permitting authorities''.

Where an operating permit program substantially, but not fully, met the program approval criteria outlined at 40 CFR part 70, EPA granted interim approval contingent on the permit authority revising its program to correct

those programmatic deficiencies that prevented full approval. West Virginia's original operating permit program substantially, but not fully, met the requirements of 40 CFR part 70. Therefore, EPA granted final interim approval of the program in a rulemaking published on November 15, 1995. (See 60 FR 57352.) The interim approval notice identified 11 outstanding deficiencies that had to be corrected in order for West Virginia's program to receive full approval. On June 1, 2001, the State of West Virginia submitted amendments to its operating permit program to EPA to address its outstanding program deficiencies.

West Virginia's June 1, 2001 submittal satisfies the State's requirement to submit program amendments to EPA by June 1, 2001. This deadline was established by EPA in order to allow for time for EPA review and action on program amendments such that operating permit programs with interim approval status could be considered for full approval by December 1, 2001. After December 1, 2001, those jurisdictions lacking fully-approved operating permit programs will, by operation of law, be subject to a federal operating permit program implemented by EPA under 40 CFR part 71. (See 65 FR 32035.)

What Is Being Addressed in This Document?

On June 1, 2001, West Virginia submitted amendments to its currently EPA-approved title V operating permit program. In general, West Virginia amended its operating permit program regulations to address deficiencies identified by EPA when it granted final interim approval of West Virginia's program in 1995. In the June 1, 2001 submittal, West Virginia also provided revisions to its existing program that make minor regulatory corrections. These additional revisions are the subject of a separate rulemaking action as more fully discussed below.

What Is Not Being Addressed in This Document?

As part of its June 1, 2001 submittal, West Virginia also submitted additional revisions to its currently EPA-approved title V operating permit program which are unrelated to the interim approval deficiencies. These program revisions are comprised of technical and administrative corrections which do not bear on the program's ability to fully meet the substantive requirements of 40 CFR part 70. These revisions were submitted pursuant to 40 CFR 70.4(i) which authorizes States with approved programs to initiate program revisions. Since these revisions do not directly affect the approval status of West Virginia's program according to 40 CFR 70.4(d) and 40 CFR 70.4(e), they will be considered in a separate rulemaking action.

On December 11, 2000, EPA announced a 90-day comment period for members of the public to identify deficiencies they perceive exist in State and local agency operating permits programs. (See 65 FR 77376.) The public was able to comment on all currently-approved operating permit programs, regardless of whether they have been granted full or interim approval. The EPA Region III did not receive comments germane to West Virginia's currently-approved operating permit program.

What Changes to West Virginia's Program Is EPA Approving?

The EPA has reviewed West Virginia's June 1, 2001 program amendments in conjunction with the portion of West Virginia's program that was earlier approved on an interim basis. Based on this review, EPA is granting full approval of West Virginia's amended operating permit program. The EPA has determined that the amendments to West Virginia's operating permit program adequately address the 11 deficiencies identified by EPA in its November 15, 1995 rulemaking granting interim approval. West Virginia's operating permit program, including the amendments submitted on June 1, 2001, fully meets the minimum requirements of 40 CFR part 70.

The following describes the changes made to West Virginia's operating permit program. Please note, West Virginia revised the numbering scheme of 45CSR30 subsequent to EPA's November 15, 1995 rulemaking action. For purposes of the following discussion, rule references are made using the original numbering scheme followed by brackets containing the corresponding current references, where different.

Changes to Correct Interim Approval Deficiencies

1. Clarify That the Section 2.18 Definition of ''Emissions Unit'' Includes Activities or Parts of Activities Which Emit or Potentially Emit Pollutants Listed Under Section 112(b) of the CAA

West Virginia's original 45CSR30, section 2.18 definition of ''Emissions unit'' did not specifically include activities or parts of activities which emit or potentially emit pollutants listed under section 112(b) of the Clean Air Act. West Virginia revised the definition of ''Emissions unit'' in section 2.8 to specifically include activities or parts of activities which emit or potentially emit pollutants listed under section 112(b) of the Clean Air Act. With this revised definition, West Virginia's 45CSR30 fully meets the requirements of 40 CFR 70.2 for definitions.

2. Clarify in Section 3.2.d That Permit Applications Will Contain Sufficient Information Needed to Determine the Applicability of, or to Impose, all Applicable Requirements

West Virginia must also ensure that the insignificant activities list approved as part of the State's program will not be modified without prior EPA approval. Moreover, West Virginia must clarify that potential emissions from all insignificant activities or emissions units, whether included in section 3.2.d. or determined by the Chief on an application-by-application basis, will be included in determining whether a source is a major source.

West Virginia's original 45CSR30, section 3.2.d list of ''insignificant activities'' included several units and activities which were not ''intrinsically insignificant'' in that they could potentially be subject to applicable requirements depending on characteristics excluded in permit applications. While 40 CFR 70.5(c) allows insignificant activities to be excluded from permit applications or identified if based on size or production rates, the permit application may not omit information necessary for the permitting authority to determine the applicability of, or to impose applicable requirements, or to determine fees. West Virginia revised section 3.2.d [section 3.2(e)] to clarify that units subject to applicable requirements shall not be deemed to be ''insignificant activities'', and that permit applications must include sufficient information to verify that the unit or activity is insignificant.

West Virginia's original 45CSR30, section 3.2.d provided the Director with unbounded discretion to approve additional sources and activities as part of the program's insignificant activity list. West Virginia revised section 3.2.d [section 3.2(e)] to clarify that units subject to applicable requirements shall not be deemed to be ''insignificant activities'', and that the program's insignificant activity list shall not be expanded without EPA approval.

West Virginia's original 45CSR30, section 3.2.d did not clearly indicate that potential emissions from all insignificant activities, including emissions from new activities determined by the Director and approved by EPA, must be included in determining whether a source is a major

source. West Virginia's revised section 3.2.d [section 3.2(e)] to clarify that potential emissions from all such activities shall not be excluded in the determination of major source status under 45CSR30 . With these revisions, West Virginia's 45CSR30 fully meets the requirements of 40 CFR 70.5 for permit applications.

3. Clarify in Section 3.3.a That Permits Issued to Major Sources Will Include All Applicable Requirements That Apply to the Source, Including Those Applicable Requirements Which May Be Later Found To Be Applicable to One or More ''Insignificant Activities''

West Virginia's original 45CSR30, section 3.3.a appeared to allow title V operating permits issued to major sources to exclude applicable requirements for insignificant activities. This exclusion was in conflict with 40 CFR 70.3(c)(1) and with other provisions of 45CSR30 which require permits to include all applicable requirements. West Virginia revised section 3.3.a [section 3.3(a)] to no longer include a reference to insignificant activities. As a result, it is clear that major source permits must include all applicable requirements. With this revision, West Virginia's revised 45CSR30 is internally consistent and fully meets the corresponding requirements of 40 CFR 70 for permit content.

4. Either Remove the Section 5.1.j.D. Provision for Volatile Organic Compounds (VOCs) Category Substitution or Clarify How it Will Be Implemented Within the Context of Emissions Trading

West Virginia's original 45CSR30, section 5.1.j.D. mistakenly provided for Director-approved emissions trades involving substitutions of categories of VOCs in production processes. West Virginia removed section 5.1.j.D. [section 5.1.j.4]. With this revision, 40CSR30 fully meets the corresponding requirements of 40 CFR 70 for emissions trading.

5. Clarify in Section 5.3.e.A. That Permits Will Contain Provisions Requiring Compliance Certifications To Be Submitted at Least Annually or Such More Frequent Periods as Specified by an Applicable Requirement or by the Permitting Authority

West Virginia's original 45CSR30, section 5.3.e.A required each permit to specify the frequency of submitting compliance certifications, but did not specifically require the frequency to be at least annually or more frequently if required by underlying applicable requirements. West Virginia revised section 5.3.e.A [section 5.3.e.1] to clarify that permits must include provisions requiring compliance certifications to be submitted at least annually or more frequently if required by underlying applicable requirements or by the Director. With this clarification, West Virginia's 45CSR30 fully meets the requirements of 40 CFR 70.6(c)(5) for compliance certifications.

6. Clarify in Section 5.5 That for Temporary Sources That Do Not Obtain a New Preconstruction Permit Prior to Each Change in Location, the Operating Permits Shall Include a Requirement That the Owner Operator Notify the Chief at Least Ten (10) Days in Advance of Each Change in Location

West Virginia's original 45CSR30, section 5.5 did not specifically require permits issued to temporary sources to include a requirement that owners or operators notify the Chief at least 10 days in advance of each change of location. Although the 10-day notification requirement was not specifically required, section 5.5 requires temporary sources to comply with preconstruction review requirements of 45CSR13, 45CSR14, and 45CSR19. For the most part, these preconstruction review requirements inherently satisfy the part 70 10-day advance notification requirement. West Virginia revised section 5.5 to further clarify that owners or operators with temporary operating permits must notify the Director at least 10 days in advance of each such change. With this clarification, West Virginia's 45CSR30 fully meets the corresponding requirements of 40 CFR 70.6(e) for temporary permits.

7. Clarify in Section 4.1 That Sources Which Become Subject to the Permitting Program After the Effective Date Are Required To Submit Permit Applications Within 12 Months

West Virginia's original 45CSR30, section 4.1 did not specifically require sources which become subject to the permitting program after the effective date of the permit program to submit permit applications within 12 months. West Virginia revised section 4.1.a.B [section 4.1a.2] to clarify that sources which become subject to the permitting program after the effective date shall file a complete application within 12 months after becoming subject to the program. As revised, West Virginia's 45CSR30 meets the requirements of 40 CFR 70.5(a) for submittal of timely applications.

8. Remove Section 6.5.a.A(c)

West Virginia's original 45CSR30, section 6.5.a.A(c) provided ''de minimis'' levels for source changes below which no permit revision would be required. West Virginia revised 45CSR30 by removing section 6.5.a.A(c) [6.5.a.1.C]. With this revision, 45CSR30 is consistent with 40 CFR part 70.

9. Clarify in Section 6.8.a.A.(a).(B) That Public Notice Will Be Given for All Scheduled Public Hearings, Not Just Those Public Hearings Which Have Been Scheduled at the Request of an Interested Person

West Virginia's original 45CSR30, section 6.8.a.A(a)(B) indicated that public notice would be provided for hearings requested by interested persons. The regulation did not specifically require that public notice be provided for public hearings to be held for reasons other than at the request of interested parties. West Virginia revised section 6.8.a.A(a)(B) [6.8.a.1.A.2] to clarify that public notice be provided for any hearing held pursuant to 45CSR30. With this clarification, West Virginia's 45CSR30 fully meets the corresponding requirements of 40 CFR 70.7 for public participation.

10. Clarify in Section 6.8.a.C That for all Permit Modification Proceedings, Except Those Modifications Qualifying for Minor Permit Modifications or Fast-track Modifications Under the Acid Rain Program, Public Notice Will Be Given by Publication in a Newspaper of General Circulation in the Area Where the Source Is Located (or in a State Publication Designed To Give General Public Notice), and to Persons on a Mailing List Developed by the Permitting authority Including Those Who Request in Writing To Be on the List

West Virginia's original 45CSR30, section 6.8.a.C. indicated that permit issuance would not be delayed or denied if proper notice was not provided to any person. West Virginia revised section 6.8.a.C [6.8.a.3] to remove the exception that permit modifications could proceed without proper notice. Consistent with 40 CFR part 70, proper public notice is required for all permit modification proceedings other than minor permit modifications or fast-track modifications under the Acid Rain Program. With this correction, West Virginia's 45CSR30 fully meets the corresponding requirements of 40 CFR 70 for public participation for permit modifications.

11. Clarify W. Va. Code Section 22–5–6(b)(1) as Necessary To Provide for a Maximum Criminal Penalty in an Amount of not less than Ten Thousand Dollars per Day per Violation Against any Person who Knowingly Makes any False Material Statement, Representation or Certification in any Forms, in any Notice or Report Required by a Permit, or who Knowingly Renders Inaccurate any Required Monitoring Device or Method

West Virginia's original W. Va. Code section 22–5–6(b)(1) indicated that the maximum criminal fine for violations shall not be more than twenty-five thousand dollars. West Virginia amended the statute to clearly state that if the violation occurs on separate days or is continuing in nature, the fine shall not exceed twenty-five thousand dollars for each day of such violation. The revision to West Virginia's statute clearly meets the requirements of 40 CFR 70.11.

What Action Is Being Taken By EPA?

The State of West Virginia has satisfactorily addressed the program deficiencies identified when EPA granted final interim approval of its operating permit program on November 15, 1995. The operating permit program amendments that are the subject of this document considered together with that portion of West Virginia's operating permit program that was earlier approved on an interim basis fully satisfy the minimum requirements of 40 CFR part 70 and the Clean Air Act. Therefore, EPA is taking direct final action to fully approve the West Virginia title V operating permit program in accordance with 40 CFR 70.4(e).

The EPA is publishing this rule without prior proposal because the Agency views this as a noncontroversial amendment and anticipates no adverse comment. However, in the ''Proposed Rules'' section of today's **Federal Register**, EPA is publishing a separate document that will serve as the proposal to approve the operating permits program approval if adverse comments are filed relevant to the issues discussed in this action. This rule will be effective on November 19, 2001 without further notice unless EPA receives adverse comment by November 2, 2001. If EPA receives adverse comment, EPA will publish a timely withdrawal in the **Federal Register** informing the public that the rule will not take effect. The EPA will address all public comments in a subsequent final rule based on the proposed rule. The EPA will not institute a second comment period on this action. Any parties interested in commenting must do so at this time. Please note that if EPA receives adverse comment on an amendment, paragraph, or section of this rule and if that provision may be severed from the remainder of the rule, EPA may adopt as final those provisions of the rule that are not the subject of an adverse comment.

Administrative Requirements

A. General Requirements

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is not a ''significant regulatory action'' and therefore is not subject to review by the Office of Management and Budget. For this reason, this action is also not subject to Executive Order 13211, ''Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use'' (66 F.R. 28355 (May 22, 2001)). This action merely approves State law as meeting Federal requirements and imposes no additional requirements beyond those imposed by State law. Accordingly, the Administrator certifies that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Because this rule approves pre-existing requirements under State law and does not impose any additional enforceable duty beyond that required by State law, it does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104–4). This rule also does not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes, as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), nor will it have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999), because it merely approves a State rule implementing a Federal standard, and does not alter the relationship or the distribution of power and responsibilities established in the Clean Air Act. This rule also is not subject to Executive Order 13045 (62 FR 19885, April 23, 1997), because it is not economically significant.

In reviewing State operating permit program submissions, EPA's role is to approve State choices, provided that they meet the criteria of the Clean Air Act. In this context, in the absence of a prior existing requirement for the State to use voluntary consensus standards (VCS), EPA has no authority to disapprove an operating permit program submission for failure to use VCS. It would thus be inconsistent with applicable law for EPA, when it reviews an operating permit program submission, to use VCS in place of an operating permit program submission that otherwise satisfies the provisions of the Clean Air Act. Thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply. As required by section 3 of Executive Order 12988 (61 FR 4729, February 7, 1996), in issuing this rule, EPA has taken the necessary steps to eliminate drafting errors and ambiguity, minimize potential litigation, and provide a clear legal standard for affected conduct. The EPA has complied with Executive Order 12630 (53 FR 8859, March 15, 1988) by examining the takings implications of the rule in accordance with the ''Attorney General's Supplemental Guidelines for the Evaluation of Risk and Avoidance of Unanticipated Takings' issued under the executive order. This rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

B. Submission to Congress and the Comptroller General

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

C. Petitions for Judicial Review

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by December 3, 2001. Filing a petition for

reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action fully approving West Virginia's title V operating permit program may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 70

Administrative practice and procedure, Air pollution control, Environmental protection, Intergovernmental relations, Operating permits, Reporting and recordkeeping requirements.

Dated: September 25, 2001.

Donald S. Welsh,

Regional Administrator, Region III.

Appendix A of part 70 of title 40, chapter I, of the Code of Federal Regulations is amended as follows:

PART 70—[AMENDED]

1. The authority citation for part 70 continues to read as follows:

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

2. Appendix A to part 70 is amended by adding paragraphs (b) and (c) in the entry for West Virginia to read as follows:

Appendix A to Part 70—Approval Status of State and Local Operating Permits Programs

* * * * *

West Virginia

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(b) The West Virginia Department of Environmental Protection submitted nonsubstantial program revisions to its program on February 11, 1997. The revisions involved additions to West Virginia's ''insignificant activity'' list. The revisions were approved on October 6, 1997 by letter from W. Michael McCabe, Regional Administrator, EPA Region III.

(c) The West Virginia Department of Environmental Protection submitted program amendments on June 1, 2001. The rule revisions contained in the June 1, 2001 submittal adequately addressed the conditions of the interim approval effective on December 15, 1995. The State is hereby granted final full approval effective on November 19, 2001.

* * * * *

[FR Doc. 01–24709 Filed 10–2–01; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[OPP–301181; FRL–6804–3]

[RIN 2070–AB78]

Tebufenozide; Tolerances for Emergency Exemptions

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This regulation re-establishes a time-limited tolerance for residues of the insecticide tebufenozide, benzoic acid, 3,5-dimethyl-1-(1,1-dimethylethyl)-2-(4-ethylbenzoyl)hydrazide in or on sweet potatoes at 0.25 parts per million (ppm) for an additional 2-year period. This tolerance will expire and is revoked on December 31, 2002. This action is in response to EPA's granting of an emergency exemption under section 18 of the Federal Insecticide, Fungicide, and Rodenticide Act authorizing use of the pesticide on sweet potatoes. Section 408(l)(6) of the Federal Food, Drug, and Cosmetic Act requires EPA to establish a time-limited tolerance or exemption from the requirement for a tolerance for pesticide chemical residues in food that will result from the use of a pesticide under an emergency exemption granted by EPA under section 18 of the Federal Insecticide, Fungicide, and Rodenticide Act.

DATES: This regulation is effective October 3, 2001. Objections and requests for hearings, identified by docket control number OPP–301181, must be received by EPA on or before December 3, 2001.

ADDRESSES: Written objections and hearing requests may be submitted by mail, in person, or by courier. Please follow the detailed instructions for each method as provided in Unit III. of the **SUPPLEMENTARY INFORMATION**. To ensure proper receipt by EPA, your objections and hearing requests must identify docket control number OPP–301181 in the subject line on the first page of your response.

FOR FURTHER INFORMATION CONTACT: By mail: Andrew Ertman, Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone number: (703) 308–9367; and e-mail address: ertman.andrew@epa.gov.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

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

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

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

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

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

2. *In person*. The Agency has established an official record for this action under docket control number OPP–301181. The official record consists of the documents specifically referenced in this action, and other information related to this action, including any information claimed as Confidential Business Information (CBI). This official record includes the documents that are physically located in

the docket, as well as the documents that are referenced in those documents. The public version of the official record does not include any information claimed as CBI. The public version of the official record, which includes printed, paper versions of any electronic comments submitted during an applicable comment period is available for inspection in the Public Information and Records Integrity Branch (PIRIB), Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA, from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The PIRIB telephone number is (703) 305–5805.

II. Background and Statutory Findings

EPA issued a final rule, published in the **Federal Register** of December 18, 1998 (63 FR 70030) (FRL–6049–4), which announced that on its own initiative under section 408 of the Federal Food, Drug, and Cosmetic Act (FFDCA), 21 U.S.C. 346a, as amended by the Food Quality Protection Act of 1996 (FQPA) (Public Law 104–170) it was establishing a time-limited tolerance for the residues of the insecticide tebufenozide on sweet potatoes at 0.25 ppm, with an expiration date of December 31, 2000. EPA established this tolerance because section 408(l)(6) of the FFDCA requires EPA to establish a time-limited tolerance or exemption from the requirement for a tolerance for pesticide chemical residues in food that will result from the use of a pesticide under an emergency exemption granted by EPA under section 18 of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA). Such tolerances can be established without providing notice or a period for public comment.

EPA received a request to extend the use of tebufenozide on sweet potatoes for this year's growing season due to the continuing emergency situation with armyworms on this crop. After having reviewed the submission, EPA concurs that emergency conditions exist. EPA has authorized under FIFRA section 18 the use of tebufenozide on sweet potatoes in Louisiana for control of armyworms.

EPA assessed the potential risks presented by residues of tebufenozide in or on sweet potatoes. In doing so, EPA considered the safety standard in FFDCA section 408(b)(2), and decided that the necessary tolerance under FFDCA section 408(l)(6) would be consistent with the safety standard and with FIFRA section 18. The data and other relevant material have been evaluated and discussed in the final rule of December 18, 1998 (63 FR 70030). Based on that data and information considered, the Agency reaffirms that re-establishment of the time-limited tolerance will continue to meet the requirements of section 408(l)(6). Therefore, the time-limited tolerances are re-established for an additional 2–year period. EPA will publish a document in the **Federal Register** to remove the revoked tolerance from the Code of Federal Regulations (CFR). Although these tolerances will expire and are revoked on December 31, 2002, under FFDCA section 408(l)(5), residues of the pesticide not in excess of the amounts specified in the tolerance remaining in or on sweet potatoes after that date will not be unlawful, provided the pesticide is applied in a manner that was lawful under FIFRA and the application occurred prior to the revocation of the tolerance. EPA will take action to revoke this tolerance earlier if any experience with, scientific data on, or other relevant information on this pesticide indicate that the residues are not safe.

III. Objections and Hearing Requests

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

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

You must file your objection or request a hearing on this regulation in accordance with the instructions provided in this unit and in 40 CFR part 178. To ensure proper receipt by EPA, you must identify docket control number OPP–301181 in the subject line on the first page of your submission. All requests must be in writing, and must be mailed or delivered to the Hearing Clerk on or before December 3, 2001.

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

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

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

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

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

3. *Copies for the Docket.* In addition to filing an objection or hearing request

with the Hearing Clerk as described in Unit III.A., you should also send a copy of your request to the PIRIB for its inclusion in the official record that is described in Unit I.B.2. Mail your copies, identified by docket control number OPP–301181, to: Public Information and Records Integrity Branch, Information Resources and Services Division (7502C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460. In person or by courier, bring a copy to the location of the PIRIB described in Unit I.B.2. You may also send an electronic copy of your request via e-mail to: opp-docket@epa.gov. Please use an ASCII file format and avoid the use of special characters and any form of encryption. Copies of electronic objections and hearing requests will also be accepted on disks in WordPerfect 6.1/8.0 or ASCII file format. Do not include any CBI in your electronic copy. You may also submit an electronic copy of your request at many Federal Depository Libraries.

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

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

IV. Regulatory Assessment Requirements

This final rule re-establishes a time-limited tolerance under FFDCA section 408. The Office of Management and Budget (OMB) has exempted these types of actions from review under Executive Order 12866, entitled *Regulatory Planning and Review* (58 FR 51735, October 4, 1993). Because this rule has been exempted from review under Executive Order 12866 due to its lack of significance, this rule is not subject to Executive Order 13211, *Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use* (66 FR 28355, May 22, 2001). This final rule does not contain any information collections subject to OMB approval under the Paperwork Reduction Act (PRA), 44 U.S.C. 3501 *et seq.*, or impose any enforceable duty or contain any unfunded mandate as described under Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) (Public Law 104–4). Nor does it require any special considerations under Executive Order 12898, entitled *Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations* (59 FR 7629, February 16, 1994); or OMB review or any other Agency action under Executive Order 13045, entitled *Protection of Children from Environmental Health Risks and Safety Risks* (62 FR 19885, April 23, 1997). This action does not involve any technical standards that would require Agency consideration of voluntary consensus standards pursuant to section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA), Public Law 104–113, section 12(d) (15 U.S.C. 272 note). Since tolerances and exemptions that are established on the basis of a petition under FFDCA section 408(d), such as the tolerance in this final rule, do not require the issuance of a proposed rule, the requirements of the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*) do not apply. In addition, the Agency has determined that this action will not have a substantial direct effect on States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132, entitled *Federalism* (64 FR 43255, August 10, 1999). Executive Order 13132 requires EPA to develop an accountable process to ensure ''meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications.'' ''Policies that have federalism implications'' is defined in the Executive Order to include regulations that have ''substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.'' This final rule directly regulates growers, food processors, food handlers and food retailers, not States. This action does not alter the relationships or distribution of power and responsibilities established by Congress in the preemption provisions of FFDCA section 408(n)(4). For these same reasons, the Agency has determined that this rule does not have any ''tribal implications'' as described in Executive Order 13175, entitled *Consultation and Coordination with Indian Tribal Governments* (65 FR 67249, November 6, 2000). Executive Order 13175, requires EPA to develop an accountable process to ensure ''meaningful and timely input by tribal officials in the development of regulatory policies that have tribal implications.'' ''Policies that have tribal implications'' is defined in the Executive Order to include regulations that have ''substantial direct effects on one or more Indian tribes, on the relationship between the Federal government and the Indian tribes, or on the distribution of power and responsibilities between the Federal government and Indian tribes.'' This rule will not have substantial direct effects on tribal governments, on the relationship between the Federal government and Indian tribes, or on the distribution of power and responsibilities between the Federal government and Indian tribes, as specified in Executive Order 13175. Thus, Executive Order 13175 does not apply to this rule.

V. Submission to Congress and the Comptroller General

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

List of Subjects in 40 CFR Part 180

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

Dated: September 21, 2001.

Richard P. Keigwin, Jr.,

Acting Director, Registration Division, Office of Pesticide Programs.

Therefore, 40 CFR chapter I is amended as follows:

PART 180—[AMENDED]

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

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

§ 180.482 [Amended]

2. Section 180.482 is amended in the table to paragraph (b) by revising the ''Expiration/Revocation/Date'' for sweet potatoes to read ''12/31/02.''

[FR Doc. 01–24720 Filed 10–2–01; 8:45 am]

BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 261

[FRN–7066–2]

RIN 2050–AE07

Correction to the Hazardous Waste Identification Rule (HWIR): Revisions to the Mixture and Derived-From Rules; Direct Final Rule

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: EPA is taking direct final action on two clarifying revisions to the mixture rule. The first revision reinserts certain exemptions to the mixture rule which were inadvertently deleted. The second revision clarifies that mixtures consisting of certain excluded wastes (commonly referred to as Bevill wastes) and listed hazardous wastes that have been listed solely for the characteristic of ignitability, corrosivity, and/or reactivity, are exempt once the characteristic for which the hazardous waste was listed has been removed.

DATES: This rule is effective on December 3, 2001, without further notice, unless EPA receives adverse comment by November 2, 2001. If we receive such comment, we will publish a timely withdrawal in the **Federal Register** informing the public that this rule will not take effect.

ADDRESSES: Please send an original and two copies of your comments referencing Docket number F–2001–WH3P–FFFFF to (1) if using regular U.S. Postal Service mail: RCRA Docket Information Center, Office of Solid Waste (5305W), U.S. Environmental Protection Agency Headquarters (EPA, HQ),1200 Pennsylvania Avenue, NW, Washington, DC 20460–0002, or (2) if using special delivery, such as overnight express service: RCRA Docket Information Center (RIC), Crystal Gateway One, 1235 Jefferson Davis Highway, First Floor, Arlington, Virginia 22202. To reduce paper use, we are asking you to send one paper copy, and one electronic copy by diskette or Internet email. In this case, send your comments to the RCRA Information Center on labeled personal computer diskettes in ASCII (TEXT) format or a word processing format we can convert to ASCII (TEXT). Please include on the disk label the name, version, and edition of your word processing software as well as your name and docket number F–2001–WH3P–FFFFF. Protect your diskette by putting it in a protective mailing envelope. To send a copy by Internet email, address it to: *rcra-docket@epamail.epa.gov*. Make sure this electronic copy is in an ASCII format that doesn't use special characters or encryption. Cite the docket Number F–2001–WH3P–FFFFF in your electronic file.

Supporting materials are available for viewing in the RCRA Information Center (RIC), located at Crystal Gateway I, First Floor, 1235 Jefferson Davis Highway, Arlington, VA. The Docket Identification Number is F–2001–WH3F–FFFFF. The RIC is open from 9 a.m. to 4 p.m., Monday through Friday, excluding federal holidays. To review docket materials, it is recommended that the public make an appointment by calling 703–603–9230. The public may copy a maximum of 100 pages from any regulatory docket at no charge. Additional copies cost $0.15/page. The index and some supporting materials are available electronically.

FOR FURTHER INFORMATION CONTACT: For general information, contact the RCRA Call Center at 800–424–9346 or TDD 800–553–7672 (hearing impaired). In the Washington, DC, metropolitan area, call 703–412–9810 or TDD 703–412–3323.

For more detailed information on specific aspects of this rulemaking, contact Tracy Atagi, Office of Solid Waste 5304W, U.S. Environmental Protection Agency, 1200 Pennsylvania Avenue, NW, Washington, DC 20460–0002, 703–308–8672, *atagi.tracy@epa.gov*.

SUPPLEMENTARY INFORMATION: On May 16, 2001, EPA published a final rule, Hazardous Waste Identification Rule (HWIR): Revisions to the Mixture and Derived-From Rules (66 FR 27266). In that rulemaking, EPA revised 40 CFR 261.3 by removing paragraph (a)(2)(iii), revising the introductory language to paragraph (a)(2)(iv) and adding new paragraphs (g) and (h). New paragraph (g) contains a revised version of the exemption formerly in (a)(2)(iii). In making theses change, EPA inadvertently deleted a reference in 40 CFR 261.3(a)(2)(iii) to the eligibility for this exemption of mixtures of wastes excluded from 40 CFR 261.4(b)(7) (commonly referred to as the Bevill exclusion), and also inadvertently deleted subparagraphs A–G of 40 CFR 261.3(a)(2)(iv), which refer to several other exemptions to the mixture rule.

In making these revisions to the mixture and derived-from rules, EPA did not intend to remove the ''Bevill mixtures'' or other mixtures referenced in the exemptions from eligibility for exemption under the revised mixture rule. To clarify this point, EPA is reinstating the deleted subparagraphs to 40 CFR 261.3(a)(2)(iv) and is revising 40 CFR 261.3(g), explicitly stating that the Bevill mixtures are eligible for the revised exemption if the waste no longer exhibits the characteristic for which the listed hazardous waste portion of the mixture was listed. The purpose of this revision is to prevent possible future regulatory confusion on the status of these ''Bevill mixtures'' and will not change their current regulatory status under the mixture rule.

EPA is publishing this rule without prior proposal because we view this as a noncontroversial amendment and anticipate no adverse comment. However, in the ''Proposed Rules'' section of today's **Federal Register** publication, we are publishing a separate document that will serve as the proposal to revise the mixture and derived-from rules if adverse comments are filed. This rule will be effective on December 3, 2001, without further notice unless we receive adverse comment by November 2, 2001. If EPA receives adverse comment, we will publish a timely withdrawal in the **Federal Register** informing the public that the rule will not take effect. We will address all public comments in a subsequent final rule based on the proposed rule. We will not institute a second comment period on this action. Any parties interested in commenting must do so at this time.

Administrative Requirements

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is not a ''significant regulatory action'' and is therefore not subject to review by the Office of Management and Budget. Because the purpose of today's action is to make a clarification that will not change the current regulatory status quo, it has no economic impact and is not subject to the regulatory flexibility provisions of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), or to sections 202 and 205 of the Unfunded Mandates Reform Act of 1995 (UMRA) (Pub. L. 104–4). In addition, this action does not significantly or uniquely affect small governments or impose a significant intergovernmental mandate, as described in sections 203 and 204 of UMRA. This rule also does not have

tribal implications, as specified by Executive Order 13175 (65 FR 67249, November 6, 2000). This rule will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999). This rule also is not subject to Executive Order 13045 (62 FR 19885, April 23, 1997), because it is not economically significant.

This action does not involve technical standards; thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply. The rule also does not involve special consideration of environmental justice related issues as required by Executive Order 12898 (59 FR 7629, February 16, 1994). In issuing this rule, EPA has taken the necessary steps to eliminate drafting errors and ambiguity, minimize potential litigation, and provide a clear legal standard for affected conduct, as required by section 3 of Executive Order 12988 (61 FR 4729, February 7, 1996). This rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*). This rule is not subject to Executive Order 13211, ''Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use'' (66 FR 28355 (May 22, 2001)) because it is not a significant regulatory action under Executive Order 12866.

The Congressional Review Act (5 U.S.C. 801 *et seq.*), as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. This action is not a ''major rule'' as defined by 5 U.S.C. 804(2). This rule is effective on December 3, 2001, unless EPA receives adverse comment by November 2, 2001. If we receive such comment, we will publish a timely withdrawal in the **Federal Register** informing the public that this rule will not take effect.

List of Subjects in 40 CFR Part 261

Environmental protection, Hazardous waste, Recycling, Waste treatment and disposal.

Dated: September 20, 2001.

Christine Todd Whitman,

Administrator.

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

PART 261—IDENTIFICATION AND LISTING OF HAZARDOUS WASTE

1. The authority citation for part 261 continues to read as follows:

Authority: 42 U.S.C. 6905, 6912(a), 6921, 6922, 6924(y), and 6938.

2. Section 261.3 is amended by revising paragraph (a)(2)(iv) and adding paragraph (g)(4) to read as follows:

§ 261.3 Definition of hazardous waste.

(a) * * *

(2) * * *

(iv) It is a mixture of solid waste and one or more hazardous wastes listed in subpart D of this part and has not been excluded from paragraph (a)(2) of this section under §§ 260.20 and 260.22, paragraph (g) of this section, or paragraph (h) of this section; however, the following mixtures of solid wastes and hazardous wastes listed in subpart D of this part are not hazardous wastes (except by application of paragraph (a)(2)(i) or (ii) of this section) if the generator can demonstrate that the mixture consists of wastewater the discharge of which is subject to regulation under either section 402 or section 307(b) of the Clean Water Act (including wastewater at facilities which have eliminated the discharge of wastewater) and;

(A) One or more of the following solvents listed in § 261.31—carbon tetrachloride, tetrachloroethylene, trichloroethylene—*Provided*, That the maximum total weekly usage of these solvents (other than the amounts that can be demonstrated not to be discharged to wastewater) divided by the average weekly flow of wastewater into the headworks of the facility's wastewater treatment or pretreatment system does not exceed 1 part per million; or

(B) One or more of the following spent solvents listed in § 261.31—methylene chloride, 1,1,1-trichloroethane, chlorobenzene, o-dichlorobenzene, cresols, cresylic acid, nitrobenzene, toluene, methyl ethyl ketone, carbon disulfide, isobutanol, pyridine, spent chlorofluorocarbon solvents—provided that the maximum total weekly usage of these solvents (other than the amounts that can be demonstrated not to be discharged to wastewater) divided by the average weekly flow of wastewater into the headworks of the facility's wastewater treatment or pretreatment system does not exceed 25 parts per million; or

(C) One of the following wastes listed in § 261.32, provided that the wastes are discharged to the refinery oil recovery sewer before primary oil/water/solids separation—heat exchanger bundle cleaning sludge from the petroleum refining industry (EPA Hazardous Waste No. K050), crude oil storage tank sediment from petroleum refining operations (EPA Hazardous Waste No. K169), clarified slurry oil tank sediment and/or in-line filter/separation solids from petroleum refining operations (EPA Hazardous Waste No. K170), spent hydrotreating catalyst(EPA Hazardous Waste No. K171), and spent hydrorefining catalyst (EPA Hazardous Waste No. K172); or

(D) A discarded commercial chemical product, or chemical intermediate listed in § 261.33, arising from *de minimis* losses of these materials from manufacturing operations in which these materials are used as raw materials or are produced in the manufacturing process. For purposes of this paragraph (a)(2)(iv)(D), ''de minimis'' losses include those from normal material handling operations (e.g., spills from the unloading or transfer of materials from bins or other containers, leaks from pipes, valves or other devices used to transfer materials); minor leaks of process equipment, storage tanks or containers; leaks from well maintained pump packings and seals; sample purgings; relief device discharges; discharges from safety showers and rinsing and cleaning of personal safety equipment; and rinsate from empty containers or from containers that are rendered empty by that rinsing; or

(E) Wastewater resulting from laboratory operations containing toxic (T) wastes listed in subpart D of this part, Provided, That the annualized average flow of laboratory wastewater does not exceed one percent of total wastewater flow into the headworks of the facility's wastewater treatment or pre-treatment system or provided the wastes, combined annualized average concentration does not exceed one part per million in the headworks of the facility's wastewater treatment or pre-treatment facility. Toxic (T) wastes used in laboratories that are demonstrated not to be discharged to wastewater are not to be included in this calculation; or

(F) One or more of the following wastes listed in § 261.32—wastewaters from the production of carbamates and carbamoyl oximes (EPA Hazardous Waste No. K157)—Provided that the maximum weekly usage of formaldehyde, methyl chloride, methylene chloride, and triethylamine (including all amounts that can not be demonstrated to be reacted in the process, destroyed through treatment, or is recovered, i.e., what is discharged or volatilized) divided by the average weekly flow of process wastewater prior to any dilutions into the headworks of the facility's wastewater treatment system does not exceed a total of 5 parts per million by weight; or

(G) Wastewaters derived from the treatment of one or more of the following wastes listed in § 261.32—organic waste (including heavy ends, still bottoms, light ends, spent solvents, filtrates, and decantates) from the production of carbamates and carbamoyl oximes (EPA Hazardous Waste No. K156).—Provided, that the maximum concentration of formaldehyde, methyl chloride, methylene chloride, and triethylamine prior to any dilutions into the headworks of the facility's wastewater treatment system does not exceed a total of 5 milligrams per liter.

* * * * *

(g) * * *

(4) any mixture of a solid waste excluded from regulation under § 261.4(b)(7) and a hazardous waste listed in subpart D of this part solely because it exhibits one or more of the characteristics of ignitability, corrosivity, or reactivity as regulated under paragraph (a)(2)(iv) of this section is not a hazardous waste, if the mixture no longer exhibits any characteristic of hazardous waste identified in subpart C of this part for which the hazardous waste listed in subpart D of this part was listed.

* * * * *

[FR Doc. 01–24068 Filed 10–2–01; 8:45 am]

BILLING CODE 6560–50–U

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 403

[FRL–7073–3]

RIN 2090–AA16

Pretreatment Program Reinvention Pilot Projects Under Project XL

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This rule will change the National Pretreatment Program regulations to allow Publicly Owned Treatment Works (POTWs) that have completed the Project eXcellence and Leadership (Project XL) selection process, including Final Project Agreement (FPA) development, to modify their approved local Pretreatment Programs. These POTWs will be allowed to modify their programs, and implement the new local programs as described in their FPAs. In today's rule, EPA recognizes that many POTWs with approved Pretreatment Programs have mastered the administrative and procedural requirements of the National Pretreatment regulations. Several of these POTWs want the opportunity to implement local pretreatment programs with effectiveness measured against environmental results rather than strict adherence to programmatic and administrative measures. These POTWs have expressed an interest in Project XL to test new pilot ideas that focus resources on activities that they believe would provide greater environmental benefits than are achieved by complying with current regulatory requirements. This rule is intended to provide the regulatory flexibility that will enable these and other test programs to move forward. Currently, five POTWs are actively involved in this Project XL process. The flexibility provided by this rule revision is limited to fifteen POTWs that meet the Project XL criteria.

DATES: This final rule is effective October 3, 2001.

ADDRESSES: A docket containing the rule, Final Project Agreements, supporting materials, public comments and the official record is available for public inspection and copying at the EPA's Water Docket, EB–57 (East Tower Basement), 401 M Street, SW., Washington, DC 20460. The record for this rulemaking has been established under docket number W–00–30, and includes supporting documentation. The public may inspect the administrative record from 9 am to 4 pm Monday through Friday, excluding Federal holidays. The public is encouraged to phone in advance to review docket materials. Appointments can be scheduled by phoning the Docket Office at (202) 260–3027. The public may copy a maximum of 100 pages from any regulatory docket at no charge. Additional copies cost 15 cents per page. Project materials are also available for review for today's action on the world wide web at *http://www.epa.gov/projectxl/.*

Supporting materials are also available for inspection and copying at U.S. EPA, Headquarters, 401 M Street, SW., Room 1027 West Tower, Washington, DC 20460 during normal business hours. Persons wishing to view the materials at the Washington, DC location are encouraged to contact Mr. Chad Carbone in advance by telephoning (202) 260–4296.

FOR FURTHER INFORMATION CONTACT: Mr. Brian Frazer, (202) 564–0599, U.S. Environmental Protection Agency, Ariel Rios Building, 1200 Pennsylvania Avenue, NW., (MC 4203), Washington, DC 20460. Further information on today's action may also be viewed on the world wide web at *http://www.epa.gov/projectxl/.*

SUPPLEMENTARY INFORMATION:

Regulated Entities

Entities potentially regulated by this action are governmental entities responsible for implementation of the National Pretreatment Program and POTWs subject to Pretreatment Standards and requirements that have completed the Project eXcellence and Leadership (Project XL) selection process, including Final Project Agreement (FPA) development, to modify their approved local pretreatment programs. Regulated categories and entities include:

Category	Examples of regulated entities
Local government	Publicly Owned Treatment Works.
State and Tribal government.	States and Tribes acting as Pretreatment Program Control Authorities or as Approval Authorities.

This table is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be regulated by this action. This table lists the types of entities that EPA is now aware could potentially be regulated by this action. Other types of entities not listed in the table could also be regulated. If you have questions regarding the applicability of this action to a particular entity, consult the person in the preceding **FOR FURTHER INFORMATION CONTACT** section.

On October 6, 2000, the Environmental Protection Agency proposed a rule (65 FR 59791) that set forth the mechanism through which POTWs that complete the Project XL process can seek modification of their programs following the procedures in 40 CFR 403.18, and implement the new

local programs as described in their FPAs. Today's final rule promulgates regulations that are identical to the proposed rule.

Outline of Today's Rule

The information presented in this preamble is organized as follows:

I. Authority
II. Background
A. What is Project XL?
B. What is EPA Announcing?
C. Stakeholder Involvement in the Project XL Process
D. Summary of Public Comments
E. What is the National Pretreatment Program?
F. What are the Current Pretreatment Program Requirements?
G. How Do the Current Requirements Relate to Environmental Objectives?
H. Why Is EPA Allowing POTW Local Pilot Pretreatment Programs at this Time?
I. Are There Any POTWs Currently Going Through Project XL Approval Process?
J. What Are the Environmental Benefits Anticipated through Project XL?
K. What is the Project Duration and Completion Date?
L. How Could the Project be Terminated?
III. Rule Description
IV. Additional Information
A. Executive Order 12866
B. Regulatory Flexibility Act
C. Congressional Review Act
D. Paperwork Reduction Act
E. Unfunded Mandates Reform Act
F. Executive Order 13045: Protection of Children from Environmental Health Risks and Safety Risks
G. Executive Order 13132: Federalism
H. Executive Order 13175: Consultation and Coordination With Indian Tribal Governments
I. National Technology Transfer and Advancement Act
J. Administrative Procedure Act
K. Executive Order 13211

I. Authority

This regulation is being promulgated under the authority of sections 307, 402 and 501 of the CWA.

II. Background

A. What Is Project XL?

Project XL, which stands for ''eXcellence and Leadership,'' is a national pilot program that tests innovative ways of achieving better and more cost-effective public health and environmental protection through site-specific agreements with project sponsors. Project XL was announced on March 16, 1995, as a central part of EPA's effort to reinvent environmental protection. See 60 FR 27282 (May 23, 1995) and 60 FR 55569 (November 1, 1995). The intent of Project XL is to allow EPA and regulated entities to experiment with pragmatic, potentially promising regulatory approaches, both to assess whether they provide superior environmental performance and other benefits at the specific facility affected, and whether they should be considered for wider application. Such pilot projects are intended to allow EPA to collect more data on a more focused basis prior to national rulemaking. Today's regulation would enable implementation of five specific XL projects as well as future projects that successfully complete the Project XL process. These efforts are crucial to EPA's ability to test new strategies that reduce the regulatory burden and promote economic growth while achieving better environmental and public health protection. EPA intends to evaluate the results of this and other XL projects to determine which specific elements of the project(s), if any, should be more broadly applied to other regulated entities for the benefit of both the economy and the environment.

B. What Is EPA Announcing?

In the June 23, 1998, **Federal Register** (63 FR 34170), EPA requested proposals for XL projects from 15 POTWs based on environmental performance measures for the pretreatment program. The process for reviewing and choosing acceptable pilot program candidates included input from POTWs, State and EPA Regional Pretreatment Coordinators, as well as opportunity for public participation. As discussed in more detail below, five POTWs have advanced to the final steps of the Project XL process. In today's rule, EPA announces revisions to the national pretreatment regulations at 40 CFR part 403 that will allow the current and future selected Local Pilot Pretreatment Programs to be implemented. The flexibility provided by this rule revision is limited to 15 POTWs that meet the Project XL criteria. POTWs must submit revised pretreatment programs for approval and obtain modified permits to authorize the POTW to implement its pilot program instead of its currently Approved POTW Pretreatment Program. However, please note that the affected States may first need to revise their own regulations or statutes to authorize the pilot programs for pretreatment XL project sponsors before this rule can be implemented in their jurisdictions.

C. Stakeholder Involvement in the Project XL Process

EPA believes stakeholder involvement in developing Local Pilot Pretreatment Programs is crucial to the success of the programs; therefore, as part of the Project XL proposal, a POTW must clearly explain its process for involving stakeholders in the design of the pilot program. This process should be based upon the guidance entitled, Regulatory Reinvention (XL) Pilot Projects, set out in the April 23, 1997, **Federal Register** notice (62 FR 19872). The support of parties that have a stake in the program is very important. Once EPA has accepted a candidate based on its detailed proposal, the POTW, EPA, the State and local stakeholders typically develop a Final Project Agreement (FPA). The FPA is a non-binding agreement that describes the intentions and commitments of the implementing parties. Stakeholders may include communities near the project, local or State governments, businesses, environmental and other public interest groups, or other similar entities. Stakeholders will also have formal opportunities to comment on provisions of the FPA that are incorporated in the POTW's revised pretreatment program under the procedures established at 40 CFR 403.18 and this rule.

D. Summary of Public Comments

EPA proposed this regulation on October 6, 2000 (65 FR 59791). The preamble to the proposed rule explains the changes in the regulations. The public comment period was open for a period of 30 days and closed on November 6, 2000.

EPA received a total of three comments regarding this rule. The commenters included two States and a trade group that represents municipalities. Two of the commenters fully support the revised regulation which will allow the Project XL process to move forward and provide a means to test new ways to streamline the pretreatment program and provide greater environmental benefits. The other commenter believes that both major and minor modifications to expired NPDES permits are prohibited and requests that 40 CFR 403.20 be clarified to allow approved Pretreatment Program Modifications that may be processed as minor NPDES Permit modifications in accordance with 40 CFR 122.63(g), to be also processed in cases when the associated NPDES Permits are expired. In response to this comment, EPA agrees that the Federal NPDES regulations do not contemplate modifications to expired NPDES permits and EPA understands that many States have permitting backlogs. However, EPA does not believe that an exception to the NPDES permitting regulations is appropriate in this narrowly tailored rulemaking amending the pretreatment regulations. Rather, EPA believes that States with NPDES permit backlogs would make POTWs that qualify under this rule a high priority and reissue those permits promptly so that those

facilities can implement the changes to their permits allowed under this rule.

E. What Is the National Pretreatment Program?

The National Pretreatment Program is part of the Clean Water Act's (CWA's) water pollution control program. The program is a joint regulatory effort by local, State, and Federal authorities that requires the control of industrial and commercial sources of pollutants discharged to municipal wastewater plants (called ''publicly owned treatment works'' or ''POTWs''). Control of pollutants prior to discharge of wastewater to the municipal sewer system minimizes the possibility of pollutants interfering with the operation of the POTW and reduces the levels of toxic pollutants in wastewater discharges from the POTW and in the sludge resulting from municipal wastewater treatment.

F. What Are the Current Pretreatment Program Requirements?

The minimum requirements for an approved POTW Pretreatment Program currently are published at 40 CFR 403.8(f). POTWs with approved Pretreatment Programs must maintain adequate legal authority, identify industrial users, designate which industrial users (IUs) are ''Significant Industrial Users'' (SIUs) (under 40 CFR 403.3(t)) and perform required monitoring, permitting and enforcement. Other sections of part 403 require POTWs with Approved Pretreatment Programs to sample and apply nationally applicable pretreatment standards to the industrial users discharging pollutants to the POTW collection system. POTWs are also required to develop local limits in accordance with 40 CFR 403.5. As announced today, EPA will allow Approval Authorities to require a POTW to meet requirements in an environmental performance-based pilot program instead of certain administrative programmatic requirements currently required in a POTW's Approved Pretreatment Program under 40 CFR part 403.

G. How Do the Current Requirements Relate to Environmental Objectives?

As described in 40 CFR 403.2, the general pretreatment regulations promote three objectives:

(a) To prevent the introduction of pollutants into POTWs which will interfere with the operation of POTWs, including interference with the use or disposal of municipal sludge;

(b) To prevent the introduction of pollutants into POTWs which will pass through the treatment works or otherwise be incompatible with such works; and

(c) To improve opportunities to recycle and reclaim municipal and industrial wastewaters and sludges.

These objectives require local programs to be designed so they are preventative in nature, and therefore, any pilot program also would need to maintain this preventative approach. The specific requirements for an Approved POTW Pretreatment Program are intended to achieve these objectives. Individual pretreatment programs, however, are not routinely required to report on the achievement of environmental measures.

The 1991 National Pretreatment Program Report to Congress provides extensive data related to the sources and amounts of pollutants discharged to POTWs, the removal of pollutants by secondary treatment technology, and the general effectiveness of the pretreatment program. The 1991 Report did, however, point to a serious lack of comprehensive environmental data with which to fully assess the effectiveness of both the national and local pretreatment programs. These Project XL pilots will help to provide data for this purpose.

H. Why Is EPA Allowing POTW Local Pilot Pretreatment Programs at this Time?

Some POTWs have mastered the administrative aspects of the pretreatment program (identifying industrial users, permitting, monitoring, etc.) and want to move into more environmental performance-based processes. These POTWs have expressed an interest in focusing their resources on activities that they believe would provide greater environmental benefit than is achieved by complying with the current requirements. Some POTWs want to be able to make decisions on allocating resources based on the risk associated with the industrial contributions they receive or other factors. Others want to be able to focus more resources on ambient monitoring in their receiving waters and/or to integrate their pretreatment programs with their storm water monitoring programs. In general, these POTWs want the opportunity to redirect limited resources away from currently required activities that they do not believe are benefitting the environment and toward activities that may achieve measurable improvements in the environment.

EPA developed the Project XL program to provide regulated entities the flexibility to conduct innovative pilot projects. Today's rule represents an attempt to spur innovation in the pretreatment program, to increase environmental benefits and, in conjunction with the streamlining proposal (see 64 FR 39564), to determine, if further streamlining of the program is needed, how streamlining can achieve environmental improvements and in what direction those future streamlining efforts should be directed.

I. Are There Any POTWs Currently Going Through Project XL Approval Process?

In order to implement the pretreatment XL projects, EPA is promulgating this rule to provide regulatory flexibility under the Clean Water Act. Currently, five (5) POTWs have requested flexibility through the Project XL FPA approval process. The POTWs are: The Narragansett Bay Commission (NBC) in Rhode Island; the Jeffersontown Wastewater Treatment Plant (WWTP), owned and operated by the Louisville and Jefferson County Metropolitan Sewer District (MSD) in Kentucky; the Metropolitan Water Reclamation District of Greater Chicago (Chicago) in Illinois; the City of Albuquerque (Albuquerque), New Mexico; and the City of Denton (Denton), Texas. The FPA for NBC lays out the following flexibilities: (1) Reduced self-monitoring requirements for ten (10) categorical industrial users (CIUs) for tier 1 facilities, (2) reduced inspection frequency for ten (10) CIUs tier 1 facilities from once every year to once every two years, and (3) allow participating CIUs tier 1 facilities to not sample for pollutants not expected to be present. Under the FPA for MSD, the POTW is requesting flexibility to (1) use an alternative definition for significant industrial user (SIU), (2) allow participating CIUs to not sample for pollutants not expected to be present and (3) use an alternative definition of significant noncompliance (SNC). The Chicago FPA describes flexibility that includes (1) use of an alternative definition for *de minimis* categorical industrial user (CIU), and (2) reduced self-monitoring and self-reporting requirements for participating CIUs and (3) use of alternative monitoring methods. The Albuquerque FPA lays out flexibility to (1) use an alternative definition of SIU, (2) use an alternative definition of SNC, (3) reduce permitting requirements for participating IUs, (4) use alternative monitoring methods and (5) reduce reporting requirements for participating IUs. The Denton FPA lays out flexibility to (1) reduce its monitoring of participating IUs and (2) reduce its inspection of participating

IUs. In exchange for these flexibilities, each individual POTW has committed to produce certain proportional amounts of superior environment performance as laid out in the FPA and maintain all legal and preventative environmental health and safety standards. Complete project site-specific descriptions can be found on the web at: http://www.epa.gov/projectxl/.

J. What Are the Environmental Benefits Anticipated Through Project XL?

These XL projects are expected to achieve superior environmental performance beyond that which is achieved under the current CWA regulatory system by allowing POTWs the ability to identify environmental goals and allocate the necessary resources on a site specific basis. Specifically, these projects are expected to produce additional benefits by (i) reducing pollutant loadings to the environment or some other environmental benefit beyond that currently achieved through the existing pretreatment program (including collecting environmental performance data and data related to environmental impacts in order to measure the environmental benefit), (ii) reducing or optimizing costs related to implementation of the pretreatment program with the savings used to attain environmental benefits elsewhere in the watershed in any media, and (iii) providing EPA with information on how the pretreatment program might be better oriented towards the achievement of measures of environmental performance.

EPA's intent is to allow Local Pilot Pretreatment Programs to be administered by those POTWs that best further those objectives. Each pilot program's method of achieving the environmental benefit should be transferable so that other POTWs may be able to implement the method and also achieve increased environmental benefits.

K. What Is the Project Duration and Completion Date?

Under Project XL, local Pilot Pretreatment Programs may be approved to operate for the term expressed in the FPA. Prior to the end of the FPA approval period (at least 180 days), the POTW may apply for a renewal or extension of the project period in accordance with the terms of the FPA. If a POTW is not able to meet the performance goals of its Local Pilot Pretreatment Program, the Pretreatment Approval Authority (either EPA or the authorized State) could allow the performance measures to be adjusted if the primary objectives of the Local Pilot Pretreatment Program would be met. The revised Local Pilot Pretreatment Program would need to be approved in accordance with the FPA and the procedures in 40 CFR 403.18.

If the primary objectives of the proposal are not being met, the Approval Authority would direct the POTW to discontinue implementing the Local Pilot Pretreatment Program and resume implementation of its previously approved pretreatment program. The Pretreatment ApprovalAuthority would need to ensure that the POTW's NPDES permit includes a ''reopener'' clause to implement this procedure.

The results of the pilots, including recommendations in POTW reports, may be used to determine the direction of future Pretreatment Program streamlining and/or reinvention.

L. How Could the Project Be Terminated?

Either the Approval Authority or the POTW may terminate a project earlier than the final project agreement's (FPA) anticipated end date. Parties will follow procedures for termination set out in the FPA. The implementing permits will also reflect the possibility of early termination. When the NPDES permitting agency modifies the POTW's NPDES permit to incorporate the flexibility allowed by today's rule, it must include a ''reopener'' provision that requires the POTW to return to compliance with previously approved pretreatment program requirements at the expiration or termination of the FPA, including an interim compliance period, if needed. Additional details are available in the site-specific FPAs.

III. Rule Description

Today's rule modifies 40 CFR part 403 to allow Pretreatment Approval Authorities (EPA or State) to grant regulatory flexibility to Project XL POTWs with approved FPAs. The regulatory flexibility would allow such POTWs to implementPretreatment Programs that include legal authorities and requirements that are different than the administrative requirements in 40 CFR part 403. The POTW would need to submit any such alternative requirements as a substantial program modification in accordance with the procedures outlined in 40 CFR 403.18. The approved modified program would need to be incorporated as an enforceable part of the POTW's NPDES permit. The Approval Authority would approve or disapprove the pilot program using the procedures in 40 CFR 403.18.

For example, the POTW would work through the Project XL process as described above. The POTW either would or has already developed the necessary FPA with stakeholder participation (local interest groups, State representatives, EPA, any other interested parties). The POTW would use the FPA as the blueprint when developing a revision of the POTW's approved local pretreatment program. The POTW would submit the revised program to its Approval Authority (State or EPA region) requesting a substantial program modification using the procedures outlined in 40 CFR 403.18. The Approval Authority would review the program modification request to determine that it contains the provisions of the blue-print FPA and make a determination to approve or deny the request. The proposal for modification would be publicly noticed following the procedures in 40 CFR 403.11 and 40 CFR 403.18. After the close of the public comment period, the Approval Authority would consider and respond to public comments and revise the POTW's pretreatment program accordingly. Then the POTWs NPDES permit would be modified by adding the modified pretreatment program as an enforceable part of the permit.

IV. Additional Information

A. Executive Order 12866

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

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

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

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

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

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

B. Regulatory Flexibility Act, as Amended by the Small Business Regulatory Enforcement Fairness Act of 1996

The Regulatory Flexibility Act (RFA), 5 U.S.C. 601 *et seq.*, generally requires an agency to prepare a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements under the Administrative Procedure Act or any other statute unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small organizations, and small governmental jurisdictions. This rule reduces the regulatory costs to POTWs of complying with the pretreatment requirements and affects only a small number of POTWs. It only affects those POTWs that elect to participate in the voluntary Project XL Program. Therefore, I certify that this action will not have a significant economic impact on a substantial number of small entities.

C. Congressional Review Act

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a ''major rule'' as defined by 5 U.S.C. § 804(2). This rule will be effective on October 3, 2001.

D. Paperwork Reduction Act

This rule does not impose any new information collection burden. This rule merely changes the National Pretreatment Program regulations to provide flexibility to allow POTWs that have completed the Project XL selection process, including FPA development, to modify their approved local Pretreatment Programs. The POTW must submit any such alternative requirements as a substantial program modification in accordance with the procedures outlined in 40 CFR 403.18. The Office of Management and Budget (OMB) has previously approved the information collection requirements for 40 CFR 403.18 under the provisions of the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.* and has assigned OMB control numbers 2040–0009 (EPAICR No. 0002.09) and 2040–0170 (EPA ICR No. 1680.02). In addition, OMB has approved the ICR entitled ''Regulatory Reinvention Pilot Projects Under Project XL: Pre-treatment Program,'' and assigned OMB control number 2010–0026 (EPA ICR No. 1755.05).

Copies of the ICR document(s) may be obtained from Sandy Farmer, by mail at the Office of Environmental Information Collection Strategies Division; U.S. Environmental Protection Agency (2822); 1200 Pennsylvania Ave., NW., Washington, DC 20460, by email at *farmer.sandy@epa.gov,* or by calling (202) 260–2740. A copy may also be downloaded off the internet at http://www.epa.gov/icr. Include the ICR and/or OMB control number in any correspondence.

Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

An Agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations are listed in 40 CFR part 9 and 48 CFR chapter 15.

E. Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Public Law 104–4, establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments and the private sector. Under section 202 of the UMRA, EPA generally must prepare a written statement, including a cost-benefit analysis, for proposed and final rules with ''Federal mandates'' that may result in expenditures to State, local, and tribal governments, in the aggregate, or to the private sector, of $100 million or more in any one year. Before promulgating an EPA rule for which a written statement is needed, section 205 of the UMRA generally requires EPA to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, most cost-effective or least burdensome alternative that achieves the objectives of the rule. The provisions of section 205 do not apply when they are inconsistent with applicable law. Moreover, section 205 allows EPA to adopt an alternative other than the least costly, most cost-effective or least burdensome alternative if the Administrator publishes with the final rule an explanation of why that alternative was not adopted. Before EPA establishes any regulatory requirements that may significantly or uniquely affect small governments, including tribal governments, it must have developed under section 203 of the UMRA a small government agency plan. The plan must provide for notifying potentially affected small governments, enabling officials of affected small governments to have meaningful and timely input in the development of EPA regulatory proposals with significant Federal intergovernmental mandates, and informing, educating, and advising small governments on compliance with the regulatory requirements.

Today's rule contains no Federal mandates (under the regulatory provisions of Title II of the UMRA) for State, local, or tribal governments or the private sector. The rule imposes no enforceable duty on any State, local or tribal governments or the private sector. Further, UMRA generally excludes from the definition of ''Federal intergovernmental mandate'' duties that arise from participation in a voluntary Federal program. The Project XL Program is a voluntary Federal program. Thus, today's rule is not subject to the requirements of sections 202 and 205 of the UMRA. For the same reasons, EPA has determined that this rule contains no regulatory requirements that might significantly or uniquely affect small governments. Thus, today's rule is not subject to UMRA section 203.

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

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

the Agency must evaluate the environmental health or safety effects of the planned rule on children, and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency.

This rule is not subject to Executive Order 13045 because it is not an economically significant rule, as defined by Executive Order 12866, and because it does not concern an environmental health or safety risk that EPA has reason to believe may have a disproportionate effect on children.

G. Executive Order 13132: Federalism

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

This final rule does not have federalism implications. It will not have substantial direct effects on the States, on the relationship between the national government and the States or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 because it provides flexibility to participate in a voluntary program designed to reduce administrative requirements for facilities that have negotiated agreements with, among other parties, their State and local governments. Thus, Executive Order 13132 does not apply to this rule.

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

Executive Order 13175, entitled ''Consultation and Coordination with Indian Tribal Governments'' (65 FR 67249, November 6, 2000), requires EPA to develop an accountable process to ensure ''meaningful and timely input by tribal officials in the development of regulatory policies that have tribal implications.'' ''Policies that have tribal implications'' is defined in the Executive Order to include regulations that have ''substantial direct effects on one or more Indian tribes, on the relationship between the Federal government and the Indian tribes, or on the distribution of power and responsibilities between the Federal government and Indian tribes.''

This final rule does not have tribal implications. It will not have substantial direct effects on tribal governments, or on the relationship between the Federal government and Indian tribes, or on the distribution of power and responsibilities between the Federal government and Indian tribes, as specified in Executive Order 13175. This rule provided flexibility to participate in a voluntary program designed to reduce administrative requirements and provide superior environmental performance for facilities that have negotiated agreements with, among other parties, their State and local governments. Thus Executive order 13175 does not apply to this rule.

I. National Technology Transfer and Advancement Act

As noted in the proposed rule, section 12(d) of the National Technology Transfer and Advancement Act of 1995 (''NTTAA''), Public Law 104–113, section 12(d) (15 U.S.C. 272 note) directs EPA to use voluntary consensus standards in its regulatory activities unless to do so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (e.g., materials specifications, test methods, sampling procedures, and business practices) that are developed or adopted by voluntary consensus standards bodies. The NTTAA directs EPA to provide Congress, through OMB, explanations when the Agency decides not to use available and applicable voluntary consensus standard. This rulemaking does not involve technical standards. Therefore, EPA did not consider the use of any voluntary consensus standards. EPA requested comment on this aspect of the rulemaking, but did not receive any such comments.

J. Administrative Procedure Act

Section 553 of the Administrative Procedure Act, 5 U.S.C. 553, generally requires that an Agency publish a rule at least 30 days prior to its effective date. However, this requirement does not apply to rules which grant an exemption from existing requirements or rules for which the Agency finds ''good cause'' to make the rule effective within 30 days of publication. Because today's rule essentially provides a variance procedure from existing administrative requirements for certain POTWs, today's rule grants an exemption and is not subject to the requirement to publish 30 days prior to the effective date of the rule. EPA also believes that it is important to make this rule effective as soon as possible so that the affected POTWs and their State and local governments can begin to make the changes to permits and undertake other necessary measures to allow the FPAs to be implemented. As a result, this rule is effective on the date of publication.

K. Executive Order 13211

This rule is not subject to Executive Order 13211, ''Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use'' (66 FR 28355, May 22, 2001) because it is not a significant regulatory action under Executive Order 12866.

List of Subjects in 40 CFR Part 403

Environmental protection, Confidential business information, Reporting and recordkeeping requirements, Waste treatment and disposal, Water pollution control.

Dated: September 27, 2001.

Christine Todd Whitman,

Administrator.

For the reasons set forth in the preamble, part 403, title 40, chapter I of the Code of Federal Regulations is amended as follows:

PART 403—GENERAL PRETREATMENT REGULATIONS FOR EXISTING AND NEW SOURCES OF POLLUTION

1. The authority for Part 403 continues to read as follows:

Authority: 33 U.S.C. 1251 *et seq.*

2. Section 403.20 is added to read as follows:

§ 403.20 Pretreatment Program Reinvention Pilot Projects Under Project XL.

The Approval Authority may allow any publicly owned treatment works (POTW) that has a final ''Project XL'' agreement to implement a Pretreatment Program that includes legal authorities and requirements that are different than the administrative requirements otherwise applicable under this part. The POTW must submit any such alternative requirements as a substantial program modification in accordance with the procedures outlined in § 403.18. The approved modified program must be incorporated as an enforceable part of the POTW's NPDES permit. The Approval Authority must include a reopener clause in the POTW's NPDES permit that directs the POTW to discontinue implementing the approved alternative requirements and

resume implementation of its previously approved pretreatment program if the Approval Authority determines that the primary objectives of the Local Pilot Pretreatment Program are not being met or the ''Project XL'' agreement expires or is otherwise terminated.

[FR Doc. 01–24713 Filed 10–2–01; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

RIN 1018–AF89

Endangered and Threatened Wildlife and Plants; Endangered Status for the Ohlone Tiger Beetle (*Cicindela ohlone*)

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Final rule.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), determine endangered status pursuant to the Endangered Species Act (Act) of 1973, as amended, for the Ohlone tiger beetle (*Cicindela ohlone*). This species is endemic to Santa Cruz County, California, and is threatened by habitat fragmentation and destruction due to urban development, habitat degradation from invasion of nonnative vegetation, and vulnerability to local extirpations from random natural events. This final rule extends the Federal protection and recovery provisions of the Act to this species.

DATES: This final rule is effective October 3, 2001.

ADDRESSES: The complete file for this rule is available for public inspection, by appointment, during normal business hours at the Ventura Fish and Wildlife Office, U.S. Fish and Wildlife Service, 2493 Portola Road, Suite B, Ventura, California 93003.

FOR FURTHER INFORMATION CONTACT: Colleen Sculley, Fish and Wildlife Biologist, Ventura Fish and Wildlife Office, at the above address (telephone 805/644–1766; facsimile 805/644–3958).

SUPPLEMENTARY INFORMATION:

Background

The Ohlone tiger beetle (*Cicindela ohlone*) is a member of the Coleopteran family Cicindelidae (tiger beetles), which includes over 2,000 species worldwide and over 100 species in the United States (Pearson and Cassola 1992). Tiger beetles are day-active, predatory insects that prey on small arthropods. Because many tiger beetles often feed on insect species that are injurious to man and crops, they are regarded as beneficial (Pearson and Cassola 1992; Nagano 1982). Adult tiger beetles are medium-sized, elongate beetles that can have a brilliant metallic green, blue, red, and yellow coloration highlighted by stripes and spots. Alternatively, they can be brown, black or dull colored (Knisley and Shultz 1997). Adults are ferocious, swift, and agile predators that seize small prey with powerful sickle-shaped jaws.

Tiger beetle larvae are also predatory. They live in small vertical or slanting burrows from which they lunge at and seize passing invertebrate prey (Essig 1926; Essig 1942; Pearson 1988). The larva grasps the prey with its strong mandibles (mouthparts) and pulls it into the burrow; once inside the burrow, the larva will feed on the captured prey (Essig 1942; Pearson 1988). Tiger beetles share similar larval body forms throughout the world (Pearson and Cassola 1992). The larvae, either white, yellowish, or dusky in coloration, are grub-like and fossorial (subterranean), with a hook-like appendage on the fifth abdominal segment that anchors the larvae inside their burrows.

Tiger beetle larvae undergo three instars (larval development stages). This period can take 1 to 4 years, but a 2-year period is the most common (Pearson 1988). After mating, the tiger beetle female excavates a hole in the soil and oviposits (lays) a single egg (Pearson 1988; Kaulbars and Freitag 1993; Grey Hayes, pers. comm. 1998). Females of many species of *Cicindela* are extremely specific in choice of soil type for oviposition (egg laying) (Pearson 1988). It is not known at this time how many eggs the Ohlone tiger beetle female lays, but other species of *Cicindela* are known to lay between 1 and 126 eggs per female (C. Barry Knisley, Randolph-Macon College, *in litt.* 2000). After the larva emerges from the egg and becomes hardened, it enlarges the chamber that contained the egg into a tunnel (Pearson 1988). Before pupation (transformation process from larva to adult), the third instar larva will plug the burrow entrance and dig a chamber. After pupation in this chamber, the adult tiger beetle will dig out of the soil and emerge. Reproduction may either begin soon after emergence or be delayed (Pearson 1988).

Tiger beetles are a well-studied taxonomic group with a large body of scientific literature; the journal *Cicindela* is devoted exclusively to tiger beetles. Scientists have studied the diversity and ecological specialization of tiger beetles, and amateur collectors have long been attracted by their bright coloration and swift movements. Tiger beetle species occur in many different habitats, including riparian habitats, beaches, dunes, woodlands, grasslands, and other open areas (Pearson 1988; Knisley and Hill 1992). A common habitat component appears to be open sunny areas for hunting and thermoregulation (an adaptive behavior to use sunlight or shade to regulate body temperature) (Knisley *et al.* 1990; Knisley and Hill 1992). Individual species of tiger beetle are generally highly habitat-specific because of oviposition and larval sensitivity to soil moisture, composition, and temperature (Pearson 1988; Pearson and Cassola 1992; Kaulbars and Freitag 1993).

The Ohlone tiger beetle is endemic to Santa Cruz County, California, where it is known only from coastal terraces supporting remnant patches of native grassland habitat. Specimens of this species were first collected northwest of the City of Santa Cruz, California, in 1987, and were first described in 1993 (Freitag *et al.* 1993). Both male and female specimens have been collected.

The adult Ohlone tiger beetle is a relatively small beetle measuring 9.5 to 12.5 millimeters (mm) (0.37 to 0.49 inches (in)) long. The adults have large, prominent eyes and metallic green elytra (leathery forewings) with small light spots (Freitag *et al.* 1993). Their legs are long, slender, and coppery-green. Freitag *et al.* (1993) describe features that distinguish this species from closely related species of *Cicindela purpurea* and other *purpurea* group taxa.

Two principal distinguishing features of the Ohlone tiger beetle are its early seasonal adult activity period and its disjunct distribution. While other tiger beetle species, such as *Cicindela purpurea*, are active during spring, summer, or early fall (Nagano 1982; Freitag *et al.* 1993), the Ohlone tiger beetle is active from late January to early April (Freitag *et al.* 1993). The Ohlone tiger beetle is the southernmost of *purpurea* group species in the Pacific Coast region; its distribution is allopatric (geographically separated) to those of similar species (Freitag *et al.* 1993).

Ohlone tiger beetle larvae are currently undescribed. However, tiger beetle burrows, measuring 4 to 6 mm in diameter (0.16 to 0.23 in), were found in the same habitat areas where adult Ohlone tiger beetles were collected (David Kavanaugh, California Academy of Sciences, pers. comm. 1997; Vince Cheap, *in litt.* 1997). The surface openings of these burrows are circular and flat with no dirt piles or mounds surrounding the circumference (Kim

Touneh, Service, pers. obs. 1997). These burrows are similar to larval burrows belonging to other tiger beetle species. Larvae and inactive adults have been excavated from these burrows, and the inactive adults collected from these burrows were fully mature and easily identified as Ohlone tiger beetles (D. Kavanaugh, pers. comm. 1997; V. Cheap, *in litt.* 1997). Based on these collections, Kavanaugh (pers. comm. 1997) concluded that the larvae found in these burrows were Ohlone tiger beetle larvae. Further investigations of these recently collected larvae are being conducted to scientifically characterize and document the morphology of the Ohlone tiger beetle larvae (D. Kavanaugh, pers. comm. 1997).

Ohlone tiger beetles are found in association with coastal terrace prairies, which are often characterized by the presence of California oatgrass (*Danthonia californica*) and purple needlegrass (*Stipa pulchra*). The substrate is shallow, pale, poorly drained clay or sandy clay soil that bakes to a hard crust by summer, after winter and spring rains cease (Freitag *et al.* 1993). Ohlone tiger beetle habitat is associated with either Watsonville loam or Bonnydoon soil types in Santa Cruz County. Soil core analyses were conducted for three of the sites known to be occupied by the Ohlone tiger beetle; the soil types for these three sites were determined to be either Watsonville loam or Bonnydoon (Richard Casale and Ken Oster, Natural Resources Conservation Service, pers. comm. 1997).

Adult Ohlone tiger beetles are found more often on level or nearly level slopes along trails (e.g., foot paths, dirt roads, and bicycle paths) that are adjacent to or near remnant patches of native grassland on coastal terraces. Adults will also utilize barren areas among low or sparse vegetation within the grassland. Ohlone tiger beetles require these open areas for construction of larval burrows, thermoregulation, and foraging (C.B. Knisley, *in litt.* 2000; Colleen Sculley, Service, pers. obs. 2000). The density of larval burrows decreases with increasing vegetation cover (G. Hayes, *in litt.* 1997). When disturbed, adults will fly to more densely vegetated areas (Freitag *et al.* 1993; Richard Arnold, consultant, pers. comm. 1995). Oviposition by females and subsequent larval development also occur in this coastal prairie habitat (i.e., open areas among native vegetation) (D. Kavanaugh, pers. comm. 1997; V. Cheap, *in litt.* 1997).

The historic range of the Ohlone tiger beetle cannot be precisely assessed because the species was only recently discovered, and no historic specimens or records are available. The earliest specimen recorded was collected from a site northwest of the City of Santa Cruz in 1987 (Freitag *et al.* 1993). Based on available information on topography, substrates, soils, and vegetation, it is likely that suitable habitat for the Ohlone tiger beetle was more extensive and continuous prior to the increase in urban development and agriculture. Historically, potentially suitable habitat may have extended from southwestern San Mateo County to northwestern Monterey County, California (Freitag *et al.* 1993). However, we have no evidence or data indicating that this species occurred beyond the present known occupied areas of Santa Cruz County. Currently, the extent of potentially suitable habitat for the Ohlone tiger beetle is estimated at 81 to 121 hectares (ha) (200 to 300 acres (ac)) in Santa Cruz County, California (Freitag *et al.* 1993).

The available data indicate a restricted range and limited distribution of the Ohlone tiger beetle. This finding is supported by the following considerations. First, many tiger beetle species are known to be restricted to specific habitats (Pearson 1988; Knisley and Hill 1992; Pearson and Cassola 1992), such as the open native grassland occupied by the Ohlone tiger beetle. Second, tiger beetles are widely collected and well-studied, yet no historic specimens were found in the extensive collections of the California Academy of Sciences, the University of California, Berkeley or the University of California, Davis (Freitag *et al.* 1993; D. Kavanaugh, pers. comm. 2000). The Ohlone tiger beetle's specialized habitat and restricted range may account for the absence of collection records prior to 1987. Because *Cicindela* is a very popular insect genus to collect (Chris Nagano, Service, pers. comm. 1993), and because entomologists commonly collect out of season and out of known ranges in order to find temporally and spatially outlying specimens, we expect more specimens would have been collected if the Ohlone tiger beetle were more widespread and common.

Three researchers conducted surveys that assess the current distribution and status of the Ohlone tiger beetle. Between 1990 and 1994, a researcher surveyed 14 sites with native grassland habitat from southwestern San Mateo County to southern Santa Cruz County for Ohlone tiger beetles. Six additional locations supporting nonnative grasslands, but which appeared otherwise suitable, were also surveyed. Surveys were conducted from February to April, when Ohlone tiger beetles are active. This work documented the presence of the Ohlone tiger beetle from sites located northwest of the City of Soquel, within the City of Scotts Valley, west of the City of Santa Cruz, and northwest of the City of Santa Cruz (Randall Morgan, *in litt.* 1994).

A second researcher surveyed for populations of Ohlone tiger beetles in coastal grasslands from southern San Mateo County to northern Monterey County during the adult activity period in 1995. Researchers visited sites repeatedly through the Ohlone tiger beetle's season of activity. Results of these surveys confirmed the presence of Ohlone tiger beetles in the 4 geographic areas identified previously and identified a new site northwest of the City of Santa Cruz that was occupied by the Ohlone tiger beetle (G. Hayes, *in litt.* 1997).

A local consultant conducted additional surveys for the Ohlone tiger beetle between 1994 and 2000 in approximately 22 locations on private lands that were not surveyed during 1990 to 1995. These surveys all occurred within the County of Santa Cruz in the vicinity of the communities of Scotts Valley, Santa Cruz, Davenport, Soquel, Capitola, and Aptos (R. Arnold, pers. comm. 2000). In 2000, the surveyor found one new site occupied by adults of the Ohlone tiger beetle and a second site with potential larval burrows. Both sites are located west of the City of Santa Cruz in close proximity to other sites known to be occupied by the Ohlone tiger beetle.

In total, we are aware of 60 sites that have been surveyed for the Ohlone tiger beetle in Santa Cruz, San Mateo, and Monterey counties. Based on the results of these survey efforts and the above considerations, we conclude that the Ohlone tiger beetle is restricted to remnant patches of native grassland on coastal terraces in the mid-county portion of coastal Santa Cruz County, California.

The proposed rule described five locations inhabited by the Ohlone tiger beetle. At the time of the proposed rule, the available data indicated that Ohlone tiger beetles were isolated geographically in each of these locations, and thus they were considered distinct populations. Since the publication of the proposed rule, we have received new information about additional areas occupied by the Ohlone tiger beetle. Furthermore, we have conducted a more extensive review of potential habitat linking these populations. Based on this new information, we believe there is evidence indicating that genetic

exchange may occur between several known locations of Ohlone tiger beetles defined in the proposed rule as distinct populations. Until data on the dispersal capability and genetic relatedness among Ohlone tiger beetles from varying locations are available, we cannot conclusively delineate populations of the Ohlone tiger beetle. Therefore, we will refer to Ohlone tiger beetles from the geographic areas where they occur and not as distinct populations.

The Ohlone tiger beetle is known from 4 narrow geographic areas within the County of Santa Cruz: northwest of the City of Soquel, within the City of Scotts Valley, west of the City of Santa Cruz, and northwest of the City of Santa Cruz. The Ohlone tiger beetle is known from 11 properties within these 4 areas. The abundance of individuals in each of these areas is unknown. However, the Ohlone tiger beetle is known to occur on less than 2 ha (5 ac) of land in each of these 4 areas (G. Hayes, pers. comm. 1995; C. Sculley pers. obs. 1999, 2000). All of these known locations of the Ohlone tiger are on coastal terraces that support remnant stands of native grassland. These 4 areas are described below:

The Ohlone tiger beetle occupies one parcel of private property northwest of the City of Soquel at 60 to 90 meters (m) (200 to 295 feet (ft)) elevation.

The beetle is known from one parcel of private property within the City of Scotts Valley at 210 m (690 ft) elevation. Potential burrows of the Ohlone tiger beetle were detected on a second parcel in the City of Scotts Valley in 1997 (Biotic Resources Group 1999), but adults were not detected at this site during surveys in 2000 (Dana Bland, pers. comm. 2000). The presence of the species at this second site is uncertain.

The Ohlone tiger beetle is known from five parcels located west of the City of Santa Cruz at 110 m (360 ft) elevation. One parcel is owned by the City of Santa Cruz, and the University of California, Santa Cruz (University) owns a second parcel. The third and fourth parcels are under private ownership. Potential burrows of the Ohlone tiger beetle have been found on a fifth property that is under private ownership; surveys for adults necessary to confirm the presence of the Ohlone tiger beetle have not been conducted at this site. All five of these properties are contiguous. Potential habitat for the Ohlone tiger beetle may link some of these areas occupied currently by the Ohlone tiger beetle (C. Sculley, pers. obs. 2000). We are uncertain if there is gene flow between these different parcels.

Ohlone tiger beetles are located northwest of the City of Santa Cruz between 110 m (360 ft) and 340 m (1,115 ft) elevation on properties owned by the University, the California Department of Parks and Recreation (CDPR), and the City of Santa Cruz (Freitag *et al.* 1993; R. Morgan, *in litt.* 1994; G. Hayes, *in litt.* 1997). These properties are contiguous as well, although Ohlone tiger beetles may be isolated on each property because habitat for the beetle is not continuous between parcels. Adult Ohlone tiger beetles were detected on the parcel owned by CDPR in 1997 (G. Hayes, *in litt.* 1999); however, no adults were detected in surveys conducted in 2000 (George Gray, CDPR, pers. comm. 2000). The status of the species on this parcel is uncertain.

Previous Federal Action

On February 18, 1993, we received a petition from Randall Morgan of Soquel, California, requesting that we add the Ohlone tiger beetle to the list of threatened and endangered species pursuant to the Act. The petition contained information indicating that the Ohlone tiger beetle has a limited distribution and specialized habitat requirements and was threatened by proposed development projects and recreational activities. Our 90-day petition finding, published in the **Federal Register** on January 27, 1994 (59 FR 3330), determined that substantial information was presented in the petition indicating that listing may be warranted. Our 12-month petition finding, published on March 1, 1996, in the **Federal Register** (61 FR 8014), concluded that listing was not warranted due to the lack of life history information and survey data to conclusively determine that the beetle is restricted to the described habitat.

On April 30, 1997, we received a second petition from Grey Hayes of Santa Cruz, California, to emergency-list the Ohlone tiger beetle as an endangered species under the Act. The petition specified endangered status because of the beetle's limited distribution and threats from proposed development projects, invasion of nonnative plants, and recreational activities. Based on the information provided by the petitioner, and additional information gathered since the first petition in 1993, we determined that emergency-listing the Ohlone tiger beetle was not required but that listing of this species as endangered is warranted. Therefore, in our most recent Notice of Review, published on October 25, 1999 (64 FR 57534), we included the Ohlone tiger beetle as a candidate species. Candidate species are those species for which listing is warranted but precluded by other pending listing actions, in accordance with section 4(b)(3)(B)(iii) of the Act. On February 11, 2000, we published a proposed rule in the **Federal Register** (65 FR 6952) to list the Ohlone tiger beetle as endangered. We have updated this final rule to reflect new information concerning changes in distribution, status, and threats since publication of the proposed rule.

Summary of Comments and Recommendations

In the February 11, 2000, proposed rule, we requested interested parties to submit factual reports or information that might contribute to the development of a final listing decision. We contacted appropriate Federal agencies, State agencies, county and city governments, scientists, and other interested parties to request information and comments. We solicited independent review of the proposed rule by three peer reviewers. We published newspaper notices in the Santa Cruz Sentinel and San Jose Mercury News on February 17, 2000, and March 4, 2000, respectively. The comment period closed on April 11, 2000. We did not receive any requests for a public hearing during the comment period.

During the comment period, we received 19 comment letters, including 3 letters from peer reviewers. Fifteen commenters supported the proposal, one provided neutral comments, and three were opposed to the proposal. Several commenters provided additional information that, with other clarifications, has been incorporated into the sections titled ''Background'' and ''Summary of Factors'' of this final rule.

Comments of a similar nature or point regarding the proposed rule have been grouped into issues and are discussed below.

Issue 1: One commenter questioned whether the Ohlone tiger beetle is actually a distinct species of tiger beetle rather than an already-identified subspecies of tiger beetle. The commenter further suggested that the authors of the scientific paper that described this species (Freitag *et al.* 1993) raised this possibility as well. Finally, the commenter expressed concern that a ''taxonomic differentiation'' of the Ohlone tiger beetle has not been conducted using ''currently available testing methods.''

Our Response: In general, we recognize taxonomic determinations that are published in peer-reviewed journals and are accepted by the

scientific community. The description of the Ohlone tiger beetle was published in the *Coleopterists' Bulletin*, a peer-reviewed scientific journal (Freitag *et al.* 1993). The authors of this publication noted that at first they thought the specimens from Santa Cruz County might have represented an unusual form of a species of tiger beetle described previously. After careful examination, the authors detected differences between the external form and structure and the genitalia of males and females of adult Ohlone tiger beetles and other closely related species of tiger beetles. They determined that these differences ''were at least as great'' as typically found between closely related, but distinct species. They described the species based on distinguishing morphological characteristics, geographical and habitat distribution, life history, and phylogenetic relationships. Thus, the authors determined that the Ohlone tiger beetle is a new and distinct species of tiger beetle.

None of the peer reviewers, all of whom specialize in the study of tiger beetles, questioned the validity of this finding. We received no comments from other tiger beetle experts expressing concern or uncertainty about the validity of the Ohlone tiger beetle being a distinct species.

We are uncertain what the commenter considers to be ''currently available testing methods.'' Therefore, we cannot comment on whether these methods have been conducted. However, we have concluded that the analyses conducted by Freitag *et al.* (1993) are adequate to conclude that the Ohlone tiger beetle is a distinct species, based on comparative morphological evidence, and that this analysis has been validly published (published in a peer-reviewed scientific journal), and accepted by the scientific community.

Issue 2: Several commenters questioned the level of survey effort that was conducted to determine the range, distribution, and frequency of occurrence of the Ohlone tiger beetle. One commenter asked whether surveys have been conducted on all sites with suitable habitat and whether the surveys were conducted at the appropriate time of year. Another commenter requested that independent studies be conducted to determine if the habitat is as restricted as proclaimed.

Our Response: The final rule describes the extent of surveys that have been conducted for the Ohlone tiger beetle at the present time. All of these surveys, unless otherwise noted, were conducted by qualified field biologists during the proper time of year and time of day (i.e., on warm, sunny days during the months of February to April) when adult Ohlone tiger beetles could reasonably be expected to be active, evident, and identifiable. Surveys were conducted using systematic field techniques and were well documented.

Survey locations included grasslands in San Mateo, Santa Cruz, and Monterey counties. At least 60 sites have been surveyed, and Ohlone tiger beetles have been found on 11 properties in 4 narrow geographic areas in Santa Cruz County. Many of the sites surveyed by Randall Morgan between 1990 and 1994, and Grey Hayes in 1995, were lands under public ownership. Most of the sites surveyed by Dr. Richard Arnold between 1994 and 2000 were under private ownership.

As a result of private landowners restricting access and volunteer surveyors having time limitations, not all sites that may provide potential habitat for the Ohlone tiger beetle have been surveyed. We acknowledge that undiscovered sites occupied by the Ohlone tiger beetle may exist, most likely on private land. We also recognize that there is a high potential that these sites are subject to the same threats that face other privately owned parcels that support the Ohlone tiger beetle. Given the extremely limited distribution of the species at the present time, discovery of several additional locations of the Ohlone tiger beetle would not likely alter the endangered status of the species overall. All of the peer reviewers acknowledged the extreme rarity of the Ohlone tiger beetle and supported listing this species as endangered.

Issue 3: One commenter questioned why the Ohlone tiger beetles found in a preserve owned and managed by the City of Santa Cruz were not found during surveys conducted between 1990 and 1994, but were located during surveys in 1995.

Our Response: We asked this question of Randall Morgan, who conducted the surveys during 1990 to 1994. Mr. Morgan re-examined his collections and determined that he did in fact collect a single Ohlone tiger beetle from the preserve in 1994. Mr. Morgan collected this Ohlone tiger beetle in the same vicinity where Ohlone tiger beetles were discovered in 1995 (R. Morgan, pers. comm. 2000).

Issue 4: One commenter questioned what additional information on the Ohlone tiger beetle we received after the publication of the 12-month finding in 1996 (61 FR 8014), in which we determined that listing of the Ohlone tiger beetle was not warranted because data were inadequate for us to determine that the Ohlone tiger beetle was restricted to the described habitat. Specifically, the commenter noted that the proposed rule to list the species (65 FR 6952) cited only the survey work that had been conducted between 1990 and 1995, which preceded the publication of this 12-month finding.

Our Response: On January 23, 1997, we received a letter from Grey Hayes that described the results of his surveys for Ohlone tiger beetles that had been conducted in 1995. We were not aware that these surveys had been conducted until we received Mr. Hayes' letter 9 months after the publication of the 12-month finding. Mr. Hayes surveyed 21 sites that represented a variety of grassland and oak woodland habitats in Monterey, Santa Cruz, and San Mateo counties. The results of these surveys indicated that the Ohlone tiger beetle was found only in association with soil types specific to the central coast of California. Furthermore, the surveys showed that Ohlone tiger beetles are found only in or adjacent to coastal terrace prairie, a type of grassland that exists on less than 809 ha (2,000 ac).

Furthermore, we reviewed the scientific literature on tiger beetles and determined that tiger beetle species are commonly restricted to very specific habitat types (Pearson 1988; Knisley and Hill 1992; Pearson and Cassola 1992). Based on this information, we concluded that adequate information existed to determine conclusively that the Ohlone tiger beetle is restricted to a narrow habitat type within Santa Cruz County.

Issue 5: One commenter questioned whether we can logically infer from two relatively limited surveys that the Ohlone tiger beetle is ''restricted to remnant patches of native grasslands on coastal terrace prairie in the mid-county portion of coastal Santa Cruz County.'' The commenter further stated that there was insufficient information to support the Service's conclusion that the Ohlone tiger beetle is in danger of extinction throughout a significant portion of its range.

Our Response: This final rule is based on the best available information and science and clearly describes how we determined the current range and habitat requirements of the Ohlone tiger beetle, and how we concluded that the species is in danger of extinction throughout a significant portion of its range. Please refer to the ''Background'' and ''Summary of Factors Affecting the Species'' sections.

Issue 6: One commenter questioned how many, and which, insect collections had been searched for specimens of the Ohlone tiger beetle.

The commenter noted that he or she had spoken with a tiger beetle expert in Texas who had specimens of the Ohlone tiger beetle collected from 29 years ago, and that the expert knew of additional specimens of the species collected in the early 1930s and 1940s.

Our Response: While preparing the manuscript to describe the Ohlone tiger beetle, Dr. David Kavanaugh of the California Academy of Sciences searched the entomological collections of the California Academy of Science, the University of California, Davis, and the University of California, Berkeley. These three institutions were searched because they held the largest collections of tiger beetles within the vicinity of Santa Cruz County, and were the most likely depositories of Ohlone tiger beetles collected from that area. Furthermore, the California Academy of Sciences holds the collection of Norman C. Rumpp, which includes one of the largest collections of tiger beetles in the world. Ohlone tiger beetles were not found in these collections.

As an expert on the genus *Cicindela,* Dr. Kavanaugh has reviewed collections of this genus located throughout the United States. He has never encountered the Ohlone tiger beetle (D. Kavanaugh, pers. comm. 2000). Cicindela is a very popular genus of insects to collect. No specimens were found in the three largest collections located in the closest proximity to Santa Cruz County, and Dr. Kavanaugh has never seen or heard of additional specimens of the Ohlone tiger beetle in other collections. Therefore, he concluded that it was unlikely that specimens would be found in additional private or public collections. We concurred with this conclusion.

We contacted Mr. William D. Sumlin, the tiger beetle specialist from Texas referred to by the commenter, and asked him about historic collections of the Ohlone tiger beetle. Mr. Sumlin stated that he had specimens of a male and female of the Ohlone tiger beetle that were collected in March 1994. This specimen was collected from a known occurrence of the Ohlone tiger beetle.

Mr. Sumlin also stated that he was not aware of any Ohlone tiger beetles collected during the 1930s and 1940s. Rather, he recalled having a conversation with another tiger beetle expert who mentioned that specimens of Ohlone tiger beetles may be located in a collection in California. The specimens were thought to be misidentified and located in a tray of specimens of another species of tiger beetle. Unfortunately, Mr. Sumlin did not recall the identity of the person who had told him this information, whose collection the specimens were in, or where the collection was located (W.D. Sumlin, *in litt.* 2000).

With so little information, we cannot verify the existence of the specimens in question. We acknowledge that other collectors may have specimens of the Ohlone tiger beetle; however, we assume that most of these collections were made after the species was described in 1993 and are from sites known to be occupied by the beetle.

Issue 7: One commenter questioned whether the absence of Ohlone tiger beetles from collections could be explained by reasons other than the species is extremely rare.

Our Response: We cannot offer any alternative hypotheses as to why the species is absent from collections. Because *Cicindela* is a very popular genus of insects to collect, and because entomologists commonly collect out of season and out of known ranges in order to find temporally and spatially outlying specimens, we would expect more specimens to have been collected if the Ohlone tiger beetle were more abundant and distributed more widely.

Issue 8: One commenter states that ''the Service seems to suggest that additional field surveys are not warranted because the Ohlone tiger beetle has not been found in any of the collections of local hobbyists, and that it was only first sited in 1997.'' The commenter noted that the Act allows the Service 1 year from the date on which a proposed rule is noticed before a decision to list or not list is made, with the option to extend this period for up to 6 months for purposes of soliciting additional data. The commenter suggested that we should use the full 18 months to conduct additional surveys for the Ohlone tiger beetle throughout all potential habitat.

Our Response: Ohlone tiger beetles were first collected in 1987, not 1997, as stated by the commenter. The proposed rule did not state that additional field surveys for the Ohlone tiger beetle are not warranted. We advocate conducting more surveys to expand our knowledge of the range, distribution, life history, and habitat requirements of the Ohlone tiger beetle. However, we have carefully assessed the best scientific and commercial information available regarding such knowledge and the past, present, and future threats faced by the Ohlone tiger beetle. Based on this information, we conclude that the Ohlone tiger beetle is in danger of extinction throughout all or a significant portion of its range (section 3(6) of the Act) and, therefore, meets the Act's definition of endangered.

Issue 9: One commenter questioned why we have chosen to list the Ohlone tiger beetle, when there are 2,000 different subspecies of tiger beetles, many with restricted populations, that we have ''rightfully shown no inclination to list.''

Our Response: The determination to list a species as federally endangered or threatened is based upon the evaluation of current and future threats to the species from the five factors listed in section 4(a) of the Act. Based on our analyses of threats facing the Ohlone tiger beetle, we believe that the Ohlone tiger beetle is in danger of extinction throughout all or a significant portion of its range (section 3(6) of the Act) and, therefore, meets the Act's definition of endangered. We have listed other species of tiger beetles in the past, and we will continue to list species that meet the criteria for threatened or endangered as defined in the Act.

Issue 10: Several commenters suggested that the listing of the Ohlone tiger beetle was occurring in order to restrict the use of private property, and questioned why the Ohlone tiger beetle has only been located in sites that are ''politically sensitive.''

Our Response: The Act requires us to base our listing decisions on the best scientific and commercial information available, without regard to the effects, including political or economic, of listing. Surveys for the Ohlone tiger beetle have occurred at sites that were nearly equally divided between private and public ownership throughout Monterey, Santa Cruz and San Mateo counties. Locations of surveys conducted by Morgan and Hayes between 1990 and 1995 were reportedly chosen based on the habitat characteristics present at each site; no emphasis was known to be given to sites that were considered ''politically sensitive'' to the community. Arnold's surveys between 1994 and 2000 were conducted largely on private lands at the request of the landowners.

Issue 11: One commenter expressed concern about the effects of road construction on habitat for the Ohlone tiger beetle. The commenter provided numerous citations for scientific papers that document and quantify the effects of roads on environmentally sensitive areas.

Our Response: We appreciate the information provided by the commenter. We consider construction of roads to be an aspect of urban development that can fragment and degrade habitat for the Ohlone tiger beetle.

Issue 12: One commenter questioned why the proposed rule does not mention

population size based on counts of adults or larval burrows of the Ohlone tiger beetle.

Our Response: At the present time, surveys to estimate sizes of populations of the Ohlone tiger beetle have not been conducted. We recognize that population estimates may provide insight into the status of the species. However, abundance of insect species can fluctuate substantially from year to year. Furthermore, some insect species may be abundant in localized populations yet susceptible to extirpation by a single event. For these reasons, estimates of abundance are not adequate in determining whether a species is endangered or threatened. Rather, we based our determination to list the Ohlone tiger beetle as federally endangered upon the evaluation of the current and future threats to the species from the five factors listed in section 4(a) of the Act.

Peer Review

In accordance with our policy published on July 1, 1994 (59 FR 34270), we solicited the expert opinions of three independent specialists regarding the biological and ecological information about the Ohlone tiger beetle contained in the proposed rule. The purpose of such review is to ensure that listing decisions are based on scientifically sound data, assumptions, and analysis, including input from appropriate experts and specialists. Two of the reviewers supported the listing of the species, but provided no substantive comments that require addressing. The third reviewer both supported the listing of the species and provided technical corrections on material contained in the sections titled ''Background'' and ''Summary of Factors Affecting the Species.''

Summary of Factors Affecting the Species

After a thorough review and consideration of all information available, we determine that the Ohlone tiger beetle should be classified as an endangered species. We followed procedures found at section 4(a)(1) of the Act and regulations (50 CFR part 424) implementing the listing provisions of the Act. A species may be determined to be endangered or threatened due to one or more of the five factors described in section 4(a)(1). These factors, and their application to the Ohlone tiger beetle, are as follows:

A. *The present or threatened destruction, modification, or curtailment of its habitat or range.* Loss of habitat is the principal threat to insect species worldwide because of their close associations with, and dependence on, specific habitats (Pyle *et al.* 1981). The effects of habitat destruction and modification on tiger beetle species have been documented by Knisley and Hill (1992) and Nagano (1982). The Ohlone tiger beetle is restricted to remnant patches of native grassland on coastal terraces where low and sparse vegetation provide space for foraging, reproduction, and thermoregulation, and support a prey base of other invertebrate species. The poorly drained clay or sandy clay substrate of the coastal terraces provides the soil moisture, composition, and temperature conditions necessary for oviposition and larval development (Pearson 1988; Kaulbars and Freitag 1993).

The habitat of the Ohlone tiger beetle is threatened with destruction resulting from urban development or with modification by invasive nonnative vegetation on all of the sites on which it occurs. Disturbance of the substrate, and removal or elimination of vegetation by urban development, kills or injures individuals and precludes others from feeding, sheltering, or reproducing. Historically, potentially suitable habitat is believed to have extended from southwestern San Mateo County to northwestern Monterey County, California (Freitag *et al.* 1993). Most of this habitat has been modified or destroyed by human actions such as urbanization and agriculture (Freitag *et al.* 1993).

About 6,060 to 8,080 ha (15,000 to 20,000 ac) of native grassland remain in Santa Cruz County, but not more than 81 to 121 ha (200 to 300 ac) contain the proper combination of substrate, slope, and exposure (bare areas between patches of grasses) to be considered suitable habitat for the Ohlone tiger beetle (Freitag *et al.* 1993). Nearly all of this suitable habitat is located within or adjacent to urbanized areas in the coastal mid-county area of Santa Cruz. Much of the City of Santa Cruz and its adjacent towns were built on these marine terrace grassland habitats (Freitag *et al.* 1993). Within suitable habitat, the beetle occupies only sparsely vegetated areas and bare areas, which are artifacts of trails, grazing, or other disturbance activities.

The property occupied by the Ohlone tiger beetle located northwest of the City of Soquel is threatened by a proposed 21-lot residential development. The preferred alternative of the proposed project would completely extirpate the Ohlone tiger beetle population by eliminating all of the known occupied habitat and most of the extant grassland habitat found on this site. One alternative in the final environmental impact report for the project proposes that the majority of suitable habitat for the Ohlone tiger beetle be set-aside and managed to reduce nonnative vegetation and enhance habitat quality. Since the publication of the proposed rule, the owner of this parcel has submitted design changes to the County of Santa Cruz. We are not certain how these design changes will impact the habitat for the Ohlone tiger beetle on the site. The County is currently preparing an expanded initial study to incorporate these changes. Once completed, the initial study will be available to the public for review and comment (Kim Tschantz, County of Santa Cruz, pers. comm. 1999, 2000).

The site occupied by the Ohlone tiger beetle located in the City of Scotts Valley was proposed for development of 233 residential homes and an open park containing two ballfields (Impact Sciences 1998). This proposed development was voted down in a public referendum in 1999, halting the development of this property for the present time. The landowner is now considering alternative development plans. The most recent proposal by the developer includes donating the area inhabited by the Ohlone tiger beetle to the City of Scotts Valley for use as a park. The City has expressed interest in developing this area into baseball fields (Laura Kuhn, City of Scotts Valley, pers. comm. 2000). The future of this site is undetermined at this time.

Even if the occupied habitat for the Ohlone tiger beetle was avoided in the development of houses and ballfields, activities occurring on adjacent lands could lead to potential disturbance, such as pesticide drift, soil erosion, and vegetation alteration. In addition, the increased isolation would make the population more vulnerable to random extinction (see Factor E of this section).

Adult Ohlone tiger beetles have been observed on 4 properties, and potential burrows have been observed on a fifth property, west of the City of Santa Cruz (C. Sculley, pers. obs. 2000; R. Arnold, pers. comm. 2000). All of the properties are contiguous. The potential for destruction threatens the habitat of the Ohlone tiger beetle on 4 of these properties.

The current landowners of one of these 4 parcels plan to build a single-family dwelling on the site. Although building plans are still being developed, the driveway will most likely be sited in, or directly adjacent to, occupied habitat for the Ohlone tiger beetle (C. Sculley, pers. obs. 2000).

In September 1998, property owners of a second parcel west of the City of

Santa Cruz tilled up a large percentage of an area occupied by the Ohlone tiger beetle in preparation for converting use of the land from livestock grazing to a vineyard (G. Hayes, pers. comm. 1998). The effects of this action on the Ohlone tiger beetle are not known, although potential burrows of the Ohlone tiger beetle were detected on the property in July 2000 (C. Sculley, pers. obs. 2000).

Potential burrows of the Ohlone tiger beetle were found in the spring of 2000 on a third parcel west of the City of Santa Cruz (R. Arnold, pers. comm. 2000). The owner of this parcel plans to build a single-family home on the site. The County of Santa Cruz has not yet reviewed the potential effects of the project on the Ohlone tiger beetle (Paia Levine, County of Santa Cruz, pers. comm. 2000).

The fourth parcel is owned by the University and is presently undeveloped, and no development is currently planned for the parcel. However, portions of the parcel, including areas occupied by the Ohlone tiger beetle, could be developed in the future as the University expands its existing campus (University of California 1992).

The fifth parcel is protected from urban development. In the spring of 1999, the City of Santa Cruz purchased this property, and it will be managed as open space by the City. The State of California will hold a conservation easement on the land. A management plan will be developed by the City of Santa Cruz, and the Ohlone tiger beetle will be considered in the plan. At the present time, the site is closed to public use except for officially escorted hikes (Susan Harris, City of Santa Cruz, pers. comm. 1999).

The habitat occupied by the Ohlone tiger beetle northwest of the City of Santa Cruz occurs on three parcels under ownership of CDPR, the University, and the City of Santa Cruz. The CDPR wants to construct an entrance road and parking area for vehicles and open existing trails to recreationists. The entrance road would be developed over a portion of habitat that was occupied by Ohlone tiger beetles in 1995 (G. Hayes, in litt. 1999). The vehicle parking area would be constructed adjacent to this habitat. In the public works plan for this site, CDPR established a policy that road maintenance or other activities will be scheduled to minimize impacts on burrows, larval habitat, foraging activities, or other aspects of the population (CDPR 1997). CDPR conducted additional surveys in 2000 to determine the current distribution of the Ohlone tiger beetle on the parcel that it owns. No adult Ohlone tiger beetles or larval burrows were detected during these surveys (G. Gray, CDPR pers. comm. 2000). Additional surveys need to be conducted to determine if Ohlone tiger beetles have been extirpated from this site.

Property adjacent to the CDPR land is managed by the University. A two-lane road bisects the lands that are owned by CDPR and the University that are occupied by the Ohlone tiger beetle. Although some development is possible within the University lands, no development projects are anticipated at this time (Graham Bice, University of California, pers. comm. 1995; G. Hayes, pers. comm. 1997). The Ohlone tiger beetle also is found in a preserve owned and managed by the City of Santa Cruz. At this time, no plans are in place that would destroy or alter the Ohlone tiger beetle habitat within this preserve (S. Harris, pers. comm. 1999).

Areas that may once have been suitable for Ohlone tiger beetles have been converted to nonnative grasslands, or have been developed because the firm, level substrate of the coastal terraces afforded good building sites with scenic views of the Pacific Ocean. For the same reasons that other terraces have already been developed, remaining areas of suitable habitat are under high development pressure.

In addition to the development threats to the Ohlone tiger beetle, the invasion of nonnative vegetation threatens the already reduced extent of suitable habitat for this species. The Ohlone tiger beetle is threatened by habitat degradation due to the invasion of nonnative plant species into the coastal prairie in every location where it occurs, including areas that are protected from development. Nonnative vegetation (e.g., French broom (*Cytisus monspessulanus*), velvet grass (*Holcus* spp.), filaree (*Erodium* spp.), and *Eucalyptus* spp.) and forest vegetation are encroaching into grassland habitats and out-competing native grassland vegetation (R. Morgan, *in litt.* 1992; G. Hayes, *in litt.* 1997; C. Sculley, pers. obs. 1999, 2000). These nonnative plants are aggressive invaders that convert sunny grasslands required by Ohlone tiger beetles to habitat dominated by a shady overstory. Without these sunny areas, the Ohlone tiger beetle cannot forage, and oviposit. In addition to shading these areas used by the beetle, the nonnative vegetation fills in the open spaces among the low or sparse vegetation creating an unsuitable densely vegetated habitat.

Nonnative vegetation may also affect the numbers and diversity of the beetle's prey, predators, and parasites (see Factor C of this section). Increased vegetation encroachment is the primary factor attributed to the extirpation of several populations of other *Cicindela* species (*e.g., C. abdominalis* and *C. debilis*) (Knisley and Hill 1992). Without management efforts to reduce and control vegetation encroachment by nonnative species, the Ohlone tiger beetle will likely decline and may become extirpated in all of the locations where the species is known presently.

Several agencies are attempting to slow the rate of vegetation encroachment into habitat for the Ohlone tiger beetle. At one location northwest of the City of Santa Cruz, the City is attempting to maintain the species' habitat by mowing parts of it to provide bare ground, and closing trails occupied by the Ohlone tiger beetle to bicycles (S. Harris, pers. comm. 1999).

The University conducts controlled burns in habitat for the Ohlone tiger beetle on its property northwest of the City of Santa Cruz. These burns are conducted for fire-training exercises and to restore native vegetation to this grassland (California Department of Forestry and Fire Protection, *in litt.* 2000). Grazing occurs on several parcels of land located west of the City of Santa Cruz which are occupied by the Ohlone tiger beetle. Grazing regimes, when conducted with the appropriate timing, frequency, and intensity, can effectively maintain native species of grasses and herbs in grasslands (G. Hayes, pers. comm. 2000). Monitoring to determine the effects of these actions on the Ohlone tiger beetle has not occurred. Therefore, we are unable to determine if the Ohlone tiger beetle has benefited from these actions.

B. *Overutilization for commercial, recreational, scientific, or educational purposes.* Unrestricted collecting is considered a threat to the species. Tiger beetle specimens are highly sought by amateur collectors (C. Nagano, pers. comm. 1993), and members of the genus *Cicindela* may be the subject of more intense collecting and study than any other single insect genus. In light of the recent discovery of the Ohlone tiger beetle, and concerns regarding its continued existence, the desirability of this species to private collectors may increase, leading to increased collection of specimens. The original petitioner for the Ohlone tiger beetle has been contacted by several people from such places as France, Wisconsin, and California, looking for Ohlone tiger beetle specimens they can add to their private collections, as well as those asking where the colonies are located and indicating they want to collect the species at those locations (R. Morgan,

pers. comm. 1998). We are aware of at least one individual who collected specimens of the Ohlone tiger beetle from the type locality after the species was described in a scientific journal (W.D. Sumlin, *in litt.* 2000). Listing this species as endangered will likely increase its attractiveness to private collectors. Removal of even a few females from a small population could reduce the persistence of the population over time (C. Knisley, *in litt.* 2000).

The Ohlone tiger beetle is not likely to be used as a model organism for general research projects because it is a rare and limited species. It may be the subject of studies intended to improve understanding of the species' ecology and to improve management strategies for its conservation. Although such studies would directly benefit the recovery of the Ohlone tiger beetle, they may contribute cumulatively to other threats to the species.

C. *Disease or Predation.* No diseases are known to threaten the Ohlone tiger beetle. However, the Ohlone tiger beetle may be affected by any of several predators and parasites known to prey upon, and afflict, other tiger beetle species. In general, parasites are considered to be more detrimental than predators to populations of tiger beetles (Nagano 1982; Pearson 1988). Known tiger beetle parasites include ant-like wasps of the family Typhiidae, especially the genera *Mathoca, Karlissa*, and *Pterombrus*, and the Bombyliid flies of the genus *Anthrax* (Nagano 1982; Pearson 1988). These insect parasites are distributed worldwide and specialize on tiger beetle larvae. Some species of tiger beetles from Arizona sustain larval parasitism rates of 20 to 60 percent (C. Knisley *in litt.* 2000).

Known tiger beetle predators include birds, shrews (Soricidae), raccoons (*Procyon lotor*), lizards (Lacertilia), toads (Bufonidae), ants (Formicidae), robber flies (Asilidae), and dragonflies (Anisoptera) (Lavigne 1972; Nagano 1982; Pearson 1988).

Predators and parasites play important roles in the natural dynamics of populations and ecosystems. The effects of predation and parasitism may pose substantial threats to Ohlone tiger beetle populations already affected by other factors, especially limited distribution and small, isolated populations. At this time, the magnitude of predation and parasitism on the Ohlone tiger beetle is not known.

D. *The inadequacy of existing regulatory mechanisms.* Regulatory mechanisms currently in effect do not provide adequate protection for the Ohlone tiger beetle and its habitat. Federal agencies are not legally required to consider and manage for species of concern.

At the State and local levels, regulatory mechanisms are also inadequate. The California Endangered Species Act does not allow for the listing of invertebrate species. State and local agencies may consider the Ohlone tiger beetle when evaluating certain activities for compliance with the California Environmental Quality Act (CEQA) and local zoning regulations. If an activity is identified as having a significant impact on this species, mitigation measures may be required by State and local regulatory agencies to offset these impacts. However, CEQA and local regulations do not provide specific protection measures to ensure the continued existence of the Ohlone tiger beetle. In addition, CEQA provisions for ''Statements of Overriding Considerations'' can allow projects to proceed despite unmitigated adverse impacts.

Ohlone tiger beetle habitat occurs on properties owned by the University, the CDPR, and the City of Santa Cruz. The University does not have a management plan that specifically protects the Ohlone tiger beetle or its habitat (G. Hayes, pers. comm. 1997). The CDPR has an existing Public Works Plan that calls for surveys to verify the occupied habitat boundary of the Ohlone tiger beetle and proposes to minimize the impacts of disturbance to the Ohlone tiger beetle during road maintenance and other scheduled activities in the plan (G. Gray, CDPR, pers. comm. 1997). However, a local citizen has expressed concern that surveys and minimization measures are not being adequately carried out (G. Hayes, *in litt.* 1999). For the site northwest of Santa Cruz, the City of Santa Cruz Parks and Recreation Department's Proposed Master Plan for the preserve proposes increased usage of existing trails, but identifies the Ohlone tiger beetle and its habitat as sensitive resources. The proposed master plan includes a management program for Ohlone tiger beetle habitat; however, implementation of any management actions will depend on future funding (S. Harris, pers. comm. 1999). For the site west of the City of Santa Cruz and owned by the City, a management plan will be developed since this property has been purchased as open space. The property is officially closed to public use except for officially escorted hikes. However, this area is not regularly patrolled, and enforcement may not be adequate to protect the species.

Because the Ohlone tiger beetle is not listed at the State or Federal levels, no regulations or regulatory mechanisms exist that prohibit importing, exporting, sale, or trade of the species.

E. *Other natural or manmade factors affecting its continued existence.* The populations of the Ohlone tiger beetle are isolated and restricted to relatively small patches of habitat. A direct correlation exists between increased extinction rates with the reduction of available habitat area and increased distances between small populations (Gilpin 1987). This conservation biology model suggests that the isolated populations of the Ohlone tiger beetle may be more vulnerable to local extinction from random genetic and demographic events or environmental catastrophes. Effects of small habitat patches and isolated populations on other species of tiger beetles have been documented. In the eastern United States, several populations of *Cicindela dorsalis* that numbered less than 200 individuals became extinct at sites where no obvious change in habitat occurred. These extinctions were presumably due to factors related to small population sizes (C. Knisely, *in litt.* 2000).

Although some species of tiger beetles are known to disperse over sizable distances (Pearson 1988), species from the *purpurea* group of the genus *Cicindela* typically do not disperse widely, usually 12 to 18 m (40 to 60 ft) (David Pearson, Arizona State University, pers. comm. 1997). The dispersal capabilities of Ohlone tiger beetles are unknown; however, because the Ohlone tiger beetle belongs to the *purpurea* group, its dispersal distance is most likely short. Assuming individuals to be capable of dispersing distances comparable to those between populations, the likelihood of successful emigration or colonization is greatly reduced by the small size of suitable habitat patches and the unavailability of even marginal habitat among the extensive urban development in the region.

Some recreational uses of Ohlone tiger beetle habitat (*i.e.*, off-highway vehicular use or mountain biking) may pose a threat to the Ohlone tiger beetles. The beetles require open ground to maneuver, take prey, and lay eggs. They use the hard-packed bicycle trails for foraging, thermoregulation, and laying their eggs (R. Morgan, pers. comm. 1998). Bicycle traffic on a trail through the University site has been observed to result in the crushing of several individual beetles (R. Morgan, *in litt.* 1993). Similar mortality has been observed in the species' habitat west of the City of Santa Cruz (R. Morgan, in litt. 1993) and may occur in other Ohlone tiger beetle populations. Also,

bicycle and foot traffic could potentially collapse larval tunnels and crush the larvae. The significance of such mortality for population viability is not known at this time, but is considered a potential threat to the Ohlone tiger beetle, particularly if bicycle traffic through the habitat increases. Heavy vehicular traffic in areas with extensive use of public trails, such as on lands owned by the University, the City of Santa Cruz, and CDPR, may also create soil compaction and rutting, damaging potential oviposition sites. Populations of another tiger beetle species found in the northeastern United States, *Cicindela dorsalis dorsalis*, were extirpated in several localities that were subjected to heavy recreational use (*i.e.*, heavy pedestrian foot traffic and vehicular use) but survived at other sites that had received little or no recreational disturbance (Knisley and Hill 1992).

Pesticides could pose a threat to the Ohlone tiger beetle. The effects of insecticides on other tiger beetle species are referenced by Nagano (1982). Local land owners may use pesticides to control targeted invertebrate species around their homes and gardens. These pesticides may drift aerially or be transported by water runoff into Ohlone tiger beetle habitat where they may kill nontargeted organisms including the Ohlone tiger beetle or its prey species. As urban development increases near or in Ohlone tiger beetle habitat, negative impacts from pesticides may become more frequent. The significance of pesticide effects is not known at this time, but they are recognized as a substantial potential threat to the species.

We have carefully assessed the best scientific and commercial information available regarding the past, present, and future threats faced by the Ohlone tiger beetle in developing this final rule. Threats to the Ohlone tiger beetle, including habitat fragmentation and destruction due to urban development, habitat degradation due to invasion of nonnative vegetation, vulnerability to random local extirpations, and potential threats due to collection, pesticides, and recreational use of habitat, imperil the continued existence of this species. Much of the habitat of this species is suitable for development and is unprotected from these threats. The Ohlone tiger beetle is known from only 11 properties in 4 narrow geographic areas of Santa Cruz County. This species is in danger of extinction ''throughout all or a significant portion of its range'' (section 3(6) of the Act) and, therefore, meets the Act's definition of endangered. Because of the high potential for these threats, if realized, to result in the extinction of the Ohlone tiger beetle, the preferred action is to list this species as endangered.

Critical Habitat

Critical habitat is defined in section 3 of the Act as–(i) the specific areas within the geographical 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 considerations or protection; and (ii) specific areas outside the geographic area occupied by the species at the time it is listed in accordance with the provisions of section 4 of the Act, upon a determination that such areas are essential for the conservation of the species. ''Conservation'' means the use of all methods and procedures necessary to bring an endangered or threatened species to the point at which listing under the Act is no longer necessary.

Section 4(a)(3) of the Act, as amended, and implementing regulations (50 CFR 424.12) require that, to the maximum extent prudent and determinable, we designate critical habitat at the time the species is determined to be endangered or threatened. Our regulations (50 CFR 424.12(a)(1)) state that the designation of critical habitat is not prudent when one or both of the following situations exist—(1) the species is threatened by taking or other human activity, and identification of critical habitat can be expected to increase the degree of threat to the species, or (2) such designation of critical habitat would not be beneficial to the species. We find that designation of critical habitat is prudent for the Ohlone tiger beetle.

Due to the small number of populations of the Ohlone tiger beetle, and the popularity of tiger beetle collecting, this species is vulnerable to unrestricted collection, vandalism, or other disturbance. However, there is no evidence that designation of critical habitat is likely to increase this threat. In the case of this species, designation of critical habitat may provide some benefits. The record shows that certain physical and biological features where the Ohlone tiger beetle is located are essential to the conservation of the species. The primary regulatory effect of critical habitat is the section 7 requirement that Federal agencies refrain from taking any action that destroys or adversely modifies critical habitat. While a critical habitat designation for habitat currently occupied by this species would not be likely to change the section 7 consultation outcome because an action that destroys or adversely modifies such critical habitat would also be likely to result in jeopardy to the species, in certain instances, section 7 consultation might be triggered only if critical habitat is designated. Examples could include unoccupied habitat or occupied habitat that may become unoccupied in the future. Designating critical habitat may also provide some educational or informational benefits. Therefore, we find that designation of critical habitat is prudent for the Ohlone tiger beetle.

However, our budget for listing activities is currently insufficient to allow us to immediately complete all of the listing actions required by the Act. Listing the Ohlone tiger beetle without designation of critical habitat will allow us to concentrate our limited resources on other listing actions that must be addressed, while allowing us to invoke protections needed for the conservation of this species without further delay. This is consistent with section 4(b)(6)(C)(i) of the Act, which states that final listing decisions may be issued without critical habitat designations when it is essential that such determinations be promptly published. We will prepare a critical habitat designation in the future at such time when our available resources and priorities allow.

Available Conservation Measures

Conservation measures provided to species listed as endangered or threatened under the Act include recognition, recovery actions, requirements for protection, and prohibitions against certain activities. Recognition through listing results in public awareness and conservation actions by Federal, State, and local agencies, private organizations, and individuals. The Act provides for possible land acquisition and cooperation with the States and requires that recovery actions be carried out for all listed species. The protection required of Federal agencies and the prohibitions against taking and harm are discussed, in part, below.

Section 7(a) of the Act, as amended, requires Federal agencies 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 being designated. Regulations implementing this interagency cooperation provision of the Act are codified at 50 CFR part 402. Section 7(a)(4) of the Act requires Federal agencies to confer with us on any action that is likely to jeopardize the continued existence of a species

proposed for listing or result in destruction or adverse modification of proposed critical habitat. If a species is listed subsequently, section 7(a)(2) of the Act requires Federal agencies to ensure that activities they authorize, fund, or carry out are not likely to jeopardize the continued existence of the species or destroy or adversely modify its critical habitat. If a Federal action may affect a listed species or its critical habitat, the responsible Federal agency must enter into formal consultation with us.

We are not aware of any specific federal actions within the habitat of the Ohlone tiger beetle. If any Federal agency were to fund or issue permits for a project that may affect the Ohlone tiger beetle, that agency would be required to consult with us. Possible nexuses include the Department of Housing and Urban Development and the Department of Commerce's Small Business Administration for funding, and the U.S. Army Corps of Engineers for permits authorized under section 404 of the Clean Water Act.

Listing the Ohlone tiger beetle as endangered will provide for the development of a recovery plan. Such a plan will bring together Federal, State, and local efforts for the beetle's conservation. The plan will establish a framework for agencies to coordinate activities and cooperate with each other in conservation efforts. The plan will set recovery priorities, assign responsibilities, and estimate costs of various tasks necessary to achieve conservation and survival of this species. Additionally, pursuant to section 6 of the Act, we will be able to grant funds to affected States for management actions promoting the protection and recovery of this species.

The Act and its implementing regulations set forth a series of general prohibitions and exceptions that apply to all endangered wildlife. These prohibitions, in part, make it illegal for any person subject to the jurisdiction of the United States to take (includes harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect; or to attempt any of these), import or export, ship in interstate commerce in the course of commercial activity, or sell or offer for sale in interstate or foreign commerce any endangered wildlife species. It is also illegal to possess, sell, deliver, carry, transport, or ship any such wildlife that has been taken illegally. Certain exceptions apply to our agents and State conservation agencies.

Permits may be issued to carry out otherwise prohibited activities involving endangered wildlife under certain circumstances. Regulations governing permits are codified at 50 CFR 17.22 and 17.23. For endangered species, such permits are available for scientific purposes, to enhance the propagation or survival of the species, and for incidental take in connection with otherwise lawful activities.

Our policy, published in the **Federal Register** on July 1, 1994 (59 FR 34272), is to identify, to the maximum extent practicable, those activities that would or would not constitute a violation of section 9 of the Act at the time of listing. The intent of this policy is to increase public awareness of the effect of this listing on proposed and ongoing activities within the species' range.

We believe that, based on the best available information, the following actions are not likely to result in a violation of section 9, provided these activities are carried out in accordance with existing regulations and permit requirements:

(1) Possession, delivery, or movement, including interstate transport and import into or export from the United States, involving no commercial activity, of dead specimens of this taxon that were collected prior to the date of publication in the **Federal Register** of a final regulation adding this taxon to the list of endangered species; and

(2) Activities conducted in accordance with reasonable and prudent measures identified by us in a biological opinion issued pursuant to section 7 of the Act, and activities authorized under section 10 of the Act.

We believe that the following actions could result in a violation of section 9; however, possible violations are not limited to these actions alone:

(1) Collection of specimens of this taxon for private possession or deposition in an institutional collection;

(2) Sale or purchase of specimens of this taxon, except for properly documented antique specimens of this taxon at least 100 years old, as defined by section 10(h)(1) of the Act;

(3) Release of biological control agents that attack any life stage of this taxon;

(4) Destruction or alteration of occupied habitat of the Ohlone tiger beetle (*e.g.,* excavating, compacting, grading, discing, or removing soil);

(5) Recreational use of occupied habitat of the Ohlone tiger beetle (*e.g.*, off-highway vehicular use, horse riding, mountain biking, or hiking); and

(6) Management of vegetation (*e.g.,* burning, grazing, or mowing).

Questions regarding whether specific activities risk violating section 9 should be directed to our Ventura Fish and Wildlife Office (see **ADDRESSES** section). Requests for copies of the regulations on listed plants and animals, and general inquiries regarding prohibitions and permits, may be addressed to the U.S. Fish and Wildlife Service, Ecological Services, Endangered Species Permits, 911 N.E. 11th Avenue, Portland, Oregon, 97232–4181 (telephone 503/231–2063; facsimile 503/231–6243).

National Environmental Policy Act

We have determined that Environmental Assessments and Environmental Impact Statements, as defined under the authority of the National Environmental Policy Act of 1969, need not be prepared in connection with regulations adopted pursuant to section 4(a) of the Act. We published a notice outlining our reasons for this determination in the **Federal Register** on October 25, 1983 (48 FR 49244).

Paperwork Reduction Act

This rule does not contain any new collections of information other than those already approved under the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.*, and assigned Office of Management and Budget clearance number 1018–0094. 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. For additional information concerning permits and associated requirements for endangered wildlife species, see 50 CFR 17.22.

References Cited

A complete list of all references cited in this rulemaking is available upon request from the Ventura Fish and Wildlife Office (see **ADDRESSES** section).

Author

The primary author of this final rule is Colleen Sculley, Ventura Fish and Wildlife Office (see **ADDRESSES** section) (telephone 805/644–1766).

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 follows:

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 section 17.11(h) by adding the following, in alphabetical order under INSECTS, to the List of Endangered and Threatened Wildlife:

§ 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							
*	*	*	*	*	*	*	*
Beetle, Ohlone tiger	*Cicindela ohlone (CA)*	U.S.A. (CA)	NA	E	713	NA	NA
*	*	*	*	*	*	*	*

Dated: September 21, 2001.

Marshall P. Jones Jr.,

Acting Director, U.S. Fish and Wildlife Service.

[FR Doc. 01–24647 Filed 10–2–01; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 223

[Docket No. 010926236–1236–01; I.D. 091301B]

RIN 0648–AP63

Sea Turtle Conservation; Restrictions to Fishing Activities

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

ACTION: Interim final rule; request for comments.

SUMMARY: NMFS is closing the waters of Pamlico Sound, North Carolina, to fishing with gillnets with a mesh size larger than 4¼ inch (10.8 cm) stretched mesh (''large-mesh gillnet''), from September 28, 2001 through December 15, 2001, to protect migrating sea turtles. The closed area includes all inshore waters of Pamlico Sound south of 35°46.3′ N. lat., north of 35°00′ N. lat., and east of 76°30′ W. long. NMFS is also considering issuance of a final rule establishing this seasonal closure each year as a permanent sea turtle conservation measure and is seeking comments on this interim rule.

DATES: This interim final rule is effective on September 28, 2001 through September 14, 2002. However, the provisions of § 223.206(d)(7) are applicable September 28, 2001 through December 15, 2001. Comments on this interim final rule are requested and must be postmarked or transmitted by facsimile by 5 p.m., Eastern Standard Time, on January 2, 2002. Comments transmitted via e-mail or the Internet will not be accepted.

ADDRESSES: Send written comments on this interim final rule to the Chief, Endangered Species Division, Office of Protected Resources, NMFS, 1315 East-West Highway, Silver Spring, MD 20910. Comments may also be sent via fax to 301–713–0376, Attn: Chief, Endangered Species Division, Office of Protected Resources. Comments will not be accepted if submitted via e-mail or the Internet. Copies of the Environmental Assessment (EA) prepared for this interim final rule and for the ESA Section 10(a)(1)(B) permit to NCDMF may also be requested at the same address.

FOR FURTHER INFORMATION CONTACT: David M. Bernhart (ph. 727–570-5312, fax 727–570–5517, e-mail David.Bernhart@noaa.gov), or Barbara A. Schroeder (ph. 301–713–1401, fax 301–713–0376, e-mail Barbara.Schroeder@noaa.gov).

SUPPLEMENTARY INFORMATION: All sea turtles that occur in U.S. waters are listed as either endangered or threatened under the Endangered Species Act of 1973 (ESA). The Kemp's ridley (*Lepidochelys kempii*), leatherback (*Dermochelys coriacea*), and hawksbill (*Eretmochelys imbricata*) are listed as endangered. Loggerhead (*Caretta caretta*) and green (*Chelonia mydas*) turtles are listed as threatened, except for populations of green turtles in Florida and on the Pacific coast of Mexico, which are listed as endangered.

Under the ESA and its implementing regulations, taking sea turtles—even incidentally—is prohibited, with exceptions for threatened species identified in 50 C.F.R. 223.206. The incidental take of endangered species may only legally be authorized by an incidental take statement provided or an incidental take permit issued pursuant to section 7 or 10 of the ESA.

1999 Events

In early November 1999, significant increases were noted in inshore sea turtle strandings in the southeastern portion of Pamlico Sound. During November and December, a total of 97 strandings occurred in the area. Kemp's ridley turtles accounted for 46 of the strandings; 31 of the strandings were loggerhead turtles; 19 of the strandings were green turtles; and the species of one of the turtles was not identified. Onboard sea turtle monitoring was conducted by the NCDMF in southeastern Pamlico Sound during November 22–24, 1999. Eleven observer trips were conducted, consisting of five trips aboard deep-water flounder gillnet (5 inch (12.7 cm) and larger stretched mesh) vessels and six trips aboard spotted seatrout gillnet (3 to 4 inch (7.6 to 10.2 cm) stretched mesh, or ''small-mesh gillnet'') vessels. Gear characteristics, set locations and soak times were recorded for each set. Two Kemp's ridley turtles were observed captured in deep-water flounder gillnets in five observer trips. No sea turtles were captured in the observed trips aboard the small mesh gillnet vessels. While limited data had been available previously concerning gillnet takes of sea turtles, the deep-water, large-mesh gillnet fishery for flounder in southeastern Pamlico Sound was suspected of being responsible for a significant portion of the sea turtle strandings. The NCDMF Marine Patrol and NOAA Fisheries Enforcement personnel conducted joint surveillance of the Pamlico Sound shrimp and gillnet fisheries during November 1999. No shrimp trawl TED violations were detected in the area. Enforcement personnel reported significant large-mesh gillnet activity in the vicinity of the strandings. An untended large-mesh gillnet was checked by enforcement

personnel, and a dead Kemp's ridley turtle was found entangled in the net.

On December 10, 1999, NMFS issued an emergency rule closing southeastern Pamlico Sound to the use of gillnets larger than 5 inch (12.7 cm) mesh to protect endangered and threatened sea turtles (64 FR 70196). Strandings decreased after implementation of the closure; however, many fishermen had stopped fishing for flounder prior to the closure. The decrease in fishing effort may have resulted in the decrease in strandings. The closure remained in effect through January 9, 2000.

2000 Events

NMFS officials met with some of the affected fishermen and the NCDMF Director on January 6, 2000, in Engelhard, N.C., to discuss the emergency closure. Many fishermen insisted that there was insufficient evidence to show that their fishery was primarily responsible for the sea turtle mortality. Some indicated that other factors, primarily the after-effects of Hurricanes Dennis and Floyd that had hit eastern North Carolina in August and September 1999, may have contributed to the turtle deaths. The fishermen acknowledged that they had fished large amounts of gear that season, up to 10,000 yards (9,140 m) and more typically 5,000 yards (4,570 m) each, but that the large amounts of gear were necessary to compete in the mostly unregulated fishery. The fishermen agreed that more observer information from the large-mesh gillnet fishery was necessary to describe the fishery's turtle bycatch. The NMFS officials explained the ESA prohibitions against takes of endangered species like the Kemp's ridley turtle. Without the incidental take authorization provided by a section 10(a)(1)(B) permit, additional illegal takes would likely result in the closure of the fishery again. The NCDMF Director told the fishermen that NCDMF would likely pursue a section 10 permit and would institute gear restrictions and an observer program for the 2000 season.

NCDMF submitted an application to NMFS on June 21, 2000, for a section 10(a)(1)(B) permit to authorize the incidental take of sea turtles in the fall, large-mesh gillnet fishery in southeastern Pamlico Sound. NCDMF called this area the Pamlico Sound Gillnet Restricted Area (PSGNRA). NMFS announced the receipt of the permit application in the **Federal Register** on August 3, 2000 (65 FR 47715), and requested public comments through September 5, 2000. In response to comments from the public and NMFS, NCDMF provided additional details on their application and made some changes to their proposed management of the fishery under the permit. On October 5, 2000, NMFS issued permit 1259 to NCDMF, valid through December 15, 2000.

The goal of the conservation plan, required to be submitted by applicants for ESA section 10(a)(1)(B) permits, for permit 1259 was for NCDMF to monitor sea turtle interactions in the fall large-mesh gillnet fishery in the PSGNRA and to implement management measures to reduce sea turtle mortality by 50 percent from September 15 through December 15, compared to the levels seen in the strandings of 1999. Permit 1259 set corresponding limits on the allowed levels of observed takes of sea turtles—both live and lethal takes—and documented strandings.

NCDMF implemented registration and reporting requirements and yardage limitations (no more than 3,000 yards (2,743 m) of gillnet per fishing operation) for the large-mesh gillnet fishery in southeastern Pamlico Sound. NCDMF also placed observers aboard a portion of the large-mesh gillnet boats to be able to estimate the actual turtle take levels against the limits in the permit. During the fifth week of the season (October 14 to 20, 2000), the number of lethal captures of green sea turtles, based on the observer coverage, had exceeded the level allowed by Permit 1259. Stranding levels had not yet reached the maximum level allowed by Permit 1259. The NCDMF Director issued a fisheries proclamation closing the PSGNRA to gillnetting with mesh size of 5 inch (12.7 cm) or greater, effective October 27, 2000.

From October 28 to December 15, 2000, 59 sea turtles (excluding live, cold-stunned animals) stranded within the PSGNRA. Although the PSGNRA was closed to gillnet fishing with nets with 5 inch (12.7 cm) or larger mesh, some fishermen re-equipped their nets with a 4⅞ inch (12.4 cm) mesh size to circumvent the closure and continued fishing and targeting flounder. Fishermen using 3 to 4 inch (7.6 to 10.2 cm) mesh gear to target seatrout or mackerel were also unaffected by the closure and continued to fish within the PSGNRA. Other fishermen simply moved their large-mesh gear slightly to the north or west of the boundaries of the PSGNRA and continued fishing immediately outside the closed area. The PSGNRA included the preferred fishing grounds for flounder, and the flounder catch rates for those fishermen who moved out of the PSGNRA were reportedly low. Since none of this fishing activity was authorized by the permit, NCDMF did not place observers aboard gillnet vessels in Pamlico Sound after the closure of the PSGNRA. Because of the demonstrated capture and mortality of sea turtles in large-mesh gillnets before the closure, NMFS believes that the continued, unmonitored gillnet fishing in and around the PSGNRA after the closure contributed to many of the subsequent sea turtle strandings.

Description of the Fishery

The Pamlico Sound large-mesh gillnet fishery can be divided into two components—shallow-water and deep-water, which are distinguished by their fishing areas, seasons, tactics, participants, and vessel characteristics.

The deep-water fishery operates from September through December with fishermen setting nets along a slope adjacent to the main basin of Pamlico Sound. Fishing depths in this area range from 10 to 20 feet (3.0 to 6.1 m). Vessels are typical ocean sink gillnet boats ranging from 25 to 45 feet (7.6 to 13.7 m) in length. Each vessel is operated by a two-man crew. Each vessel sets between 2,000 yards (1,828 m) and 10,000 yards (9,140 m) of large-mesh (most often 5.5 to 6.5 inch (14.0 to 16.5 cm)) gillnet, which are soaked for up to 3 days and retrieved with the aid of net reels. Net depths range from 8 to 12 feet (2.4 m to 3.7 m) with tie-downs 2 to 4 feet (.61 to 1.2 m) long attached to the float and lead lines at 50 foot (15.2 m) intervals along the net. Tie-downs are used in this fishery to produce a bag or pocket of webbing, which is believed to increase the catch efficiency for bottom-dwelling flounder. There were 25 active participants in this fishery during the 2000 fishing season with most trips originating from Engelhard or Swan Quarter, N.C., and a small portion leaving from Hatteras, N.C. This fishery has developed within the past 10 years from what was initially only a few fishermen setting a few thousand yards of gillnet. Effort has steadily increased with more participants fishing more gear each year. During the past several years, gillnets have surpassed pound nets as the dominant gear for flounder in North Carolina's estuarine waters. Pound nets had long been the traditional means for harvesting flounder in North Carolina waters.

Monitoring of the deep-water fishery during the 2000 fishing season consisted of 13.1 percent observer coverage within the PSGNRA with 35 trips observed. Fourteen sea turtle interactions were observed involving four Kemp's ridleys, two greens, and eight loggerheads. Eight of these turtles were released alive; six were dead.

The shallow-water fishery operates from April through December in areas next to the barrier islands in Pamlico Sound, extending both north and southwest of the PSGNRA along the Outer Banks. Most fishing in these areas occurs in depths of less than 3 feet (0.9 m). Vessels are usually open skiffs ranging from 15 to 25 feet (4.6 to 7.6 m) in length with one or two-man crews. Each fisherman typically sets 500 to 2000 yards (457 to 1,828 m) of large-mesh (5.5 to 7.0 inch (14.0 to 17.8 cm)) gillnet. The nets are soaked overnight and retrieved by hand. Tie-downs are not used in this fishery, but net depths range from 6 to 11 feet (1.8 to 3.4 m) with sets occurring in depths less than 3 feet (0.9 m). This combination of water depth and net depth provides the same bag effect as the tie-down in the deep-water fishery. There were 68 active participants that fished within the PSGNRA during the 2000 fishing season. The shallow-water gillnet fishery is considered to be more traditional than the deep-water gillnet fishery.

Monitoring during the 2000 fishing season consisted of 4.3 percent observer coverage of the shallow-water, large-mesh fishery within the PSGNRA with 37 trips observed. Four sea turtle interactions were observed. All were green turtles. Three were released alive; one was dead.

NCDMF's Section 10(a)(1)(B) Permit Application

Permit 1259 was issued for the 2000 fall fishing season only and its authorization for incidental take expired when the authorized level was exceeded in October 2000. Although section 10(a)(1)(B) permits are generally issued for multi-year periods of time, NMFS and NCDMF believed that the newness of the fishery, the apparent high levels of turtle interaction, and the paucity of observer data for management decisions justified a single-year permit in 2000 to allow NCDMF to gather important information about bycatch issues in the fishery. NMFS, in issuing permit 1259, had to consider the effects of the permit on listed species, pursuant to sections 7(a)(2) and 7(b) of the ESA. The resulting biological opinion concluded that, as a one-year only event, the issuance of Permit 1259 and the fishery were not likely to jeopardize the continued existence of any listed species of sea turtle. The opinion did acknowledge, however, that additional, future permits might be sought by NCDMF for large-mesh gillnetting in Pamlico Sound, perhaps modified based on the outcome of the 2000 permit. NMFS would then have to consider the effects of the resulting take on a much longer-term basis prior to issuing any such permits.

NMFS received an application for another ESA section 10(a)(1)(B) permit from NCDMF on August 9, 2001 that would allow NCDMF to manage both large-mesh and small-mesh gillnet fisheries and incidental sea turtle takings in Pamlico Sound in the 2001 season as an exemption to the ESA's prohibition on takes and as an exemption the closure instituted by this interim final rule. NMFS published a notice of receipt of NCDMF's application in the **Federal Register** on August 15, 2001. NMFS requested public comments on the application for the required 30-day period, through September 14, 2001. NCDMF's proposed management period for the permitted activity is September 15 through December 15, 2001. Although NMFS will expedite the decision on issuance of the permit, the permit could not be issued prior to the proposed September 15 start date because of public notice and comments requirements of the ESA.

The conservation plan in NCDMF's permit application includes the creation of three specified Shallow Water Gillnet Restricted Areas (SGNRAs) around the inside of the Outer Banks in Pamlico Sound and two inlet corridors at Hatteras and Ocracoke Inlets. Large- and small-mesh gillnet fishing operations in the SGNRAs will require a special permit from NCDMF, will be required to accept observers, and will be required to file weekly reports of fishing catch and effort to NCDMF. Large- and small-mesh gillnet fishing operations will be limited to a maximum of 2,000 yards (1,835 m) of net. From September 15 through October 31, small-mesh gillnet fishing operations will be required to attend their nets. Large-mesh gillnetting will be prohibited by NCDMF in the inlet corridors from September 15 through December 15, 2001. On August 22, 2001, the NCDMF Director issued a state fisheries Proclamation that implemented these management measures, effective September 15, 2001.

NMFS has determined that NCDMF's permit application meets the issuance criteria. NMFS intends to issue the permit, simultaneously with the effective date of this interim final rule.

Closure of Large-Mesh Gillnet Fishing in Pamlico Sound

Through this interim final rule, NMFS is closing the waters of Pamlico Sound, North Carolina, to fishing with gillnets with a mesh size larger than 4¼ inches (10.8 cm) stretched mesh, from September 15 through December 15. The closed area includes all inshore waters of Pamlico Sound south of 35°46.3′ N. lat. (the south side of Oregon Inlet), north of 35°00′ N. lat. (the south end of Portsmouth Island), and east of 76°30′ W. long. (a line of longitude which crosses the mouths of the Neuse River, Bay River, and Pamlico River). The Outer Banks and the COLREGS line form the seaward boundary of the closed area. The closed area includes all contiguous tidal waters to Pamlico Sound, within the stated boundaries. The large-mesh gillnet fishery in Pamlico Sound has been shown to take, including to capture and kill, numerous endangered and threatened sea turtles during their fall migration. NMFS is taking this action to prevent further takes of listed species in this fishery.

Issuance of the section 10(a)(1)(B) permit to NCDMF would create an exemption to this closure for large-mesh gear fished in shallow water, pursuant to 50 CFR 223.206(a)(2), as long as permit conditions and the conservation plan are followed. The deep-water fishery, which has fewer participants yet catches and kills more sea turtles (based on NCDMF's 2000 observer data), was not included in NCDMF's permit application, nor in their Proclamation, issued on August 22, 2001. Therefore, this closure is necessary to ensure the effective implementation of NCDMF's conservation plan by preventing large-mesh gillnet fishing in Pamlico Sound outside of the management of fishery by NCDMF under the conservation plan of the permit. In particular, this closure will prevent large-mesh gillnetting in deep-water areas, and it will prevent vessels from moving outside of the SGNRAs to avoid monitoring by NCDMF, as happened last year. This closure will also prevent illegal takings after the permit expires or the permit's incidental take limit is met or exceeded. NCDMF distributed a press release on August 22, 2001, that covered their Proclamation and gillnet restrictions and stated: ''It is anticipated NMFS will close the majority of deep-water areas of the Pamlico Sound to large-mesh gill nets later this fall.''

Request for Comments

NMFS is considering issuance of a final rule establishing this seasonal closure each year as a permanent sea turtle conservation measure. Written public comments on this interim final rule must be postmarked or transmitted by facsimile by 5 p.m., Eastern Standard Time, on January 2, 2002 (see **ADDRESSES**). Comments are particularly sought on the area and season covered in this interim final rule and whether they should be changed or expanded. The NCDMF application specified a

September 15 to December 15 season for the fall gillnet fishery in Pamlico Sound, and this interim final rule applies only to that season and area for consistency with the state's action. NMFS is aware, however, that large-mesh gillnet fishing for flounder occurs in Pamlico Sound in the summer as well, when sea turtles would be expected to occur in the Sound in relatively high numbers. Adjacent Core Sound also has large-mesh gillnetting for flounder and contains important sea turtle habitat but is not included in the closed area in this interim final rule. Information and data on sea turtle-gillnet interactions in North Carolina inshore waters, including Core Sound, are specifically requested, as are suggested alternative approaches to minimizing the extent and effects of those interactions.

Comments will be considered by NMFS in determining whether to adopt permanently, modify, or withdraw this interim final rule. NMFS intends to take final action on this issue early in 2002, to provide greater certainty and advance notice to the public before the 2002 fishing season. If significant changes to the interim final rule are needed, NMFS will first publish a proposed rule and seek additional public comment. If NMFS determines to adopt this interim final rule permanently, a final rule will be published in the **Federal Register**.

Classification

NMFS prepared an Environmental Assessment (EA) for this interim final rule and the issuance of the ESA Section 10(a)(1)(B) permit to NCDMF and concluded that these regulations and issuance of the permit would pose no significant adverse environmental impact.

The actions implemented by this interim final rule are expected to impact approximately 25 large-mesh, deep-water gillnet vessel owners and operators. Four alternatives were evaluated in the EA prepared for this interim final rule, including a status quo or ''no action'' alternative. For a description and analysis of the alternatives, readers should refer to the EA prepared for this interim final rule. The total cost to the fisheries for the primary target species—southern flounder—is expected to be zero. The primary effect of this interim final rule will be a redistribution of catch from deep-water gillnet fishermen to shallow-water and small-mesh gillnet fishermen and pound net fishermen, and the overall fishing effort targeting southern flounder in Pamlico Sound is very high and capable of fully exploiting the resource. In 2000, gillnet landings exceeded the previous year's levels in spite of NCDMF's closure of the primary fishing grounds to gillnetting with gear greater than 5 inch (12.7 cm) mesh halfway through the season. Using worst-case assumptions, though, the 25 primarily affected vessels may be faced with a loss of potential revenue of around $10,000 to $20,000 per year each, depending on fish prices. The affected vessels, however, are the largest in the fishery and have the greatest number of alternative fisheries, as they are essentially ocean-gillnet vessels. They are also the most recent entrants into the fishery. The vessels who would continue to fish under the provisions of the permit, on the other hand, are considered more traditional to the fishery, are generally smaller, and many of them cannot safely work outside the sheltered waters of the Sound.

This interim final rule does not contain collection-of-information requirements subject to the Paperwork Reduction Act.

This interim final rule has been determined to be not significant for purposes of Executive Order 12866.

A biological opinion (BO) on the issuance of the ESA Section 10(a)(1)(B) permit to NCDMF was finalized in September 2001. That BO concludes that issuance of the permit for the 2001 fishing season, with the conditions and limitations on total authorized levels of sea turtle capture and mortality, was not likely to jeopardize the continued existence of any species of sea turtle. This interim final rule implements measures that ensure that the proposed action takes place as considered in the BO. That is, the conclusion of the BO is based on the assumption that impacts to sea turtles in the fall 2001 Pamlico Sound gillnet fisheries will be limited to legally authorized takes, in accordance with the permit's conservation plan. This interim final rule is necessary to ensure that unauthorized takes do not occur in gillnet fisheries outside of NCDMF's conservation plan. The effects of the interim final rule itself on listed species are strictly beneficial, by preventing further takings.

Given the status of the species to be protected and the fact that unauthorized takings of listed species of sea turtles are continuing to occur, the Assistant Administrator (AA), for good cause, under 5 U.S.C. 553(b)(3)(B) finds that delaying this action to allow for prior notice and an opportunity for public comment would be impracticable and contrary to the public interest because providing public notice and opportunity for comment would prevent the agency from implementing this action in a timely manner to protect the listed sea turtles. This decision is based on the fact that large-mesh gillnet fishing is presently allowed without restriction throughout Pamlico Sound. On September 15, NCDMF issued a gillnet Proclamation which applies to the SGNRAs and inlet corridors along the southern and eastern edges of Pamlico Sound, but not to the remaining majority of Sound waters, especially the deep-water areas where sea turtle take and mortality have been demonstrated to be high. Large-mesh gillnet fishing effort is currently increasing as changing water temperatures cause flounder to move through the Sound. Sea turtles apparently respond similarly to the fall weather in Pamlico Sound, increasing their vulnerability to being captured and killed as the fishing effort also peaks. In 2000, strandings in North Carolina's coastal waters reached a new record level of 838 turtles. The continuation of sea turtle mortality along the North Carolina coast at such high levels would seriously threaten sea turtle populations, and this interim final rule is intended to address a major source of fishing-related sea turtle mortality. For the same reasons, the AA finds good cause also under 5 U.S.C. 553(d)(3) not to delay the effective date of this rule for 30 days. As prior notice and opportunity for public comment are not required to be provided for this interim final rule by 5 U.S.C. 553, or by any other law, the analytical requirements of the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*, are inapplicable.

In keeping with the intent of Executive Order 13132 to provide continuing and meaningful dialogue on issues of mutual State and Federal interest, NMFS has conferred with the State of North Carolina regarding the development of NCDMF's endangered and threatened species incidental take permit application and the need for NMFS to implement a complementary closure to ensure the effectiveness of the State's conservation plan. NMFS has coordinated the timing of the publication of this interim final rule with the issuance of the ESA Section 10(a)(1)(B) permit to NCDMF, which creates an exemption to the closure in this action. NMFS intends to continue to consult with the State of North Carolina during the implementation of this rule and NCDMF's management of sea turtle interaction in state water fisheries.

List of Subjects in 50 CFR Part 223

Administrative practice and procedure, Endangered and threatened species, Exports, Imports, Reporting and recordkeeping requirements.

Dated: September 27, 2001.

William T. Hogarth,

Assistant Administrator for Fisheries, National Marine Fisheries Service.

For the reasons set out in the preamble, 50 CFR part 223 is amended to read as follows:

PART 223—THREATENED MARINE AND ANADROMOUS SPECIES

1. The authority citation for part 223 continues to read as follows:

Authority: 16 U.S.C. 1531 *et seq.*

2. In § 223.206(d), add paragraph (d)(7) to read as follows:

* * * * *

(d) * * *

(7) *Restrictions applicable to gillnet fisheries in North Carolina.* No person may fish with gillnet fishing gear which has a stretched mesh size larger than 4¼ inches (10.8 cm), from September 28, 2001 through December 15, 2001, in the inshore waters of Pamlico Sound, North Carolina, and all contiguous tidal waters, bounded on the north by 35°46.3′ N. lat., on the south by 35°00′ N. lat., and on the west by 76°30′ W. long.

[FR Doc. 01–24722 Filed 9–28–01; 5:06 pm]

BILLING CODE 3510–22–P

Proposed Rules

Federal Register
Vol. 66, No. 192
Wednesday, October 3, 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 ENERGY

Office of Energy Efficiency and Renewable Energy

10 CFR Part 431

[Docket No. EE–RM–96–400]

Energy Efficiency Program for Certain Commercial and Industrial Equipment: Petition for Recognition of Underwriters Laboratories Inc. To Be Classified as a Nationally Recognized Certification Program for Electric Motor Efficiency

AGENCY: Office of Energy Efficiency and Renewable Energy; Department of Energy.

ACTION: Public notice and solicitation of comments.

SUMMARY: Underwriters Laboratories Inc. has petitioned the Department of Energy (Department) to classify its Energy Verification Service program for electric motors as a nationally recognized certification program in the United States. The Department solicits comments, data and information as to whether to grant the Petition.

DATES: Written comments, data and information, in triplicate, must be received at the Department of Energy by October 18, 2001.

ADDRESSES: Written comments, data and information should be labeled ''Underwriters Laboratories Inc. Petition to be Classified as a Nationally Recognized Certification Program for Electric Motor Efficiency,'' and submitted to: Ms. Brenda Edwards-Jones, Office of Energy Efficiency and Renewable Energy, EE–41, U.S. Department of Energy, 1000 Independence Avenue SW., Washington, DC 20585–0121. Telephone: (202) 586–2945; Telefax: (202) 586–4617. Also, a copy of such comments should be submitted to Ms. Jodine E. Smyth, Senior Coordinator, Global Accreditation Services, Underwriters Laboratories Inc., 333 Pfingsten Road, Northbrook, IL 60062. Telephone: (847) 272–8800, ext. 42418; or Telefax (847) 509–6321.

FOR FURTHER INFORMATION CONTACT:

James Raba, U.S. Department of Energy, Office of Energy Efficiency and Renewable Energy, Mail Station EE–41, 1000 Independence Avenue, SW., Washington, DC 20585–0121, telephone (202) 586–8654, telefax (202) 586–4617, or: jim.raba@ee.doe.gov.

Francine Pinto, Esq., U.S. Department of Energy, Office of General Counsel, Mail Station GC–72, 1000 Independence Avenue, SW., Washington, DC 20585–0103, (202) 586–7432, telefax (202) 586–4116, or: francine.pinto@hq.doe.gov.

SUPPLEMENTARY INFORMATION: A copy of the Underwriters Laboratories Inc. petition for its certification program to be nationally recognized is appended to this notice. Supporting documents that accompanied the Petition may be viewed at the Freedom of Information Reading Room, U.S. Department of Energy, Forrestal Building, Room 1E–190, 1000 Independence Avenue, SW., Washington, DC 20585–0101, telephone (202) 586–3142, between the hours of 9:00 a.m. and 4:00 p.m., Monday through Friday, except Federal holidays. Also, it can be viewed on the World Wide Web at http://www.eren.doe.gov/buildings/codes_standards/rules/index.htm.

Additional information about Underwriters Laboratories Inc.'s Energy Verification Services (EVS), and in particular, three-phase induction (1–200 horsepower) motors, can be obtained on the World Wide Web at *http://www.ul.com/energy/index.html* and *http://www.ul.com/energy/elements.html* and *http://www.ul.com/energy/test.html* respectively, or from Ms. Jodine E. Smyth, Senior Coordinator, Global Accreditation Services, Underwriters Laboratories Inc., 333 Pfingsten Road, Northbrook, IL 60062, or telephone: (847) 272–8800, ext. 42418; or telefax (847) 509–6321, or electronic mail at Jodine.E.Smyth@us.ul.com Also, information about the Petition to be a nationally recognized certification program for electric motor efficiency can be obtained from Ms. Smyth.

The Final Rule for Test Procedures, Labeling, and Certification Requirements for Electric Motors, 10 CFR Part 431, was published in the **Federal Register** (64 FR 54114) on October 5, 1999. It can also be obtained from the Office of Building Research and Standards, Office of Energy Efficiency and Renewable Energy, EE–41, U.S. Department of Energy, 1000 Independence Avenue SW., Washington, DC 20585–0121, or telephone 202–586–9127, or on the World Wide Web at http://www.eren.doe.gov/buildings/codes_standards/rules/motors/index.htm

Authority

Part C of Title III of the Energy Policy and Conservation Act contains energy conservation requirements for electric motors, including test procedures, energy efficiency standards, and compliance certification requirements. 42 U.S.C. 6311–6316. Section 345(c) of EPCA directs the Secretary of Energy to require motor manufacturers ''to certify through an independent testing or certification program nationally recognized in the United States, that [each electric motor subject to EPCA efficiency standards] meets the applicable standard.'' 42 U.S.C. 6316(c). Regulations to implement this EPCA directive are codified in Title 10 of the Code of Federal Regulations Part 431 (10 CFR Part 431) at sections 431.123, *Compliance Certification,* 431.27, *Department of Energy recognition of nationally recognized certification programs,* and 431.28, *Procedures for recognition and withdrawal of recognition of accreditation bodies and certification programs.* Sections 431.27 and 431.28 set forth the criteria and procedures for national recognition of an energy efficiency certification program for electric motors by the Department of Energy.

Background

For a certification program to be classified by the Department of Energy as being nationally recognized in the United States for the purposes of section 345 of EPCA, the organization operating the program must submit a petition to the Department requesting such classification, in accordance with sections 431.27 and 431.28 of 10 CFR Part 431. In sum, for the Department to grant such a petition, the certification program must: (1) Have satisfactory standards and procedures for conducting and administering a

certification system, and for granting a certificate of conformity; (2) be independent of electric motor manufacturers, importers, distributors, private labelers or vendors; (3) be qualified to operate a certification system in a highly competent manner; and (4) be expert in the test procedures and methodologies in IEEE Standard 112–1996 Test Method B and CSA Standard C390–93 Test Method (1), or similar procedures and methodologies for determining the energy efficiency of electric motors, and have satisfactory criteria and procedures for selecting and sampling electric motors for energy efficiency testing. 10 CFR Part 431.27(b).

Each petition requesting classification as a nationally recognized certification program must contain a narrative statement as to why the organization meets the above criteria, be accompanied by documentation that supports the narrative statement, and signed by an authorized representative. 10 CFR Part 431.27(c).

Discussion

Pursuant to sections 431.27 and 431.28(a) of 10 CFR Part 431, on February 16, 2001, Underwriters Laboratories Inc. submitted to the Department a Petition for ''Classification in Accordance with 10 CFR Part 431.27'' (''Petition'' or ''UL Petition''). The Petition consisted of a letter from Underwriters Laboratories Inc. to the Department, narrative statements on each of four subjects, and supporting documentation on these subjects. The Department is required to publish in the **Federal Register** such petitions for public notice and solicitation of comments, data and information as to whether the Petition should be granted. 10 CFR Part 431.28(b). The Department is hereby publishing as an attachment to this notice the four narrative statements in their entirety. Also, attached is the Department's summary of the supporting documentation.

The Department hereby solicits comments, data and information on whether the Underwriters Laboratories Inc. Petition should be granted. 10 CFR Part 431.28(b). Any person submitting written comments to DOE with respect to the Underwriters Laboratories Inc. Petition must also, at the same time, send a copy of such comments to Underwriters Laboratories Inc. As provided under section 431.28(c) of 10 CFR Part 431, Underwriters Laboratories Inc. may submit to the Department a written response to any such comments. After receiving any such comments and responses, the Department will issue an interim and then a final determination on the Underwriters Laboratories Inc. Petition, in accordance with sections 431.28(d) and (e) of 10 CFR Part 431.

In particular, the Department is interested in obtaining comments, data, and information respecting the following:

a. *Attachment 1 of the Underwriters Laboratories Inc.'s Petition,* segment entitled ''431.27(c)(1) Standards and Operating Procedures.'' The Department is interested in obtaining comments as to how rigorously Underwriters Laboratories Inc. operates its certification system under the guidelines contained in ISO/IEC Guide 65, *General requirements for bodies operating product certification systems.*

b. *Attachment 1 of the Underwriters Laboratories Inc.'s Petition,* segment entitled ''Test Facility Evaluation.'' The Department is interested in obtaining comments concerning the step-by-step procedures and processes that, in fact, Underwriters Laboratories uses to examine and qualify a testing facility under the guidelines contained in ISO/IEC Guide 25, *General requirements for the competence of calibration and testing laboratories.* Also, the procedures it uses to evaluate motor efficiency through review of motor design and construction information, conduct actual witness testing, analyze test data, and determine the reliability of an alternative efficiency determination method.

c. *Attachment 1 of the Underwriters Laboratories Inc.'s Petition,* segment entitled ''Sample Selection.'' The Department is interested in obtaining comments concerning the criteria and procedures Underwriters Laboratories Inc. uses for the selection and sampling of electric motors to be tested for energy efficiency.

d. *Attachment 2 of the Underwriters Laboratories Inc.'s Petition,* segment entitled ''431.27(c)(2) Independence.'' The Department is interested in obtaining comments as to whether there is a conflict of interest, or the appearance of a conflict of interest, in certain situations where Underwriters Laboratories Inc. has an ongoing relationship, direct or indirect, with a motor manufacturer, importer, private labeler, or other such entity through (a) the UL product listing process for safety, or (b) through a manufacturer's representative that would serve in a UL Industry Advisory Group.

e. *Attachment 4 of the Underwriters Laboratories Inc.'s Petition,* segment entitled ''431.27(c)(4) Expertise in Motor Test procedures.'' The Department is interested in obtaining comments concerning the technical qualifications and experience of Underwriters Laboratories Inc. staff with evaluating and testing electric motors for energy efficiency under IEEE 112–1996 Test Method B and CSA C390–93 Test Method (1).

Additionally, the Department has been conducting an independent investigation of the Underwriters Laboratories Inc., Energy Verification Service.

Issued in Washington, DC, September 27, 2001.

David K. Garman,

Assistant Secretary for Energy Efficiency and Renewable Energy.

Underwriters Laboratories, Inc., Petition

16 February 2001
Mr. James Raba
U.S. Department of Energy, Office of Energy Efficiency and Renewable Energy, Mail Station EE–41, 1000 Independence Ave., SW., Washington, DC 20585–0121

Subject: Classification in Accordance with 10 CFR 431.27

Dear Mr. Raba:

Please accept this letter and supporting documentation as Underwriters Laboratories Inc., petition for classification in accordance with 10 CFR Part 431.27, par. c)—Department of Energy Recognition of Nationally Recognized Certification Programs.

Provided for your review is information regarding:

- The program procedures for implementing UL's Energy Verification Services
- Statement of Independence
- History and evidence of UL's experience as a third party product certification organization.
- History in UL's experience in the field of energy verification services.

If you require any further information regarding this request, please feel free to contact us.

Sincerely,
Jodine E. Smyth (Ext. 42418),
Senior Coordinator, Global Accreditation Services,
FAX: 847–509–6321,
Email: *Jodine.E.Smyth@us.ul.com*

Reviewed by:
Rick A. Titus,
Associate Manager, Global Accreditation Services,
FAX: 847–509–6321,
Email: *Rick.A.Titus@us.ul.com*

Attachment 1

431.27(c)(1) Standards and Operating Procedures

Underwriters Laboratories Inc., energy verification service assists manufacturers demonstrate their products meet UL and Canadian regulations by verifying the energy efficiency ratings of their products. UL's Energy Verification service includes products such as motors, air conditioning units, furnaces, refrigerators, etc. UL's Energy Verification service is offered as an adjunct service to UL's traditional product safety certification programs.

Underwriters Laboratories Inc. product safety certification program is an ISO Guide

65 compliant program as demonstrated by ANSI accreditation, letter/scope is provided at part of Attachment 3. UL's Energy Verification utilizes the same operation manuals as UL's product safety certification services with minor variations that are detailed in the UL Energy Verification Manual.

These variations include: Scope of products: Motors, Three-Phase Induction (1 to 200 horsepower).

Declaration of Test Standards Used

(a) CSA–C390–M93, Three-Phase Induction Efficiency Quoting Method and Permissible Efficiency Tolerance, or

(b) DOE Test Procedure 10 CFR, Part 431.23.

The certification of motors under UL's Energy Verification Service is based upon the satisfactory evaluation and testing to the requirements of the applicable standard. Continued certification is judged through continued surveillance of products at the manufacturing location. The following is a description of the major elements of UL's Energy Verification Service used for qualifying manufacturers' motors.

Application Process

The customer requests energy verification certification of their motors. UL will collect information and provide applications to the customer. Upon receipt of applications UL will assign a qualified UL staff member to be responsible for handling the investigation.

Initial Product Evaluation Criteria

General—The following information is obtained prior to and during the initial visit to the manufacturer's facilities:

(a) Identification of the products being submitted by type, brand name, model designations and, if available, rated yearly energy consumption (kWh/yr.), and any other pertinent information specific to these products.

(b) A summary of test data and information on energy consumption, and product capacity for the products being submitted, obtained in accordance with the applicable Standard.

(c) Information on the test facilities used in obtaining the test data and to be used in verifying the test data—a list of instruments used in making the necessary measurements such as temperature, electrical, time and power supply, information on calibration and other applicable information on the test room such as the location, source of supply and environmental controls.

(d) Information on the products' design and construction, including the critical product features which would affect the product performance with respect to energy efficiency which must be controlled by the manufacturer in order to maintain a consistent product performance with respect to energy efficiency.

(e) A description of the production testing conducted to monitor controls on energy efficiency ratings assigned for the products.

Test Facility Evaluation

Due to the volume of testing, and the need to demonstrate that products manufactured after the initial evaluation remain in compliance with requirements, UL's Energy Verification Service is designed to make use of manufacturers' test facilities. A client may utilize the UL Client Test Data Program or the UL Witness Test Data program. UL's Client Test Data or UL's Witness Test Data programs as detailed in the UL Client Interactive Manual.

The Witness Test data program includes a review of the test facilities, equipment and competence of personnel conducting the testing. All tests are witnessed by UL staff to confirm the results of the tests.

The UL Client Test Data programs requires initial and annual assessments of the clients testing capabilities which includes: the laboratory quality system, physical resources, test equipment, personnel, procedures and documentation of data.

Sample Selection

Representative samples from the manufacturer's production are selected for use in testing witnessed by UL's engineering staff. Representative samples are those that, when reviewed as a group, can adequately represent a line of similar models that use the same major energy consuming components.

The objective in selecting representative samples is to obtain sufficient confidence that the series of motors verified meet the applicable energy efficiency standard and regulation while at the same time minimizing the number of tests the manufacturer is required to perform. For a series of motors, samples are selected to represent the entire range of motors. The data collected in the representative samples is reviewed to verify the samples can completely represent the model line. Additional sampling may be necessary to completely represent the model line.

Product Construction Evaluation

The manufacturer's product construction is evaluated to identify the critical construction features that would affect the product capacity and performance with respect to energy efficiency. In addition, the manufacturer's existing quality assurance procedures for controlling critical construction features, as well as the manufacturer's procedures for ongoing production testing, are evaluated to determine that adequate controls are in place to provide consistent energy efficiency.

On-Going Production Testing

Manufacturers test samples of their products as part of their ongoing production procedures to determine continued compliance with the energy efficiency requirements. The number of samples to be tested and the frequency of testing varies for each product type and is dependent on the applicable standard, government regulation, industry practices and number of units manufactured. The manufacturer is required to document the test results, which UL audits as part of each follow-up visit.

Follow-Up Visits and Testing

UL representatives conduct unannounced inspections at each authorized manufacturing location. Typically, two visits to each manufacturing facility are carried out each year to examine samples of the product and monitor the manufacturers' production and control measures and use of the Energy Verification marking. Whenever possible, the follow-up visits are combined with ongoing safety certification Follow-Up visits. During each visit, samples are selected by the UL representative and tested by the manufacturer at its own or other qualified facility. The test results are compared to the documented test results for the selected products to verify continuing compliance. The number of samples to be tested varies for each product and is dependent on variables similar to those used to determine the number of tests to be performed.

Non-Conformance

For non-conforming test results found during follow-up testing at the manufacturer's own or other qualified test facilities, the manufacturer is required to either remove the UL Energy Verification markings from non-conforming products or determine the cause of non-conformance and implement one of the following:

(a) Cull the lot to segregate non-conforming products;

(b) Rework the lot to correct the non-conformance; or

(c) Determine that no other sample will exhibit non-conformance.

Certification

After determination that the motors meet the applicable standard and regulation, the applicant is formally notified that they are authorized to apply the UL Energy Verification Mark. A Follow-Up Procedure report is issued that contains identification of the motors found in compliance, electrical and efficiency ratings, critical construction features, test results and Follow-Up testing requirements. A directory listing all the products verified for energy efficiency is published and available to the general public.

Follow-Up Service (FUS) Agreement

In compliance with ISO Guide 65 Clause 13.2 and as a means of control of UL's Energy Verification Mark, the applicant and manufacturer must enter into contract ''FUS Agreement'' with Underwriters Laboratories Inc. This FUS Agreement defines the conditions for maintaining certification such as access to manufacturing sites, records, follow-up inspections and product re-testing. A client may only apply UL's mark to products that comply with the UL Follow-Up Procedure, described above.

Attachment 2

431.27(c)(2) Independence

UL is independent and impartial of any individual supplier or purchaser and is free from any other conflict of interest. Attached is a notarized Statement of Independence signed by an officer of the corporation.

Attachment 3

431.27(c)(3) Qualifications

Underwriters Laboratories Inc. (UL) is an independent, not-for-profit product safety certification organization, whose corporate mission is to serve the public by testing products for safety. UL's principal activity is investigating the safety of many kinds of

products, including electrical and electronic equipment and products, mechanical products, building materials, construction systems, fire protection equipment, burglary protection systems and equipment, and marine products. UL also devotes its resources to the development of UL Standards for Safety. These documents contain the safety requirements for products tested by UL. Since the first Standard was developed in 1903, the number of UL Standards for Safety has increased to over 700.

UL was founded in 1894. In the past 105 years, UL has grown to approximately 5250 employees, some 1500 of which are Engineers. UL's Corporate Headquarters is in Northbrook, Illinois. Additionally, there are four other major domestic testing locations, 24 international subsidiaries and liaison offices and 190 inspection centers. Today, more than 16.1 billion UL Marks appear on new products annually.

Testing Experience and Expertise

UL has been conducting product evaluations for 105 years—an activity that is the basis of UL's expertise. Since its first examination on March 24, 1894, on the flammability characteristics of a noncombustible insulator, the breadth of UL product evaluations has increased every year. In 1999 alone, UL conducted more than 94,300 product evaluations.

Summary of UL's Accreditations

UL is involved in over 80 accreditation programs covering a wide spectrum of products and services. These accreditation programs are all related to UL's activities concerned with the evaluation and testing services of materials, products, and systems for public safety. UL works with accreditors from the private sector whose work is accepted by a variety of stakeholders and with accreditors from municipal, State and Federal Government bodies. These organizations include the American National Standards Institute (ANSI), National Institute of Standards and Technology under the National Voluntary Laboratory Accreditation Program (NIST/NVLAP) and Occupational Safety and Health Administration (OSHA) as a Nationally Recognized Testing Laboratory (NRTL) and the Standards Council of Canada (SCC), just to name a few.

The majority of these accreditations cover UL as a testing laboratory and product safety certification organization. Although each accreditor to a certain extent establishes their own criteria, for the most part, two sets of criteria are utilized for evaluating the competence of a testing laboratory and product certification organization. ISO/IEC Guide 25, *General Requirements for the Competence of Calibration and Testing Laboratories* and ISO/IEC Guide 65 *General Requirements for Bodies Operating Product Certification Systems.* UL's written policies and associated operating procedures were designed using the criteria of these two guides.

Copies of UL's accreditation certificates by ANSI, SCC, and OSHA are included for your review.

Attachment 4

431.27(c)(4) Expertise in Motor Test Procedures

General

UL has been providing Energy Verification certification services since 1995. UL has evaluated motors in sizes ranging from 1 hp to 200 hp using the standards IEEE 112 Test Method B or CSA C390. Review of the enclosed Directory of Products Verified to Energy Efficient Standards will reveal the number of manufacturers UL currently maintains Listings for in each category. UL Energy Verification Certifications can also be accessed on-line by using the following address: *http://www.ul.com/database/index.htm.*

Personnel

UL engineering staff maintains a minimum four-year Bachelor of Science in engineering. The Resume of the involved Managing Engineers and the personnel bulletins of the staff involved at the UL facilities is provided for your review.

The Department's Summary of Supporting Documentation Provided by Underwriters Laboratories Inc.

Summary of Attachment 1 Supporting Documentation

Attachment 1 of the Underwriters Laboratories Inc. petition contained no supporting documents.

Summary of Attachment 2 Supporting Documentation

Attachment 2 of the Underwriters Laboratories Inc. petition contains a copy of a sworn statement of the independent status of Underwriters Laboratories Inc., dated November 12, 1999.

Summary of Attachment 3 Supporting Documentation

Attachment 3 of the petition contains copies of the following documents Underwriters Laboratories Inc., has received in recognition of its certification system and technical capabilities:

1. Letter of confirmation that the attached list of Underwriters Laboratories Inc.'s certification programs and their sites are accredited by the American National Standards Institute, in accordance with ISO/IEC Guide 65—General Requirements for Bodies Operating Product Certification Systems, dated September 5, 2000.
2. Certificate of Accreditation as a certification organization from the Standards Council of Canada, October 5, 1993.
3. Certificate of Recognition as a Nationally Recognized Testing Laboratory Program from the Occupational Safety and Health Administration, U.S. Department of Labor, June 29, 2000.

Summary of Attachment 4 Supporting Documentation

Attachment 4 of the petition contains a copy of the Underwriters Laboratories Inc., Directory of Products Verified to Energy Efficiency Standards, September 7, 1999. Also, Attachment 4 contains copies of resumes of certain managing engineers, and the Personnel Bulletins of the involved staff at the Underwriters Laboratories Inc., facilities.

[FR Doc. 01–24682 Filed 10–2–01; 8:45 am]

BILLING CODE 6450–01–P

FEDERAL ELECTION COMMISSION

11 CFR Parts 100, 114, and 117

[Notice 2001–14]

The Internet and Federal Elections; Candidate-Related Materials on Web Sites of Individuals, Corporations and Labor Organizations

AGENCY: Federal Election Commission.

ACTION: Notice of Proposed Rulemaking.

SUMMARY: The Commission is publishing proposed rules relating to the Internet and Federal elections. These rules address issues raised in a Notice of Inquiry that was published by the Commission in November of 1999. The proposed rules would clarify the status of campaign-related Internet activity conducted by individuals, and of hyperlinks and endorsement press releases on Internet web sites established by corporations and labor organizations. The draft rules that follow do not represent a final decision by the Commission on the issues presented in this rulemaking. Further information is provided in the supplementary information that follows.

DATES: Comments must be submitted on or before December 3, 2001.

ADDRESSES: All comments should be addressed to Rosemary C. Smith, Assistant General Counsel, and must be submitted in either written or electronic form. Written comments should be sent to the Federal Election Commission, 999 E Street, NW., Washington, DC 20463. Faxed comments should be sent to (202) 219–3923, with printed copy follow-up to insure legibility. Electronic mail comments should be sent to internetnprm@fec.gov. Commenters sending comments by electronic mail must include their full name, electronic mail address and postal service address within the text of their comments. Comments that do not contain the full name, electronic mail address and postal service address of the commenter will not be considered. The Commission will make every effort to have public comments posted on its web site within ten business days of the close of the comment period.

FOR FURTHER INFORMATION CONTACT: Rosemary C. Smith, Assistant General Counsel, or Paul Sanford, Staff Attorney, 999 E Street, NW.,

Washington, DC 20463, (202) 694–1650 or (800) 424–9530.

SUPPLEMENTARY INFORMATION: The Commission is publishing this Notice of Proposed Rulemaking [''NPRM''] to invite comments on proposed rules that would apply to certain types of campaign-related Internet activity by individuals, corporations and labor organizations. This NPRM follows publication of a Notice of Inquiry (''NOI'') on November 5, 1999, in which the Commission sought comments on a wide range of issues related to campaign activity conducted on the Internet. 64 FR 60360 (Nov. 5, 1999). After reviewing the comments received in response to the NOI, the Commission has decided to issue proposed rules in three areas: (1) Application of the volunteer exemption in 2 U.S.C. 431(8)(B)(ii) to Internet activity by individuals; (2) Hyperlinks placed on corporate or labor organization web sites; and (3) Press releases announcing candidate endorsements that are made available on corporate and labor organization web sites. The Commission may take additional action on some or all of the other issues raised in the NOI at a later time.

A. Background

Recent election cycles have seen a dramatic increase in the use of the Internet to conduct campaign activity related to federal elections. The use of the Internet for activity relating to federal elections raises issues regarding the application of the Federal Election Campaign Act of 1971, as amended, 2 U.S.C. 431 *et seq.* (''FECA'' or ''the Act'').

Generally, the FECA requires individuals, candidates, party committees, separate segregated funds (''SSFs'') and nonconnected committees to file disclosure reports regarding their election-related activity, and also sets restrictions or limitations on the amounts that may be contributed to candidates and political committees by individuals, corporations, labor organizations and other entities. Although the FECA was enacted prior to widespread use of the Internet, and has been narrowed by court decisions such as *Buckley* v. *Valeo,* 424 U.S. 1 (1976) and *FEC* v. *Massachusetts Citizens for Life,* 479 U.S. 238 (1986), several provisions of the Act are broad enough to potentially encompass some types of campaign-related Internet activity conducted by individuals, corporations and labor organizations.

For example, the Act's definitions of ''contribution'' and ''expenditure'' are broad enough to potentially apply to some Internet activity conducted by individuals. Section 431(8) of the Act states that the term ''contribution'' includes ''any gift, subscription, loan, advance or deposit of money or anything of value made by any person for the purpose of influencing any election for Federal office.'' 2 U.S.C. 431(8)(A)(i). Similarly, section 431(9) states that the term ''expenditure'' includes ''any purchase, payment, distribution, loan, advance, deposit, or gift of money or anything of value, made by any person for the purpose of influencing any election for Federal office.'' 2 U.S.C. 431(9)(A). These definitions have been incorporated into sections 100.7(a) and 100.8(a) of the Commission's regulations.

The FECA's definition of ''independent expenditure'' is also broad enough to potentially apply to some individual Internet activity. Section 431(17) of the Act states that ''the term 'independent expenditure' means an expenditure by a person expressly advocating the election or defeat of a clearly identified candidate which is made without cooperation or consultation with any candidate, or any authorized committee or agent of such candidate, and which is not made in concert with, or at the request or suggestion of, any candidate, or any authorized committee or agent of such candidate.'' 2 U.S.C. 431(17). This definition is incorporated into 11 CFR 109.1.

The FECA is also broad enough to potentially apply to some Internet activity conducted by corporations and labor organizations. Section 441b of the Act states that ''[i]t is unlawful * * * for any corporation whatever, or any labor organization, to make a contribution or expenditure in connection with any election'' for Federal office. 2 U.S.C. 441b(a). Section 441b also contains a separate definition of ''contribution or expenditure'' that applies to corporations and labor organizations. This definition states that ''the term 'contribution or expenditure' shall include any direct or indirect payment, distribution, loan, advance, deposit, or gift of money, or any services, or anything of value * * * to any candidate, campaign committee, or political party or organization, in connection with'' any election to any federal office. 2 U.S.C. 441b(b)(2). The definition of ''contribution or expenditure'' applicable to corporations and labor organizations has been incorporated into section 114.1 of the Commission's regulations. The prohibition on corporate and labor organization contributions and expenditures is in 11 CFR 114.2.

The Commission has been called upon to apply these definitions in several past advisory opinions. However, in applying these rules, the Commission has also had to determine whether the statutory and regulatory exceptions to these definitions would place the activity at issue outside the coverage of the Act. For example, the Act states that the definition of ''contribution'' applicable to individuals does not include

> The use of real or personal property, including a church or community room used on a regular basis by members of a community for noncommercial purposes, * * * voluntarily provided by an individual to any candidate or any political committee of a political party in rendering voluntary personal services on the individual's residential premises or in the church or community room for candidate-related or political party-related activities * * *.

2 U.S.C. 431(8)(B)(ii). *See also* 11 CFR 100.7(b)(4), (b)(5) and (b)(6). The Commission's regulations contain a parallel exception to the definition of expenditure. Section 100.8(b)(5) states that

> (N)o expenditure results where an individual, in the course of volunteering personal services on his or her residential premises to any candidate or political committee of a political party, provides the use of his or her real or personal property to such candidate for candidate-related activity or to such political committee of a political party for party-related activity.

11 CFR 100.8(b)(5). *See also* 11 CFR 100.8(b)(6) and (b)(7). This provision can also be interpreted as an exception to the definition of ''independent expenditure,'' since that definition incorporates the term ''expenditure.'' 2 U.S.C. 431(17), 11 CFR 100.16.

Section 441b also contains exceptions that could place some corporate and labor organization Internet activity outside the scope of the Act. Section 441b(b)(2) states that the definition of ''contribution or expenditure'' applicable to corporations and labor organizations does not include, *inter alia,*

> (A) Communications by a corporation to its stockholders and executive or administrative personnel and their families or by a labor organization to its members and their families on any subject; (and) (B) nonpartisan registration and get-out-the-vote campaigns by a corporation aimed at its stockholders and executive or administrative personnel and their families, or by a labor organization aimed at its members and their families * * *.

2 U.S.C. 441b(b)(2). The Commission has promulgated rules describing several types of corporate and labor organization activity that are exempt

from the prohibition on contributions and expenditures. *See* 11 CFR 114.3 and 114.4.

The Commission's advisory opinions provide some guidance on the application of these definitions and their exceptions to campaign activity conducted on the Internet. However, the scope of these opinions is limited to the specific factual situations presented. The Commission initiated this rulemaking in order to provide more comprehensive guidance to the regulated community on these issues. This NPRM will focus on the application of the contribution and expenditure definitions and exceptions described above to Internet campaign activity conducted by individuals, corporations and labor organizations.

B. The Notice of Inquiry

The Notice of Inquiry sought comments on a wide range of issues relating to the use of the Internet for campaign activity. 64 FR 60360 (Nov. 5, 1999). One threshold question raised was whether campaign activity conducted on the Internet is properly subject to the Act and the Commission's regulations at all. In addition, the NOI asked commenters to submit comments on whether Internet campaign activities are analogous to campaign activities conducted in other contexts, or are instead so different that they require different rules. The Commission also asked commenters to discuss aspects of the Commission's current regulations that may affect or inhibit the use of the Internet in ways that may not have been anticipated or intended when the regulations were promulgated, and which may now be inappropriate when applied to Internet activity.

More than 1300 commenters submitted comments on the Notice of Inquiry. The Commission received comment from individuals, state and national political parties, and from advocacy organizations that focus on a wide range of public policy issues, such as the First Amendment and civil rights. The Commission also received comments from advocacy organizations that focus on Internet and technology issues, including several devoted to the development of the Internet as a tool for advancing democracy and for educating the public about political candidates and issues. Several for-profit Internet ventures submitted comments, including one major Internet service provider. In addition, the Commission received comments from national labor organizations, the publisher of a journal on law and technology, and from several law firms that represent clients involved in various Internet activities, including one that represents several candidates and party committees. These comments are summarized below.

1. General Comments on the NOI

a. Whether To Undertake a Rulemaking

Many of the commenters expressed views on the general question of whether the Commission should undertake a rulemaking relating to the use of the Internet for campaign activities. At the time the Notice of Inquiry was published in November of 1999, some commenters urged the Commission to refrain from comprehensive rulemaking until after the 2000 election. Other commenters said that the Commission should conduct further inquiry before issuing new rules and allow ample time for the major stakeholders to address the issues raised.

The commenters expressed widely differing views on the preferred scope of the rulemaking. One commenter urged the Commission to adopt a comprehensive approach to regulation of political activity on the Internet, rather than issuing guidance piecemeal through advisory opinions. Another commenter encouraged the Commission to promulgate new and separate rules governing the use of the Internet that minimize the requirements placed on web sites and individuals. In contrast, the third commenter said the Commission should not be drawn into effort to develop a comprehensive framework for regulating every type of Internet political activity, because the Commission will not be able to keep up with fluid and evolving industry standards.

b. Ways in Which the Internet Differs From Traditional Media

Several commenters argued that the Internet differs from traditional communications media, in support of the assertion that the assumptions of the campaign finance laws are inapplicable to the newer medium. According to these commenters, the Internet differs in the following respects:

(1) The Internet is abundant. There is no ''scarcity,'' *i.e.,* no limit on the number of communicators, as there is with other media;

(2) The Internet is inexpensive, which allows everyone to participate. Thus, the traditional models regarding cost upon which the FECA is based do not apply.

(3) The Internet is interactive and multidirectional. Unlike other media, Internet users can easily talk back to those who supply Internet communications.

(4) The Internet is user-controlled, i.e., each user selects the content with which he or she will come in contact, whereas the FECA assumes a limited number of people will control the content to which the end users are exposed.

(5) The Internet is decentralized. There are no gatekeepers, and no web sites or speakers have any inherent advantage over any other web sites or speakers. Each one has the same distribution potential; and

(6) The Internet is global. Thus, it provides immediate access, and would be difficult to regulate.

The commenters asserted that the FECA is based on the traditional mass media model, where candidates must buy advertisements or rely on news coverage to reach the public. In contrast, the commenters argue, candidates advertise directly on the Internet by creating web sites, thereby avoiding the added cost of buying advertising. One commenter interpreted the Supreme Court's opinion in *Reno* v. *ACLU,* 521 U.S. 844 (1997), to say that the factors permitting government regulation in other contexts are not present in cyberspace.

A number of nonprofit groups also praised the Internet's ability to provide efficient, timely information about candidates. These commenters said that the Internet promotes cleaner, more informed elections by reducing the importance of money and the need for fundraising, thereby improving the quality of debate and increasing competition.

c. General Recommendations for Commission Action

Many of the commenters submitted general recommendations for Commission action. Hundreds of commenters, for example, stated their opposition to any regulation of the Internet or any involvement of the Commission with the Internet. Over 340 commenters stated that the Commission should generally avoid any regulation of Internet activities, with many of the commenters explaining that the Internet cannot or should not be regulated because the medium is a form of constitutionally-protected speech. Other commenters said that the Commission should refrain from issuing regulations restricting the Internet, and instead establish an unambiguous legal framework that allows maximum freedom to participate in political activity with minimal government involvement, in order to foster development of the medium. Many of these commenters said that if the Act is applied to the Internet, the resulting regulatory burdens will stifle

participation by individuals and small groups. They also believe that the regulatory safeguards applicable to traditional media are unnecessary for the Internet, because the low costs and wide accessibility of the Internet allow individuals to put forth their views on a relatively equal basis with the largest traditional publisher, effectively preventing misuse. Most of these commenters indicated that web sites run by individuals or small organizations should be subject to less regulation and scrutiny than campaign-directed sites or commercial sites run for profit.

One commenter said that the purposes of the FECA would best be fulfilled by a hands-off approach to regulation of the Internet, particularly for individuals, volunteers and membership associations. Another commenter said that regulating political activity on the Internet could deter individual and grassroots efforts that would possibly gain visibility only on the web. A third commenter said that the FEC should take into account the policy underlying the First Amendment, the FECA and section 230 of the Telecommunications Act of 1996, which the commenter asserted is to promote democratic institutions by increasing the quantity, diversity, and opportunities for political speech.

Several commenters cited constitutional considerations in arguing that the Commission should not regulate political activity on the Internet. One commenter said that only regulations that address the compelling state interest in protecting elections from the corrosive effect of private wealth are justified. This commenter argued that the low cost of the Internet prevents corruption. Another commenter took a similar position, and said that regulations would discourage individual participation in political debate, and would limit much needed information dissemination. A third commenter urged the Commission to adopt a presumption that the use of the Internet is not regulated by the FECA, and narrowly tailor any new rules based on record evidence, to ensure that they withstand constitutional scrutiny.

Another commenter expressed opposition to the rulemaking unless it is to establish that Internet activities are fully protected by the First Amendment, and exempt from reporting requirements and limits. This commenter urged the Commission to treat all forms of Internet communication as the modern equivalents of personal correspondence, pamphlets, newspapers and other forms of political speech, and argued that nobody that is not already being regulated should come under FEC jurisdiction because of Internet activity.

However, not all of the commenters were opposed to Commission regulation of Internet political activity. A number of commenters expressed concern that in the absence of specifically applicable regulations, political parties and organizations would use the Internet to circumvent the FECA or otherwise abuse the freedoms of the medium, and urged the Commission to promulgate rules explicitly applying the Act to political activity conducted on the Internet. One commenter said that the Internet is a means of communication like any other, and warrants no special exemption from regulation. Another said that Internet campaign activities are analogous to other campaign activities and therefore come under the Commission's authority. Two commenters urged the Commission to treat candidate web sites the same as any other campaign-related expense, in order to serve the intent of the statute to level the playing field between incumbents and challengers. Some commenters drew a distinction between solicited and unsolicited material, and requested restrictions on ''spam,'' or unsolicited e-mail and other unsolicited material.

One commenter said that while the Commission should not restrict First Amendment rights, it likewise should not grant broad permanent exemptions that would threaten on-line privacy or other compelling state interests, or that would undermine existing disclosure requirements. Another commenter said the Commission should apply some of the current regulations to Internet activity, but should not unduly limit activity such as hyperlinks, banner ads and other communications. Instead, this commenter urged the Commission to proceed slowly, and adopt a flexible regulatory approach. Finally, one commenter recognized the Commission's interpretive authority, but urged the Commission to exercise that authority only when it has a high degree of confidence that the Internet activity being conducted implicates the Act.

C. The Proposed Rules

After reviewing the issues raised and the comments received in response to the NOI, the Commission has decided to propose rules to address three issues: (1) Application of the volunteer exemption in 2 U.S.C. 431(8)(B)(ii) to Internet activity by individuals; (2) Hyperlinks placed on corporate or labor organization web sites; and (3) Candidate endorsements announced on corporate and labor organization web sites. The comments received relating to these specific areas are summarized below, followed by a description of the proposed rules.

1. Internet Activity by Individuals

a. The Notice of Inquiry

The NOI invited comments on how the Act should be applied to web sites created by individuals that contain references to candidates or political parties. The Commission has addressed issues relating to Internet campaign activities by individuals in two past advisory opinions. Advisory Opinion (''AO'') 1998–22 involved a web site operated by an individual using a computer jointly owned by the individual and his wholly-owned limited liability company, or ''LLC.'' Because the individual administered the site himself using existing equipment, Internet services and domain names, he incurred no additional costs in operating the site. Nevertheless, the Commission concluded that if an individual creates a web site that contains express advocacy of a clearly identified candidate, the costs of the site are an expenditure under the Act and must be reported if they exceed $250 in a calendar year. 2 U.S.C. 434(c), 11 CFR 109.2. The Commission also said that even if the costs of the site are part of the expenses of maintaining several unrelated sites, they can be apportioned, so that a portion of the costs can be treated as part of the independent expenditure. AO 1998–22.

However, in AO 1999–17, the Commission concluded that costs incurred by a campaign volunteer in preparing a web site on behalf of candidate on his or her home computer are exempt from the contribution definition under the volunteer exception in § 100.7(b)(4) of the regulations. The Commission said that the volunteer exception applies to ''individuals known to the campaign who, with the campaign's permission (at some level) engage in volunteer activity.'' *Id.* The Commission also said that the costs of electronic mail sent by a campaign volunteer using his or her own computer equipment would be covered by the volunteer exception, and thus would not result in a contribution to the campaign. *Id.*

The NOI asked whether costs incurred by individuals in posting candidate-related materials should be covered by the FECA, and if so, how the value of the individual's contribution or independent expenditure should be determined? In addition, the NOI asked whether an individual posting the materials should be required to treat a portion of the cost of the computer

hardware, software, or Internet services as part of the contribution or expenditure. Finally, the NOI sought comments on the extent to which uncompensated Internet activity by individuals should be covered by the volunteer exemption.

b. Comments

The Commission received numerous comments on the application of the Act to web sites created by individuals. Most commenters argued that costs incurred by individuals engaged in Internet activities should not be considered contributions or independent expenditures under the FECA. Many of these commenters thought Internet activity conducted by individuals should be covered by the volunteer exception. Some commenters argued that the Internet is easily accessible and that posting information involves minimal costs. Others claimed that Internet users must take some affirmative action to view materials on the Internet. Another group of commenters asserted that the primary purpose of most politically-oriented Internet activities is to share ideas and information. For these reasons, they proposed that only sites directly funded or controlled by a campaign should be treated as contributions or expenditures.

These commenters generally agreed with the argument that the volunteer exception should cover web sites created by individuals and electronic mail transmitted by individuals, and that the volunteer exception should exempt these activities from the contribution limits whether or not the individual is working on his or her own, or is volunteering directly for a campaign. Several commenters criticized AO 1998–22, saying that the opinion was wrongly decided and should be superseded because it fails to grasp that the Internet is a medium in which speech is cheap. These commenters expressed the opinion that the low cost of Internet communication clearly puts individual web sites within the volunteer exception. Thus, they assert, it is inappropriate to treat the costs of Internet access as an expenditure. Another commenter also urged the Commission to vacate AO 1998–22, saying that individuals should not be required to count all expenses for personal and home computer equipment towards the FECA thresholds.

Three commenters urged the Commission to relax the disclosure requirements for individual Internet activity conducted independently from the candidate. They suggested that the Commission not require an individual to include a disclaimer or submit disclosure reports unless the individual's spending exceeds a substantial threshold. One commenter suggested a threshold of $10,000, while another suggested $25,000.

In contrast, other commenters argued that the Commission should apply the contribution and expenditure definitions to Internet activity consistent with the application of these definitions to other activities that are not significantly different. A few commenters suggested that the Commission issue a *per se* rule that individuals will not be required to register or report unless their direct out-of-pocket expenses for express advocacy exceed $250. One commenter suggested that Internet-related services, such as Internet access, web site creation and web site maintenance, should be treated as in-kind contributions, but only when they are provided directly to candidates and political campaigns.

Several commenters submitted comments on the types of individual expenses that should be considered contributions or expenditures for purposes of the Act. Two commenters expressed the opinion that the cost of a computer and other electronic media should not be considered contributions or expenditures unless there is evidence that the individual is working with a candidate or has purchased equipment for the sole purpose of supporting a candidate. Two other commenters urged the Commission not to include allocated ''sunk'' costs, *i.e.,* costs that have already been incurred and cannot be recovered, unless they were incurred principally to support or oppose candidates. Similarly, several commenters argued that only the incremental costs incurred while engaging in Internet political activity should be counted towards an individual's expenditure reporting threshold.

c. Proposed 11 CFR 117.1

To clarify the application of the Act to campaign-related Internet activity by individuals, the Commission is proposing to add new § 117.1, which would describe certain types of individual Internet activities that would not be treated as contributions or expenditures. Section 117.1(a) would contain an exception from the definition of ''contribution'' in § 100.7(a) of the current regulations. Section 117.1(b) would contain a parallel exception from the expenditure definitions in §§ 100.8(a) and 109.1.

Proposed §§ 117.1(a) and (b) would state that no contribution or expenditure results where an individual, without receiving compensation, uses computer equipment, software, Internet services or Internet domain name(s) that he or she personally owns to engage in Internet activity for the purpose of influencing any election to Federal office. These exceptions would apply whether or not the individual's activities are known to or coordinated with any candidate, authorized committee or party committee. *See* 11 CFR 100.23. In addition, Internet services personally owned by an individual would include Internet access and web hosting services provided by an Internet service provider (''ISP''), if these services are provided to the individual pursuant to an agreement between the ISP and the individual acting in his or her individual capacity. The individual's use of servers, storage devices and other equipment owned by the ISP pursuant to such a service agreement would also be covered by the exception, regardless of where that equipment is physically located.

However, the proposed exceptions would not apply to equipment, services or software owned by an individual's employer, even if the individual was using them as part of volunteer activity conducted on his or her own time. (Note, however, that if the use of a corporation's or labor organization's computer facilities is ''occasional, isolated or incidental'' under 11 CFR 114.9(a) or (b), no contribution or expenditure would result, so long as the individual reimburses the corporation or labor organization for any associated increase in overhead or operating costs.)

The effect of the proposed contribution and expenditure exceptions would be that individuals would be able to engage in a significant amount of election-related Internet activity without being subject to the Act. The costs incurred in activities that fall within the contribution exception would not count toward the limits on individual contributions to candidates and party committees. Furthermore, the costs of activities that fall within the expenditure exception would not be independent expenditures under 11 CFR 100.16 and 109.1. As a result, individuals would not be required to disclose these costs when they exceed $250 in a calendar year, 2 U.S.C. 434(c), nor would they be required to include disclaimer statements, 2 U.S.C. 441d. *See* 11 CFR 109.2, 109.3 and 110.11.

The status of costs that are not covered by these exceptions would depend, among other things, on whether the costs at issue would constitute a ''contribution'' or ''expenditure'' under the FECA, and whether the individual that incurs the costs coordinates his or her activity with a candidate, authorized

committee or party committee, or instead conducts the activity independently. 11 CFR 100.16 and 100.23. Coordinated expenditures that are not covered by the contribution exception would be in-kind contributions subject to the individual contribution limits, and independent expenditures that are not covered by the expenditure exception would be subject to the $250 reporting threshold in 2 U.S.C. 434(c). *See also* 11 CFR 109.2, AO 1998–22. The Commission invites comments on the exceptions from the contribution and expenditure definitions in proposed sections 117(a) and (b).

2. Hyperlinks on Corporation and Labor Organization Web Sites

a. The Notice of Inquiry

Many corporations and labor organizations operate web sites to communicate with their restricted class and the general public. As explained above, section 441b of the Act prohibits corporations and labor organizations from making contributions or expenditures in connection with federal elections. Thus, the Act generally prohibits these entities from using web sites that are available to the general public to assist or advocate on behalf of any federal candidate.

The Notice of Inquiry sought comments on the circumstances under which a candidate-related or election-related hyperlink on a corporate or labor organization web site should be treated as a prohibited contribution or independent expenditure. The NOI observed that a hyperlink on a corporate or labor organization's web site may be something of value to the linked candidate, political committee or political party, since the link will inevitably steer visitors from the corporation or labor organization's site to the linked site. In AO 1999–17, the Commission concluded that a hyperlink to a candidate or committee's web site is a contribution under the Act if those providing the link do so at less than the amount that they would usually charge for the link. Thus, if a corporation or labor organization provides a free hyperlink to a candidate or committee's web site when it would ordinarily charge for the link, this could be viewed as a contribution or expenditure under the Act.

On the other hand, the costs of providing the link are often negligible or nonexistent, and the practice in some areas of the Internet industry may be to charge nothing for these links. Thus, the usual and normal charge for providing a link may be zero. The NOI sought comments on whether, in light of these considerations, a hyperlink on a corporate or labor organization web site should be considered a contribution or expenditure.

b. Comments

One commenter argued that, under the Supreme Court's decision in *Reno* v. *ACLU,* 521 U.S. 844 (1997), Internet communications are not communications with the general public, and thus, the prohibition on corporate and labor organization expenditures would not apply. *See* 11 CFR 114.2(a). However, most of the comments implicitly or explicitly assumed that Internet communications are communications with the general public for purposes of the Act. The Commission recently approved final rules that treat Internet communications as ''general public political communication'' for purposes of the contribution limits in section 441a. 11 CFR 100.23(e)(1). *See also* 66 FR 23537 (May 9, 2001).6

On the general question of whether corporate and labor organization Internet communications should be treated as contributions or expenditures, several commenters took the position that the existing regulations generally applicable to corporation and labor organization activity should also apply to Internet political activity by these entities. Thus, these commenters believe that web sites owned, maintained or operated by a corporation or a labor organization should be forbidden from advocating for or assisting a candidate. One commenter specifically argued that the actions of corporations and labor organizations should be more strictly regulated than the activities of individuals.

In contrast, one commenter asserted that the Commission should mirror the volunteer exemption that applies to individuals for corporations, and rule that most corporate political speech on the Internet is not ''something of value'' that can be considered a contribution subject to regulation under the FECA.

Two commenters went further, arguing that section 441b does not apply to corporate and labor organization communications on the Internet. These commenters assert that section 441b only prohibits corporations and labor organizations from making contributions of ''anything of value'' in connection with a federal election. Thus, in their view, section 441b only prohibits communications entailing a measurable monetary sum. These commenters claimed that Internet communications generally do not involve substantial costs. Consequently, they reasoned, section 441b does not apply to Internet communications. These two commenters also urged the Commission to consider the requirements of the FECA satisfied if express advocacy on a labor organization web site includes the proper disclaimer.

Some of the comments submitted regarding hyperlinks on individual web sites were also relevant to hyperlinks on web sites operated by corporations and labor organizations. Thirty commenters argued that hyperlinks are merely pointers that present an option for a viewer, but do not add value to a site or advocate the contents of the target site. Nineteen commenters suggested that hyperlink restrictions could reduce the value of the entire Internet. Eighteen commenters took the position that regulation is unnecessary because hyperlinks cost next to nothing to create. Ten commenters opposed hyperlink regulations because they believe hyperlink regulations would be difficult to enforce. Several commenters recommended that a hyperlink be treated as a contribution only in specific circumstances, such as when it is presented in a fraudulent or misleading manner or when it is provided without charge when a charge would normally be assessed for similar services.

Other commenters urged the Commission to treat hyperlinks like footnotes, endnotes, numbers in a phone book, maps or signs offering directions to campaign headquarters, providing a friend or caller with a phone number, or the mere provision of information or a path to information, much like providing someone with a telephone number or an address. These commenters argued that links should not be treated as an implied endorsement, because the user must take proactive steps to pursue further information. Two commenters characterized hyperlinks as the backbone of the web, and argued that treating them as contributions or something of value will discourage web site operators from linking to official candidate sites. Another commenter characterized hyperlinks as part of the Internet infrastructure.

Other commenters expressed similar views. One commenter asserted that the mere establishment of hyperlinks, even if coordinated, should not be regulated. Another commenter argued that if a hyperlink is placed on a site without any attempt to distinguish candidates or their political affiliation, the link should be treated as nonpartisan voter drive activity under section 431(9)(B)(ii) of the FECA, regardless of the type of web site on which it is posted. A third

commenter took the position that a link cannot be treated as a contribution or expenditure because it does not contain substantive content. The commenter argued that hyperlinks may facilitate access to communication that contains express advocacy, but they cannot themselves be a communication containing express advocacy.

One commenter said the standard of ''usually charged for'' cited in AO 1999–17 is inadequate, because some web sites have both paid and unpaid links. This commenter urged the Commission to specifically state that hyperlinks are not ''something of value,'' and only treat a link as a contribution when (1) the web site routinely charges for similar links, (2) the web site has provided the particular links in a partisan manner, and (3) the text of or content around the link contains express advocacy. Another commenter urged the Commission to use categories to apply the ''less than usual and normal charge'' standard. Under this approach, a link to a particular candidate's web site would not be a contribution to that candidate unless the site charges less than it would for links to another candidate's web sites.

Other commenters favored less regulation of hyperlinks. One commenter suggested that the Commission establish a presumption that a hyperlink is not a contribution absent facts to the contrary. Under this approach, if a web site provided a link for which it would normally charge a fee, the Commission would treat this as one factor tending to rebut the presumption that the link is not a contribution. Another commenter took a more absolute position, saying that there is no definitive way to determine the value of a hyperlink. Consequently, this commenter believes, they should not be regulated on any type of web sites.

c. Proposed 11 CFR 117.2

The Commission is proposing to add provisions to the regulations that would address the placement of hyperlinks on corporate and labor organization web sites. New § 117.2 would state that the establishment and maintenance of a hyperlink from the web site of a corporation or labor organization to the web site of a candidate or party committee for no charge or for a nominal charge would not be a contribution or expenditure, even if the corporation or labor organization selectively provides hyperlinks to one or more candidate(s), political committee(s), or political parties without providing hyperlinks to any opposing candidate(s), political committee(s) or political parties.

However, three conditions must be met in order for the hyperlink to be exempt from the contribution and expenditure definitions. First, the hyperlink will only be exempt if the corporation or labor organization does not charge or charges only a nominal amount for providing hyperlinks to other organizations. Second, the hyperlink may not be a coordinated general public political communication under § 100.23 of the Commission's rules. Finally, if the hyperlink is anchored to an image or graphic material, that material may not expressly advocate under § 100.22. Similarly, the text surrounding the hyperlink on the corporation or labor organization's web site may not expressly advocate. However, if the hyperlink is anchored to the text of the URL of a candidate or party committee's web site, the text of the URL is not subject to the express advocacy limitation. Thus, even if the text of the URL itself expressly advocates, the hyperlink would be exempt, so long as the other conditions are met. The Commission invites comments on proposed § 117.2.

3. Press Releases Announcing Candidate Endorsements

a. The Notice of Inquiry

Under section 114.4(c) of the current regulations, corporations and labor organizations may distribute certain candidate-related and election-related materials to the general public without violating section 441b of the FECA. Under paragraph (c)(6) of § 114.4, a corporation or labor organization may endorse a candidate, and may also publicly announce the endorsement and state the reasons therefore through a press release and press conference, so long as disbursements for the press release and press conference are *de minimis*. The corporation or labor organization's disbursements will be considered *de minimis* if the press release and notice of the press conference are distributed only to the representatives of the news media that the corporation or labor organization customarily contacts when issuing nonpolitical press releases or holding press conferences for other purposes. 11 CFR 114.4(c)(6).

In AO 1997–16, the Commission applied this exception to a corporate endorsement posted on the corporation's web site. The Commission concluded that communication of the endorsement via the web site would, in effect, be communication with the general public, and thus would be a prohibited corporate expenditure under 2 U.S.C. 441b(b)(2)(A) and 11 CFR 114.4. However, the Commission said that an endorsement could be posted on a corporation or labor organization's web site if access to the endorsement were limited to the restricted class using a password or similar method, or if the corporation or labor organization's separate segregated fund paid the costs of posting the endorsement.

The NOI sought comments on whether a corporation or labor organization that routinely posts press releases on the Internet should be allowed to post a press release announcing a candidate endorsement on a portion of its site that is accessible to the general public, or should be required to limit access to members of the restricted class.

b. Comments

Several commenters addressed the subject of endorsements on corporate and labor organization web sites. One commenter argued that corporations that routinely post press releases on their own web sites should be allowed to post endorsements. Another commenter took the position that posting a press release should be allowed provided the press release is used in a similar way to any other press release. This commenter reasoned that if other press releases are generally available to the public, endorsement press releases should also be accessible to the general public. Another commenter suggested that corporations and labor organizations should be allowed to post candidate endorsement press releases on their web sites so long as they make no special effort to direct web traffic to the endorsement portion of their sites. This commenter also urged the Commission to supersede AO 1997–16.

In contrast, two commenters suggested that corporations and labor organizations be required to place endorsement press releases in a discrete ''media only'' area of their web sites designated solely for media communications. These commenters said this area could be a deep link page, to limit exposure. However, under these circumstances, the commenters argued, corporations and labor organizations should be allowed to place candidate endorsements on their web sites, since this reflects the way they communicate with the news media in the Internet age.

c. Proposed 11 CFR 117.3

The Commission proposes to add § 117.3 to new part 117 to address the issue of endorsement press releases on corporate and labor organization web sites. Proposed § 117.3 would state that,

for the purposes of the provisions governing endorsements in § 114.4(c)(6) of the current regulations, a corporation or labor organization may make a press release announcing a candidate endorsement available to the general public on its web site, provided that four conditions are met: (1) The corporation or labor organization ordinarily makes press releases available to the general public on its web site; (2) The press release is limited to an announcement of the corporation or labor organization's endorsement or pending endorsement and a statement of the reasons therefore; (3) The press release is made available in the same manner as other press releases made available on the web site; and (4) The costs of making the press release available on the web site are *de minimis*.

This provision would enable a corporation or labor organization to post a press release announcing a candidate endorsement on its web site without limiting access to the press release to its restricted class. Thus, § 117.3 would partially supersede AO 1997–16. However, the corporation or labor organization would be required to limit the press release to an announcement of the corporation or labor organization's endorsement and a statement of the reasons for the endorsement. Section 117.3 would not allow the corporation or labor organization to post express advocacy materials such as banner advertisements for a candidate on its web site. The Commission invites comments on this proposal.

Certification of No Effect Pursuant to 5 U.S.C. 605(b) (Regulatory Flexibility Act)

I certify that the attached proposed rules, if promulgated, would not have a significant economic impact on a substantial number of small entities. The basis of this certification is that the proposed rules are permissive in nature, in that they allow individuals, corporations and labor organizations to engage in activity that might otherwise be limited or prohibited under the FECA. Therefore, the rules would impose no economic burdens on these entities.

List of Subjects

11 CFR Part 100

Elections.

11 CFR Part 114

Business and Industry, Elections, Labor.

11 CFR Part 117

Elections, Internet.

For the reasons set forth in the preamble, the Federal Election Commission proposes to amend Subchapter A of Chapter I of Title 11 of the Code of Federal Regulations as follows:

PART 100—SCOPE AND DEFINITIONS (2 U.S.C. 431)

1. The authority citation for part 100 would continue to read as follows:

Authority: 2 U.S.C. 431, 434(a)(11), 438(a)(8).

2. Section 100.7 would be amended by adding a new sentence at the end of paragraph (b)(4) to read as follows:

§ 100.7 Contribution (2 U.S.C. 431(8)).

* * * * *

(b) * * *

(4) * * * See 11 CFR 117.1 for rules governing an individual's use of computer equipment, software, Internet services or Internet domain name(s) that he or she personally owns to engage in Internet activity in support of or in opposition to any candidate or any political committee of a political party.

* * * * *

3. Section 100.8 would be amended by adding a new sentence at the end of paragraph (b)(5), to read as follows:

§ 100.8 Expenditure (2 U.S.C. 431(9)).

* * * * *

(b) * * *

(5) * * * See 11 CFR 117.1 for rules governing an individual's use of computer equipment, software, Internet services or Internet domain name(s) that he or she personally owns to engage in Internet activity in support of or in opposition to any candidate or any political committee of a political party.

* * * * *

PART 114—CORPORATE AND LABOR ORGANIZATION ACTIVITY

4. The authority citation for part 114 would continue to read as follows:

Authority: 2 U.S.C. 431(8)(B), 431(9)(B), 432, 434(a)(11), 437d(a)(8), 438(a)(8) and 441b.

5. Section 114.1 would be amended by adding new paragraph (a)(2)(iv) to read as follows:

§ 114.1 Definitions.

(a) * * *

(2) * * *

(iv) The establishment and maintenance of a hyperlink under the conditions described in section 117.2 of this chapter;

* * * * *

6. Section 114.4 would be amended by adding a new sentence at the end of paragraph (c)(6)(i) to read as follows:

§ 114.4 Disbursements for communications beyond the restricted class in connection with a Federal election.

* * * * *

(c) * * *

(6) * * *

(i) * * * The press release may be made available through the corporation's or labor organization's web site under the conditions described in section 117.3 of this chapter.

* * * * *

7. Part 117 would be added to read as follows:

PART 117—USE OF THE INTERNET FOR CAMPAIGN ACTIVITY

Sec.

117.1 Individual volunteer activity that is not a contribution or expenditure.
117.2 Hyperlinks from corporation or labor organization web sites.
117.3 Corporate and labor organization endorsement press releases beyond the restricted class in connection with a federal election.

Authority: 2 U.S.C. 431(8), 431(9), 437d(a)(8), 438(a)(8) and 441b.

§ 117.1 Individual volunteer activity that is not a contribution or expenditure.

(a) *Contribution.* Notwithstanding the provisions of § 100.7(a) of this chapter, no contribution results where an individual, without receiving compensation, uses computer equipment, software, Internet services or Internet domain name(s) that he or she personally owns to engage in Internet activity for the purpose of influencing any election for Federal office, whether or not the individual's activities are known to or coordinated with any candidate, authorized committee or party committee.

(b) *Expenditure.* Notwithstanding the provisions of §§ 100.8(a) and 109.1 of this chapter, no expenditure results where an individual, without receiving compensation, uses computer equipment, software, Internet services or Internet domain name(s) that he or she personally owns to engage in Internet activity for the purpose of influencing any election for Federal office, whether or not the individual's activities are known to or coordinated with any candidate, authorized committee or party committee.

§ 117.2 Hyperlinks from corporation or labor organization web sites.

(a) Notwithstanding the provisions of § 114.1(a) of this chapter, the establishment and maintenance of a hyperlink from the web site of a

corporation or labor organization to the web site of a candidate, political committee or party committee for no charge or for a nominal charge is not a contribution or expenditure, provided that:

(1) The corporation or labor organization does not charge or charges only a nominal amount for providing hyperlinks to other organizations;

(2) The hyperlink is not coordinated general public political communications under § 100.23 of this chapter; and

(3) The following materials do not expressly advocate under § 100.22 of this chapter:

(i) The image or graphic material to which the hyperlink is anchored; and

(ii) The text surrounding the hyperlink on the corporation or labor organization's web site, other than the text of a Uniform Resource Locator to which the link is anchored.

(b) The exception in paragraph (a)(1) of this section applies even if the corporation or labor organization selectively provides hyperlinks to one or more candidate(s), political committee(s), or political parties without providing hyperlinks to any opposing candidate(s), political committee(s) or political parties.

§ 117.3 Corporate and labor organization endorsement press releases.

For the purposes of § 114.4(c)(6) of this chapter, a corporation or labor organization may make a press release announcing a candidate endorsement available to the general public on its web site, provided that:

(a) The corporation or labor organization ordinarily makes press releases available to the general public on its web site;

(b) The press release is limited to an announcement of the corporation's or labor organization's endorsement or pending endorsement and a statement of the reasons therefore;

(c) The press release is made available in the same manner as other press releases made available on the web site; and

(d) The costs of making the press release available on the web site are *de minimis.*

Dated: September 27, 2001.

Danny L. McDonald,

Chairman, Federal Election Commission.

[FR Doc. 01–24643 Filed 10–2–01; 8:45 am]

BILLING CODE 6715–01–P

FEDERAL HOUSING FINANCE BOARD

12 CFR Chapter IX

[No. 2001–21]

RIN 3069–AB09

Multiple Federal Home Loan Bank Memberships

AGENCY: Federal Housing Finance Board.

ACTION: Solicitation of comments.

SUMMARY: The Federal Housing Finance Board (Finance Board) is soliciting comments on the implications for the Federal Home Loan Bank System (FHLBank System) raised by the structural changes that have been occurring in its membership base. This solicitation has been prompted by the submission of several petitions, each requesting that the Finance Board permit a single depository institution to become a member of two Federal Home Loan Banks (FHLBanks) concurrently. The petitions also raise a number of other broad issues affecting the FHLBank System. The Finance Board has decided to afford all interested parties an opportunity to provide comments.

DATES: Comments must be received in writing on or before January 2, 2002.

ADDRESSES: Interested persons should submit their data, views, opinions, and comments to: Elaine L. Baker, Secretary to the Board, Federal Housing Finance Board, 1777 F Street, NW., Washington, DC 20006, or to *BakerE@fhfb.gov.* Comments will be available for public inspection at this address.

FOR FURTHER INFORMATION CONTACT: James L. Bothwell, Managing Director, (202) 408–2821; Scott L. Smith, Acting Director, (202) 408–2991, Office of Policy, Research and Analysis; Arnold Intrater, Acting General Counsel, (202) 408–2536, Neil R. Crowley, Deputy General Counsel, (202) 408–2990, Sharon B. Like, Senior Attorney-Advisor, (202) 408–2930, Office of General Counsel, Federal Housing Finance Board, 1777 F Street, NW., Washington, DC 20006.

SUPPLEMENTARY INFORMATION: To assist interested parties in responding to the questions posed in this notice and in understanding how these issues may affect the FHLBank System, Part I of this notice provides an overview of the establishment of the FHLBank System, how the FHLBank System has evolved over the years, and its current structure.

I. Background

A. Establishment of the FHLBank System

The FHLBank System was created in 1932 by the Federal Home Loan Bank Act (Bank Act), (12 U.S.C. 1421 *et seq*). The Bank Act was a response to the financial crises of the Great Depression and, in particular, to an urgent need at that time for a central credit facility for thrift institutions that would help to ensure the availability of funds for home financing. Before the enactment of the Bank Act, thrift institutions did not have a national regulator, but were subject only to state-level regulation. Further, thrifts, which evolved from neighborhood cooperative home-financing societies into variously named associations (building and loan associations, savings and loan associations, cooperative banks, homestead banks, and mutual savings banks), lacked an efficient means to balance funding supply and demand, both at the level of the institution and across regions.

The Bank Act established the Federal Home Loan Bank Board (FHLBB), and authorized the FHLBB to create and oversee from eight to 12 FHLBanks to bolster the ailing thrift industry by lending money to thrifts and other mortgage lenders.[1] The Bank Act provided that FHLBank districts were to be ''apportioned with due regard to the convenience and customary course of business of the institutions eligible to and likely'' to join, and that ''no [FHLBank] district shall contain a fractional part of any State.'' (*See* 12 U.S.C. 1423.) The FHLBB created 12 FHLBanks, determined their locations and drew their boundaries, all as authorized in the Bank Act. Each FHLBank served members located within its geographic district, which was made up of between two and eight states. (*See* 12 U.S.C. 1423.)

As originally enacted in 1932, the Bank Act authorized any eligible institution to become either a ''member'' or a ''nonmember borrower'' of a FHLBank, and further provided:

[1] The twelve FHLBanks that were created are ''government-sponsored enterprises'' (GSEs), organized under the authority of the Bank Act, 12 U.S.C. 1423, 1432(a), *i.e.,* they are federally chartered but privately owned institutions created by Congress to support the financing of housing and community lending by their members. *See* 12 U.S.C. 1422a(a)(3)(B)(ii), 1430(i), (j) (1994). By virtue of their GSE status, the FHLBanks are able to borrow in the capital markets at favorable rates. The FHLBanks then pass along that funding advantage to their members—and ultimately to consumers—by providing advances (secured loans) and other financial services to their members (principally, depository institutions) at rates that the members generally could not obtain elsewhere.

An institution eligible to become a member or a nonmember borrower under this section may become a member only of, or secure advances from, the [FHLBank] of the district in which is located the institution's principal place of business, or of the [FHLBank] of a district adjoining such district, if demanded by convenience and then only with the approval of the [Finance] Board.

(*See* 12 U.S.C. 1424(a), (b)).[2] In response to questions raised during the Senate hearings on the Bank Act about how insurance companies with mortgage lending operations throughout the country would access the FHLBank System, the principal drafter of the Bank Act stated the ''theory'' of the bill as follows:

[I]t was not the desire, say, for members in South Carolina to borrow of a New York bank, because it would mean too great a concentration at the New York bank. If the New York bank happened to do better than a South Carolina bank, all members would go there. There is the opportunity in the bill for a member whose principal place of business is in one district to belong to a bank in the adjoining district, but outside of that there is no provision. It is impossible under the terms of the bill for a company doing business in New York to belong to a South Carolina bank.[3]

By requiring the FHLBank districts to include only whole states, the Bank Act created the possibility that some institutions would not be able to join the FHLBank that was the most convenient for them, even though the district had been established based on the ''convenience and customary course of business'' standard. The original bill considered by Congress in 1932 would have allowed an institution unilaterally to choose to join a FHLBank in an adjoining district, with no restriction placed on this right. That language raised concerns that an institution could become a member of an adjoining district irrespective of the distance between the applicant and the FHLBank of the adjoining district. During the House hearings, a change was proposed to section 4(b) of the Bank Act, and ultimately incorporated into the final legislation, to allow adjoining district membership only ''if demanded by convenience and then only with the consent and approval of the [B]oard.'' *See* Hearings Before A Subcommittee of the Committee on Banking and Currency on H.R. 7620 (Creation of a System of Federal Home Loan Banks) , U.S. House of Representatives, 72nd Cong., 1st Sess. (1932), at 199.

A related statute, the Home Owners' Loan Act of 1933 (HOLA), was enacted one year after the Bank Act and, in providing for the chartering of federal savings and loan associations, stated that:

Each such [federal savings and loan] association, upon its incorporation, shall become automatically a member of the [FHLBank] of the district in which it is located, or if convenience shall require and the Board approve, shall become a member of a [FHLBank] of an adjoining district. Such associations shall qualify for such membership in the manner provided in the [Bank Act] with respect to other members.

12 U.S.C. 1464(f). The House Report on the HOLA incorporated all of section 4 of the Bank Act into its Report and stated that the bill, apart from other minor changes, ''does not otherwise disturb the functioning of the [FHLBank] System.'' H.R. Rep. No. 55, 72nd Cong., 1st Sess. at 1 (April 25, 1933).

The Bank Act further provided that an institution eligible for membership could become a member of a FHLBank if the institution satisfied certain criteria and purchased a specified amount of the FHLBank's capital stock. (*See* 12 U.S.C. 1424, 1426.) The FHLBank System was designed to be a cooperative, in that only members could borrow from the FHLBanks, and all FHLBank profits were to be distributed back to the members in the form of lower loan rates (advance prices) or through dividends on purchased shares. The Bank Act further authorized the FHLBanks to raise funds by selling bonds, which, in keeping with the cooperative nature of the FHLBank System, would be the joint and several obligations of all of the FHLBanks in the FHLBank System.

B. Regulatory and Industry Developments

When the FHLBank System was established, its membership base was largely confined to the thrift industry, which consisted of nearly 11,000 thrift institutions. Each such institution conducted business primarily, if not exclusively, in the community in which it was based. In 1932, thrift institutions tended to be small, with assets per thrift averaging just $7.7 million (in 1999 dollars). By comparison, the newly established FHLBanks were much larger, commencing their operations with $125 million (nearly $1.4 billion in 1999 dollars) of capital provided by the U.S. Treasury, which received in return 125,000 shares of FHLBank stock.[4]

Since 1932, the size and nature of the membership base of the FHLBank System has changed significantly, principally as a result of numerous statutory amendments, regulatory changes and industry innovations affecting the banking industry generally, and the thrift industry and the FHLBank System in particular. By 1989, the number of thrift institutions had declined to 3,087 (correspondingly, the FHLBank System had 3,177 members at that time) and increased in average asset size to nearly $582 million (in 1999 dollars). At the same time, regulatory changes were allowing thrift institutions to engage in lines of business that historically had been restricted to commercial banks. The increasing similarity of the two types of depository institutions provided, in part, a rationale for the amendments to the Bank Act in 1989 that allowed commercial banks to become members of the FHLBank System. This change in membership eligibility has resulted in a substantial increase in FHLBank System membership, which currently exceeds 7,800 members. As of June 30, 2001, commercial banks accounted for 73 percent of FHLBank System membership, 45 percent of its capital, and 40 percent of total advances outstanding.

Though the thrift industry had been consolidating since the 1930s, the number of commercial banks had changed little until the regulatory changes that began in the early 1980s. These regulatory changes accelerated the ongoing consolidation of the banking industry as a whole. From the early 1930s to 1982, the number of depository institutions declined from over 25,000 to 17,869. The rate of decline, however, increased between 1982 and 1992 (after the Garn-St Germain Act) and again between 1992 and 2000 (after the Office of Thrift Supervision (OTS) eased its branching policy for federal savings associations) so that by December 31, 2000, the number of commercial banks and thrift institutions totaled just 9,905. The consolidation also has served to increase the average asset size of these depository institutions. As of December 2000, they held, on average, assets of

[2] Section 6(e) of the Bank Act provided a limited transition period during which ''nonmember borrowers,'' institutions that otherwise were eligible for FHLBank membership but lacked the legal authority under state law to invest in equity securities (and thus could not invest in FHLBank stock), could obtain FHLBank advances without becoming members. See 12 U.S.C. 1426(e).

[3] See Hearings Before A Subcommittee of the Committee on Banking and Currency on S. 2959 (Creation of a System of Federal Home Loan Banks), U.S. Senate, 72nd Cong., 1st Sess. (1932), at 116–117, 359–360.

[4] The FHLBanks also raised capital by selling stock to their members. The Bank Act required the FHLBanks to begin repurchasing the stock from the U.S. Treasury loan once the amount of stock issued to their members equaled the initial $125 million provided by the U.S. Treasury. The FHLBanks began to repurchase stock from the Treasury in 1948 and completed the repurchases in 1951. Since that time, all FHLBank stock has been held exclusively by the members of the FHLBanks.

over $700 million, up from $373 million in 1992 and from $272 million in 1982 (valued in 1999 dollars).[5]

An essential part of the consolidation process has been the gradual dismantling of interstate banking restrictions. The Riegle-Neal Interstate Banking and Branching Efficiency Act of 1994 lifted the last of the national interstate branching prohibitions, completing the process of dismantling the interstate banking restrictions that had been occurring on a piecemeal basis, on both a national and a state level.[6] A depository institution now has the ability to operate across state lines, and may do so by establishing *de novo* branch offices in other states (subject to certain state law restrictions) or by assimilating the out-of-state offices of another depository institution into its own branch network.

C. Current Environment

Currently, each member of the FHLBank System is a member solely of the FHLBank in the district in which the member maintains its principal place of business. No single institution is a member of more than one FHLBank, although certain holding companies do own separate subsidiaries that are members of different FHLBanks. The consolidation in the banking industry, however, has affected the membership of the FHLBanks. For example, most FHLBanks now have one or two members that are disproportionately large. For example, as of March 31, 2001, 2000, six of the 12 FHLBanks had one or more members that accounted for at least 20 percent of the FHLBank's total advances outstanding, and nine of the FHLBanks had at least one member that was larger, in terms of asset size, than the FHLBank itself. Furthermore, a substantial portion of FHLBank activities is with members, particularly large members, that have a multi-district presence. The presence of both large members and members that conduct business in other FHLBank districts has the potential to affect the operations of the FHLBanks and the FHLBank System.

1. Large Members

Large financial institutions that are FHLBank System members tend to be large users of FHLBank services, in part, to support their housing finance activities nationwide. In fact, of the top 50 mortgage originators nationwide during 1999, 14 were FHLBank members, and an additional 28 had affiliates that could provide them with indirect access to FHLBank services. Together, FHLBank members and their affiliates accounted for over 44 percent[7] of single-family mortgage originations in 1999. As continued consolidation will result in an increasing number of ever-larger members, the potential for such members to affect the pricing, operations, and stability of the FHLBank System will also increase.

One concern associated with large members is that they have the potential to cause rapid and substantial swings in the volume of advances and other services at their FHLBank. The large members (with principally short-term advances) can affect such volume changes because they have alternative funding sources, such as access to the capital markets, and they can make business decisions, such as merging, consolidating, or relocating, that affect the degree of business they conduct with their FHLBank. To the extent that a FHLBank seeks to avoid significant swings in business activity, the large member is positioned to achieve price or other concessions from that FHLBank.

Even though a large member has the potential to cause large fluctuations in a FHLBank's earnings and asset base, there are other factors that may lessen the likelihood of a large member actually having such an effect on the policies of an individual FHLBank. First, the flexible capital structure and low fixed costs of the FHLBanks allow them to expand or contract their balance sheets with relatively little effect on their ability to service remaining members in a manner consistent with the public purpose of the FHLBank System.[8] As evidence of this flexibility, nine of the 12 FHLBanks could lose their largest member in terms of advances and still have assets in excess of that of the smallest FHLBank. Second, the cooperative structure of the FHLBank System, where all members own shares in their FHLBank, reduces the incentive for members to bargain for concessions from their own FHLBank, because such concessions, to the extent they depress the profitability of the FHLBank, will be reflected in lower dividends, higher future advance rates, or reduced services from the FHLBank to all members. Third, the Bank Act limits the ability of a member to obtain concessions from its FHLBank. Specifically, section 7(j) of the Bank Act requires the directors of the FHLBanks to administer the affairs of their FHLBank fairly and without discrimination in favor of or against any member borrower. (*See* 12 U.S.C. 1427(j).) The FHLBanks, therefore, may not offer a price concession to a large member (except for volume and risk-related discounts) without also making it available to all other members. (*See* 12 CFR 950.5(b)(2).) In addition, existing law limits the number of votes any one member can cast for a FHLBank director from its state to the average number of shares of FHLBank stock required to be held by all members in that state, effectively limiting the ability of large members to control the election of FHLBank directors.

Another concern raised by the advent of large members in the FHLBank System is that such members may present a concentration of credit risk, as a small number of members may account for a large percentage of the FHLBank's advances or other activities. Such concentration of credit risk could subject the FHLBank to losses of a significant magnitude if these members were to experience substantial financial

[5] For the source of information regarding the average asset sizes, see: FDIC, ''Historical Statistics on Banking,'' at *http://www2.fdic.gov/hsob/*. Two other statistics offer evidence of consolidation: First, between 1980 and 1998, the share of commercial bank assets held by the top 100 commercial banks rose from 46.8 percent to 70.9 percent. Second, the substantial rise in average asset size since 1982 came in spite of the fact that the median asset size has remained relatively stable. A rising mean asset size relative to median asset size is evidence of increased concentration at the high end of the distribution.

[6] Historically, the FHLBB permitted federal savings and loan associations to branch only within the state in which they maintained their home office, although in 1981 the FHLBB amended its branching policy to permit limited interstate branching in connection with the resolution of failing savings and loan associations. 12 CFR 556.5(a)(3) (1982). The Garn-St Germain Depository Institutions Act of 1982 expanded the authority to allow interstate branching in connection with the acquisition of failed savings and loan associations, and also allowed failed commercial banks to be acquired by out-of-state bank holding companies. Pub. Law No. 97–320, § 116, § 123, 96 Stat. 1469 (Oct. 15, 1982). The Financial Institutions Reform, Recovery, and Enforcement Act of 1989 (FIRREA) allowed out-of-state commercial banks to acquire healthy savings associations, Pub. Law No. 101–73, § 601, 103 Stat. 183, 408 (Aug. 9, 1989), and, in 1992, the OTS allowed interstate branching for all federal savings associations. *See* 12 CFR 556.5 (1993). The Riegle-Neal Interstate Banking and Branching Efficiency Act of 1994 authorized commercial banks, as of June 1, 1997, to establish interstate branch offices, which allowed affiliated banks in different states to consolidate into one bank charter with interstate offices, and allowed banks greater authority to engage in interstate mergers and acquisitions. Pub. Law No. 103–328, § 102, 108 Stat. 2338, 2343 (Sept. 29, 1994).

[7] Based on Home Mortgage Disclosure Act data. Represents percent of loans originated (conventional single-family purchases and refinancings).

[8] The mission of the FHLBanks is to provide to their members and housing associates financial products and services, including, but not limited to advances, that assist and enhance such members' and housing associates' financing of: (a) Housing, including single-family and multi-family housing serving consumers at all income levels; and (b) community lending. (*See* 12 CFR 940.2).

difficulties. To some extent, the existence of large member institutions means that such concentrations of credit risk are inevitable. The risks to any one FHLBank, however, are limited by several features of the FHLBank System. First and foremost, advances and most other activities are secured by the member's collateral, which lessens the likelihood of a FHLBank incurring a loss. In fact, the FHLBank System has never experienced a credit loss from such activity with its members. Second, the FHLBanks have proven to be quite flexible in responding to fluctuations in membership. In particular, different FHLBanks have endured, with little or no consequences, instances where large members have withdrawn from membership or significantly reduced their activity with the FHLBank. Finally, because the consolidated obligations for which one FHLBank is the primary obligor also are the joint-and-several liabilities of all the FHLBanks, the risks to any one FHLBank are effectively backed by the full capital base of the FHLBank System.

Another concern associated with large member institutions and their potential to alter significantly the volume of their activities within any one FHLBank is that such actions may have consequences for the Affordable Housing Program (AHP). Through the AHP, the FHLBanks provide subsidies to members for the funding of affordable owner-occupied and rental housing projects.[9] Because the amount of AHP funds available in any given year depends on the net income of each FHLBank, some parties have expressed concern that the withdrawal of a large member would cause the FHLBank's earnings, and therefore AHP funding, to be reduced. Even if a large member's withdrawal from membership were to have that effect on a given FHLBank, if that member were to become a member of another FHLBank, the total AHP funding for the FHLBank System may be unaffected. Specifically, reduced funding associated with the decreased earnings of the one FHLBank are likely to be matched by the increased funding associated with the higher earnings of the other FHLBank. Nonetheless, the geographic distribution of funding among FHLBanks could be significantly altered.

2. Members With a Multi-District Presence

In varying degrees, some members now have the ability to operate in more than one FHLBank district, and engage in business with more than one FHLBank. As with large members, the presence of members with multi-district activities has the potential to affect the pricing, operations, and stability of the FHLBanks and the FHLBank System. Such effects could arise because some multi-district activities create the potential for competition among the FHLBanks for member business that was not contemplated when Congress created the FHLBank System. Depending on the nature of such competition, it might either contribute to the efficient achievement of the FHLBank System's housing finance mission, or undermine the cooperative nature of the FHLBank System. Allowing concurrent membership in more than one district for a single institution would amount to redefining the rules governing multi-district activity for such members, and perhaps increase the opportunity for other members to engage in multi-district activity, thus potentially increasing the competitive pressures facing the FHLBanks.

Certain members already conduct a significant amount of business activity across district lines. This activity occurs through a number of channels. The only way for a member to achieve something comparable, in terms of member access and benefits, to concurrent memberships in multiple FHLBanks, under current rules, is through the holding company structure, where two or more subsidiaries of a holding company are each a member of a different FHLBank. Holding companies can cause their subsidiaries to shift or pledge assets among themselves, regardless of their location or membership status. This flexibility affords these holding companies the ability to ''FHLBank shop'' to obtain more favorable prices for FHLBank services. Such FHLBank shopping puts the FHLBanks in competition with each other, which was not contemplated when Congress created the FHLBank System. The potential for such competition is significant given the number of holding companies in the FHLBank System. Currently, 72 percent of members are subsidiaries of holding companies.[10] Moreover, 104 depository institution holding companies have subsidiaries that are members of different FHLBanks. The subsidiaries of those holding companies account for 36 percent of total FHLBank System advances outstanding. Furthermore, going forward under the new capital structure required by Gramm-Leach-Bliley Act, Public Law 106–102, 133 Stat. 1338 (Nov. 12, 1999) (GLB Act), FHLBank shopping may not be limited to prices for services. Specifically, because the GLB Act does not require all FHLBanks to have the same stock purchase requirements, a FHLBank could attempt to compete for certain members' business by setting stock purchase requirements that are more favorable to those members. Although Finance Board approval will be necessary before implementing any capital plan, FHLBanks have expressed a desire for the flexibility to adjust their stock purchase requirements within reasonable ranges. If approved, each FHLBank would have an ability to set those requirements in such a way as to attract the business of members with multi-district access or concurrent memberships.

Currently, a holding company structure allows the company to secure the benefits of membership in two or more FHLBanks through its member affiliates. In recent years, the consolidation of the banking industry and the passage of the Riegle-Neal Interstate Banking and Branching Efficiency Act of 1994 have induced many banking companies to adopt an interstate branch structure, rather than operate with numerous banking subsidiaries. An institution with an interstate branch network is currently not permitted membership in more than one FHLBank. Consequently, this situation has prompted several members that have acquired members of other FHLBanks through a merger to seek permission to become a member of the FHLBank of the merged member, or to continue the membership of the merged member, so that it may obtain the benefits of membership in more than one FHLBank without having to maintain separate banking subsidiaries. More requests for concurrent membership by single institutions could arise, given the prevalence of members with geographically dispersed branch networks. As of June 30, 2000, 188 of the FHLBank System's 7,205 bank and thrift members had branch offices in more than one FHLBank district. These members accounted for 37 percent of

[9] *See* 12 U.S.C. 1430(j)(1). Section 10(j)(5) of the Bank Act provides generally that each FHLBank shall contribute annually to its AHP 10 percent of the FHLBank's net earnings for the previous year. If the aggregate amount of such payments is not at least $100 million, each FHLBank must contribute to its AHP its pro rata share of $100 million. *See* 12 U.S.C. 1430(j)(5). The Finance Board's implementing AHP regulation requires each FHLBank to establish a competitive scoring process, subject to overall eligibility requirements and scoring parameters set forth in the AHP regulation, for awarding of the FHLBank's AHP funds to its members. *See* 12 CFR 951.5(b), 951.6(b). Members apply to the FHLBank of which they are a member for AHP funds on behalf of sponsors of specific housing projects.

[10] Many of these are the only subsidiary of unitary bank or unitary thrift holding companies.

total deposits in all member commercial banks and thrifts.

Although subject to limits, there are other means by which members can access the services of more than one FHLBank. For example, certain members currently obtain unsecured credit from FHLBanks of which they are not members. Finance Board policies permit the FHLBanks to extend short-term unsecured credit to eligible counterparties, but restrict those counterparties to institutions that are in the banking, housing, finance, or securities industries. The Finance Board also imposes credit-quality restrictions on a FHLBank's extensions of unsecured credit. Nothing in the Bank Act or in the Finance Board's regulations or policies, however, requires an eligible counterparty to be a member of the FHLBank extending the unsecured credit. Thus, a member may obtain limited amounts of unsecured loans (typically, federal funds) from its own FHLBank, as well as from other FHLBanks. The unsecured credit market is thus an area where FHLBanks already have the potential to compete with one another. As of August 31, 2001, 80 percent of the unsecured credit outstanding from the FHLBanks to members had been extended by FHLBanks to members of other FHLBanks.

The FHLBanks' AHPs provide another way that member activities can reach across FHLBank districts. Over the 10-year history of the AHP, 8 FHLBanks have provided AHP funds to their members to support 118 out-of-district AHP projects, which represents approximately 2.4 percent of total AHP funds. This percentage has been higher in recent years, reaching 5.7 percent in 1999 and 3.3 percent in 2000. The AHP regulation gives a FHLBank the discretion to prohibit the use of its AHP funds to support out-of-district projects. *See* 12 CFR 951.5(b)(10)(i)(B).[11] Nonetheless, all but two of the FHLBanks currently permit such out-of-district funding.

Finally, member assets may be spread among FHLBank districts as a result of inter-FHLBank operations. For example, advances and acquired member assets (AMAs) can be sold or ''participated'' between and among the FHLBanks.[12] Although the sale or participation of advances is relatively uncommon, currently more than half of the total outstanding balance of AMAs has been participated by the acquiring FHLBanks to other FHLBanks.

Although not all multi-district activities translate into greater competition among the FHLBanks, for those that do, there are a number of factors that mitigate the extent of such competition among FHLBanks. Specifically, FHLBanks are required to apply standards and criteria for evaluating member advances consistently and without discrimination. Thus, FHLBanks may not offer discounted pricing to a ''FHLBank shopper'' unless that client has creditworthiness or other qualifications for better terms for which all members could potentially qualify. Further, Finance Board regulations (12 CFR 950.5(b)) require that FHLBanks price their advances at or above their marginal cost of funds, providing a lower limit for advance prices that protects the FHLBanks' profitability. Finally, any such competition that could prove destructive would be detected and addressed by safety-and-soundness requirements that are enforced by annual on-site Finance Board examinations and off-site monitoring.

The current inter-district activities by members have affected the regional franchises of the FHLBanks, in spite of the existing practice that allows institutions to become members of only one FHLBank. Modifying existing practice to allow institutions to become members of more than one FHLBank concurrently would likely serve to increase the potential competition among the FHLBanks. Nonetheless, such a modification may also have benefits for the stability of any one FHLBank. Depending on how such concurrent memberships are structured, they may act to limit the concentration of risks that arise when institutions become disproportionately large members of a single FHLBank. Whether such changes would promote or detract from the ability of the FHLBank System to achieve its public purpose is an important issue for consideration. Part III of this notice identifies specific questions on this and other issues raised in this section.

II. Petitions for Multiple FHLBank Memberships for a Single Depository Institution

It is against this background of the current practice and structure of the FHLBank System that three FHLBanks have submitted petitions to the Finance Board requesting that the Finance Board permit a single depository institution to become a member of more than one FHLBank concurrently.

A. Current Rules

Currently, each member of the FHLBank System is a member solely of the FHLBank in the district of which the member maintains its principal place of business. No single institution is a member of more than one FHLBank, although, as noted above, there are over 100 holding companies nationwide that own separate affiliates that are members of different FHLBanks. If a holding company that owns a member of one FHLBank acquires a depository institution that is a member of another FHLBank and then holds the two institutions as separate subsidiaries, each subsidiary can remain a member of its own FHLBank. If, however, the holding company opts to merge the two institutions, current rules provide that the FHLBank membership of the disappearing institution terminates when it is merged into the other institution.[13] (*See* 12 CFR 925.24(a).) As a result of one such merger, the Finance Board has been presented with an issue that it has not previously addressed, which is whether a single depository institution may be a member of more than one FHLBank at the same time.

B. Petitions for Multiple FHLBank Memberships

On December 11, 2000, the Finance Board received from the Federal Home Loan Bank of Dallas (Dallas FHLBank) a petition (Petition) requesting that the Finance Board approve an application that would allow an institution that currently is a member of the Federal Home Loan Bank of San Francisco (San Francisco FHLBank) to become, in addition, a member of the Dallas FHLBank. The institution seeking dual FHLBank memberships, Washington Mutual Bank, FA (WMBFA), is a federal savings association located in Stockton, California.[14] WMBFA applied for

[11] During the AHP rulemaking process, commenters indicated that there were both advantages and disadvantages to allowing FHLBanks to adopt prohibitions on funding of out-of-district projects. Accordingly, the Finance Board determined to leave the decisions on whether to adopt such prohibitions to the discretion of each FHLBank, in consultation with its Advisory Council.

[12] All 12 FHLBanks have established various member mortgage asset programs to assist their members. The programs all involve the investment by the FHLBank in loans originated by members.

[13] The result would be the same even if no holding company were involved. Thus, if a member of one FHLBank were to merge into a member of another FHLBank, the membership of the former institution would terminate upon the cancellation of its charter, which typically occurs when the merger takes effect.

[14] As of June 30, 2001, WMBFA was the largest member of the San Francisco FHLBank, with

membership in the Dallas FHLBank in connection with its merger with Bank United, a federal savings bank located in Houston, Texas, that had been the largest member of the Dallas FHLBank.[15] As described above, upon consummation of the merger into WMBFA on February 13, 2001, Bank United's membership in the Dallas FHLBank terminated. Before submitting the Petition to the Finance Board, the Dallas FHLBank had approved the membership application submitted by WMBFA, contingent upon the Finance Board also approving the application under section 4(b) of the Bank Act (12 U.S.C. 1424(b)). The Finance Board published a notice of its receipt of the Petition, and received requests to intervene and comment letters from 11 parties, including five FHLBanks, two FHLBank members, three community development organizations, and a trade association. Certain of those parties have asked the Finance Board to address the issues associated with multiple FHLBank memberships through a rulemaking, rather than through an adjudication of the Petition. More recently, the Finance Board has received from the Federal Home Loan Bank of New York (New York FHLBank) a similar petition to allow Fleet National Bank, Providence, Rhode Island (Fleet), a member of the Federal Home Loan Bank of Boston, to become a member of the New York FHLBank as a result of its merger on March 1, 2001 with Summit Bank, Hackensack, New Jersey (Summit-NJ), which formerly had been a member of the New York FHLBank.[16] The Finance Board also has received from the Federal Home Loan Bank of Chicago (Chicago FHLBank) a similar petition to allow Charter One Bank, F.S.B., Cleveland, Ohio (Charter One), a member of the Federal Home Loan Bank of Cincinnati, to become a member of the Chicago FHLBank as a result of its merger on July 2, 2001 with Liberty Federal Bank, Hinsdale, Illinois, (Liberty Federal), which formerly had been a member of the Chicago FHLBank.

C. Legal Considerations

A fundamental threshold issue is whether the Bank Act authorizes an institution to become a member of more than one FHLBank. For example, within the context of section 4(b) of the Bank Act, the question is raised whether an institution may become a member of more than one FHLBank, or whether it is simply provided an alternative, in limited circumstances, to become a member of a FHLBank other than the one in whose district it has its principal place of business. (*See* 12 U.S.C. 1424(b).) Since its enactment in 1932, section 4(b) of the Bank Act has been amended only one time, which amendment struck from the statute references to ''nonmember borrowers'' that the Congress described as obsolete.[17] If the Finance Board were to determine that section 4(b) of the Bank Act authorizes an institution to become a member of more than one FHLBank, the Finance Board also would have to establish standards for determining what constitutes ''demanded by convenience'' under section 4(b) for any institution that seeks membership in an adjoining FHLBank. In Part III of this notice, the Finance Board requests comment on what factors the Finance Board should consider in determining whether an additional membership would meet the ''demanded by convenience'' requirement established by section 4(b) of the Bank Act. As a related matter, the Finance Board also requests comment on how the ''demanded by convenience'' standard should be applied in the case of an institution that simply seeks to become a member of an adjoining FHLBank, *i.e.,* in lieu of becoming a member of the FHLBank where it maintains its principal place of business.

D. Multiple FHLBank Membership Issues

If the Finance Board were to permit multiple FHLBank memberships under the Bank Act, a number of regulatory issues would need to be resolved, some of which may require statutory or regulatory amendments. Part III of this notice identifies specific questions on these issues for which the Finance Board is soliciting comment. Several of these issues are discussed further below.

1. Membership Restrictions

If the Finance Board were to permit multiple FHLBank memberships for a single depository institution under section 4(b) of the Bank Act, a financial institution that conducts significant portions of its business in different states could, in theory, become a member of several FHLBanks, depending on how many FHLBank districts adjoin the FHLBank district where the institution maintains its principal place of business. For example, an institution with its principal place of business in the Cincinnati or Dallas FHLBank districts could, in theory, become a member of up to six other FHLBanks. An institution with its principal place of business in the Des Moines FHLBank district could, in theory, become a member of up to five other FHLBanks. In contrast, an institution with its principal place of business in the Boston FHLBank district could become a member of only one other FHLBank. Such a result raises questions about the disparate treatment of members under the Bank Act, particularly as amended by the GLB Act, which was intended to equalize access to the FHLBank System for all members. While permitting multiple FHLBank memberships arguably could mitigate concerns about large member concentration in a particular FHLBank, the solution may be rendered more or less effective depending on geography. Moreover, the solution may be completely unavailable in the case of a merger of two members whose FHLBank districts do not adjoin. If membership in one FHLBank carries with it the opportunity to become a member of up to six other FHLBanks but membership in another FHLBank carries the opportunity to become a member of one or two other FHLBanks, then some FHLBanks and their members may be placed at a disadvantage relative to certain other FHLBanks and their members. Such disparate treatment of FHLBanks and their members could raise both legal and safety and soundness concerns for the Finance Board.

approximately 43 percent of its total advances and 41 percent of its total capital stock. WMBFA has over 1,126 branch offices located in California, Texas, and Florida. Washington Mutual, Inc., Seattle, Washington, is a savings and loan holding company that owns WMBFA, as well as two institutions that are members of the Federal Home Loan Bank of Seattle, and one that is a member of the Federal Home Loan Bank of Topeka.

[15] As of December 31, 2000, Bank United held approximately 26 percent of the total advances and 18 percent of the total capital stock of the Dallas FHLBank. Bank United also had over 150 branch offices Texas.

[16] The merger also involves two other institutions, Summit Bank, Bethlehem, Pennsylvania, and Summit Bank, Norwalk, Connecticut, neither of which is revelant for FHLBank membership purposes.

[17] The House Conference Report on FIRREA, which amended the Bank Act in 1989, states that those nonmember borrower provisions were removed because they were obsolete. *See* H.R. Conference Report No. 101–222, 101st Cong., 1st Sess. at 426 (Aug. 4, 1989). FIRREA left intact section 5(f) of the HOLA, which separately addressed the adjoining district issue for federal savings and loan associations. It was not until the Gramm-Leach-Bliley Act of 1999 that section 5(f) of the HOLA was amended. That amendment provided for voluntary FHLBank membership for federal savings associations, but made no reference to the adjoining district issue. Section 5(f), as amended, states: ''After the end of the 6-month period beginning on November 12, 1999, a Federal savings association may become a member of the [FHLBank] System, and shall qualify for such membership in the manner provided by the [Bank] Act.'' 12 U.S.C. 1464(f).

One possible means of addressing those concerns would be to limit the number of FHLBanks in which any one institution could be a member. For example, if the Finance Board were to limit institutions to no more than two FHLBank memberships, then any concerns about disparate treatment of members based only on geography may well be moot, although the possibility of the member ''FHLBank shopping'' (*i.e.,* playing one FHLBank against another) would remain. If the Finance Board were to permit an institution to become a member of more than one FHLBank, the Finance Board, in Part III of this notice, requests comment on how best to treat all members equally under the Bank Act, whether the Finance Board should limit the number of FHLBanks that a member may join, and if so, how it should structure those limits in order to discourage activities such as ''FHLBank shopping.''

2. FHLBank Capital Stock

Under the existing capital stock purchase requirements, which remain in effect until a FHLBank implements its new capital structure plan under the GLB Act, each member must subscribe to an amount of FHLBank stock equal to the greater of 1 percent of the member's residential mortgage assets or 5 percent of its outstanding advances. (*See* 12 U.S.C. 1426(b)(1), (2).) As the FHLBanks implement their capital structure plans, that subscription formula will be replaced by provisions in each plan that establish a minimum stock investment for all members. (*See* 12 U.S.C. 1426(b)(1)(B), (c)(1).) Because each FHLBank has significant latitude in determining how to structure the minimum investment for its members (*i.e.,* as a percentage of the member's assets, outstanding advances, or other business activity) and what classes of stock to issue, it is unlikely that the stock purchase requirements for any two FHLBanks will be identical, as is the case under current law.

Under either the existing or the GLB Act capital regime, if a member of one FHLBank were to become a member of one or more additional FHLBanks, it would have to purchase some amount of the stock of each of the additional FHLBanks. The Bank Act does not expressly provide for a member to invest a lesser amount than is required by the current statutory formula or the minimum investment established under the capital plan for the FHLBank. Similarly, the Bank Act does not authorize a member to maintain its required investment on a proportionate basis, *i.e.,* where the amount of the required investment is allocated among the stock of each of the FHLBanks that has admitted the institution to membership. Moreover, section 7(j) of the Bank Act requires the board of directors of each FHLBank to administer the affairs of the FHLBank fairly and impartially and without discrimination in favor of or against any member borrower. (*See* 12 U.S.C. 1427(j).) That provision suggests that a reduction of the stock purchase requirement for the benefit of particular FHLBank members would not be permissible if it were to discriminate against other members.

In light of the above, and if the Finance Board were to provide regulatory guidance on multiple FHLBank memberships, the Finance Board, in Part III of this notice, requests comment on how best to apply the existing and the GLB Act stock purchase requirements to an institution if it were allowed to become a member of more than one FHLBank. The Finance Board also requests comment on whether it should defer any action on the issue of multiple FHLBank memberships until after the capital structure plans for the FHLBanks have been implemented, recognizing that a determination as to how to apply the new capital structure in such circumstances logically should not be done until the contents of those plans are known.

3. Collateral Securing FHLBank Advances to Members

Section 10(a) of the Bank Act provides generally that all advances from a FHLBank to members shall be fully secured by eligible collateral. (*See* 12 U.S.C. 1430(a).) Section 10(d) of the Bank Act provides that a FHLBank shall reserve the right to require at any time, when deemed necessary for its protection, deposits of additional collateral security or substitutions of security by the borrowing institution, and each borrowing institution shall assign additional or substituted security when and as so required. (*See* 12 U.S.C. 1430(d).) Section 10(e) of the Bank Act further provides generally that any security interest granted to a FHLBank by any member shall be entitled to priority over the claims and rights of any party, other than a *bona fide* purchaser that is entitled to priority under other law or a person with an actual perfected security interest. (*See* 12 U.S.C. 1430(e).) Part 950 of the Finance Board's regulations implements the provisions of the Bank Act on advances and collateral. (*See* 12 CFR part 950.)

If the Finance Board were to permit one depository institution to become a member of more than one FHLBank, questions are raised as to how a FHLBank would ensure that its advances to a member would remain fully secured if that member also had obtained advances from other FHLBanks. In that case, each FHLBank would have the right under section 10(d) of the Bank Act to require a member at any time to deposit additional collateral or to substitute collateral. Whereas the FHLBanks now rely in many cases on a ''blanket lien'' on a member's assets, that approach may not be workable where two or more FHLBanks have made advances to one member, unless the FHLBanks have agreed to subordinate their respective interests in certain assets of the member. Although delivery of collateral to each FHLBank also would solve these concerns, it could entail substantial administrative costs to both FHLBanks, which could affect the pricing of advances to all members. Moreover, if a member of more than one FHLBank were to be placed into receivership, the FHLBanks may well have competing claims to the same collateral (unless they have perfected their respective security interests), which may require the Finance Board to impose separate collateral requirements for institutions that are members of more than one FHLBank. Questions of how to prioritize security interests of two FHLBanks over the claims and rights of any party, as provided by section 10(e) of the Bank Act, also are raised. (*See* 12 U.S.C. 1430(e).) In Part III of this notice, the Finance Board requests comment on how permitting multiple FHLBank memberships would affect the collateral practices of the FHLBanks from which those members obtain advances, and what safeguards the Finance Board could adopt in its advances and collateral regulations to ensure that advances to such members do not present any undue risks to the FHLBanks or to the FHLBank System.

4. Directors and Voting Rights

If an institution were to be permitted to become a member of more than one FHLBank, the Finance Board would have to determine whether that institution could participate in the election of directors (*i.e.,* by voting or by having its representatives serve on the board) at any FHLBank other than the one where it maintains its principal place of business. Similarly, the Finance Board would have to determine whether the stock owned by such an institution in its ''non-principal'' FHLBank could be included in determining the amount of FHLBank stock required to be held by the members of those FHLBanks. Each year, the Finance Board allocates elective directorships among the states

based on the amount of FHLBank stock required to be held by the members that are located in each state. The FHLBanks also use the required stock holdings to calculate the statutory ceiling on the number of votes that any one member may cast in an election of directors.

Under section 7(b) of the Bank Act, each elective directorship of a FHLBank must be designated by the Finance Board as representing the members of that FHLBank that are located in a particular state, and may be filled only by an officer or director of a member that is located in that state. (*See* 12 U.S.C. 1427(b).) For each elective directorship, only the members that are located in the particular state may vote, with each share of FHLBank stock required to be held by the member carrying one vote. The maximum number of votes that any one member may cast, however, is capped at the average number of shares of FHLBank stock required to be held by members in that state as of the end of the calendar year.

Currently, each member of a FHLBank is designated as being located in a particular state, based on the location of its principal place of business, which in turn is based on the location of its home office, as specified in its charter. (*See* 12 CFR 925.18(b).) Based on that designation, a member may vote for FHLBank directors, and the officers and directors of the member are eligible to serve as a FHLBank director representing that state. Under current practice, an institution is deemed to have only one ''principal place of business,'' although it may be in a state other than where the home office is located. (*See* 12 CFR 925.18(c) (allowing for an alternative location for the principal place of business).) Even if the Finance Board were to permit an institution to become a member of one or more additional FHLBanks, it is not clear that the member could have any principal place of business other than its current state and, therefore, it is unclear whether the lack of a principal place of business within the additional FHLBank districts would preclude the member from participating in the elections of the additional FHLBanks or from having its stock included in determining the average amount of FHLBank stock held by the members of the additional FHLBanks. The concept of a ''principal place of business'' suggests exclusivity, *i.e.,* notwithstanding that an institution may conduct its business from a multitude of locations, only one of those locations will be its home office, corporate headquarters, or the location at which most of its business is conducted.

In Part III of this notice, the Finance Board requests comment generally on the extent to which an institution if it were allowed to become a member of more than one FHLBank should be permitted to participate in the election of directors for its ''non-principal'' FHLBanks. The Finance Board also requests comment on whether allowing such an institution to participate in the elections of its ''non-principal'' FHLBanks would have any adverse effects, either as to the FHLBanks themselves or as to the other members of the additional FHLBanks that maintain their principal place of business within the district, particularly the community financial institutions. The Finance Board further requests comment on whether it would be advisable for a particular institution to be deemed to have more than one principal place of business for FHLBank membership purposes and, if so, how the additional principal places of business should be determined.

5. Evaluation of ''Demanded by Convenience'' Membership Applications

All applicants for FHLBank membership must satisfy certain statutory eligibility criteria in order to be approved for membership. (*See* 12 U.S.C. 1424.) The Finance Board's membership regulation prescribes documentation and other requirements for evaluation of membership applications, including evaluation of an applicant's financial condition and other information based on the applicant's recent regulatory financial and examination reports. (*See* 12 CFR 925.6 through 925.17.) The regulation, however, does not specifically address how a FHLBank, or the Finance Board, should evaluate an application for an additional membership submitted under the provisions of section 4(b) of the Bank Act, nor does it specify what information is required to be submitted by an applicant seeking membership under that provision.

Moreover, applying the existing regulation to such applicants is apt to result in some inconsistencies, depending solely on whether an application is filed before or after the applicant has merged with a member of the FHLBank. For example, WMBFA submitted its application to the Dallas FHLBank prior to its merger with Bank United, which (if the existing regulations were to be applied to this type of application) would appear to allow the application to be processed based solely on an evaluation of the financial condition and other information of WMBFA prior to its merger with Bank United. By contrast, Fleet submitted its application to the New York FHLBank after its merger with Summit-NJ, which (if the existing regulations were to be applied to this type of application) required the New York FHLBank to evaluate the financial condition and other information of the combined entity, *i.e.,* Fleet as it exists after the merger with the three separate Summit Bank subsidiaries. (*See* 12 CFR 925.15.)

Such materially different processing requirements illustrate the degree to which the current regulation lacks a coherent approach to the evaluation of applications for multiple FHLBank memberships under the provisions of section 4(b) of the Bank Act. In cases where an institution that is a member of one FHLBank seeks membership in another FHLBank as a result of its merger with a member of the latter FHLBank, the merger itself has been cited as a compelling factor justifying the additional FHLBank membership. In such circumstances, logic suggests that the eligibility of that out-of-district institution for membership in the additional FHLBank should be determined in light of the financial and other data of the post-merger entity, rather than the data of the institution as it existed prior to the merger. To proceed otherwise effectively would require the FHLBank (and the Finance Board) to determine the eligibility of an out-of-district institution for membership without regard to the in-district presence that the institution has acquired through the merger. The Finance Board believes that whatever process that might be adopted for the review of such membership applications if multiple FHLBank memberships were to be permitted should be applied consistently, and should not vary based solely on whether the merger occurs before or after the submission of the membership application. In Part III of this notice, the Finance Board requests comment on whether the procedures and criteria for evaluating such applications if multiple FHLBank memberships were to be permitted should be applied consistently to all such applicants, and whether there are any reasons why the Finance Board should not require that the analysis of the membership application be focused on the combined entity, *i.e.,* as it exists or will exist subsequent to its merger.

III. Solicitation of Comments

The Finance Board is soliciting comments on the following questions, which relate to how developments in the membership base have affected the FHLBank System, and how permitting a

single depository institution to become a member of more than one FHLBank might affect the FHLBank System. This part of this notice contains all the questions for which the Finance Board specifically seeks comment.

A. Issues Regarding the Current Structure of the FHLBank System

1. What are the implications for the FHLBank System of increasing consolidation among the membership base of the FHLBanks? Specifically, what are the risks to a FHLBank of having a significant portion of its business and capital stock concentrated in a small number of large members, and what is the best way to manage those risks? How does such concentration of business and stock affect the distribution of FHLBank services to the membership and the governance of the FHLBanks?

2. What are the implications for the FHLBank System of the current structure under which two or more depository institutions that are subsidiaries of the same holding company may become members of separate FHLBanks? Specifically, have such ''affiliated memberships'' caused competition among FHLBanks to a degree that was not contemplated when Congress created the FHLBank System? If so, is such competition either beneficial or harmful to the accomplishment of the public purposes of the FHLBank System?

3. What, if any, restrictions on the terms of membership for depository institutions that operate in more than one FHLBank district, or for depository institutions whose affiliates are members of other FHLBanks, are necessary or appropriate to minimize any risks that may be associated with such members or to preserve the cooperative nature of the FHLBank System?

4. What would be the implications of revising the structure of the FHLBank System to allow a single depository institution to become a member of more than one FHLBank? Would the risks or benefits of such a structure differ materially from those presented by the current structure, under which affiliated depository institutions may be members of different FHLBanks? Would revising the structure in such a manner affect the ability of the FHLBanks to achieve their statutory mission to support housing finance and community lending or affect FHLBank and FHLBank System safety and soundness?

5. Would allowing a single depository institution to become a member of more than one FHLBank affect the distribution of membership benefits to small members relative to the larger members? How would it affect the distribution of membership benefits to large institutions that are members of only one FHLBank, relative to large institutions that are members of more than one FHLBank?

6. Certain depository institution members currently conduct a significant portion of their business beyond the geographic boundaries of their FHLBank district. What effect do these inter-district activities have on the safety, soundness, stability, and mission achievement of the FHLBank System?

7. What actions, if any, should the Finance Board take in response to the increasing amount of inter-district activities conducted by some members of the FHLBank System?

8. What are the implications, for distribution of Affordable Housing Program (AHP) funds, of continued consolidation within the membership base of the FHLBank System and the expansion of out-of-district financing activities? More specifically, how does inter-district consolidation and expansion of out-of-district financing activities affect the geographic distribution of AHP funds? Given that certain FHLBanks have limits on the amount a single institution may receive in AHP funds, how do these changes affect the distribution of AHP funds?

9. Should the Finance Board consider invoking its statutory authority to consolidate two or more FHLBanks and/or to readjust district boundaries, or take some other action, as a means to address any strains placed on the FHLBank System by the ongoing consolidation within the banking industry?

B. Multiple FHLBank Membership Issues

1. If the Finance Board were to determine that a single depository institution may become a member of more than one FHLBank under section 4(b) of the Bank Act, what factors should the Finance Board consider in determining whether a particular institution would meet the ''demanded by convenience'' standard required by section 4(b)?

2. What conditions, restrictions, or limitations should the Finance Board impose on a single depository institution if it were permitted to become a member of more than one FHLBank to ensure that the institution does not pose any undue risks to those FHLBanks, their respective members, or to the cooperative nature of the FHLBank System? What conditions, restrictions, or limitations should the Finance Board impose to allow the FHLBank System to better achieve its housing finance mission if a single depository institution were to be permitted to become a member of more than one FHLBank?

3. Because the number of ''adjoining districts'' varies from FHLBank to FHLBank, how could the Finance Board best ensure that members in different FHLBanks, if permitted to become members of more than one FHLBank, would have equal opportunities under section 4(b) to become a member of a FHLBank in an adjoining district? Would a limitation on the number of FHLBanks that any one institution could join be an appropriate means to avoid disparate treatment of members?

4. How should the stock purchase requirements of each FHLBank be applied to an institution if it were permitted to become a member of more than one FHLBank? Should the Finance Board require such members to comply with the stock purchase requirements of each FHLBank in the same manner as those requirements apply to all other members, particularly in light of section 7(j) of the Bank Act, which requires each FHLBank to administer its affairs impartially and without discrimination against any member?

5. Given that the FHLBanks are now developing plans to implement a new capital structure, and given that members, if allowed concurrent memberships in two or more FHLBanks, might be subjected to different stock purchase requirements at each FHLBank, should the Finance Board use its authority to approve those plans to require that all FHLBanks impose equal, or very similar, stock purchase requirements for membership, advances, and other activities such as mortgage purchases?

6. How would single depository institutions if permitted to become members of more than one FHLBank affect the collateral practices of the FHLBanks from which those members obtain advances, and what safeguards should the Finance Board adopt to ensure that advances to such members do not present any undue risks to the FHLBanks or to the FHLBank System?

7. To what extent, if any, should an institution if it were allowed to become a member of more than one FHLBank be permitted to participate in the election of directors for its ''non-principal'' FHLBanks and, if such participation were allowed, would it have any adverse effects on the non-principal FHLBanks or on their members, particularly the smaller members, such as community financial institutions?

8. What financial and other information about the prospective member should the Finance Board

require to be submitted by an institution if it were permitted to apply for an additional FHLBank membership under the Bank Act? Specifically, in any case involving a merger of two institutions, should the eligibility of the surviving institution for the additional FHLBank membership be determined based on an analysis of the combined entity, *i.e.,* as it exists subsequent to the merger?

IV. Request for Comment

The Finance Board is interested in receiving comment on all aspects of the issues raised by the continued growth in inter-district activities of FHLBank members and the concept of multiple FHLBank memberships, in addition to the specific requests for comment made in this solicitation of comments.

Dated: September 26, 2001.

By the Board of Directors of the Federal Housing Finance Board.

J. Timothy O'Neill,

Chairman.

[FR Doc. 01–24588 Filed 10–2–01; 8:45 am]

BILLING CODE 6725–01–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[CA242–0291b; FRL–7059–1]

Revisions to the California State Implementation Plan, Imperial County Air Pollution Control District, Monterey Bay Unified Air Pollution Control District

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing to approve revisions to the Imperial County Air Pollution Control District (ICAPCD) and Monterey Bay Unified Air Pollution Control District (MBUAPCD) portions of the California State Implementation Plan (SIP). These revisions concern volatile organic compound (VOC) emissions from automotive refinishing operations, metal parts and products coating, and applications of nonarchitectural coatings. We are proposing to approve local rules to regulate these emission sources under the Clean Air Act as amended in 1990 (CAA or the Act).

DATES: Any comments on this proposal must arrive by November 2, 2001.

ADDRESSES: Mail comments to Andy Steckel, Rulemaking Office Chief (AIR–4), U.S. Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105–3901.

You can inspect copies of the submitted SIP revisions and EPA's technical support documents (TSDs) at our Region IX office during normal business hours. You may also see copies of the submitted SIP revisions at the following locations:

California Air Resources Board, Stationary Source Division, Rule Evaluation Section, 1001 "I" Street, Sacramento, CA 95814;

Imperial County Air Pollution Control District, 150 South 9th Street, El Centro, CA 92243; and,

Monterey Bay Unified Air Pollution Control District, 24580 Silver Cloud Court, Monterey, CA 93940.

FOR FURTHER INFORMATION CONTACT: Jerald S. Wamsley, Rulemaking Office (Air-4), U.S. Environmental Protection Agency, Region IX, (415) 744–1226.

SUPPLEMENTARY INFORMATION: This proposal addresses the following rules: ICAPCD Rule 427, Automotive Refinishing Operations; MBUAPCD Rule 429, Applications of Nonarchitectural Coatings; and, MBUAPCD Rule 434, Coating of Metal Parts and Products. In the Rules and Regulations section of this **Federal Register**, we are approving these local rules in a direct final action without prior proposal because we believe these SIP revisions are not controversial. However, if we receive adverse comments, we will publish a timely withdrawal of the direct final rule and address the comments in subsequent action based on this proposed rule. Since we do not plan to open a second comment period, anyone interested in commenting should do so at this time. If we do not receive adverse comments, we are planning no further activity. For further information, please see the direct final action.

Dated: August 24, 2001.

Sally Seymour,

Acting Regional Administrator, Region IX.

[FR Doc. 01–24484 Filed 10–2–01; 8:45 am]

BILLING CODE 6560–50–U

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 70

[VA–T5–2001–02a; FRL–7073–4]

Clean Air Act Approval of Operating Permit Program Revisions; Virginia

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing to approve revisions to the operating permit program of the Commonwealth of Virginia. Virginia's operating permit program was submitted in response to the Clean Air Act (CAA) Amendments of 1990 that required States to develop, and submit to EPA, programs for issuing operating permits to all major stationary sources and to certain other sources within the States' jurisdiction. The EPA granted final interim approval of Virginia's operating permit program on June 10, 1997, as corrected on March 19, 1998. Virginia has revised its operating permit program since receiving interim approval and this action proposes to approve those revisions. Any parties interested in commenting on this action proposing to approve discretionary revisions to Virginia's program should do so at this time. A more detailed description of Virginia's submittal and EPA's evaluation are included in a Technical Support Document (TSD) in support of this rulemaking action. A copy of the TSD is available, upon request, from the EPA Regional Office listed in the **ADDRESSES** section of this document.

DATES: Written comments must be received on or before November 2, 2001.

ADDRESSES: Written comments may be mailed to Makeba Morris, Chief, Permits and Technical Assessment Branch, Mailcode 3AP11, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103. Copies of the documents relevant to this action are available for public inspection during normal business hours at the Air Protection Division, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103 and Virginia Department of Environmental Quality, 629 East Main Street, Richmond, Virginia, 23219.

FOR FURTHER INFORMATION CONTACT: David Campbell, Permits and Technical Assessment Branch at (215) 814–2196 or by e-mail at campbell.dave@.epa.gov.

SUPPLEMENTARY INFORMATION: On November 20, 2000, the Commonwealth of Virginia submitted revisions to its State operating permit program. These revisions are the subject of this document and this section provides additional information on the revisions by addressing the following questions:

What is the State operating permit program?

What is being addressed in this document?

What is not being addressed in this document?

What changes to Virginia's operating permit program is EPA approving?

How does Virginia's Voluntary Environmental Assessment Privilege Law affect its operating permit program?

What action is being taken by EPA?

What Is the State Operating Permit Program?

The Clean Air Act Amendments of 1990 required all States to develop operating permit programs that meet certain federal criteria. When implementing the operating permit programs, the States require certain sources of air pollution to obtain permits that contain all of their applicable requirements under the Clean Air Act (CAA). The focus of the operating permit program is to improve enforcement by issuing each source a permit that consolidates all of its applicable CAA requirements into a federally-enforceable document. By consolidating all of the applicable requirements for a given air pollution source into an operating permit, the source, the public, and the State environmental agency can more easily understand what CAA requirements apply and how compliance with those requirements is determined.

Sources required to obtain an operating permit under this program include ''major'' sources of air pollution and certain other sources specified in the CAA or in EPA's implementing regulations. For example, all sources regulated under the acid rain program, regardless of size, must obtain operating permits. Examples of ''major'' sources include those that have the potential to emit 100 tons per year or more of volatile organic compounds, carbon monoxide, lead, sulfur dioxide, nitrogen oxides, or particulate matter (PM10); those that emit 10 tons per year of any single hazardous air pollutant (HAP) specifically listed under the CAA; or those that emit 25 tons per year or more of a combination of HAPs. In areas that are not meeting the national ambient air quality standards (NAAQS) for ozone, carbon monoxide, or particulate matter, major sources are defined by the gravity of the nonattainment classification. For example, in the counties and cities in northern Virginia that are part of the metropolitan Washington, D.C. serious ozone nonattainment area, major sources include those with the potential of emitting 50 tons per year or more of volatile organic compounds or nitrogen oxides.

What Is Being Addressed in This Document?

On November 20, 2000, Virginia submitted revisions to its currently approved program regulations intended to clarify and improve its existing operating permit program. Virginia made revisions to its existing program to correct definitions; to incorporate EPA guidance and regulatory changes; and, to clarify minor procedural matters. In the November 20, 2000 submittal, Virginia also provided amendments to its existing program to address deficiencies identified when its program received interim approval. These amendments are the subject of a separate rulemaking action as more fully discussed below.

What Is Not Being Addressed in This Document?

As part of its November 20, 2000 submittal, Virginia also provided amendments to its operating permit program regulations to address deficiencies identified by EPA when it granted final interim approval of Virginia's program in 1997. Since these program amendments are not directly relevant to this rulemaking action proposing to approve revisions to Virginia's operating permit program, they will be considered in a separate rulemaking action.

On December 11, 2000, EPA announced a 90-day comment period for members of the public to identify deficiencies they perceive exist in State and local agency operating permits programs. [See 65 FR 77376.] The public was able to comment on all currently-approved operating permit programs, regardless of whether they have been granted full or interim approval. The December 11, 2000 notice instructed the public to identify deficiencies in either the substance of the approved program or in how a permitting authority is implementing its approved program.

The EPA stated that it will consider information received from the public pursuant to the December 11, 2000 notice and determine whether it agrees or disagrees with the purported deficiencies. Where EPA agrees there is a deficiency, it will publish a notice of deficiency consistent with 40 CFR 70.4(i) and 40 CFR 70.10(b). The Agency will at the same time publish a notice identifying any alleged problems that we do not agree are deficiencies. For programs that have not yet received full approval, such as Virginia's program, EPA will publish these notices by December 1, 2001.

The EPA received numerous comments in response to the December 11, 2000 notice announcing the start of the 90-day public comment period. As part of those comments, EPA Region III received comments germane to Virginia's currently-approved operating permit program. The Agency will respond to those comments in a separate notice(s) by December 1, 2001 as required by the December 11, 2000 notice.

The EPA is not addressing any comments received pursuant to the December 11, 2000 notice in this document. As mentioned above, comments provided in accordance with the December 11, 2000 notice were to address the substance or implementation of currently-approved programs. This action proposes to approve revisions to Virginia's currently-approved operating permit program. The program revisions that are the subject of this document were not federally approved as part of Virginia's operating permit program before the close of the 90-day public comment period announced in the December 11, 2000 notice. Therefore, any persons wishing to comment on this action proposing to approve revisions to Virginia's currently-approved program should do so at this time.

What Changes to Virginia's Program is EPA Approving?

The EPA has reviewed Virginia's November 20, 2000 program revisions in conjunction with the portion of Virginia's program that was earlier approved by EPA. Based on this review, EPA is proposing to approve revisions to Virginia's operating permit program. The EPA has determined that the revisions to Virginia's operating permit program appropriately clarify and improve the currently approved version of its program. The revisions fully meet the minimum requirements of 40 CFR part 70.

In general, Virginia revised its permit program regulations in order to support commitments it made to EPA in a February 27, 1997 letter; to incorporate relevant EPA guidance; to clarify certain definitions; to bring its acid rain operating permit program into conformity with federal regulations; to incorporate provisions relating to EPA's compliance assurance monitoring rule; and, to clarify certain other definitions and minor procedural matters. The following describes the revisions made to Virginia's operating permit program.

Changes to Virginia's Operating Permit Program

A. Changes To Support Commitments Made by Virginia

On February 27, 1997, the Commonwealth of Virginia submitted the final portions of its original operating permit program for EPA review. In its transmittal letter to EPA, Virginia committed to interpret and implement certain provisions of its operating permit program in a manner consistent with 40 CFR part 70. Such commitments were thought necessary at

the time because Virginia's permit program did not speak directly to the matters in question or could be subject to varied interpretation. In its November 20, 2000 program revisions, Virginia has clarified these matters to EPA's satisfaction.

1. Applicability of Title V to Sources Subject to Standards Promulgated under Sections 111 or 112 of the Clean Air Act

Virginia revised 9 VAC 5–80–50 D 1 b to indicate that where EPA has failed to declare whether a given source or source category covered by a standard promulgated under sections 111 or 112 of the Clean Air Act after July 21, 1992 is subject to the title V program, the source or source category is subject to Virginia's title V operating permit program.

2. Definition of ''Malfunction''

Virginia revised the definition of ''malfunction'' at 9 VAC 5–80–60 C and 9 VAC 5–80–370 to clarify that failures due to improperly designed equipment, lack of maintenance, improper maintenance, or operator error shall not be considered malfunctions.

3. Definition of ''Research and Development Facility''

Virginia revised the definition of ''research and development facility'' at 9 VAC 5–80–60 C and 9 VAC 5–80–320 C to clarify that such facilities shall not be engaged in the manufacture of products for sale or exchange for commercial profit in any manner.

4. Permit Applications Must Include Applicable Requirements for Insignificant Activities

Virginia revised 9 VAC 5–80–90 E 1 and 9 VAC 5–80–440 E 1 to clarify that permit applications must cite and describe all applicable requirements, include those covering insignificant activities at the subject source.

5. Criteria for Administrative Amendments

Virginia revised 5–80–200 A 1 and 9 VAC 5–80–560 A 1 to clarify that administrative amendments are limited to typographical errors or any other similar error.

6. Notification Requirements for Malfunctions

Virginia revised 5–80–250 B 4 and 9 VAC 5–80–650 B 4 to clarify that notifications of malfunctions, regardless of their mode (e.g. telephone, facsimile, etc), shall include a description of the malfunction, any steps taken to mitigate emissions, and corrective actions taken.

B. Changes To Incorporate EPA Guidance

Virginia amended 9 VAC 5–80–720 A to expand the list of insignificant activities to include activities defined by EPA guidance to be ''trivial'' activities.

C. Changes To Clarify State Requirements

Virginia revised the definitions of ''applicable requirement'' and ''applicable state requirement'' at 9 VAC 5–80–60 C and 9 VAC 5–80–370 and other provisions that cite these definitions. Virginia revised these definitions to clarify what requirements are only enforceable by the Commonwealth.

D. Changes to Acid Rain Operating Permit Program To Conform With Federal Regulations

Virginia revised several sections of its acid rain operating permit program regulations to conform with EPA's acid rain program regulations at 40 CFR part 72. Virginia added or amended a number of definitions at 9 VAC 5–80–370 that are derived from 40 CFR 72.2. Virginia also made several programmatic modifications to be consistent with the federal acid rain program.

E. Changes To Incorporate Compliance Assurance Monitoring Requirements

Virginia amended 5–80–110 and 9 VAC 5–80–490 to include appropriate references to federal compliance assurance monitoring requirements at 40 CFR part 64 clarifying that its program is consistent with 40 CFR 70.6(a) and (c).

F. Changes To Clarify Definitions and Minor Procedural Matters

Virginia made several changes to the program to clarify certain definitions and to reflect minor procedural changes: at 9 VAC 5–80–60 C and 9 VAC 5–80–370, the definition of ''insignificant activity'' was added; at 9 VAC 5–80–60 C, the definition ''State enforceable'' was amended to conform to Virginia's general administration regulation; at 9 VAC 5–80–350 B and C, fee payment provisions were amended to clarify these procedures; and, at 9 VAC 5–80–720 B 5 and 6, citations to federal regulations were corrected.

How Does Virginia's Voluntary Environmental Assessment Privilege Law Affect its State Operating Permit Program?

In 1995, Virginia adopted legislation that provides, subject to certain conditions, for an environmental assessment (audit) ''privilege'' for voluntary compliance evaluations performed by a regulated entity. The legislation further addresses the relative burden of proof for parties either asserting the privilege or seeking disclosure of documents for which the privilege is claimed. Virginia's legislation also provides, subject to certain conditions, for a penalty waiver for violations of environmental laws when a regulated entity discovers such violations pursuant to a voluntary compliance evaluation and voluntarily discloses such violations to the Commonwealth and takes prompt and appropriate measures to remedy the violations. Virginia's Voluntary Environmental Assessment Privilege Law, Va. Code Sec. 10.1–1198, provides a privilege that protects from disclosure documents and information about the content of those documents that are the product of a voluntary environmental assessment. The Privilege Law does not extend to documents or information (1) that are generated or developed before the commencement of a voluntary environmental assessment; (2) that are prepared independently of the assessment process; (3) that demonstrate a clear, imminent and substantial danger to the public health or environment; or (4) that are required by law.

On January 12, 1997, the Commonwealth of Virginia Office of the Attorney General provided a legal opinion that states that the Privilege law, Va. Code Sec. 10.1–1198, precludes granting a privilege to documents and information ''required by law,'' including documents and information ''required by federal law to maintain program delegation, authorization or approval,'' since Virginia must ''enforce federally authorized environmental programs in a manner that is no less stringent than their federal counterparts. . . .'' The opinion concludes that ''[r]egarding § 10.1–1198, therefore, documents or other information needed for civil or criminal enforcement under one of these programs could not be privileged because such documents and information are essential to pursuing enforcement in a manner required by federal law to maintain program delegation, authorization or approval.''

Virginia's Immunity law, Va. Code Sec. 10.1–1199, provides that ''[t]o the extent consistent with requirements imposed by Federal law,'' any person making a voluntary disclosure of information to a state agency regarding a violation of an environmental statute, regulation, permit, or administrative order is granted immunity from administrative or civil penalty. The

Attorney General's January 12, 1997 opinion states that the quoted language renders this statute inapplicable to enforcement of any federally authorized programs, since ''no immunity could be afforded from administrative, civil, or criminal penalties because granting such immunity would not be consistent with federal law, which is one of the criteria for immunity.''

Therefore, EPA has determined that Virginia's Privilege and Immunity statutes will not preclude the Commonwealth from enforcing its operating permit program consistent with the federal requirements. In any event, because EPA has also determined that a state audit privilege and immunity law can affect only state enforcement and cannot have any impact on federal enforcement authorities, EPA may at any time invoke its authority under the Clean Air Act, including, for example, sections 113, 167, 205, 211 or 213, to enforce the requirements or prohibitions of the state plan, independently of any state enforcement effort. In addition, citizen enforcement under section 304 of the Clean Air Act is likewise unaffected by this, or any, state audit privilege or immunity law.

What Action Is Being Taken By EPA?

The operating permit program revisions submitted by Virginia on November 20, 2000 improve the currently approved program and meet the minimum requirements of 40 CFR part 70 and the Clean Air Act. Therefore, EPA is proposing to approve revisions to the Commonwealth of Virginia's title V operating permit program.

The EPA is soliciting public comments on the issues discussed in this document. These comments will be considered before taking final action. Interested parties may participate in the Federal rulemaking procedure by submitting written comments to the EPA Regional office listed in the **ADDRESSES** section of this document.

Administrative Requirements

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this proposed action is not a ''significant regulatory action'' and therefore is not subject to review by the Office of Management and Budget. This action merely proposes to approve State law as meeting federal requirements and imposes no additional requirements beyond those imposed by State law. Accordingly, the Administrator certifies that this proposed rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Because this rule proposes to approve pre-existing requirements under State law and does not impose any additional enforceable duty beyond that required by State law, it does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104–4). For the same reason, this proposed rule also does not significantly or uniquely affect the communities of tribal governments, as specified by Executive Order 13084 (63 FR 27655, May 10, 1998). This proposed rule will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999), because it merely proposes to approve a State rule implementing a federal standard, and does not alter the relationship or the distribution of power and responsibilities established in the Clean Air Act. This proposed rule also is not subject to Executive Order 13045 (62 FR 19885, April 23, 1997), because it is not economically significant.

In reviewing State operating permit program submissions, EPA's role is to approve State choices, provided that they meet the criteria of the Clean Air Act. In this context, in the absence of a prior existing requirement for the State to use voluntary consensus standards (VCS), EPA has no authority to disapprove a State operating permit program submission for failure to use VCS. It would thus be inconsistent with applicable law for EPA, when it reviews a State operating permit program submission, to use VCS in place of a State operating permit program submission that otherwise satisfies the provisions of the Clean Air Act. Thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply. As required by section 3 of Executive Order 12988 (61 FR 4729, February 7, 1996), in issuing this proposed rule, EPA has taken the necessary steps to eliminate drafting errors and ambiguity, minimize potential litigation, and provide a clear legal standard for affected conduct. EPA has complied with Executive Order 12630 (53 FR 8859, March 15, 1988) by examining the takings implications of the rule in accordance with the ''Attorney General's Supplemental Guidelines for the Evaluation of Risk and Avoidance of Unanticipated Takings'' issued under the executive order. This proposed rule to approve revisions to Virginia's operating permit program does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

List of Subjects in 40 CFR Part 70

Administrative practice and procedure, Air pollution control, Environmental protection, Intergovernmental relations, Operating permits, Reporting and recordkeeping requirements.

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

Dated: September 25, 2001.

Donald S. Welsh,

Regional Administrator, Region III.

[FR Doc. 01–24714 Filed 10–2–01; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 70

[DE–T5–2001–01b; FRL–7072–8]

Clean Air Act Full Approval of Operating Permit Program; Delaware

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA proposes to fully approve the operating permit program of the State of Delaware. Delaware's operating permit program was submitted in response to the Clean Air Act (CAA) Amendments of 1990 that required States to develop, and submit to EPA, programs for issuing operating permits to all major stationary sources and to certain other sources within the States' jurisdiction. The EPA granted final interim approval of Delaware's operating permit program on December 4, 1995. Delaware amended its operating permit program to address deficiencies identified in the interim approval action and this action proposes to approve those amendments. In the Final Rules section of this **Federal Register**, EPA is approving the State's operating permit program as a direct final rule without prior proposal because the Agency views this as a noncontroversial submittal and anticipates no adverse comments. A detailed rationale for the approval is set forth in the direct final rule. If no adverse comments are received in response to this action, no further activity is contemplated. If EPA receives adverse comments, the direct final rule will be withdrawn and all public comments received will be

addressed in a subsequent final rule based on this proposed rule. The EPA will not institute a second comment period. Any parties interested in commenting on this action should do so at this time. Please note that if EPA receives adverse comment on an amendment, paragraph, or section of this rule and if that provision may be severed from the remainder of the rule, EPA may adopt as final those provisions of the rule that are not the subject of an adverse comment.

DATES: Comments must be received in writing by November 2, 2001.

ADDRESSES: Written comments should be mailed to Ms. Makeba Morris, Chief, Permits and Technical Assessment Branch, Mailcode 3AP11, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103. Copies of the documents relevant to this action are available for public inspection during normal business hours at the Air Protection Division, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103 and Delaware Department of Natural Resources & Environmental Control, 89 Kings Highway, P.O. Box 1401, Dover, Delaware 19903.

FOR FURTHER INFORMATION CONTACT: David Campbell, (215) 814–2196, or by e-mail at *campbell.dave@epa.gov.*

SUPPLEMENTARY INFORMATION: For further information, please see the information provided in the direct final action, with the same title, that is located in the ''Rules and Regulations'' section of this **Federal Register** publication.

Dated: September 25, 2001.

Donald S. Welsh,

Regional Administrator, Region III.

[FR Doc. 01–24708 Filed 10–2–01; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 70

[WV–T5–2001–01b; FRL–7073–8]

Clean Air Act Full Approval of Operating Permit Program; West Virginia

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA proposes to fully approve the operating permit program of the State of West Virginia. West Virginia's operating permit program was submitted in response to the Clean Air Act (CAA) Amendments of 1990 that required States to develop, and submit to EPA, programs for issuing operating permits to all major stationary sources and to certain other sources within the States' jurisdiction. The EPA granted final interim approval of West Virginia's operating permit program on November 15, 1995. West Virginia amended its operating permit program to address deficiencies identified in the interim approval action and this action proposes to approve those amendments. In the Final Rules section of this **Federal Register**, EPA is approving the State's operating permit program as a direct final rule without prior proposal because the Agency views this as a noncontroversial submittal and anticipates no adverse comments. A detailed rationale for the approval is set forth in the direct final rule. If no adverse comments are received in response to this action, no further activity is contemplated. If EPA receives adverse comments, the direct final rule will be withdrawn and all public comments received will be addressed in a subsequent final rule based on this proposed rule. The EPA will not institute a second comment period. Any parties interested in commenting on this action should do so at this time. Please note that if EPA receives adverse comment on an amendment, paragraph, or section of this rule and if that provision may be severed from the remainder of the rule, EPA may adopt as final those provisions of the rule that are not the subject of an adverse comment.

DATES: Comments must be received in writing by November 2, 2001.

ADDRESSES: Written comments should be mailed to Ms. Makeba Morris, Chief, Permits and Technical Assessment Branch, Mailcode 3AP11, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103. Copies of the documents relevant to this action are available for public inspection during normal business hours at the Air Protection Division, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103 and West Virginia Department of Environmental Protection, Office of Air Quality, 1558 Washington Street, East, Charleston, West Virginia, 25311.

FOR FURTHER INFORMATION CONTACT: David Campbell, (215) 814–2196, or by e-mail at *campbell.dave@epa.gov.*

SUPPLEMENTARY INFORMATION: For further information, please see the information provided in the direct final action, with the same title, that is located in the ''Rules and Regulations'' section of this **Federal Register** publication.

Dated: September 25, 2001.

Donald S. Welsh,

Regional Administrator, Region III.

[FR Doc. 01–24710 Filed 10–2–01; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 261

[FRN–7066–1]

RIN: 2050–AE07

Correction to Hazardous Waste Identification Rule (HWIR): Revisions to the Mixture Rule; Proposed Rule

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing two clarifying revisions to the mixture rule. The first revision reinserts certain exemptions to the mixture rule which were inadvertently deleted. The second revision clarifies that mixtures consisting of certain excluded wastes (commonly referred to as Bevill wastes) and listed hazardous wastes that have been listed solely for the characteristic of ignitability, corrosivity, and/or reactivity, are exempt once the characteristic for which the hazardous waste was listed has been removed.

In the ''Rules and Regulations'' section of today's **Federal Register**, we are also simultaneously approving these clarifying revisions to the mixture rule as a direct final rule without prior proposal because we view these as noncontroversial revisions and anticipate no adverse comment. We have explained our reasons for this approval in the preamble to the direct final rule. If we receive no adverse comment, we will not take further action on this proposed rule. If we receive adverse comment, we will withdraw the direct final rule and it will not take effect. We will address all public comments in a subsequent final rule based on this proposed rule. We will not institute a second comment period on this action. Any parties interested in commenting must do so at this time.

DATES: Written comments must be received by November 2, 2001.

ADDRESSES: Please send an original and two copies of your comments referencing Docket number F–2001–

WH3P–FFFFF to (1) if using regular U.S. Postal Service mail: RCRA Docket Information Center, Office of Solid Waste (5305W), U.S. Environmental Protection Agency Headquarters (EPA, HQ), 1200 Pennsylvania Avenue, NW., Washington, DC 20460–0002, or (2) if using special delivery, such as overnight express service: RCRA Docket Information Center (RIC), Crystal Gateway One, 1235 Jefferson Davis Highway, First Floor, Arlington, Virginia 22202. To reduce paper use, we are asking you to send one paper copy, and one electronic copy by diskette or Internet email. In this case, send your comments to the RCRA Information Center on labeled personal computer diskettes in ASCII (TEXT) format or a word processing format we can convert to ASCII (TEXT). Please include on the disk label the name, version, and edition of your word processing software as well as your name and docket number F–2001–WH3P–FFFFF. Protect your diskette by putting it in a protective mailing envelope. To send a copy by Internet email, address it to: *rcra-docket@epamail.epa.gov.* Make sure this electronic copy is in an ASCII format that doesn't use special characters or encryption. Cite the docket Number F–2001–WH3P–FFFFF in your electronic file.

The RCRA Information Center is located at Crystal Gateway One, 1235 Jefferson Davis Highway, First Floor, Arlington Virginia. If you would like to look at and copy supporting information for RCRA rules, please make an appointment with the RCRA Information Center by calling (703) 603–9230. Docket hours are from 9:00 A.M. to 4:00 P.M. Monday through Friday, except for Federal holidays. You may copy up to 100 pages from any regulatory document at no cost. Additional copies cost $0.15 per page.

FOR FURTHER INFORMATION CONTACT: For general information, contact the RCRA Call Center at 800 424–9346 or TDD 800 553–7672 (hearing impaired). In the Washington, DC, metropolitan area, call 703 412–9810 or TDD 703 412–3323.

For more detailed information on specific aspects of this rulemaking, contact Tracy Atagi, Office of Solid Waste 5304W, U.S. Environmental Protection Agency, 1200 Pennsylvania Avenue, NW., Washington, DC 20460–0002, 703–308–8672, *atagi.tracy@epa.gov.*

SUPPLEMENTARY INFORMATION: This document concerns revising the mixture rule in order to correct errors made in a previous notice. For further information, please see the information provided in the direct final action that is located in the ''Rules and Regulations'' section of this **Federal Register** publication.

Administrative Requirements

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is not a ''significant regulatory action'' and is therefore not subject to review by the Office of Management and Budget. Because the purpose of today's action to make a clarification that will not change the current regulatory status quo, it has no economic impact and is not subject to the regulatory flexibility provisions of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), or to sections 202 and 205 of the Unfunded Mandates Reform Act of 1995 (UMRA) (Pub. L. 104–4). In addition, this action does not significantly or uniquely affect small governments or impose a significant intergovernmental mandate, as described in sections 203 and 204 of UMRA. This rule also does not have tribal implications, as specified by Executive Order 13175 (65 FR 67249, November 6, 2000). This rule will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999). This rule also is not subject to Executive Order 13045 (62 FR 19885, April 23, 1997), because it is not economically significant.

This action does not involve technical standards; thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply. The rule also does not involve special consideration of environmental justice related issues as required by Executive Order 12898 (59 FR 7629, February 16, 1994). In issuing this rule, EPA has taken the necessary steps to eliminate drafting errors and ambiguity, minimize potential litigation, and provide a clear legal standard for affected conduct, as required by section 3 of Executive Order 12988 (61 FR 4729, February 7, 1996). This rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*). This rule is not subject to Executive Order 13211, ''Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use'' (66 FR 28355 (May 22, 2001)) because it is not a significant regulatory action under Executive Order 12866.

List of Subjects in 40 CFR Part 261

Environmental protection, Hazardous waste, Recycling, Waste treatment and disposal.

Dated: September 20, 2001.

Christine Todd Whitman,

Administrator.

[FR Doc. 01–24073 Filed 10–2–01; 8:45 am]

BILLING CODE 6560–50–U

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 300

[FRL–7070–2]

National Oil and Hazardous Substances Pollution Contingency Plan; National Priorities List

AGENCY: Environmental Protection Agency.

ACTION: Notice of Intent to Delete McAdoo Associates Superfund Site from the National Priorities List: Request for Comments.

SUMMARY: The Environmental Protection Agency (EPA) Region III announces its intent to delete the McAdoo Associates Superfund Site (Site) located in Kline Township, Schuylkill County, Commonwealth of Pennsylvania, from the National Priorities List (NPL) and requests public comment on this proposed action. The NPL constitutes Appendix B of 40 CFR Part 300 which is the National Oil and Hazardous Substances Pollution Contingency Plan (NCP), which EPA promulgated pursuant to Section 105 of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), as amended. EPA and the Pennsylvania Department of Environmental Protection (PADEP) have determined that the remedial action for the site has been successfully executed.

DATES: Comments concerning the proposed deletion of this Site from the NPL may be submitted on or before November 2, 2001.

ADDRESSES: Comments may be mailed to: Eugene Dennis (3HS21), Remedial Project Manager, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania, 19103–2029.

Comprehensive information, including the deletion docket, on this Site is available for viewing at the Site information repositories at the following locations: Regional Center for Environmental Information, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania, 19103,

215–814–5254 or 800–553–2509, Monday through Friday 8:00 a.m. to 4:30 p.m.; McAdoo-Kelayers Library, 15 Kelayers Road, McAdoo, Pennsylvania 18237, 570–929–1120.

FOR FURTHER INFORMATION CONTACT:

Eugene Dennis (3HS21), Remedial Project Manager, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania, 19103–2029. Telephone 215–814–3202 or 800–553–2509, e-mail address: *dennis.eugene@epa.gov.*

SUPPLEMENTARY INFORMATION:

Table of Contents:

I. Introduction
II. NPL Deletion Criteria
III. Deletion Procedures
IV. Basis of Intended Site Deletion

I. Introduction

The U.S. Environmental Protection Agency, Region III announces its intent to delete the McAdoo Associates Superfund Site, Schuylkill County, Pennsylvania from the NPL, Appendix B of the National Oil and Hazardous Substance Pollution Contingency Plan (NCP), which constitutes 40 CFR Part 300, and requests public comments on this proposed action. EPA identifies sites that appear to present a significant risk to public health, welfare or the environment, and maintains the NPL as the list of these sites.

EPA and the Pennsylvania Department of Environmental Protection (PADEP) have determined that remedial activities conducted at the Site have been successfully executed.

EPA will accept comments on the proposal to delete this Site for thirty calendar days after publication of this notice in the **Federal Register**.

Section II of this notice explains the criteria for deleting sites from the NPL. Section III discusses the procedures that EPA is using for this action. Section IV discusses the McAdoo Associates Superfund Site and explains how the Site meets the deletion criteria.

II. NPL Deletion Criteria

Section 300.425(e)(1) of the NCP provides that releases may be deleted from, or recategorized on the NPL, where no further response is appropriate. In making a determination to delete a release from the NPL, EPA shall consider, in consultation with the state, whether any of the following criteria have been met:

(i) The responsible parties or other parties have implemented all appropriate response actions required; or

(ii) All appropriate Fund-financed responses under CERCLA have been implemented and no further action by responsible parties is appropriate; or

(iii) The remedial investigation has shown that the release poses no significant threat to public health or the environment and, therefore, remedial measures are not appropriate.

Even if a site is deleted from the NPL, where hazardous substances, pollutants, or contaminants remain at the site above levels that allow for unlimited use and unrestricted exposure, EPA will conduct a review of the site at least every five years after the initiation of the remedial action at the site to ensure that the site remains protective of public health and the environment.

If new information becomes available which indicates a need for further action, EPA may initiate remedial actions. Whenever there is a significant release from a site deleted from the NPL, the site may be restored to the NPL without the application of the Hazard Ranking System.

III. Deletion Procedures

The following procedures were used for the intended deletion of this Site:

1. EPA Region III has recommended deletion and has prepared the relevant documents. All appropriate response actions required under CERCLA have been implemented and no further response by EPA is appropriate.
2. PADEP has concurred with the proposed deletion decision.
3. A notice has been published in the local newspapers and has been distributed to appropriate Federal, state, and local officials and other interested parties announcing the commencement of a thirty (30) day public comment period on EPA's Notice of Intent to Delete.
4. The EPA Region III Office has made all relevant documents supporting the proposed deletion available for the public to review in the Site information repositories identified above.

Deletion of the Site from the NPL does not itself create, alter, or revoke any individual's rights or obligations. The NPL is designed primarily for informational purposes and to assist Agency management. As mentioned in Section II of this Notice, Section 300.425(e)(3) of the NCP states that the deletion of a site from the NPL does not preclude eligibility for future response actions.

For deletion of this Site, EPA's Regional Office will accept and evaluate public comments on EPA's Notice of Intent to Delete before making a final decision to delete. If necessary, the EPA will prepare a Responsiveness Summary to address any significant public comments received.

A deletion occurs when the Regional Administrator places a final notice, a Notice of Deletion, in the **Federal Register**. Generally, the NPL will reflect deletions in the final update. Public notices and copies of the Responsiveness Summary will be made available to the public by the EPA Regional Office.

IV. Basis for Intended Site Deletion

The following summary provides the EPA's rationale for the proposal to delete this Site from the NPL.

Site Location

The McAdoo Associates Site consists of two operable units (OUs) that are located approximately 3 miles apart from one another. Operable Unit 1 is known as the McAdoo Kline Township (MKT) location and is located approximately 1.5 miles south of McAdoo Borough, due east of U.S.Route 309 in Kline Township, Schuylkill County, Pennsylvania. Operable Unit 2 is known as the McAdoo Blaine Street (MBS) location and is located in the Borough of McAdoo, Schuylkill County, Pennsylvania.

Site History

The MKT location consists of approximately 8 acres and is situated at the site of an old (subsurface and surface strip) coal mine which operated sporadically from the 1880's to the 1960's. In 1975 McAdoo Associates acquired the site property and installed two rotary kiln furnaces and an upright liquid waste incinerator which were operated to reclaim metals from waste sludges, reportedly using waste solvents as fuel. The MKT location was ordered closed in 1979 by the Pennsylvania Department of Environmental Resources (now known as the Pennsylvania Department of Environmental Protection) as a result of numerous environmental compliance problems. At the time of closure in April 1979, the MKT location was inventoried and found to contain 6,790 drums of hazardous waste, four above ground 15,000 gallon storage tanks, three above ground 10,000 gallon storage tanks and miscellaneous debris. Between January 1981 and October 1982 the Potentially Responsible Parties (PRP's) removed all of the drums and all site features, with the exception of one 15,000 gallon storage tank from the MKT location.

The MBS location consists of a small lot (approximately 100' x 150') situated at the intersection of west Fourth street and north Harrison street in a residential area of McAdoo Borough. Prior to 1972, the MBS location was the site of a heating oil and gasoline storage

business which utilized five underground storage tanks. From 1972 to 1979 the property allegedly was used by the owners of McAdoo Associates for temporary storage of various liquid wastes in the underground tanks. The waste was reportedly used as fuel to be burned at the MKT location. Operations at the MBS location were discontinued in 1979.

Because both locations were operated as one facility involving the same ownership and waste, they were combined and collectively called the McAdoo Associates site for evaluation in the Hazard Ranking System (HRS) scoring process. The site received a score of 63.03 and the McAdoo Associates site was placed on the National Priorities List (NPL) in September, 1983.

Record of Decision—MBS Location

EPA conducted investigations of the underground tanks at the MBS location in 1982, and response activities also began in 1982 when EPA ordered the PRPs to pump 11,000 gallons of waste liquids from four of the underground tanks. The liquid waste was described as petroleum distillates and PAHs. Gasoline and water were reported to be contained in one tank, and oils and solvents were identified in the other tanks. Based on the results of the investigations, EPA issued a Record of Decision (ROD) for Interim Remedial Measures (IRM) on June 5, 1984, calling for cleaning and removal of the underground tanks, the removal of contaminated soil, and the sampling of subsurface soils. The implementation of the ROD began in March 1985 with the excavation and removal of the tanks and was completed in June 1985 when the MBS location was backfilled and graded.

Record of Decision—MKT Location

EPA conducted a Remedial Investigation (RI) at the MKT location in 1984. The results of the RI indicated elevated levels of metals in the mine pool underlying the site and in the site fill. Based on the results of the RI and subsequent Feasibility Study (FS), EPA issued a Record of Decision on June 28, 1985, for the MKT location, which selected a remedial action alternative that included the following components:

- Implementing a mine subsidence study (MSS) to determine the risk and magnitude of mine subsidence;
- Removing and disposing of miscellaneous surface debris and the remaining 15,000 gallon above ground tank;
- Implementing a soil sampling program to define the extent of soil contamination;
- Excavating and offsite disposal of contaminated soils and backfilling of the excavated areas with clean fill;
- Regrading, constructing a cap with surface water diversion and re-vegetation; and
- Performing operation and maintenance (O&M), including groundwater monitoring, for up to 30 years.

The PRP's began remedial activities at the MKT location in 1988 with the removal of the remaining storage tank and the MSS required by the ROD. Excavation and disposal of contaminated soils in two areas defined by the soil sampling program and MSS were performed in 1990. The construction of the cap was initiated on July 20, 1991, and was completed on November 14, 1991.

Record of Decision—Both MKT and MBS Locations

In 1990/1991 EPA conducted a focused RI/FS at the MBS and MKT locations to investigate outstanding concerns not addressed by RODs previously issued for these locations. The scope of the focused RI/FS was to evaluate the surface water, sediment and groundwater at the MKT location and groundwater at the MBS location. The focused RI/FS was completed in July 30, 1991. Based on the results of the focused RI/FS, EPA issued a ROD on September 30, 1991. The ROD stated that no further actions beyond those already implemented at the MKT and MBS locations were required. At the same time, however, the 1991 ROD required long-term groundwater monitoring at both locations. The major components of the monitoring program include:

- Expansion of the long-term water quality monitoring program as needed at the MKT location (originally included as part of the 1985 ROD) to include additional sampling of all existing monitoring wells;
- Installation of four groundwater monitoring wells at the MBS location to be used for long-term monitoring of groundwater quality.

The Operations and Maintenance Plan, attached to the 1988 Consent Decree for the MKT location, was amended in June, 1998 to expand the groundwater monitoring program to include the requirements of the 1991 ROD. Subsequently, annual groundwater monitoring was initiated by the PRP's in October, 1998 at the MKT location.

Since no agreement had been formulated between EPA and the PRP's for the MBS location, the wells required by the 1991 ROD for the MBS location were installed by EPA in May and June, 1992. Groundwater samples were then collected and the results indicated that petroleum-related organic compounds and semi-volatile organic compounds were present in the monitoring wells located down-gradient of the former tank location. Subsequent groundwater sampling was performed as part of a Focused Feasibility Study (FFS) conducted by EPA in the Spring of 1993. The results of the FFS sampling confirmed the presence of organic contaminants in the groundwater as well as a free product (in one monitoring well) determined to be weathered fuel oil and gasoline. Based on the results of the FFS, EPA issued a ROD Amendment for the MBS location on September 30, 1993. The major components of the ROD Amendment are:

- Installation of new groundwater extraction wells at the MBS location and extraction of contaminated groundwater;
- Installation and operation of a free product removal system to extract the fuel and gasoline;
- Installation of a groundwater treatment system to include oil/water separation, air stripping, and polishing using granular activated carbon;
- Performance of groundwater monitoring; and
- The establishment of Performance Standards for Benzene, Ethylbenzene, 1,2-dichloroethane Bis(2-ethylhexyl)pthalate and Manganese.

Phase one of the Remedial Action (RA) at the MBS location was implemented by EPA on March 28, 1995 with the installation of five groundwater extraction wells and the recovery of free product from an existing monitoring well. After installation of the groundwater extraction wells EPA determined, through groundwater extraction, that a pumping rate of 15 gallons per minute could not be sustained by pumping these wells individually or collectively. The capacity of the aquifer to recharge the wells and produce the amount of water needed for treatment was not sufficient. As a result, EPA terminated the RA for the MBS location after Phase One.

Following the termination of the RA at the MBS location, EPA issued an Explanation of Significant Differences (ESD) on September 26, 1995. The ESD identified several Significant Differences that warranted changes to the remedy presented in the 1993 ROD Amendment for the MBS location. The

Significant Differences presented in the ESD are as follows:

(1) Mechanical pumping of the wells at the MBS location, on a continuous basis, was determined not to be a viable option due to insufficient water volume as described above. The contaminated groundwater would have to be manually extracted by hand bailing the wells.

(2) The small volume of ground water capable of being removed from the extraction wells did not warrant the construction of a treatment system at the MBS location. The manually extracted groundwater would be contained and taken off-site for treatment.

(3) The extraction and treatment of groundwater from the MBS location would not be performed on a continuous basis. Rather, the manual extraction would be performed on a periodic basis.

(4) The free product recharge rate was extremely slow and as a result a free product recovery system was not warranted. Instead the free product was manually removed on the same schedule as the manual removal of the contaminated groundwater.

The ESD for the MBS location was implemented in 1996. Between 1996 and June, 2001 the wells at the MBS location were purged and sampled 4 times. A review of the monitoring data indicates the presence of PAHs which are constituents of gasoline and fuel oil. Benzene and ethylbenzene are present at concentrations above the performance standards. These contaminants have been determined not to be compounds of concern, but instead residuals of the gasoline and fuel oil once stored at the MBS location. Bis(ethylhexyl)pthalate is a suspect contaminant present at concentrations slightly above the performance standards.

Based on a thorough evaluation of the results of the groundwater data collected from the wells at the MBS location, EPA has determined that the volatile organic compounds being found in the groundwater are constituents of gasoline and fuel oil and are not compounds of concern related to the past storage of waste liquids at the MBS location. Also, there are no threats to residents who use groundwater in the area of the MBS location, as the source of potable groundwater is located approximately 3 miles away and the wells are several hundred feet deep. There is no hydraulic connection between the shallow groundwater at the MBS location and the public water supply wells. As such, EPA has discontinued the manual extraction of groundwater. Groundwater will continue to be monitored at the MBS location.

Five-Year Review

A five-year review for the Site was completed on June 27, 2000. Five-year reviews for the Site will continue to be conducted. The next Review is scheduled to be completed by September 30, 2004.

Community Involvement

Public participation activities have been satisfied as required in CERCLA Section 113(k), 42 U.S.C. 9613(k), and CERCLA Section 117, 42 U.S.C. 9617. Documents in the deletion docket on which EPA relied to make this recommendation of deletion from the NPL are available to the public in the information repositories.

Applicable Deletion Criteria

EPA is proposing deletion of this Site from the NPL. PADEP has concurred with EPA that all appropriate responses under CERCLA have been implemented. Documents supporting this action are available from the docket. EPA believes that the criteria stated in Section II(i) and (ii) for deletion of this Site have been met. Therefore, EPA is proposing the deletion of the McAdoo Associates Superfund Site from the NPL.

Dated: September 19, 2001.

Thomas C. Voltaggio,

Acting Regional Administrator, U.S. EPA Region III.

[FR Doc. 01–24486 Filed 10–2–01; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

RIN 1018–AI16

Endangered and Threatened Wildlife and Plants; Proposed Endangered Status for the Rota Bridled White-Eye (*Zosterops rotensis*) From the Commonwealth of the Northern Mariana Islands

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule.

SUMMARY: We, the U.S. Fish and Wildlife Service, propose endangered status pursuant to the Endangered Species Act of 1973, as amended, for the Rota bridled white-eye (*Zosterops rotensis*), a bird. The Rota bridled white-eye is a recognized species of white-eyes endemic to the Mariana archipelago, which comprises the U.S. Territory of Guam and the U.S. Commonwealth of the Northern Mariana Islands. The Rota bridled white-eye is endemic to the island of Rota, and was once widespread, possibly occupying forested habitat at all elevations. The total population of the Rota bridled white-eye was estimated at 1,167 individuals in 1996, which is a decline of 89 percent from the 1982 estimated population. The population estimate of Rota bridled white-eyes in 1999 was 1,092 (Amidon 2000). The Rota bridled white-eye is currently found in four patches of mature wet forests at elevations above 200 meters (650 feet) in elevation. The reasons for this species' decline is likely due to degradation or loss of habitat due to development, agricultural activities, and naturally occurring events; avian disease; predation; and pesticides. This proposal, if made final, would implement the protection provisions of the Act.

DATES: Comments from all interested parties must be received by December 3, 2001. Public hearing requests must be received by November 19, 2001.

ADDRESSES: If you wish to comment, you may submit your comments and materials concerning this proposal by any one of several methods.

(1) You may submit written comments to the Field Supervisor, U.S. Fish and Wildlife Service, Pacific Islands Office, 300 Ala Moana Boulevard, Room 3–122, Box 50088, Honolulu, Hawaii 96850.

(2) You may send comments by electronic mail (e-mail) to: rota_bwe_pr@fws.gov. See the Public Comments Solicited section below for file format and other information about electronic filing.

(3) You may hand-deliver comments to our office at 300 Ala Moana Boulevard, Room 3–122, Box 50088, Honolulu, Hawaii.

FOR FURTHER INFORMATION CONTACT: Field Supervisor, Pacific Islands Office, at the above address (telephone 808/541–3441; facsimile 808/541–3470).

SUPPLEMENTARY INFORMATION:

Background

The Rota bridled white-eye (*Zosterops rotensis*) is endemic to the island of Rota, U.S. Commonwealth of the Northern Mariana Islands (CNMI). Rota is approximately 86 square kilometers (km^2) (33 sq miles (mi^2)) and is the fourth largest island in the Mariana Islands archipelago. The island of Rota is composed of a series of uplifted coral limestone plateaus with a volcanic outcrop. The climate is tropical marine with high humidity and uniform temperatures throughout the year. Average daytime temperatures are approximately 12 degrees Celsius (80

degrees Fahrenheit), with approximately 200 centimeters (cm) (80 inches (in)) of rainfall annually and about 80 percent humidity. Rainfall averages 27 cm (10.6 in) per month during the wet season and 9.6 cm (3.8 in) per month during the dry season.

The Rota bridled white-eye is a small, flocking bird in the Family Zosteropidae, Order Passeriformes. The name white-eye is derived from the ring of white feathers around each eye. The plumage is tinged with yellow, and the bill, legs, and feet are yellow-orange (Pratt *et al.* 1987). Wing, tail, and tarsal lengths taken from 21 birds captured by the Mariana Avian Rescue and Survey (MARS) Project averaged 5.6 cm (2.2 in), 3.8 cm (1.5 in), and 2.6 cm (1 in), respectively (Scott Derrickson, National Zoological Park, *in litt.* 1998). Average weights taken from birds captured for the MARS Project were 9.7 grams (0.3 ounces) for males and 9.2 grams (0.3 ounces) for females (S. Derrickson, *in litt.* 1998).

Baker (1951) reports that the Rota bridled white-eye was first grouped with a population of birds on Palau as *Zosterops semperi*. The Rota bridled white-eye was later described as a separate subspecies, *Z. semperi rotensis*, by Takatsukasa and Yamashina (1931). All of the Micronesian bridled white-eyes were then placed under one species, *Z. conspicillatus*, by Stresemann (1931). Later, the bridled white-eyes in the Mariana Islands were recognized as three separate subspecies: *Z. c. rotensis* (Rota); *Z. c. saypani* (Saipan and Tinian); and *Z. c. conspicillatus* (Guam) (Fancy and Snetsinger 1996). However, the Rota bridled white-eye has been considered to be a full species, *Z. rotensis*, on the basis of unpublished differences in plumage, vocalizations, and behavior (H. D. Pratt, *in litt.* 1994, as cited in Collar *et al.* 1994). Recent genetic evidence from mitochondrial DNA sequences (Slikas *et al.* 2000) supported the recognition of the species proposed by Pratt *et al.* (1987), and also showed that two distinct lineages occur within the Marianas, one on Guam, Saipan, Tinian, and Aguijan, and the other on Rota. Both recent authorities on the taxonomy of Micronesian white-eyes thus agree that the Rota population is distinct from others in the Marianas and should be recognized as a separate species, which therefore is referred to here as the Rota bridled white-eye (*Z. rotensis*).

The most extensive work on bridled white-eye foraging and social behavior was conducted on Saipan. Craig (1989, 1990) found that bridled white-eyes on Saipan forage in flocks of 10 to 40 individuals in the upper outer layers in the leaves of trees in both limestone forests and *Leucaena leucocephala* (tangantangan) thickets. Bridled white-eyes on Saipan and Guam have also been recorded in other habitats, including suburban areas, beach strand, wetlands, and grasslands (Craig 1996; Jenkins 1983). They forage primarily by gleaning insects from leaves in the upper, outer layers of trees, but also feed on seeds, nectar, flowers, and fruits (Craig 1996).

Foraging behaviors recorded by Craig and Taisacan (1994) found that the foraging behavior of the Rota bridled white-eye appeared similar to that of bridled white-eyes on Saipan. Most foraging took place in the upper, outer layer of canopy trees where they gleaned for insects on leaves and branches. They are known to forage in trees that are 15 cm (6 in) in diameter at breast height (dbh) or smaller (Fred Amidon, pers. comm. 1999). The tree species commonly used by white-eyes on Saipan for foraging were not recorded by Craig (1989, 1990). However, Amidon (2000) commonly observed Rota bridled white-eyes foraging in upper leaves and branches of *Elaeocarpus joga* (yoga), *Hernandia labyrnthica* (oschal), and *Merrilliodendron megacarpum* (faniok).

The typical flock of Rota bridled white-eyes consists of five to seven birds, which is small compared to those on Saipan; this may be due to low numbers of birds on Rota. Craig and Taisacan (1994) believe the white-eye flocks on Rota may be composed of related individuals, based upon their observations of frequent food begging in the flocks. The home ranges of the flocks are estimated to be at least 150 meters (m) (495 feet (ft)) in diameter (Craig and Taisacan 1994).

Very little is known about the breeding biology of the Rota bridled white-eye. Twenty-three nests have been recorded (Yamashina 1932; Pratt 1985; Lusk and Taisacan 1997; Amidon 2000). The smallest nest tree dbh recorded was 23 cm (9 in) (Amidon 2000). The discovery dates of these nests indicate that the breeding season extends at least from December to August. However, a year-round breeding season may be more likely, as indicated by breeding records of bridled white-eye species and subspecies (Marshall 1949; Jenkins 1983). The recorded clutch sizes from four Rota bridled white-eye nests were one to two light blue eggs (Yamashina 1932; Amidon *et al.* unpublished data). Descriptions of eggs of other Mariana bridled white-eyes indicates that completed clutches consist of two to three light blue-green eggs (Yamashina 1932; Jenkins 1983). Observations of 7 active nests by Amidon (2000) indicate incubation and nestling periods of at least 10 and up to 12 days and an observation of one banded nestling indicates a fledgling period of at least 8 days. Rota bridled white-eye nests were commonly suspended between branchlets and leaf petioles and were composed of rootlets, woven grass or *Pandanus* spp. fibers, moss, spider webs, and a yellow cottony material (Lusk and Taisacan 1997; Amidon 2000). Nests were found above 320 m (1056 ft) elevation in *Hernandia labyrinthica*, *Elaeocarpus joga*, *Merrilliodendron megacarpum*, and *Acacia confusa* (sosugi) trees with dbh between 23 cm (9 in) and 602 cm (237 in) (Pratt 1985; Lusk and Taisacan 1997; Amidon 2000).

Very little is known about the past distribution and abundance of bridled white-eyes on Rota. Early descriptions by Baker (1948) described this species as numerous and found at lower elevations. Residents of Rota during the post World War II years also remember seeing white-eyes at low elevations in Songsong Village (Engbring *et al.* 1986). However, in 1975, Pratt *et al.* (1979) found no white-eyes in the lowland areas and only observed birds on the central plateau. The current distribution of Rota bridled white-eyes indicates that the highest densities are found in the high-elevation wet limestone forests (Fancy and Snetsinger 1996; Amidon 2000). All Rota bridled white-eye nests with recorded locations (22 out of 23 nests) were also recorded in high-elevation wet forest (Pratt 1985; Lusk and Taisacan 1997; Amidon 2000). Whether this distribution is the result of habitat preference or is simply an artifact of the population decline is unknown; however, the species appears to have been mostly limited to the upper elevation forests since at least the 1960s (Fancy and Snetsinger 1996).

In 1977, a survey was conducted only on the upper plateau and densities were estimated white-eye densities to be 22 birds/km^2 (35 birds/mi^2) (Ralph and Sakai (1979). The first island-wide survey of forest birds was conducted in 1982. During this survey, bridled white-eyes were only found in forested areas above 300 m (984 ft) (Engbring *et al.* 1986). The average bridled white-eye density on Rota was determined to be 183 birds/km^2 (292 birds/mi^2) (1/16 the average density on Tinian) with an island population estimate of 10,763 birds. Other surveys following the 1982 survey showed little change in the white-eye distribution, but did show a decline in white-eye numbers (Engbring 1987, 1989; Craig and Taisacan 1994). In

a 1994 survey, it was found that densities had decreased by 27 percent (155 birds/km^2 (248 birds/mi^2)) from the 1982 estimate (Ramsey and Harrod 1995). In the fall of 1996, a survey by Fancy and Snetsinger (1996) estimated the population of Rota bridled white-eyes to be 1,167 birds. This estimate indicated an 89 percent decline from the 1982 estimate. In addition, this survey determined that the population was restricted primarily to four patches of forest covering an area of about 254 hectares (ha) (628 acres (ac)) above 200 m (656 ft) elevation. Ninety-four percent of the Rota bridled white-eyes were found to occur in these patches. The white-eye population was estimated to be at 1,092 after a survey conducted in 1999 (Amidon 2000).

Forests in these four high-density areas can be described as a type of cloud forest because of the cloud buildup over the central plateau region, which results in flourishing wet forests with growths of epiphytic ferns and orchids (Fosberg 1960; Falanruw *et al.* 1989). Amidon (2000) found that the primary overstory component of three of the four high-density Rota bridled white-eye areas is *Hernandia labyrinthica* with *Elaeocarpus joga*. The remaining area is almost exclusively made up of *Merrilliodendron megacarpum* in the overstory.

Currently, 85 percent of the Rota bridled white-eye population occurs on public lands and 15 percent occurs on private lands. There is no U.S. government-owned land in the CNMI; all public lands are administered by the CNMI government. Approximately 60 percent of the land on Rota is publicly owned, although much of it has been leased to private individuals.

The Rota bridled white-eye is listed as a critically endangered species in the most recent list of threatened animals of the world by the World Conservation Union (IUCN) (1999). The IUCN list provides an assessment of the conservation status of species on a global scale in order to highlight species threatened with extinction and, therefore, promote their conservation. A critically endangered species is one facing an extremely high risk of extinction in the wild in the immediate future. Also, in 1991, the CNMI government listed the Rota bridled white-eye as threatened or endangered.

Previous Federal Action

Federal action on the Rota bridled white-eye began when we published a Notice of Review in the **Federal Register** on December 30, 1982 (47 FR 58454). The Rota bridled white-eye was included as a Category 2 candidate for Federal listing. Category 2 species were those for which conclusive data on biological vulnerability and threats were not currently available to support proposed rules. Subsequent Notices of Review published on September 18, 1985 (50 FR 37958), January 6, 1989 (54 FR 554), and November 21, 1991 (56 FR 58804) also listed this species as a Category 2 species.

In the November 15, 1994, Notice of Review (59 FR 58982), the Rota bridled white-eye was moved from a Category 2 candidate to a Category 1 candidate for Federal listing. Category 1 species were those for which we had on file substantial information on biological vulnerability and threats to support preparations of listing proposals, but for which listing proposals had not yet been published because they were precluded by other listing activities.

In the February 28, 1996 (61 FR 7596), and September 19, 1997 (62 FR 49398), Candidate Notices of Review, we discontinued category designations and the Rota bridled white-eye was listed as a candidate species. We define candidate species as those for which we have sufficient information on biological vulnerability and threats to support proposals to list the species as threatened or endangered.

Summary of Factors Affecting the Species

Section 4 of the Act and our regulations (50 CFR part 424) issued to implement the listing provisions of the Act established the procedures for adding species to the Federal Lists. A species may be determined to be endangered or threatened due to one or more of the five factors described in section 4(a)(1) of the Act. These factors and their application to the Rota bridled white-eye (*Zosterops rotensis*) are listed below.

A. The Present or Threatened Destruction, Modification, or Curtailment of its Habitat or Range

The Mariana Islands were believed to have been colonized by humans at least 4,000 years ago (Craib 1983). Before European contact, the island of Rota was thought to have had a large population of people who moved into the area from insular southeast Asia and Melanesia, and who modified most of the island's vegetation (Fosberg 1960). During the Spanish administration (1521 to 1899), the island was largely depopulated, and the vegetation probably recovered on most of the island until the Japanese administration from 1914 to 1944 (Fosberg 1960; Engbring *et al.* 1986). During the Japanese administration, much of the level land was cleared for sugar cane cultivation, and areas on the upper terrace were cleared for phosphate mining (Fosberg 1960; Engbring *et al.* 1986). Rota was not invaded during World War II, but was bombed (Engbring *et al.* 1986). In 1946, one-fourth of the total area of Rota was covered in well-developed forest, but this was broken into small parcels or located along the base of cliffs (Fosberg 1960). By the mid-1980s, Engbring *et al.* (1986) reported that 60 percent of Rota was composed of native forest, although a good portion of this was in an altered condition. The most mature native forests were found along the cliffs of the upper plateau, with the forests on level portions of the island being primarily secondary growth. Today, less than 58 percent of the native limestone forest remains (Falanruw *et al.* 1989), and plans for further projects, such as agricultural homesteads and resort development in the As Mundo area, continue to threaten the remaining limestone forest, and the available habitat for the Rota bridled white-eye.

Although the habitat in the limestone forest is threatened, the majority of the high-elevation forests along the upper plateau have not been threatened by development and clearing in the past because of their rugged topography. They have, however, received extensive typhoon damage in recent years. In 1988, typhoon Roy hit Rota with winds of over 241 kilometers per hour (150 miles per hour) and completely defoliated almost all of the forests of Rota (Fancy and Snetsinger 1996). In some areas, 50 percent of trees were downed, and 100 percent suffered limb damage. The wet forests of the upper cliffline were drastically altered by this storm and have not recovered well (Fancy and Snetsinger 1996). In December 1997, super typhoon Paka hit Rota, and much of the upper plateau was defoliated again. These storms have limited the available nesting and foraging sites for the Rota bridled white-eye.

B. Overutilization for Commercial, Recreational, Scientific, or Educational Purposes

Valued for their songs, some species and subspecies of white-eyes are kept as pets in Asian countries (Moreau and Kikkawa 1985). However, there are no reports of Rota bridled white-eyes in the pet trade. Unrestricted collecting or hunting is not known to be a factor currently affecting this species. Vandalism may be a potential concern for this species. For example, on Rota, rare plants have been the target of vandals who feared the plant's existence was an impediment to development

(Raulerson and Rinehart 1997). However, we have no evidence of such vandalism directly affecting Rota bridled white-eyes.

C. Disease or Predation

Black drongos (*Dicrurus macrocercus*), also known as king crow, are thought to have been introduced to Rota from Taiwan by the Japanese South Seas Development Company in 1935 to control destructive insects (Baker 1948). Black drongos are noted for their aggression toward and occasional predation on small passerines (Ali and Ripley 1972; Maben 1982). On Guam, black drongos have been observed eating an Eurasian tree sparrow (*Passer montanus*) (Maben 1982), rufous fantails (*Rhipidura rufifrons*), a Guam swiftlet (*Collocalia bartschi*) (Perez 1968), and either a bridled white-eye or a Guam flycatcher (*Myiagra freycineti*) (Drahos 1977). A black drongo was observed eating a bridled white-eye on Rota (Amidon 2000). Maben (1982) observed black drongos harassing birds such as native and introduced doves (Order Columbidae), cardinal (Micronesian) honeyeaters (*Myzomela rubratra*), and Micronesian starlings (Aplonis opaca). Harassment by the drongo of potential predators like crows and raptors has also been noted (Ali and Ripley 1972; Maben 1982; Melville 1991).

Craig and Taisacan (1994) believe that a relationship exists between the abundance of black drongos and the decline and range restriction of the bridled white-eye on Rota. They believe the distributions of black drongos and potential prey, like the Rota bridled white-eye and the rufous fantail, show that black drongo predation may be a factor in the decline of these species. Engbring *et al.* (1986) found black drongos abundant in lowlands and uncommon in the forests of the upper plateau where the Rota bridled white-eye is found. In lowland areas, the rufous fantail was also found to be uncommon, while birds too large to be prey of black drongos were abundant (Engbring *et al.* 1986).

On the other hand, Fancy and Snetsinger (1996) believe that black drongos could not be responsible for the distributional changes and population decline of the white-eye. Studies of black drongos on Guam by Maben (1982) found that, although they would harass other birds, black drongos did not regularly attempt to prey on them. Birds have also been reported to forage within black drongo territories and nest near active black drongo nests without harassment (Ali and Ripley 1972; Shukkur and Joseph 1980; Maben 1982). Michael Lusk of the Service (unpublished data) observed no interactions between black drongos and Rota bridled white-eyes during a 1993–1994 study of their interactions on Rota (cited in Fancy and Snetsinger 1996). However, it is possible that black drongo predation or harassment may be limiting the recovery of the bridled white-eye on Rota (Fancy and Snetsinger 1996).

The brown tree snake (*Boiga irregularis*) was found to be the major factor in the decline of native forest birds on Guam (Savidge 1986, 1987). There have been 43 sightings and 8 captures of brown tree snakes on Saipan since 1982 (Grant Beauprez, CNMI Department of Fish and Wildlife, *in litt.* 2000), and a population of this voracious predator may now be established on Saipan (Vogt 2000). Presently, no observations of live brown tree snakes have been recorded on Rota, although two dead, confirmed brown tree snakes have been found on Rota (Rodda, pers. comm. 1998). Fancy and Snetsinger (1996) do not believe that brown tree snakes are the likely cause of the Rota bridled white-eye decline. The Rota bridled white-eye decline has been island-wide and has not followed the pattern that occurred on Guam in which the range expansion of the brown tree snake correlated with the range contraction of forest birds (Savidge 1987). Also, the densities of rats on Rota appear very high and would have declined if snakes were a problem on the island. However, given that the brown tree snake exists on Guam and may now exist in Saipan, and that two dead brown tree snakes were found on Rota, the accidental introduction of the brown tree snake to Rota is a constant potential threat.

Two species of introduced rat, Asian house rat (*Rattus tanezumi*) and Polynesian rat (*R. exulans*), have been recorded on Rota (Johnson 1962; Flannery 1995). Recent work by Service personnel on Rota, and opportunistic trapping and observations for the Guam rail release program, have indicated that high densities of rats exist on Rota (Fancy and Snetsinger 1996). Introduced rats have been found to be important predators of native birds in Hawaii, New Zealand, and other Pacific Islands (Atkinson 1977, 1985; Robertson *et al.* 1994). However, the role of rats in the population decline and range restriction of the Rota bridled white-eye is unknown. Fancy and Snetsinger (1996) indicated that other causes may have led to the decline, but did not rule out the possibility that rat predation may be an important mortality factor for Rota bridled white-eyes.

Disease has also been implicated as a potential cause for the population decline and range restriction of the Rota bridled white-eye. In Hawaii, research has indicated that avian disease was a significant factor in the decline and distributional change of the native avifauna (van Riper *et al.* 1986, Warner 1968). Observations made by biologists and veterinarians who have worked on Rota, however, do not indicate the presence of pathogens or of an epidemic occurring there (Fancy and Snetsinger 1996, Pratt 1983). Research on Guam has not revealed the presence of significant levels of disease (Savidge 1986). The presence of the haematozoans *Plasmodium* spp. (Savidge 1986) and *Haemoproteus* spp. (Marshall 1949; Savidge 1986) in bridled white-eyes on Saipan has been reported. However, these parasites were considered to be relatively benign based on the good physical condition of the birds (Savidge 1986). Since no studies on the presence and effect of disease on the native birds of Rota have been conducted, the effects of disease on the decline and range restriction of the Rota bridled white-eye remains unclear.

D. The Inadequacy of Existing Regulatory Mechanisms

In 1991, the CNMI government listed the Rota bridled white-eye as threatened or endangered (the CNMI makes no distinction between the threatened and endangered categories) (Public Law 2–51). However, no regulations prohibit the taking of CNMI threatened and endangered species (Kevin Garlick, Service, *in litt.* 1997).

A current activity that may provide some help in stabilization and protection for this bird on Rota is designation of the Sabana Protected Area (Area). The Area occurs on a plateau of shifting agricultural lands within a mosaic of native forest, and was designated as a protected area in 1994 through Rota Local Law No. 9–1 (Sabana Protected Area Management Committee 1996). A plan was developed to manage the Area as part of an effort by the CNMI government to limit development in this upper elevation area (Sabana Protected Area Management Committee 1996). Zones of activities have been designated for the Area, with rules established for each zone. A number of activities can occur in the Area in certain zones, such as farming, hunting, forestry, and medicinal use of plants. Many of these activities require a permit from the CNMI Department of Lands and Natural Resources. Conservation zones within the Area have been established in areas critical to the continued survival of bats

on Rota (Sabana Protected Area Management Committee 1996). These conservation zones also correspond to most of the current range of the Rota bridled white-eye. However, vegetation that is 15 cm (6 in.) dbh or less may be permitted to be removed in certain zones, including the bat conservation zone. Removal of this vegetation may have negative effects on the bridled white-eye nesting and foraging habitat. While preservation of these forested areas is believed to also be essential for the long-term stability of the Rota bridled white-eye, not all of the species' habitat occurs within the Sabana Protected Area. Since the Rota bridled white-eye is not protected from take as a CNMI-listed species, and since the Sabana Protected Area affords some, but likely inadequate, habitat protection for this species, regulatory mechanisms to protect this species are inadequate.

E. Other Natural or Manmade Factors Affecting its Continued Existence

The use of pesticides has been implicated as a potential factor in the decline of the Rota bridled white-eye (Fancy and Snetsinger 1996). However, little information is available on the use of pesticides in the post World War II Mariana Islands. The U.S. military is reported to have liberally applied DDT (1, 1-bis (chlorophenyl)-2, 2, 2 trichloroethane) on the Mariana Islands during and after WWII (Baker 1946; Grue 1985). Pesticide use on Guam was implicated as a potential factor in the decline of Guam's avifauna (Jenkins 1983; Diamond 1984). But concentrations of DDT and DDE (1, 1-bis (chlorophenyl)-2, 2-dichloroethane) in swiftlet carcasses and guano were considered to be too low to cause mortality or reproductive failure (Grue 1985; Savidge 1986). The insecticide malathion was also used to control the introduced melon fly (*Dacus cucurbitae*) in 1988 and 1989 on Rota (Engbring 1989). However, a study to monitor the status of birds on Rota before and after the insecticide application did not detect any adverse effects on populations there (Engbring 1989). Approximately 90 to 95 percent of crops grown on Rota are root crops, such as sweet potato and taro, so pesticide use tends to be minimal. The most commonly used insecticides on Rota are diazinon, sevin, and malathion, which are used to control insects on vegetables and livestock (John Morton, Service, pers. comm. 1998). It is not known what impacts these insecticides have on the Rota bridled white-eye.

The small population size and limited distribution of the Rota bridled white-eye places this species at risk from naturally occurring events and environmental factors. Typhoons, in particular, pose a serious threat, directly and indirectly, to the white-eye and other avian populations (Wiley and Wunderle 1993). Direct effects include mortality from winds and rains. Indirect effects include the loss of food supplies, foraging habitat substrates, nests, nest and roost sites, and microclimate changes. For example, in December 1997, super typhoon Paka defoliated trees and removed large amounts of epiphytic growth and associated organic matter from the limestone forests of Rota (John Morton, pers. comm. 1998). This may have resulted in lower quality habitat and decreased availability of nesting material for the Rota bridled white-eye.

We have carefully evaluated the best scientific and commercial information available regarding the past, present, and future threats faced by this species in determining to propose this rule. Based on this evaluation, we propose to list the Rota bridled white-eye as endangered. The Rota bridled white-eye is endemic to the island of Rota, and its population has declined an estimated 89 percent over the past 16 years. This species is threatened by one or more of the following: Habitat degradation or loss due to development, agricultural activities, and naturally occurring events such as typhoons; avian disease; predation by black drongos, rats, and potentially the brown tree snake; pesticides; and inadequate existing regulatory mechanisms. The small population size and limited distribution makes this species particularly vulnerable to extinction from random environmental events. Because the Rota bridled white-eye is in danger of extinction throughout all or a significant portion of its range, it fits the definition of endangered as defined in the Act.

Critical Habitat

Critical habitat is defined in section 3 of the Act as the specific areas within the geographical 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 essential to the conservation of the species and that may require special management considerations or protection, and specific areas outside the geographical area occupied by a species at the time it is listed, upon a determination by the Secretary that such areas are essential for the conservation of the species. ''Conservation'' means the use of all methods and procedures needed to bring the species to the point at which listing under the Act is no longer necessary.

Critical habitat designation, by definition, directly affects only Federal agency actions through consultation under section 7(a)(2) of the Act. 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 a listed species or destroy or adversely modify its critical habitat.

Section 4(a)(3) of the Act, as amended, and our implementing regulations (50 CFR 424.12) require that, to the maximum extent prudent and determinable, we designate critical habitat at the time the species is determined to be endangered or threatened. Our regulations (50 CFR 424.12(a)(1)) state that the designation of critical habitat is not prudent when one or both of the following situations exist—(1) the species is threatened by taking or other human activity, and identification of critical habitat can be expected to increase the degree of threat to the species, or (2) such designation of critical habitat would not be beneficial to the species.

We find that designating critical habitat is prudent for the Rota bridled white-eye. Consistent with applicable regulations (50 CFR 424.12(a)(1)(i)) and recent case law, we do not expect that the identification of critical habitat will increase the degree of threat to this species of taking or other human activity. In the absence of a finding that critical habitat would increase threats to a species, if any benefits would result from critical habitat designation, then a prudent finding is warranted. In the case of this species, there may be some benefits to designation of critical habitat. The primary regulatory effect of critical habitat is the section 7 requirement that Federal agencies refrain from taking any action that destroys or adversely modifies critical habitat. While a critical habitat designation for habitat currently occupied by this species would not be likely to change the section 7 consultation outcome because an action that destroys or adversely modifies such critical habitat would also be likely to result in jeopardy to the species, in some instances section 7 consultation would be triggered only if critical habitat is designated-for example, unoccupied habitat that may become occupied in the future. Some educational or informational benefits also may result from designation of critical habitat.

Because of the sharp population decline and currently precariously low numbers of Rota bridled white-eye individuals, we are not spending resources on the proposal of critical

habitat with the proposal to list this species. Section 4(b)(6)(C) of the Act states that the final critical habitat designation shall be published with the final listing determination unless ''* * * (i) it is essential to the conservation of such species that the regulation implementing such determination be promptly published; * * *''

We will develop a proposal to designate critical habitat for the Rota bridled white-eye as soon as feasible given our financial constraints and in coordination with the priority of other listing actions.

Available Conservation Measures

Conservation measures provided to endangered or threatened species under the Act include recognition, recovery actions, requirements for Federal protection, and prohibitions against certain practices. Recognition through listing encourages and results in conservation actions by Federal, State, and local agencies, private organizations, and individuals. The Act provides for possible land acquisition and cooperation with States and requires that recovery plans be developed for all listed species. Funding may be available through section 6 of the Act for the State to conduct recovery activities. The protection required of Federal agencies and the prohibitions against taking and harm are discussed, in part, below.

Section 7(a) of the Act, as amended, requires Federal agencies 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) requires Federal agencies to confer with us on any action that is likely to jeopardize the continued existence of a species proposed for listing or result in destruction or adverse modification of proposed critical habitat. If a species is listed, 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 the listed species or destroy or adversely modify its critical habitat. If a Federal action may affect a listed species or its critical habitat, the responsible Federal agency must enter into consultation with us, under section 7(a)(2) of the Act.

Federal agency actions that may require conference or consultation include U.S. Army Corps of Engineers involvement in projects such as the construction of roads and bridges; Natural Resource Conservation Service projects; Federal Emergency Management Agency activities; and U.S. Department of Housing and Urban Development projects.

There are no federally owned lands on the island of Rota. Parts of Rota have been used as, or are under consideration for use as, training areas by U.S. armed forces. In the past, some military training has occurred at the Rota airport and on Angyuta, an island near the commercial port. Neither area contains native limestone forest. Federally supported activities that could affect the Rota bridled white-eye or its habitat in the future include, but are not limited to, low-level helicopter maneuvers over areas occupied by Rota bridled white-eyes.

Listing the Rota bridled white-eye provides for the development and implementation of a recovery plan for the species. This plan will bring together Federal, State, and regional agency efforts for conservation of the species. A recovery plan will establish a framework for agencies to coordinate their recovery efforts. The plan will set recovery priorities and estimate the costs of the tasks necessary to accomplish the priorities. It will also describe the site-specific management actions necessary to achieve conservation and survival of the species.

The Act and its implementing regulations set forth a series of general prohibitions and exceptions that apply to all endangered wildlife. The prohibitions of section 9(a)(2) of the Act, implemented by 50 CFR 17.21 for endangered species, make it illegal for any person subject to the jurisdiction of the United States to take (includes harass, harm, pursue, hunt, shoot, wound, kill, trap, or collect; or attempt any of these), import or export, ship in interstate commerce in the course of a commercial activity, or sell or offer for sale in interstate or foreign commerce any listed species. It is also illegal to possess, sell, deliver, carry, transport, or ship any such wildlife that has been taken illegally. Further, it is illegal for any person to attempt to commit, to solicit another person to commit, or to cause to be committed, any of these acts. Certain exceptions apply to our agents and State conservation agencies.

Permits may be issued to carry out otherwise prohibited activities involving endangered wildlife under certain circumstances. Regulations governing permits are codified at 50 CFR 17.22 and 17.23. Such permits are available for scientific purposes, to enhance the propagation or survival of the species, and/or for incidental take in the course of otherwise lawful activities. Permits are also available for zoological exhibitions, educational purposes, or special purposes consistent with the purposes of the Act. Requests for copies of the regulations regarding listed wildlife and inquiries about permits and prohibitions may be addressed to the U.S. Fish and Wildlife Service, Ecological Services, Endangered Species Permits, 911 N.E. 11th, Avenue, Portland, Oregon 97232–4181, (telephone 503/231–2063; facsimile 503/231–6243).

Our policy, as published in the **Federal Register** on July 1, 1994 (59 FR 34272), is to identify to the maximum extent practicable at the time a species is listed those activities that would or would not likely be a violation of section 9 of the Act. The intent of this policy is to increase public awareness of the effect of this listing on proposed and ongoing activities within the range of the species. We believe that permitted scientific activities or recreational activities within forested areas that support populations of bridled white-eyes would not likely result in a violation of section 9.

Activities that we believe could potentially harm the Rota bridled white-eye, and would likely violate section 9, include, but are not limited to:

(1) Unauthorized collecting, handling, possessing, selling, delivering, carrying, transporting, or shipping of the species;

(2) Intentional introduction of exotic species that compete with or prey on bird species, such as the introduction of the predatory brown tree snake to islands that support bird populations;

(3) Activities that disturb bridled white-eyes from nesting sites and feeding areas, and unauthorized destruction or alteration of forested areas required by the bridled white-eye for foraging, perching, breeding, or rearing young; and

(4) Engaging in the unauthorized import or export of this bird or interstate and foreign commerce (commerce across State lines and international boundaries).

Questions regarding whether specific activities will constitute a violation of section 9 of the Act should be directed to the Field Supervisor of our Pacific Islands Office (see **ADDRESSES** section).

Public Comments Solicited

We intend that any final action resulting from this proposal will be as accurate and as effective as possible. Therefore, comments or suggestions from the public, other concerned governmental agencies, the scientific community, industry, or any other interested party concerning this proposed rule are hereby solicited.

Comments particularly are sought concerning:

(1) Biological, commercial trade, or other relevant data concerning any threat (or lack thereof) to this species;

(2) The location of any additional populations of this species and the reasons why any habitat should or should not be determined to be critical habitat pursuant to section 4 of the Act;

(3) Additional information concerning the range, distribution, and population size of this species; and,

(4) Current or planned activities in the subject area and their possible impacts on this species.

If you wish to comment, you may submit your comments and materials concerning this proposal by any one of several methods, as listed above in **ADDRESSES.** If you submit comments by e-mail, please submit comments as an ASCII file format and avoid the use of special characters and encryption. Please include ''Attn: [RIN 1018–AI16]'' and your name and return address in your e-mail message. If you do not receive a confirmation from the system that we have received your e-mail message, contact us directly by calling our Pacific Islands Office at phone number 808/541–3441. Please note that this e-mail address will be closed out at the termination of the public comment period.

Our practice is to make comments, including names and home addresses of respondents, available for public review during regular business hours. Commenters may request that we withhold their home address, which we will honor to the extent allowable by law. In some circumstances, we may also withhold a commenter's identity, as allowable by law. If you wish us to withhold your name or address, you must state this request prominently at the beginning of your comment. However, we will not consider anonymous comments. To the extent consistent with applicable law, we will make all submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, available for public inspection in their entirety. Comments and materials received will be available for public inspection, by appointment, during normal business hours at the above address.

You may request a public hearing on this proposal. Your request for a hearing must be made in writing and filed within 45 days of the date of publication of the proposal in the **Federal Register**. Address your requests to the Supervisor, Pacific Islands Office, U.S. Fish and Wildlife Service (see **ADDRESSES** section).

Peer Review

In accordance with our policy published on July 1, 1994 (59 FR 34270), we will seek expert opinions of at least three appropriate independent specialists regarding this proposed rule. The purpose of such review is to ensure listing decisions are based on scientifically sound data, assumptions, and analysis. We will send copies of this proposed rule immediately following publication in the **Federal Register** to these peer reviewers. We will invite these peer reviewers to comment, during the public comment period, on the specific assumptions and conclusions regarding the proposed designation of critical habitat.

We will consider all comments and information received during the comment period on this proposed rule during the preparation of a final rulemaking. Accordingly, the final decision may differ from this proposal.

National Environmental Policy Act

We have determined that an environmental impact statement and environmental assessment, as defined under the authority of the National Environmental Policy Act of 1969, need not be prepared in connection with regulations adopted pursuant to section 4(a) of the Act. We published a notice outlining our reasons for this determination in the **Federal Register** on October 25, 1983 (48 FR 49244).

Paperwork Reduction Act

This rule does not contain any collections of information that require Office of Management and Budget (OMB) approval under the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.* An information collection related to the rule pertaining to permits for endangered and threatened species has OMB approval and is assigned clearance number 1018–0094. This rule does not alter that information collection requirement. For additional information concerning permits and associated requirements for endangered animal species, see 50 CFR 17.22.

References Cited

A complete list of all references cited in this proposal is available upon request from the Pacific Islands Office (see **ADDRESSES** section).

Author

The primary author of this proposed rule is Leila Gibson, Fish and Wildlife Biologist, U.S. Fish and Wildlife Service (see **ADDRESSES** section).

List of Subjects in 50 CFR Part 17

Endangered and threatened species, Exports, Imports, Reporting and record keeping requirements, and Transportation.

Proposed Regulation Promulgation

Accordingly, we hereby propose to amend part 17, subchapter B of chapter I, title 50 of the Code of Federal Regulations, as set forth below:

PART 17—[AMENDED]

1. The authority citation for part 17 continues to read as follows:

Authority: 16 U.S.C. 1361–1407; 16 U.S.C. 1531–1544; 16 U.S.C. 4201–4245; Pub. L. 99–625, 100 Stat. 3500, unless otherwise noted.

2. Section 17.11(h) is amended by adding the following, in alphabetical order under BIRDS, to the List of Endangered and Threatened Wildlife 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						
*	*	*	*	*		*	*
BIRDS							

Species		Historic range	Vertebrate population where endangered or threatened	Status	When listed	Critical habitat	Special rules
Common name	Scientific name						
*	*	*	*	*	*	*	*
White-eye, Rota bridled.	*Zosterops rotensis*	Western Pacific Ocean—U.S.A. (Commonwealth of the Northern Mariana Islands).	Entire	E		NA	NA
*	*	*	*	*	*	*	*

Dated: September 27, 2001.

Marshall P. Jones, Jr.,

Director, Fish and Wildlife Service.

[FR Doc. 01–24659 Filed 10–2–01; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 229

[Docket No. 001128334–1239–04; I.D. 092401E]

RIN 0648–AN88

Marine Mammals; Atlantic Large Whale Take Reduction Plan (ALWTRP) Regulations; Seasonal Area Management (SAM) Program

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

ACTION: Advance notice of proposed rulemaking (ANPR); notice of intent (NOI) to prepare an Environmental Impact Statement (EIS); request for comments.

SUMMARY: NMFS is preparing regulations to implement a Seasonal Area Management (SAM) program to seasonally limit fishing operations in certain areas, which was identified as a measure under the reasonable and prudent alternative (RPA) contained in the Biological Opinions (BOs) prepared for the Federal Northeast multispecies (multispecies), monkfish, spiny dogfish, and American lobster (lobster) fisheries under the Endangered Species Act (ESA). The SAM program is intended to provide endangered western North Atlantic right whales (right whales) protection from entanglement with fishing gear used in those fisheries. The measures that have been identified for proposed rulemaking would require the reduction, elimination, and/or modification of certain types of fixed gear (i.e., gillnets and lobster traps) in specific areas off the Atlantic coast of the United States during times of the year when right whales are known to be present in significant concentrations. NMFS also announces its intention to prepare an Environmental Impact Statement (EIS) for the SAM regulations, in accordance with the National Environmental Policy Act (NEPA), to analyze impacts to the environment of the management alternatives under consideration.

DATES: Written comments must be received at the appropriate address or facsimile (fax) number (see **ADDRESSES**) no later than 5 p.m. local time on November 2, 2001.

ADDRESSES: Written comments should be sent to: Mary Colligan, Acting Assistant Administrator for Protected Resources, Northeast Region, NMFS, One Blackburn Drive, Gloucester, MA 01930. Comments may also be sent via fax to 978–281–9394. Comments submitted via e-mail or Internet will not be accepted. Copies of the BOs may be requested from the above address or can be downloaded from the internet at the following website: http://www.nmfs.noaa.gov/prot—res/overview/publicat.html.

FOR FURTHER INFORMATION CONTACT: Gregg LaMontagne, NMFS, Northeast Region, 978–281–9291, fax 978–281–9394; Katherine Wang, NMFS, Southeast Region, 727–570–5312; or Patricia Lawson, NMFS, Office of Protected Resources, 301–713–2322.

SUPPLEMENTARY INFORMATION:

Background

In compliance with the Endangered Species Act (ESA)(16 U.S.C. 1531 *et seq.*) section 7 consultation procedures, NMFS prepared Biological Opinions (BOs) for the continued authorization of Federal fisheries under the Fishery Management Plans for the multispecies, spiny dogfish, and monkfish fisheries, and under the Federal regulations for the lobster fishery, to assess the impacts of those fisheries on species protected under the ESA. Previous ESA section 7 consultations on those fisheries incorporated the Atlantic Large Whale Take Reduction Plan (ALWTRP) as an RPA to avoid the likelihood of jeopardy to right whales from the multispecies, dogfish, and monkfish gillnet fisheries and the lobster trap fishery. NMFS published a proposed rule on April 7, 1997 (62 FR 16519), followed by an interim final rule on July 22, 1997 (62 FR 39157), that contained the provisions of the ALWTRP and implementing regulations. NMFS published an interim final rule that implemented time and area closures, gear requirements, and a prohibition on storing inactive gear at sea, and contained other, non-regulatory measures (e.g., gear research, public outreach, scientific research) intended to reduce serious injury and mortality to four large whale stocks, including right whales.

On February 16, 1999, NMFS published a final rule (64 FR 7529) that made changes to the interim final rule implementing the ALWTRP. On December 21, 2000, NMFS published an interim final rule (65 FR 80368) to implement additional measures (buoy line weak links, net panel weak links with anchoring systems, restrictions on numbers of buoy lines, and gear marking requirements) in response to continued entanglements of right whales with gear used in the multispecies, monkfish, spiny dogfish, and lobster trap fisheries.

NMFS reinitiated consultation on May 4, 2000, for the northeast multispecies, spiny dogfish and monkfish gillnet fisheries, and on June 22, 2000, for the Federal regulations for the lobster fishery, following new whale entanglements resulting in serious injuries, at least one right whale mortality in gillnet gear, new information indicating a declining status for western North Atlantic right whales (Caswell et al. 1999), and revisions to the ALWTRP. In previous consultations, the ALWTRP had been accepted as a reasonable and prudent alternative (RPA) to avoid the likelihood of jeopardy to right whales from these

four fisheries. Given the new information on the declining status of the right whale population and continued entanglements (suggesting possible failure of the RPA to avoid jeopardy to right whales), reinitiation of consultation was necessary to reevaluate the potential impact of these gillnet fisheries and the lobster trap fishery on right whales, and to assess the ability of the RPA to avoid the likelihood of jeopardy. The BOs resulting from these consultations were issued on June 15, 2001.

Biological Opinions

The BOs prepared during the most recent consultation provided information on the status of all protected species that occur in western North Atlantic waters where the multispecies, spiny dogfish, monkfish, and American lobster trap fisheries operate, based on the best information available. The BOs treated the western North Atlantic right whale population as a recovery unit whose survival and recovery is critical to the survival and recovery of the species as a whole. Any activity that would appreciably reduce the likelihood that a recovery unit would survive and recover in the wild would also appreciably reduce the species' likelihood of survival and recovery in the wild. The BOs focused on the western North Atlantic recovery unit of right whales, which is the recovery unit that occurs in the area where these fisheries operate.

Western North Atlantic right whales have been protected from whaling for more than 50 years, yet there is no evidence of their recovery. Based on recent estimates, the western North Atlantic population numbers about 300 individuals. Right whales may be adversely affected by habitat degradation, habitat exclusion, acoustic disturbance, harassment, or reduction in prey resources resulting from a variety of activities, including the operation of fisheries. The major known sources of human-caused mortality and injury of right whales include entanglement in commercial fishing gear and ship strikes. Caswell et al. (1999), which is cited in the BOs, concluded that reduction of such mortalities would significantly improve the species' chances for survival.

Environmental baseline analyses for BOs includes the past and present impacts of all state, Federal or private actions and other human activities in the action area; the anticipated impacts of all proposed Federal projects in the action area that have already undergone section 7 consultation; and the impact of state or private actions that are contemporaneous with the consultation in process (50 CFR 402.02). The environmental baselines for the BOs included the impacts of several activities that may affect the survival and recovery of threatened and endangered species in the action area and that fell into the following three general categories: Vessel operations, fisheries, and recovery activities associated with those impacts. Other environmental impacts include the effects of dredging, disposal, ocean dumping, and sonic activity. A number of factors in the existing baseline for right whales left considerable concern. For example, the western North Atlantic right whale population continues to decline, and, despite measures developed as a result of the initial ALWTRP, entanglements of right whales in fishing gear continue to occur.

The BOs specifically examined whether the multispecies, monkfish, spiny dogfish, and/or lobster fisheries are likely to jeopardize the continued existence of any ESA-listed species. Factors considered included the degree of overlap between the operation of the fisheries under consultation and areas where protected species occur, past interactions between protected species and gear used in the fisheries, the known effects of gear interactions on protected species, and the effects of incorporating the existing ALWRTP measures. Based on this analysis, NMFS concluded that:

1. Gillnet gear used in the multispecies, spiny dogfish, and monkfish fisheries poses an entanglement risk to protected species;
2. Trap gear used in the lobster fishery poses an entanglement risk to protected species;
3. Baleen whales are more likely to become entangled in gillnet gear, as opposed to toothed whales (e.g., sperm whales), given baleen whales' method of feeding;
4. Of the baleen whales, right whales and humpback whales are most likely to interact with multispecies, spiny dogfish, and monkfish gillnet fisheries and the lobster trap fishery, since those whales commonly occur in areas and at times where those fisheries operate;
5. Although directed effort in the spiny dogfish and monkfish fisheries is expected to be reduced over the next few years in an effort to rebuild those stocks, even the reduced amount of effort that is expected could still pose an entanglement risk for protected species; and
6. Modification of the multispecies, spiny dogfish, and monkfish gillnet fisheries and the lobster trap fishery by the existing ALWTRP measures is not expected to remove all risk of gear interactions with protected species, given that the existing modifications of the ALWTRP do not apply to gillnet gear fished in the Mid-Atlantic or Southeast, where right and humpback whales may also occur. In addition, gear modifications as required by the ALWTRP have only recently been implemented (i.e., as a result of the December 21, 2000, interim final rule).

Based on those six factors, the BOs concluded that gillnet and trap activities under the four fisheries as currently conducted are likely to jeopardize the continued existence of the right whale, but are not likely to destroy or adversely modify designated critical habitat; and may adversely affect, but are not likely to jeopardize, the continued existence of humpback, fin, blue, sei and sperm whales. Therefore, the potential for gear entanglements of right whales as a result of these fisheries must be further reduced by additional measures to reduce interaction between right whales and multispecies, monkfish, and spiny dogfish gillnets and lobster trap gear in areas and times of high right whale abundance, and by implementing gear modifications based on recent technological advances.

The BOs also considered cumulative effects, which include the effects of future state, tribal, local or private actions that are reasonably certain to occur in the action area. Future Federal actions that are unrelated to the proposed action were not considered because they require separate consultation under section 7 of the ESA. Past and present impacts of non-Federal actions were also not included in the cumulative effects, because they are part of the environmental baseline. In the BOs, NMFS considered the following: State-water fisheries, the maritime industry, pollution, catastrophic events such as oil spills, noise pollution, and similar activities or occurrences in Canadian waters.

The BOs concluded that the multispecies, spiny dogfish, monkfish, and lobster fisheries use gear that can cause serious injury and mortality to whales if entanglements occur. Gear interactions are more likely to occur if gear is concentrated in areas and at times that endangered whales occur in significant numbers. Right whales are vulnerable to entanglement in this type of gear while they are foraging.

In view of the right whale's decline and probability of extinction if the population decline continues, any entanglement that causes serious injury and/or mortality may reduce appreciably the likelihood of survival and recovery of this species. Measures

developed thus far under the ALWTRP are not expected to prevent all entanglements of right whales in gillnet or lobster trap gear, since these measures are not applicable to all areas where right whale distribution overlaps the use of these gear types. Given the known human-caused sources of right whale mortality, their small population size, and their low reproductive rate, the loss of even one right whale, particularly a reproductively active female, may reduce appreciably the likelihood of the survival and recovery of this species.

Given the current critical status of the right whale population and the aggregate effects of human-caused mortality that has led to the species' current status, the risk of incidental mortality caused by the multispecies, spiny dogfish, monkfish or lobster fisheries as currently prosecuted should be reduced. These fisheries take place in areas frequented by right whales and use sink gillnet gear and lobster trap gear, which are known to cause serious injury and mortality to right whales.

Reasonable and Prudent Alternative

Regulations implementing section 7 of the ESA (50 CFR 402.02) define the RPA as alternative actions, identified during formal consultation, that: (1) can be implemented in a manner consistent with the intended purpose of the action; (2) can be implemented consistent with the scope of the action agency's legal authority and jurisdiction; (3) are economically and technologically feasible; and (4) avoid the likelihood of jeopardizing the continued existence of listed species or resulting in the destruction or adverse modification of critical habitat. As a result of the consultation and the finding of jeopardy for right whales, NMFS developed a single RPA with multiple management components that collectively are designed to avoid the likelihood of continued jeopardy for right whales and to allow the continued authorization of the four fisheries for which consultation was conducted.

The RPA measures are intended, in combination, to avoid the potential for gillnet and lobster trap interactions with right whales, minimize adverse effects when and if interactions with these fishing gear types do occur, and mitigate any unavoidable entanglements of right whales with these gear types. The measures under the RPA are: Seasonal and Dynamic Area Management programs (SAM and DAM, respectively), an expansion of gillnet and lobster trap gear modifications to Mid-Atlantic waters, and modification of fishing practices in Southeastern U.S. waters, continued gear research and modifications, and additional measures to implement and monitor the effectiveness of the RPA.

Both SAM and DAM are intended to reduce the potential for interactions of right whales with gillnet and lobster trap gear. NMFS will use data on seasonal concentrations of right whales obtained from aerial surveys to implement annual area-specific gear restrictions and/or closures. The SAM program would be implemented through proposed and final rulemaking, which will require the preparation of an EIS and is the subject of this ANPR and NOI. To supplement the SAM program, NMFS is proposing in a separate proposed rule to further develop and implement the DAM program, which would be responsive to concentrations of right whales that would not otherwise be protected by the SAM measures. NMFS will identify criteria for triggering DAM in the separate proposed rule. The DAM measures are not the subject of this ANPR and NOI.

Concurrent with this ANPR/NOI and the DAM proposed rule, NMFS is proposing to expand the gillnet and lobster trap gear modifications outlined in the December 21, 2000, interim final rule to include Mid-Atlantic and Southeast waters. NMFS will also host a workshop to investigate options for gillnet and lobster trap gear modifications to prevent serious injury to right whales that may become entangled in that gear and will expand research and testing on the feasibility of eliminating floating line in the anchor and buoy lines of gillnet gear and lobster trap gear by replacing it with neutrally buoyant line. NMFS will continue research on weak-link floatlines in gillnet gear to investigate the possibility of reducing the strength of gillnet floatlines, which are known to be a problem in the entanglement of large whales. NMFS will also continue research on line that could be used in gillnets to eliminate external plastic floats when combined with properly placed weak links. Gear modification requirements will be implemented through proposed and final rulemaking and are not the subject of this ANPR and NOI.

In addition to this ANPR/NOI and the proposed rules for DAM and gear modifications, which are components of the RPA designed to reduce the potential for entanglement of right whales, NMFS will conduct the following activities to implement and monitor the RPA measures. NMFS will provide guidance to participants in the multispecies, spiny dogfish, monkfish and lobster fisheries on the requirement to report incidental takes of marine mammals and will send a letter to all permit holders in these fisheries detailing the protocol for reporting entangled or stranded whales. NMFS will also monitor and evaluate the effectiveness of the measures prescribed in the RPA, including SAM, DAM, and gear modifications and research. If a right whale is killed or seriously injured by (1) multispecies, spiny dogfish, or monkfish gillnet gear, or by lobster trap gear; (2) gear that is identifiable as being approved for use in the multispecies, spiny dogfish, monkfish or lobster fisheries; or (3) fishing gear that cannot be identified as being associated with a specific fishery, NMFS will consider it evidence that the measures outlined in the RPA are not demonstrably effective at reducing right whale injuries or death. Similarly, if NMFS does not observe a decrease in observed entanglements and scarification (scarring of the whale due to gear entanglements and/or interactions), NMFS will consider that the performance standards outlined in the RPA have not been met.

NMFS has determined that the management actions outlined in the RPA collectively avoid jeopardy. Further information on the RPA is available in the BOs (see **ADDRESSES**).

Marine Mammal Protection Act

Pursuant to section 118 of the Marine Mammal Protection Act (MMPA), NMFS convened the Atlantic Large Whale Take Reduction Team (ALWTRT) to develop a plan for reducing the incidental by-catch of large whales in commercial fisheries along the Atlantic coast. The ALWTRT consists of representatives from the fishing industry, the New England and Mid-Atlantic Fishery Management Councils, state and Federal resource management agencies, the scientific community, and conservation organizations. The immediate goal of the ALWTRT, in accordance with the 1994 amendments to the MMPA, was to draft an ALWTRP to reduce the incidental take of the four primary large whale species that interact with fisheries--the North Atlantic right whale (*Eubalaena glacialis*), humpback whale (*Megaptera novaeangliea*), fin whale (*Balaenoptera physalus*), and minke whale (*Balaenoptera acutorostrata*)--to a level less than the potential biological removal level (PBR) within 6 months of implementation of the ALWTRT's plan. Potential biological removal level means the maximum number of animals, not including natural mortalities, that may be removed from a marine mammal stock while allowing that stock to reach or maintain its optimum sustainable

population. The 1994 amendments to the MMPA established the goal to achieve a zero mortality rate goal (ZMRG) to be achieved within 5 years of ALWTRP implementation. For right whales, these two goals are essentially the same, because PBR has been defined as zero. Since the current incidental take for right whales exceeds the PBR and does not achieve ZMRG, additional risk reduction is necessary in order to meet the objectives of the MMPA.

Proposed SAM Program

As described above, NMFS proposes to implement two additional types of gear restrictions. One or more areas with predictable annual concentrations of right whales will be considered for SAM. These areas would have pre-established boundaries, and their closing and opening dates will be specified in advance of the right whales' expected arrival. This is an expansion of the management approach that established the existing Cape Cod Bay and Great South Channel restricted areas designed to protect right whales. Areas without predictable concentrations of right whales will be potential candidates for DAM. Under DAM, restrictions in addition to those already in place under SAM would not be implemented unless and until concentrations of right whales are found to be present by qualified individuals. If such concentrations are observed and the triggering criteria are met, NMFS will invoke a temporary restricted area around the animals through publication of notification in the **Federal Register**. The fishing industry and public will also be made aware of the restricted areas through other notification means, such as NOAA Weather broadcasts. Regulations implementing the DAM program will be the subject of a separate rulemaking.

To implement SAM, NMFS must specify the area(s) and times that right whales can reasonably be predicted to occur on an annual basis. After NMFS has identified such area(s) and time(s), the degree of gear restriction within the area(s) must be determined. The intent is to make the area(s) large enough to adequately protect right whales, but not so large that they restrict gear use with little or no benefit to the whales. Similarly, gear use in the identified SAM area(s) must be restricted long enough to provide right whales protection from gear entanglements, but no longer than necessary. Finally, the level of gear restrictions necessary within the SAM area(s) must be sufficient to ensure that serious injury or mortality to right whales is avoided. These issues, and the alternatives that NMFS has identified to address them, are the subject of the remainder of this ANPR and NOI.

Alternatives Under Consideration for Rulemaking

The SAM alternatives vary by: (1) geographic area, (2) gear restrictions, and (3) time intervals. NMFS has analyzed aerial survey data collected from 1999-2001 in the area from south of Nantucket northward to the Bay of Fundy, and from the New England coast eastward to the Hague Line, to determine seasonal and spatial patterns of right whale occurrence and concentration. The analytical process was to: (1) Identify right whale sightings that met the trigger criterion for considering concentrations in need of protection; (2) define the size of a core area of right whale occurrence and then draw a 15-nm radius buffer circle around that core area; (3) for each year of survey data, draw a polygon around the circular buffer zones and join the overlapping polygons to create a potential SAM area; (4) overlay all three year's potential SAM areas, identify and eliminate those areas with sightings in only 1 year, and draw an outline around that potential SAM area; and (5) adjust the area to match existing closures and zones, such as the existing Northeast multispecies closed areas. The triggering criterion was a sighting of three or more right whales sufficiently close to one another to achieve a density of 0.04 right whales/nm2, which would equal a minimum of three right whales within 75 nm2. While this approach could not entirely exclude any area, since survey data are sparse from some areas of the Gulf of Maine, it did identify those areas that are likely to be optimal for the SAM program, based on the best information available. Details of NMFS' analysis will be included in the EIS.

At least 1,307 right whale observations were made during the 3 years of aerial surveys, distributed among 784 group sightings. Few were seen in March (1.8 percent) or July (5.6 percent); most were seen in May (43.8 percent), June (32.3 percent), and April (16.4 percent), though this was due in part to greater survey effort in May-June. Sightings in March-April tended to be in the areas surrounding Cape Cod (e.g., Provincetown Slope). However, by May right whales were regularly sighted along the northern edge of Georges Bank and in the Great South Channel. Right whales were consistently seen in all 3 years in this area and into Wilkinson Basin through June, with some tendency for them to be seen farther to the north as the season progressed. During 1999-2000, concentrations were found episodically in the Cashes Ledge area--specifically in April 1999 and June 2000. Similar concentrations in the Cashes Ledge area were not found in 2001.

Concentrations of right whales that would have met the triggering criterion (events) occurred 149 times during 1999-2001. Events peaked in May (45.0 percent), followed by June (29.5 percent). The fewest events occurred in March (4.0 percent) and July (6.0 percent). The average number of right whales included in each event was 6.2, and varied little between years.

Overlaying 3 years of SAM zones that could be drawn from the survey data suggests that there is similarity between years in habitat use in areas outside of the Great South Channel and Cape Cod Bay. Right whales were consistently seen in all 3 years in the area from Cape Cod eastward to the Hague line, but were seen only sporadically in the north (e.g., the Cashes Ledge Area). NMFS then derived a composite SAM zone, built from the three annual SAMs, which includes almost all of the right whale sightings during 1999-2001. One possible SAM zone resulting from NMFS' analysis, which would encompass all of the events recorded during April-July 1999-2001, had a total area of about 10,200 nm^2, not including other closed areas. If the zone were expanded to encompass the buffer area around the events, its area would increase to about 17,000 nm^2.

When the SAM boundaries were smoothed and realigned with existing management zones in the Gulf of Maine, analysis of the data suggested the possibility of two smaller SAM zones. One is a core zone of about 7,000 nm^2, stretching from Cape Cod eastward to the Hague Line, with a consistent pattern of right whale sightings over all 3 survey years. The second is a northern zone of about 1,700 nm^2, which would cover additional right whale sightings that occurred sporadically in some months of 2 of the 3 survey years.

The core zone, in combination with the Cape Cod Bay and Great South Channel closures, would encompass all but 15 of the 149 events during 1999-2001. All events from 2001 would be included in this area. Of the 784 group right whale sightings, only 94 (12 percent) would occur outside of this zone. Within this core zone, right whales were more likely to be seen in the western part of this area (near Cape Cod Bay and the Great South Channel) in March-April than in May-July. This suggests that there is a possible east-west break point in the seasonal distribution within the core zone at about 69.4° W longitude.

In summary, NMFS' initial analysis suggests that there are areas within the Gulf of Maine other than Cape Cod Bay and the Great South Channel where right whales can be expected to occur each spring. Thus, gear restrictions within at least the core SAM zone, or some similarly configured zone, could significantly buffer right whales from interactions with fishing gear. The potential benefits of a northern SAM zone are less clear at this time. While the northern zone identified in NMFS' preliminary analysis would encompass additional events not included in the core zone, NMFS does not know at this time whether these events represent a predictable distribution pattern.

The SAM zones described above are among the alternatives that NMFS will consider in the EIS. Other alternatives would be variations of these zones. For example, the core zone could be subdivided such that different subzones would be closed at different time intervals, to match more precisely the historically determined areas of right whale concentration at given times of the year. Four possible variations on gear restrictions and times are:

1. A SAM zone with gear restrictions throughout the designated time frame.
2. A SAM zone with gear restrictions lifted sequentially over time, as right whale concentrations move through the zone.
3. A SAM zone with no gear restrictions initially, but with gear restrictions that would be put in place as right whale concentrations appear in the zone and would then be lifted as right whale concentrations leave the zone.
4. A SAM zone divided into predetermined sections (subzones), with all dates for gear restrictions in each subzone predetermined.

Other alternatives or variations of the above alternatives identified through the NEPA scoping process for the EIS may also be considered. Gear restrictions within the SAM zone(s) could range from total prohibition of gillnet and lobster trap gear within the zone(s); to allowing only gear that has been modified to present a relatively low risk of causing serious injury or mortality to right whales to be fished within the zone(s); to allowing unmodified gear to be fished, but at reduced concentrations and/or using modified practices (e.g., tending gillnets).

At the June 2001, ALWTRT meeting, team members discussed at length gear modifications that could be used as gear restrictions within SAM zones to reduce the risk of causing serious injury or mortality to right whales. The items listed below were discussed but are not necessarily consensus recommendations of the ALWTRT. The following gillnet gear modifications to reduce risk of entanglement were discussed: (1) net tending or generally remaining close enough to the gear to respond should the nets entangle an animal, (2) additional floatline weak links, exact number to be determined, above the number required by the current regulations, (3) use of neutrally buoyant or sinking line for buoy lines and groundlines connecting nets and anchors, (4) limit effort or the amount of net based on vessel size, and (5) limit the type or quantity of net allowed.

The following lobster trap gear modifications to reduce risk of entanglement were discussed: (1) reduced strength buoy line weak link for the offshore lobster fisheries, (2) neutrally buoyant or sinking groundline for nearshore and offshore lobster fisheries, and (3) additional weak link options. Through this ANPR and NOI, NMFS is also requesting comments on any additional gear modification concepts for further consideration and development.

The EIS will also analyze the impacts of the SAM alternatives on other aspects of the human environment, including their impacts to participants of the multispecies, monkfish, spiny dogfish, and lobster fisheries. NMFS is requesting comments from the public on these and other possible alternatives for SAM that would comply with the RPA requirements to protect right whales.

References:

Caswell, H., M. Fujiwara, and S. Brault. 1999. Declining survival probability threatens the North Atlantic right whale. Proc. Nat. Acad. Sci. 96: 3308–3313.

Anticipated Regulatory Changes to Implement SAM

Although NMFS is still developing the alternatives to be thoroughly analyzed in the EIS, NMFS expects that the final SAM measures will require that regulations at 50 CFR part 229 be amended as follows:

§ 229.32 Atlantic large whale take reduction plan regulations.

1. Paragraph (c) would be amended to include any additional restrictions to lobster gear or its use, specific to SAM, if such restrictions are necessary in order for that gear to be used within a SAM zone.

2. Paragraph (d) would be amended to include any additional restrictions to anchored gillnet gear or its use, specific to SAM, if such restrictions are necessary in order for that gear to be used within a SAM zone.

3. Paragraph (g) would be redesignated paragraph (h) and a new paragraph (g) would be added to define the boundaries of the SAM zone(s) and any subzones; define the times of the year that the SAM zone(s) and any subzones would require restrictions in the use of gillnet and lobster trap gear; and provide procedures that NMFS will use to implement and lift gear restrictions within the SAM zone(s) or subzones.

Specifics of the regulatory changes will be described in a proposed rule, and if adopted would be implemented through a final rule. No scoping meetings will be held. NMFS invites comments, through this document, on its identified proposed rulemaking and the scope of the draft EIS to be prepared.

Authority: 16 U.S.C. 1361 *et seq.*

Dated: September 28, 2001.

William T. Hogarth,

Assistant Administrator for Fisheries, National Marine Fisheries Service.

[FR Doc. 01–24910 Filed 10–1–01; 2:59 pm]

BILLING CODE 3510–22–S

Notices

Federal Register

Vol. 66, No. 192

Wednesday, October 3, 2001

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Natural Resources Conservation Service

Notice of Proposed Change to Section IV of the Virginia Field Office Technical Guide

AGENCY: Natural Resources Conservation Service (NRCS), U.S. Department of Agriculture.

ACTION: Notice of Availability of proposed changes in the Virginia NRCS Field Office Technical Guide for review and comment.

SUMMARY: It has been determined by the NRCS State Conservationist for Virginia that changes must be made in the NRCS Field Office Technical Guide specifically in practice standards: # 362, Diversion; # 382, Fence; # 511, Forest Harvest Management; # 552, Irrigation Pit or Regulating Reservoir; # 441, Irrigation System, Microirrigation; # 442, Irrigation System, Sprinkler; # 430DD, Irrigation Water Conveyance, High-Pressure, Underground, Plastic; # 460, Land Clearing; # 453, Land Reclamation, Landslide Treatment; # 454, Land Reclamation, Subsidence Treatment; # 512, Pasture and Hayland Planting; # 558, Roof Runoff Structure; # 574, Spring Development; # 607, Surface Drainage, Field Ditch; # 620, Underground Outlet; # 472, Use Exclusion, # 658, Wetland Creation; # 659, Wetland Enhancement to account for improved technology. These practices will be used to plan and install conservation practices on cropland, pastureland, woodland, and wildlife land.

DATES: Comments will be received on or before Novemebr 2, 2001.

FOR FURTHER INFORMATION CONTACT: Inquire in writing to M. Denise Doetzer, State Conservationist, Natural Resources Conservation Service (NRCS), 1606 Santa Rosa Road, Suite 209, Richmond, Virginia 23229–5014; Telephone number (804) 287–1665; Fax number (804) 287–1736. Copies of the practice standards will be made available upon written request to the address shown above or on the Virginia NRCS web site *http://www.va.nrcs.usda.gov/DataTechRefs/Standards&Specs/EDITStds/EditStandards.htm.*

SUPPLEMENTARY INFORMATION: Section 343 of the Federal Agriculture Improvement and Reform Act of 1996 states that revisions made after enactment of the law to NRCS State technical guides used to carry out highly erodible land and wetland provisions of the law shall be made available for public review and comment. For the next 30 days, the NRCS in Virginia will receive comments relative to the proposed changes. Following that period, a determination will be made by the NRCS in Virginia regarding disposition of those comments and a final determination of change will be made to the subject standards.

Dated: September 24, 2001.

M. Denise Doetzer,

State Conservationist, Natural Resources Conservation Service, Richmond, Virginia.

[FR Doc. 01–24646 Filed 10–2–01; 8:45 am]

BILLING CODE 3410–16–P

DEPARTMENT OF AGRICULTURE

Rural Business-Cooperative Service

Notice of Request for Collection of Public Information with Use of a Survey

AGENCY: Rural Business-Cooperative Service, USDA.

ACTION: Proposed collection; comments request.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, this notice announces the Rural Business-Cooperative Service's (RBS) intention to request an extension of the clearance for an existing information collection in order to render service to associations of producers of agricultural, forestry, fisheries products and federations and subsidiaries thereof as authorized in the Cooperative Marketing Act of 1926.

DATES: Comments on this notice must be received by December 3, 2001 to be assured of consideration.

FOR FURTHER INFORMATION CONTACT: Tracey L. Kennedy, Agricultural Economist, RBS, U.S. Department of Agriculture, 1400 Independence Avenue SW., Stop 3252, Washington, DC 20250–3252, Telephone (202) 690–1428.

SUPPLEMENTARY INFORMATION:

Title: Annual Survey of Cooperative Involvement in International Markets.

Type of Request: Information collection.

Abstract: The mission of the Rural Business-Cooperative Service (RBS), formerly Agricultural Cooperative Service (ACS), is to assist farmer-owned cooperatives in improving the economic well being of their farmer-members. This is accomplished through a comprehensive program of research on structural, operational, and policy issues affecting cooperatives; technical advisory assistance to individual cooperatives and to groups of producers who wish to organize cooperatives; and development of educational and informational material. The authority to carry out RBS's mission is defined in the Cooperative Marketing Act of 1926 (44 Stat. 802–1926). Authority and Duties of Division (7 U.S.C. 453).

(a) The division shall render service to associations of producers of agricultural products, and federations and subsidiaries thereof, engaged in the cooperative marketing of agricultural products including processing, warehousing, manufacturing, storage, the cooperative purchasing of farm supplies, credit, financing, insurance, and other cooperative activities.

(b) The division is authorized to:

(1) Acquire, analyze and disseminate economic, statistical, and historical information regarding the progress, organization, and business methods of cooperative associations in the United States and foreign countries.

(2) conduct studies of the economic, legal, financial, social and other phases of cooperation, and publish the results thereof. Such studies shall include the analyses of the organization, operation, financial and merchandising problems of cooperative organizations.

(3) make surveys and analyses if deemed advisable of the accounts and business practices of representative cooperative associations upon their request; to report to the association so surveyed the results thereof; and with the consent of the association so surveyed to publish summaries of the results of such surveys, together with similar facts, for the guidance of

cooperative associations and for the purpose of assisting cooperative associations in developing methods of business and market analysis.

(4) acquire from all available sources, information concerning crop prospects, supply, demand, current receipts, exports, imports, and prices of agricultural products handled or marketed by cooperative associations, and to employ qualified commodity marketing specialists to summarize and analyze this information and disseminate the same among cooperative associations and others.''

RBS also has a stated objective to ''assist U.S. farmer cooperatives to expand their participation in international trade of agricultural products and supplies and to review their progress.'' As trade agreements are implemented and domestic farm supports are reduced, a global presence is increasingly important to producers, their communities, and to job-creation and retention in agri- and food-related industries. Measurement and monitoring of cooperatives' global presence are stated objectives of RBS's International Trade Program. In order to carry out the agency's mission and objectives, RBS needs to collect information from the cooperative community. This information collection is designed to provide time-series data that will provide a better understanding of the opportunities and limitations of producer-owned cooperatives in global markets. The data provide the basis for research on trade-related issues affecting cooperatives, and background for trade-related policy analysis.

Beginning in 1980, RBS's predecessor agency Agricultural Cooperative Service (ACS) collected cooperative trade data at five year intervals. Value of cooperative exports by commodity and destination were measured, as well as information related to method of sale. Values of imports by cooperatives, by commodity and country of origin were collected in 1986 and 1991. Since 1997, data have been collected on an annual basis (OMB No. 0570–0020), as it had become apparent that data collected at intervals longer than one year do not provide for meaningful analysis. Further, data collected prior to 1997 had been strictly limited to exports and imports, neglecting other important international arrangements such as strategic alliances and foreign direct investment. A more comprehensive, annual data set accomplishes stated CS objectives to measure and monitor cooperatives' global presence. These data are generally not available to RBS unless provided by the cooperatives.

Estimate of Burden: Public reporting burden for this collection of information is estimated to average one (1) hour per response.

Respondents: Cooperatives involved in international activities.

Estimated Number of Respondents: 127.

Estimated Number of Responses per Respondent: one per year.

Estimated Total Annual Burden on Respondents: 127 hours.

Copies of this information collection can be obtained from Jean Mosley, Regulations and Paperwork Management Branch, at (202) 692–0041.

Comments

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

Comments may be sent to Jean Mosley, Regulations and Paperwork Management Branch, U.S. Department of Agriculture, Rural Development, 1400 Independence Avenue SW., Stop 0742, Washington, DC 20250. All responses to this notice will be summarized and included in the request for OMB approval. All comments will also become a matter of a public record.

Dated: August 24, 2001.

John Rosso,

Acting Administrator, Rural Business-Cooperative Service.

[FR Doc. 01–24670 Filed 10–2–01; 8:45 am]

BILLING CODE 3410–XY–P

DEPARTMENT OF AGRICULTURE

Rural Utilities Service

Notice of Availability of a Draft Environmental Impact Statement

AGENCY: Rural Utilities Service, USDA.

ACTION: Notice of availability of a draft environmental impact statement.

SUMMARY: Notice is hereby given that the Rural Utilities Service (RUS), has released for public review and comment a Draft Environmental Impact Statement (DEIS) for the Southern Intertie Project. The project being proposed by the Intertie Participants Group (IPG) is the construction of a 138 kilovolt (kV) transmission line between the Kenai Peninsula and Anchorage, Alaska. The RUS is the lead Federal agency in the environmental review process. The U.S. Fish and Wildlife Service (USFWS) and the U.S. Army Corps of Engineers (USACE) are serving as cooperating agencies.

Three public hearings have been scheduled during the review and comment period on the DEIS. The dates and locations of these hearings are described below.

DATES: The public hearing dates are:

1. October 30, 2001, 2 p.m. to 4 p.m., Washington, DC
2. November 13, 2001, 7 p.m. to 9 p.m., Anchorage, Alaska
3. November 14, 2001, 7 p.m. to 9 p.m., Soldotna, Alaska

ADDRESSES: The public hearing locations are:

1. Washington, DC—U.S. Fish and Wildlife Service, 4401 North Fairfax Drive, Room 200 A/B, Arlington, VA
2. Anchorage, AK—Loussac Library, 3600 Denali Street, Wilda Marston Theater, Anchorage, AK
3. Soldotna, AK—Kenai Peninsula Borough Administration Building, 144 North Binkley Street, Kenai Peninsula Borough Chambers, Soldotna, AK

FOR INFORMATION CONTACT: Lawrence R. Wolfe, Senior Environmental Protection Specialist, Engineering and Environmental Staff, USDA Rural Utilities Service, Stop 1571, 1400 Independence Avenue, SW., Washington, DC 20250–1571, telephone (202) 720–1784. The E-mail address is: lwolfe@rus.usda.gov.

SUPPLEMENTARY INFORMATION: The IPG has proposed a new 138 kV transmission line in order to improve the overall Railbelt electrical system reliability and energy transfer capabilities between the Kenai Peninsula and Anchorage. The IPG proposed alternative, the Enstar Route, would connect the Soldotna Substation on the Kenai Peninsula with the International Substation in Anchorage. This alternative would parallel the Enstar Pipeline through the Kenai National Wildlife Refuge (KNWR). A second alternative, the Tesoro Route, would connect the Bernice Lake Substation on the Kenai Peninsula with the Pt. Woronzof Substation in Anchorage. This alternative would parallel the Tesoro Pipeline from the

Captain Cook State Recreational Area to Pt. Possession. The DEIS analyzes the potential impacts of constructing and operating a 138 kV transmission line along both the Enstar and Tesoro Routes. The DEIS evaluates a number of routing alternatives and related system improvements between the proposed substation connections, as well as alternative technologies and the no-action alternative.

The RUS, USACE, and USFWS will issue final decisions regarding the IPG proposal at the conclusion of the environmental review process. Regardless of which routing alternatives are selected, certain construction activities will require a Department of the Army permit. A copy of the Public Notice of Application for Permit is included in the DEIS. Comments on the permit application may be submitted to the USACE directly or may be included with other comments on the DEIS.

The USFWS must decide whether to issue a right-of-way permit to the IPG to construct and operate the proposed facilities on lands within the KNWR. The decision will be made in accordance with the requirements of Title XI of the Alaska National Interest Lands Conservation Act (ANILCA) (Pub. L. 96–487) for access by transportation and utility systems across conservation system units in Alaska. Title XI of ANILCA stipulates that public hearings be held in Washington, DC and Alaska during the DEIS review period.

The USFWS must also prepare a compatibility determination in accordance with the requirements of the National Wildlife Refuge System Administration Act (16 U.S.C. 668dd), as amended, for any proposed facilities on lands within the KNWR. The compatibility determination will be prepared by the USFWS following the public review and comment period on the DEIS. Public comments received during the review will be used in the compatibility determination process.

Copies of the DEIS are available for public review at the following public libraries in Anchorage: Z.J. Loussac Public Library; Chugiak-Eagle Public Library; Gerrish (Girdwood) Branch Library; Mountain View Branch Library; Muldoon Branch Library; and the Samson-Dimond Public Library. Copies will also be available for review at the following libraries on the Kenai Peninsula: Hope Community Library; Cooper Landing Community Library; Soldotna Public Library; and Kenai Community Library. In Washington, D.C., copies are available for review at RUS offices. A copy of the DEIS is also available for review online at *http://www.usda.gov/rus/water/ees/eis.htm.*

Public comments concerning the adequacy and accuracy of the DEIS will be accepted during a 60 day comment period ending December 5, 2001. Comments should be sent to Lawrence R. Wolfe at the address provided above.

Dated: September 26, 2001.

Alfred Rodgers,

Acting Assistant Administrator, Electric Program, Rural Utilities Service.

[FR Doc. 01–24740 Filed 10–2–01; 8:45 am]

BILLING CODE 3410–15–P

COMMITTEE FOR PURCHASE FROM PEOPLE WHO ARE BLIND OR SEVERELY DISABLED

Procurement List; Proposed Addition

AGENCY: Committee for Purchase From People Who Are Blind or Severely Disabled.

ACTION: Proposed addition to Procurement List.

SUMMARY: The Committee is proposing to add to the Procurement List a commodity to be furnished by nonprofit agencies employing persons who are blind or have other severe disabilities.

COMMENTS MUST BE RECEIVED ON OR BEFORE: November 2, 2001.

ADDRESSES: Committee for Purchase From People Who Are Blind or Severely Disabled, Jefferson Plaza 2, Suite 10800, 1421 Jefferson Davis Highway, Arlington, Virginia 22202–3259.

FOR FURTHER INFORMATION CONTACT: Sheryl D. Kennerly (703) 603–7740.

SUPPLEMENTARY INFORMATION: This notice is published pursuant to 41 U.S.C. 47(a)(2) and 41 CFR 51–2.3. Its purpose is to provide interested persons an opportunity to submit comments on the possible impact of the proposed actions.

If the Committee approves the proposed addition, the entities of the Federal Government identified in this notice for each commodity will be required to procure the commodity listed below from nonprofit agencies employing persons who are blind or have other severe disabilities.

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. The action will not result in any additional reporting, recordkeeping or other compliance requirements for small entities other than the small organizations that will furnish the commodity to the Government.

2. The action will result in authorizing small entities to furnish the commodity to the Government.

3. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 46–48c) in connection with the commodity proposed for addition to the Procurement List. Comments on this certification are invited. Commenters should identify the statement(s) underlying the certification on which they are providing additional information.

The following commodity is proposed for addition to Procurement List for production by the nonprofit agencies listed:

Commodity

Cap, Utility, USMC 8405–01–485–4299
8405–01–485–4304
8405–01–485–4305
8405–01–485–4307
8405–01–485–4308
8405–01–485–4309
8405–01–485–4313
8405–01–485–4314
8405–01–485–4315
8405–01–485–4316
8405–01–485–4317
8405–01–485–4318
8405–00–NSH–1001
8405–00–NSH–1002
8405–00–NSH–1003
8405–00–NSH–1004
8405–00–NSH–1005
8405–00–NSH–1006
8405–00–NSH–1007
8405–00–NSH–1008
8405–00–NSH–1009
8405–00–NSH–1010
8405–00–NSH–1011
8405–00–NSH–1012
NPA: Southeastern Kentucky Rehabilitation Industries, Inc. Corbin, Kentucky
Government Agency: U.S. Marine Corps

Sheryl D. Kennerly,

Director, Information Management.

[FR Doc. 01–24723 Filed 10–2–01; 8:45 am]

BILLING CODE 6353–01–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–834–806]

Notice of Final Determination of Sales at Less Than Fair Value: Certain Hot-Rolled Carbon Steel Flat Products From Kazakhstan

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

ACTION: Notice of final determination in the less than fair value investigation of

certain hot-rolled carbon steel flat products from Kazakhstan.

SUMMARY: We determine that certain hot-rolled carbon steel flat products from Kazakhstan are being, or are likely to be, sold in the United States at less than fair value. On May 3, 2001, the Department of Commerce published a notice of preliminary determination of sales at less than fair value in the investigation of hot-rolled carbon steel flat products from Kazakhstan. *See Notice of Preliminary Determination of Sales at Not Less Than Fair Value: Certain Hot-Rolled Carbon Steel Flat Products from Kazakhstan*, 66 FR 22168 (May 3, 2001) (''*Preliminary Determination*''). This investigation covers one manufacturer/exporter of the subject merchandise. The period of investigation (''POI'') is April 1, 2000 through September 30, 2000.

Based upon our verification of the data and analysis of the comments received, we have made changes in the margin calculations. Therefore, the final determination of this investigation differs from the preliminary determination. The final weighted-average dumping margin is listed below in the section titled ''Continuation of Suspension of Liquidation.''

EFFECTIVE DATE: October 3, 2001.

FOR FURTHER INFORMATION CONTACT: Juanita H. Chen at 202–482–0409, Import Administration, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue, NW., Washington, DC 20230.

Applicable Statute and Regulations

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

Background

On December 4, 2000, the Department initiated an antidumping duty investigation of hot-rolled steel from Kazakhstan. *See Notice of Initiation of Antidumping Duty Investigations: Certain Hot-Rolled Carbon Steel Flat Products from Argentina, India, Indonesia, Kazakhstan, the Netherlands, the People's Republic of China, Romania, South Africa, Taiwan, Thailand, and Ukraine*, 65 FR 77568 (December 12, 2000) (''Notice of Initiation'').

On March 16, 2001, co-petitioners Bethlehem Steel Corporation, LTV Steel Company, Inc., National Steel Corporation, and U.S. Steel Group, a unit of USX Corporation [1] (hereinafter collectively ''Bethlehem, et al.'') requested that the Department initiate a middleman dumping investigation. On June 15, 2001, the Department issued a memorandum stating we are not initiating a middleman dumping investigation because Bethlehem, *et al.*, have not provided specific evidence of dumping by a particular middleman. *See Memorandum for Joseph A. Spetrini on Whether to Initiate a Middleman Dumping Investigation* (June 15, 2001).

On March 21, 2001, OJSC Ispat Karmet (''Ispat Karmet'') requested that the Department determine that the hot-rolled steel industry in Kazakhstan is a market-oriented industry (''MOI''). We address Ispat's request in the *Issues and Decision Memorandum from Joseph A. Spetrini, Deputy Assistant Secretary, to Faryar Shirzad, Assistant Secretary* (September 21, 2001).

On May 3, 2001, the Department published a notice of preliminary determination of sales at less than fair value (''LTFV'') in the investigation of certain hot-rolled carbon steel flat products from Kazakhstan. *See Notice of Preliminary Determination of Sales at Less Than Fair Value: Certain Hot-Rolled Carbon Steel Flat Products From Kazakhstan*, 66 FR 22168 (May 3, 2001). On June 1, 2001, the Department published a notice of postponement of the final determination in the investigation, as well as an extension of provisional measures from a four month period to a period not to exceed six months. *See Postponement of Final Determination for Antidumping Duty Investigation: Certain Hot-Rolled Carbon Steel Flat Products from Kazakhstan*, 66 FR 29773 (June 1, 2001).

On May 23, 2001, Bethlehem, et al., timely submitted a request for a hearing. On May 29, 2001, Ispat Karmet timely submitted a request for a public hearing. On June 1, 2001, co-petitioners IPSCO Steel Inc., Gallatin Steel Company, Nucor Corporation, Steel Dynamics, Inc., Weirton Steel Corporation, and the Independent Steelworkers Union, timely submitted a request for a hearing.

On July 16, 2001 through July 20, 2001, the Department conducted a sales and factors of production verification of Ispat Karmet. *See Report on the U.S. Sales and Factors of Production Verification of OJSC Ispat Karmet* (August 2, 2001) (''Verification Report'').

We invited parties to comment on our *Preliminary Determination.* On August 10, 2001, Ispat Karmet submitted a case brief which we rejected for containing untimely factual information. On August 16, 2001, Ispat Karmet submitted a revised case brief which we rejected for containing untimely factual information. On August 20, 2001 Ispat Karmet submitted its final revised case brief (''Ispat Karmet's Brief''). Petitioners did not submit a case brief. Co-petitioners Bethlehem, *et al.* submitted their rebuttal brief (''Petitioners'' Rebuttal'') on August 20, 2001. On August 23, 2001, all parties withdrew their requests for a hearing. Although the deadline for this determination was originally September 17, 2001, in light of the events of September 11, 2001 and the subsequent closure of the Federal Government for reasons of security, the time frame for issuing this final determination has been extended by four days.

The Department has conducted and completed the investigation in accordance with section 735 of the Act.

Scope of Investigation

For purposes of this investigation, the products covered are certain hot-rolled carbon steel flat products of a rectangular shape, of a width of 0.5 inch or greater, neither clad, plated, nor coated with metal and whether or not painted, varnished, or coated with plastics or other non-metallic substances, in coils (whether or not in successively superimposed layers), regardless of thickness, and in straight lengths of a thickness of less than 4.75 mm and of a width measuring at least 10 times the thickness. Universal mill plate (*i.e.,* flat-rolled products rolled on four faces or in a closed box pass, of a width exceeding 150 mm, but not exceeding 1250 mm, and of a thickness of not less than 4.0 mm, not in coils and without patterns in relief) of a thickness not less than 4.0 mm is not included within the scope of these investigations.

Specifically included within the scope of this investigation are vacuum degassed, fully stabilized (commonly referred to as interstitial-free (''IF'')) steels, high strength low alloy (''HSLA'') steels, and the substrate for motor lamination steels. IF steels are recognized as low carbon steels with micro-alloying levels of elements such as titanium or niobium (also commonly referred to as columbium), or both, added to stabilize carbon and nitrogen elements. HSLA steels are recognized as steels with micro-alloying levels of elements such as chromium, copper, niobium, vanadium, and molybdenum. The substrate for motor lamination

[1] On July 2, 2001, U.S. Steel Group, a unit of USX Corporation, changed its name to United States Steel LLC. United States Steel LLC is a Delaware limited liability company and the successor by merger to USX Corporation.

steels contains micro-alloying levels of elements such as silicon and aluminum.

Steel products to be included in the scope of this investigation, regardless of definitions in the Harmonized Tariff Schedule of the United States (''HTSUS''), are products in which: (i) Iron predominates, by weight, over each of the other contained elements; (ii) the carbon content is 2 percent or less, by weight; and (iii) none of the elements listed below exceeds the quantity, by weight, respectively indicated:

1.80 percent of manganese, or
2.25 percent of silicon, or
1.00 percent of copper, or
0.50 percent of aluminum, or
1.25 percent of chromium, or
0.30 percent of cobalt, or
0.40 percent of lead, or
1.25 percent of nickel, or
0.30 percent of tungsten, or
0.10 percent of molybdenum, or
0.10 percent of niobium, or
0.15 percent of vanadium, or
0.15 percent of zirconium.

All products that meet the physical and chemical description provided above are within the scope of this investigation unless otherwise excluded. The following products, by way of example, are outside or specifically excluded from the scope of this investigation:

—Alloy hot-rolled steel products in which at least one of the chemical elements exceeds those listed above (including, *e.g.*, American Society for Testing and Materials (''ASTM'') specifications A543, A387, A514, A517, A506).

—Society of Automotive Engineers (''SAE'')/American Iron & Steel Institute (''AISI'') grades of series 2300 and higher.

—Ball bearing steels, as defined in the HTSUS.

—Tool steels, as defined in the HTSUS.

—Silico-manganese (as defined in the HTSUS) or silicon electrical steel with a silicon level exceeding 2.25 percent.

—ASTM specifications A710 and A736.

—USS abrasion-resistant steels (USS AR 400, USS AR 500).

—All products (proprietary or otherwise) based on an alloy ASTM specification (sample specifications: ASTM A506, A507).

—Non-rectangular shapes, not in coils, which are the result of having been processed by cutting or stamping and which have assumed the character of articles or products classified outside chapter 72 of the HTSUS.

The merchandise subject to this investigation is classified in the HTSUS at subheadings: 7208.10.15.00, 7208.10.30.00, 7208.10.60.00, 7208.25.30.00, 7208.25.60.00, 7208.26.00.30, 7208.26.00.60, 7208.27.00.30, 7208.27.00.60, 7208.36.00.30, 7208.36.00.60, 7208.37.00.30, 7208.37.00.60, 7208.38.00.15, 7208.38.00.30, 7208.38.00.90, 7208.39.00.15, 7208.39.00.30, 7208.39.00.90, 7208.40.60.30, 7208.40.60.60, 7208.53.00.00, 7208.54.00.00, 7208.90.00.00, 7211.14.00.90, 7211.19.15.00, 7211.19.20.00, 7211.19.30.00, 7211.19.45.00, 7211.19.60.00, 7211.19.75.30, 7211.19.75.60, and 7211.19.75.90. Certain hot-rolled carbon steel flat products covered by this investigation, including: vacuum degassed fully stabilized; high strength low alloy; and the substrate for motor lamination steel may also enter under the following tariff numbers: 7225.11.00.00, 7225.19.00.00, 7225.30.30.50, 7225.30.70.00, 7225.40.70.00, 7225.99.00.90, 7226.11.10.00, 7226.11.90.30, 7226.11.90.60, 7226.19.10.00, 7226.19.90.00, 7226.91.50.00, 7226.91.70.00, 7226.91.80.00, and 7226.99.00.00. Subject merchandise may also enter under 7210.70.30.00, 7210.90.90.00, 7211.14.00.30, 7212.40.10.00, 7212.40.50.00, and 7212.50.00.00. Although the HTSUS subheadings are provided for convenience and U.S. Customs purposes, the written description of the merchandise under investigation is dispositive.

Analysis of Comments Received

All issues raised in the case and rebuttal briefs to this investigation are addressed in the *Issues and Decision Memorandum from Joseph A. Spetrini, Deputy Assistant Secretary, to Faryar Shirzad, Assistant Secretary* (September 21, 2001) (''*Decision Memo*''), which is hereby adopted by this notice. A list of the issues which parties have raised and to which we have responded, and other issues addressed, is attached to this notice as an Appendix. Parties can find a complete discussion of all issues raised in this investigation and the corresponding recommendations in the *Decision Memo*, a 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 Memo* can be accessed directly on the Web at http://ia.ita.doc.gov. The paper copy and electronic version of the *Decision Memo* are identical in content.

Changes Since the Preliminary Determination

Based on our findings at verification, and analysis of comments received, we have made adjustments to the calculation methodology in calculating the final dumping margin in this proceeding. *See Analysis Memorandum for OJSC Ispat Karmet* (September 21, 2001) (''*Analysis Memo*'').

Verification

As provided in section 782(i) of the Act, we verified the information submitted by the respondent for use in our final determination. We used standard verification procedures including examination of relevant accounting and production records, and original source documents provided by the respondent. For changes from the *Preliminary Determination* as a result of verification, *see Analysis Memo*.

Use of Partial Adverse Facts Available

In accordance with section 776 of the Act, we have determined that the use of partial adverse facts available is appropriate for certain portions of our analysis of Ispat Karmet. For a discussion of our determination with respect to this matter, *see Decision Memo*.

Nonmarket Economy Country

For this final determination, the Department is continuing to treat Kazakhstan as a non-market economy (''NME'') country, as described in the ''Nonmarket Economy Country'' section of our *Preliminary Determination.*

Separate Rates

For this final determination, the Department has determined a separate rate for Ispat. As discussed in the ''Separate Rates'' section of our *Preliminary Determination*, in a NME proceeding, the Department presumes that all companies within the country are subject to governmental control and assigns a single rate unless the producer can demonstrate that it is sufficiently independent so as to be entitled a separate rate. The separate rates analysis pertains to the export activities of the producer, and because we determined that Ispat is wholly foreign owned, and because we have no evidence indicating that it is under the control of the Republic of Kazakhstan, specifically with regard to export activities, we determine that Ispat qualifies for a separate rate. *See Brake Rotors from the People's Republic of China: Preliminary Results and Partial Rescission of the Fourth New Shipper Review and Rescission of the Third Antidumping Duty Administrative Review*, 66 FR 1303

(January 8, 2001); *Notice of Final Determination of Sales at Less Than Fair Value: Creatine Monohydrate from the People's Republic of China*, 64 FR 71104 (December 20, 1999).

Kazakhstan-Wide Rate

As discussed in our *Preliminary Determination*, Ispat Karmet has qualified for a separate rate. *See* ''Kazakhstan-Wide Rate'' section of our *Preliminary Determination*. There has been no other evidence submitted since the *Preliminary Determination* to change Ispat Karmet's qualification. Accordingly, we have calculated a Kazakhstan-wide rate for this investigation based on the weighted-average margin determined for Ispat Karmet. This Kazakhstan-wide rate applies to all entries of subject merchandise except for entries of subject merchandise exported by Ispat Karmet.

Ministerial Error

After the *Preliminary Determination*, the Department issued a ministerial error memorandum discussing two issues which Ispat Karmet alleged as requiring corrections. *See Ministerial Error Memorandum for the Preliminary Determination of Sales at Not Less Than Fair Value* (August 17, 2000) (''*Ministerial Error Memo*''). We agreed with Ispat Karmet on one of the two allegations, *i.e.*, that we should modify freight costs for scrap to apply only to scrap purchased from outside sources. *See Ministerial Error Memo* at 3. However, as correcting the ministerial error would not have resulted in a change of at least five absolute percentage points in the weighted-average dumping margin, nor a change of not less than 25 percent of the weighted-average dumping margin, we did not amend our *Preliminary Determination*, but stated we would include the correction, as appropriate, in our final determination. *Id.* Our determination has not changed since issuance of the *Ministerial Error Memo*. We agree with Ispat Karmet that we should correct the ministerial error. Without this correction, we cannot properly calculate the margin. Pursuant to 19 CFR 351.224(e), the Department will, ''if appropriate, correct any significant ministerial error by amending the preliminary determination, or correct any ministerial error by amending the final determination . . . [and] publish notice of such corrections in the **Federal Register**.'' Accordingly, we have incorporated the correction of the ministerial error in our final determination.

Suspension Agreement

On May 4, 2001, the government of Kazakhstan submitted a proposal for a suspension agreement (which was received by the Department on May 8, 2001), in accordance with the Department's regulations at 19 CFR 351.208. On July 30, 2001, the Department invited the Minister of Economy and Trade for Kazakhstan to Washington DC to hear the details of the government of Kazakhstan's proposal. On August 2, 2001, Bethlehem, *et al.* submitted comments on the negotiations between the Department and the Government of Kazakhstan, arguing that negotiation or conclusion of an agreement is untimely and not in compliance with the Department's regulations. On August 10, 2001, the Department submitted a memorandum to the file, explaining that the ''Department's regulations allow for flexibility, especially with regard to procedural deadlines where the Secretary determines there is good cause.'' *See Memorandum to the file from Joe Spetrini, Deputy Assistant Secretary, to Faryar Shirzad, Assistant Secretary for Import Administration* (August 10, 2001), at 2. On August 17, 2001, the Department and the Government of Kazakhstan initialed a proposed suspension agreement and the Department gave interested parties until September 6, 2001 to comment on the proposed agreement. On September 6, 2001, we received comments from Petitioners arguing that the statutory requirements for suspending an investigation have not been met, and that the proposed agreement needs substantial revisions. Specifically, Petitioners argue that: (1) The Department has not explained how the proposed agreement complies with the requirements of the Tariff Act, in conformation with 19 CFR 351.208; (2) effective monitoring of the proposed agreement is not practicable; (3) the proposed agreement will not prevent the suppression or undercutting of price levels of domestic products; and (4) it is in the public interest to enter an antidumping order. Also on September 6, 2001, Petitioners requested the antidumping duty investigation be continued, pursuant to 19 CFR 351.208(h). The Department and the Government of Kazakhstan did not sign a suspension agreement on hot-rolled carbon steel flat products from Kazakhstan by the deadline date of September 21, 2001. Consequently, Petitioners' comments are moot.

Fair Value Comparisons

To determine whether sales of hot-rolled steel products from Kazakhstan were made in the United States at LTFV, we compared EP to a normal value (''NV''), as described in the ''Export Price'' and ''Normal Value'' sections of the *Preliminary Determination.*

Surrogate Country

For purposes of the final determination, we continue to find that Egypt remains the appropriate primary surrogate country for Kazakhstan. For further discussion and analysis regarding the surrogate country selection for Kazakhstan, see the ''Surrogate Country'' section of our *Preliminary Determination.*

Continuation of Suspension of Liquidation

In accordance with section 735(c)(1)(B) of the Act, we are directing the U.S. Customs Service (''Customs'') to continue to suspend liquidation of all imports of subject merchandise entered, or withdrawn from warehouse, for consumption on or after the date of publication of the Preliminary Determination in the **Federal Register**. We will instruct Customs to continue 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 below. These suspension of liquidation instructions will remain in effect until further notice. The weighted-average dumping margins are as follows:

Exporter/Manufacturer	Weighted-average margin (percent)
OJSC Ispat Karmet	243.46
Kazakhstan-Wide	243.46

Disclosure

The Department will disclose calculations performed, within five days of the date of publication of this notice, to the parties in this investigation, in accordance with section 351.224(b) of the Department's regulations.

International Trade Commission Notification

In accordance with section 735(d) of the Act, we have notified the ITC of our affirmative determination of sales at LTFV. As our final determination is affirmative, the ITC will determine within 45 days after our final determination whether imports of hot-rolled steel from Kazakhstan are materially injuring, or threaten material injury to, the U.S. industry. If the ITC

determines that material injury, or threat of material injury does not exist, the proceeding will be terminated and all securities posted will be refunded or cancelled. If the ITC determines that such injury does exist, the Department will issue an antidumping duty order directing Customs officials to assess antidumping duties on all imports of the subject merchandise entered for consumption on or after the effective date of the suspension of liquidation.

This determination is issued and published in accordance with sections 735(d) and 777(i)(1) of the Act.

Dated: September 21, 2001.

Faryar Shirzad,

Assistant Secretary for Import Administration.

Appendix I

A. Market Oriented Industry Issue

Comment 1: Market Oriented Industry

B. General Issues

Comment 2: Aberrational Surrogate Values
Comment 3: Choice of Surrogate Values
Comment 4: Double Counting Values

C. Verification Issues

Comment 5: Factors of Production Based on Thickness
Comment 6: Dubai Sales Office
Comment 7: Nominal Thickness
Comment 8: Coil Protectors
Comment 9: Inland Freight Distance
Comment 10: Manganese Ore
Comment 11: Packing Bands
Comment 12: Sales to Ispat Sidbec
Comment 13: Technical Water
Comment 14: Silico-manganese

[FR Doc. 01–24750 Filed 10–2–01; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–823–811]

Notice of Final Determination of Sales at Less Than Fair Value: Certain Hot-Rolled Carbon Steel Flat Products From Ukraine

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

ACTION: Notice of final determination of sales at less than fair value: certain hot-rolled carbon steel flat products from Ukraine.

SUMMARY: We determine that certain hot-rolled carbon steel flat products (''hot-rolled steel'') from Ukraine are being, or are likely to be, sold in the United States at less than fair value, as provided in section 735 of the Tariff Act of 1930, as amended (the ''Act''). On May 3, 2001, the Department of Commerce (the ''Department'') published its preliminary determination in the less than fair value (''LTFV'') investigation of certain hot-rolled carbon steel flat products from Ukraine. *See Notice of Preliminary Determination of Sales at Less Than Fair Value: Certain Hot-Rolled Carbon Steel Flat Products From Ukraine,* 66 FR 22152 (May 3, 2001) (''*Preliminary Determination*''). Based on our analysis of comments received, the final determination differs from the preliminary determination. The estimated margins of sales at LTFV are shown in the ''Final Determination of Investigation'' section of this notice.

EFFECTIVE DATE: October 3, 2001.

FOR FURTHER INFORMATION CONTACT: Lori Ellison or Rick Johnson of Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone: (202) 482–5811 and (202) 482–3818, respectively.

The Applicable Statute and Regulations

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

Case History

On May 3, 2001, the Department published its *Preliminary Determination* in the LTFV investigation of hot-rolled steel from Ukraine. As noted in our *Preliminary Determination*, Zaporizhstal Iron and Steel Works (''Zaporizhstal'') is the sole participating respondent in this investigation. The other two Ukrainian producers of subject merchandise, Dnepropetrovsk Comintern Steel Works (''Dnepropetrovsk'') and Ilyich Iron & Steel Works, Mariupol (''Ilyich''), failed to respond to our requests for information. The petitioners in this investigation are: Bethlehem Steel Corporation, LTV Steel Company, Inc., National Steel Corporation, U.S. Steel Group, a unit of USX Corporation, the United Steelworkers of America, Gallatin Steel Company, IPSCO Steel Inc., Nucor Corp., Steel Dynamics, Inc., Weirton Steel Corp., and Independent Steelworkers Union (hereinafter ''petitioners'').

For purposes of our preliminary determination, pursuant to section 776(b) of the Act, we applied a single Ukraine-wide antidumping duty rate to all producers/exporters of hot-rolled steel in Ukraine. This rate was based on total adverse facts available. *See Preliminary Determination* at 22155. As total adverse facts available, we applied the highest dumping margin from the petition (as adjusted by the Department), 89.49 percent. *See id.* at 22157 and Memorandum to Edward C. Yang, *Facts Available Corroboration Memorandum, Preliminary Determination of Hot-Rolled Carbon Steel Flat Products from Ukraine*, April 23, 2001 (''*Preliminary FA/Corroboration Memorandum*'').

On May 2, 2001, the Department received a request from the respondent Zaporizhstal, ''the Midland group of companies'' (*i.e.*, Midland Industries Limited, Midland Metals International, Inc., and Midland Resources Holding Limited), and the State Committee of Industrial Policy of Ukraine, to postpone its final determination until 135 days after publication of the Department's preliminary determination and to extend the imposition of provisional measures from a four-month period to not more than six months, pursuant to section 735(a)(2)(A) of the Act. On May 21, 2001, we published in the **Federal Register** our notice to postpone the final determination, pursuant to those requests. *See Certain Hot-Rolled Carbon Steel Flat Products From Ukraine; Notice of Postponement of Final Determination in the Antidumping Duty Investigation*, 66 FR 27937 (May 21, 2001).

Although we applied to Zaporizhstal total adverse facts available for purposes of the preliminary determination, we gave the company yet another opportunity to remedy the deficiencies and inconsistencies in its response subsequent to the preliminary determination. On April 19, 2001, and May 4, 2001, we issued supplemental questionnaires with due dates of May 4, 2001, and May 18, 2001, respectively. On May 3, 2001, the Department granted Zaporizhstal's request of May 2, 2001, that the April 19, 2001 questionnaire response deadline be extended by two weeks. Zaporizhstal submitted timely responses to both questionnaires on May 18, 2001. On May 21, 2001, Zaporizhstal filed information that was ''inadvertently left out'' of the May 18th submission. On June 12, 2001, petitioners submitted additional information to value the factors of production.

On June 28, June 29, and July 6, 2001, respectively, well past the deadline of May 18, 2001 (as supplemented on May 21, 2001), for responding to our questionnaires, Zaporizhstal filed three

additional submissions. On July 31, 2001, we issued a letter to Zaporizhstal in which we rejected these three submissions as untimely filed responses to our supplemental questionnaires. In this letter, we informed Zaporizhstal that, in order for the Department to have considered this information, it should have been filed not later than with the May 18, 2001, submission (as supplemented on May 21st), in response to the Department's April 19 and May 4, 2001, supplemental questionnaires. *See Letter from Edward Yang to Bruce Aitken*, dated July 31, 2001; and *Memorandum to the File from Lori Ellison to Rick Johnson*, dated July 27, 2001. On August 2, 2001, counsels to Zaporizhstal and petitioners were notified via telephone that the Department determined not to conduct a verification of Zaporizhstal's sales and normal value data. *See Memorandum to the File from Lori Ellison to Rick Johnson; Decision Not to Conduct a Verification of Respondent's Data*, dated August 2, 2001.

On August 9, 2001, Zaporizhstal submitted its case brief with a supplement. On August 14, 2001, the petitioners submitted a rebuttal brief. On August 23, 2001, the petitioners withdrew their request of May 24, 2001, for a hearing. *See Memorandum from Lori Ellison to Rick Johnson regarding Withdrawal of Request for Hearing*, dated August 23, 2001.

On June 15, 2001, we determined not to initiate a middleman dumping investigation. *See Memorandum to Joseph A. Spetrini from Edward Yang Regarding Certain Hot-Rolled Carbon Steel Flat Products from Ukraine: Whether to Initiate a Middleman Dumping Investigation*, dated June 15, 2001.

On May 18, 2001, Zaporizhstal commented regarding its request for revocation of Ukraine's non-market economy (''NME'') status or for market oriented industry (''MOI'') treatment. This submission was provided in response to the Department's letter of February 26, 2001, in which the Department requested that Zaporizhstal address the statutory criteria for revoking a country's NME status and the established criteria for granting MOI treatment. *See Department's February 26, 2001 letter from Rick Johnson to Mr. Kieran Sharpe (''February 26, 2001 Letter'')*. On July 11, 2001, Zaporizhstal further addressed the criteria for revoking Ukraine's NME status. On July 24, 2001, the petitioners submitted comments on Zaporizhstal's analysis. On August 8, 2001, the Embassy of Ukraine, on behalf of the Ministry of Economy of Ukraine, submitted information and evidence necessary for the Department's consideration of Ukraine's NME status.

On May 8, 2001, the Embassy of Ukraine requested that the Department consider an agreement suspending this investigation. The request was accompanied by a proposed suspension agreement. In a letter of July 30, 2001, the Department invited the Ministry of Economy of Ukraine to discuss the details of this proposal. On August 2, 2001 petitioners submitted comments on the negotiations between the Department and the Government of Ukraine, arguing that negotiation or conclusion of an agreement is untimely and not in compliance with the Department's regulations. On August 10, 2001, the Department submitted a memorandum to the file, explaining that the ''Department's regulations allow for flexibility, especially with regard to procedural deadlines where the Secretary determines there is good cause.'' See Memorandum to the File from Joe Spetrini, Deputy Assistant Secretary, to Faryar Shirzad, Assistant Secretary for Import Administration (August 10, 2001), at 2. On August 13 and 14, 2001, Department officials met with Ukrainian government officials and consulted regarding the proposed suspension agreement. The Department and the Government of Ukraine did not initial or sign a suspension agreement regarding this investigation. Consequently, petitioners' comments are moot.

Although the deadline for this determination was originally September 15, 2001, in light of the events of September 11, 2001, and the subsequent closure of the Federal Government for reasons of security, the time frame for issuing this determination has been extended by four days.

Period of Investigation

The period of investigation (''POI'') is April 1, 2000, through September 30, 2000. This period corresponds to the two most recent fiscal quarters prior to the month of the filing of the petition (*i.e.*, November 2000). *See* 19 CFR 351.204(b)(1).

Analysis of Comments Received

All issues raised in the case and rebuttal briefs by parties to this proceeding and to which we have responded are listed in the Appendix to this notice and addressed in the *Issues and Decision Memorandum for the Antidumping Duty Investigation of Certain Hot-Rolled Carbon Steel Flat Products From Ukraine* (''*Issues and Decision Memorandum*''), dated September 21, 2001, which is hereby adopted by this notice. Parties can find a complete discussion of the issues raised in this investigation and the corresponding recommendations in this public memorandum, which is on file in the Central Records Unit, room (B–099) of the main Department building. In addition, a complete version of the *Issues and Decision Memorandum* can be accessed directly on the Web at *http://ia.ita.doc.gov.* The paper copy and electronic version of the *Issues and Decision Memorandum* are identical in content.

Changes Since the Preliminary Determination

Based on our analysis of the comments received, we have made adjustments to the preliminary determination methodologies in calculating the final dumping margin in this proceeding. While we continued to use Indonesia as the surrogate country, we made the following changes: (1) we applied an updated inflation factor based on the entire POI; and (2) we applied an updated exchange rate based upon the entire POI. These adjustments are discussed in the Memorandum to Edward C. Yang, *Facts Available Corroboration Memorandum, Final Determination of Hot-Rolled Carbon Steel Flat Products from Ukraine*, September 21, 2001 (''*Final FA/Corroboration Memorandum*'') at Attachment II.

Verification

We determined to not verify the information submitted by Zaporizhstal, as required by section 782 (i)(1) of the Act, because of its incompleteness. *See Final FA/Corroboration Memorandum and Memorandum to the File from Lori Ellison to Rick Johnson; Decision Not to Conduct a Verification of Respondent's Data*, dated August 2, 2001.

Scope of Investigation

For purposes of this investigation, the products covered are certain hot-rolled carbon steel flat products of a rectangular shape, of a width of 0.5 inch or greater, neither clad, plated, nor coated with metal and whether or not painted, varnished, or coated with plastics or other non-metallic substances, in coils (whether or not in successively superimposed layers), regardless of thickness, and in straight lengths of a thickness of less than 4.75 mm and of a width measuring at least 10 times the thickness. Universal mill plate (*i.e.,* flat-rolled products rolled on four faces or in a closed box pass, of a width exceeding 150 mm, but not exceeding 1250 mm, and of a thickness of not less than 4.0 mm, not in coils and

without patterns in relief) of a thickness not less than 4.0 mm is not included within the scope of this investigation.

Specifically included within the scope of this investigation are vacuum degassed, fully stabilized (commonly referred to as interstitial-free (IF)) steels, high strength low alloy (HSLA) steels, and the substrate for motor lamination steels. IF steels are recognized as low carbon steels with micro-alloying levels of elements such as titanium or niobium (also commonly referred to as columbium), or both, added to stabilize carbon and nitrogen elements. HSLA steels are recognized as steels with micro-alloying levels of elements such as chromium, copper, niobium, vanadium, and molybdenum. The substrate for motor lamination steels contains micro-alloying levels of elements such as silicon and aluminum.

Steel products to be included in the scope of this investigation, regardless of definitions in the Harmonized Tariff Schedule of the United States (HTSUS), are products in which: (i) iron predominates, by weight, over each of the other contained elements; (ii) the carbon content is 2 percent or less, by weight; and (iii) none of the elements listed below exceeds the quantity, by weight, respectively indicated:

1.80 percent of manganese, or
2.25 percent of silicon, or
1.00 percent of copper, or
0.50 percent of aluminum, or
1.25 percent of chromium, or
0.30 percent of cobalt, or
0.40 percent of lead, or
1.25 percent of nickel, or
0.30 percent of tungsten, or
0.10 percent of molybdenum, or
0.10 percent of niobium, or
0.15 percent of vanadium, or
0.15 percent of zirconium.

All products that meet the physical and chemical description provided above are within the scope of this investigation unless otherwise excluded. The following products, by way of example, are outside or specifically excluded from the scope of this investigation:

- Alloy hot-rolled steel products in which at least one of the chemical elements exceeds those listed above (including, *e.g.,* American Society for Testing and Materials (ASTM) specifications A543, A387, A514, A517, A506).
- Society of Automotive Engineers (SAE)/American Iron & Steel Institute (AISI) grades of series 2300 and higher.
- Ball bearing steels, as defined in the HTSUS.
- Tool steels, as defined in the HTSUS.
- Silico-manganese (as defined in the HTSUS) or silicon electrical steel with a silicon level exceeding 2.25 percent.
- ASTM specifications A710 and A736.
- USS abrasion-resistant steels (USS AR 400, USS AR 500).
- All products (proprietary or otherwise) based on an alloy ASTM specification (sample specifications: ASTM A506, A507).
- Non-rectangular shapes, not in coils, which are the result of having been processed by cutting or stamping and which have assumed the character of articles or products classified outside chapter 72 of the HTSUS.

The merchandise subject to this investigation is classified in the HTSUS at subheadings: 7208.10.15.00, 7208.10.30.00, 7208.10.60.00, 7208.25.30.00, 7208.25.60.00, 7208.26.00.30, 7208.26.00.60, 7208.27.00.30, 7208.27.00.60, 7208.36.00.30, 7208.36.00.60, 7208.37.00.30, 7208.37.00.60, 7208.38.00.15, 7208.38.00.30, 7208.38.00.90, 7208.39.00.15, 7208.39.00.30, 7208.39.00.90, 7208.40.60.30, 7208.40.60.60, 7208.53.00.00, 7208.54.00.00, 7208.90.00.00, 7211.14.00.90, 7211.19.15.00, 7211.19.20.00, 7211.19.30.00, 7211.19.45.00, 7211.19.60.00, 7211.19.75.30, 7211.19.75.60, and 7211.19.75.90. Certain hot-rolled carbon steel flat products covered by this investigation, including: vacuum degassed fully stabilized; high strength low alloy; and the substrate for motor lamination steel may also enter under the following tariff numbers: 7225.11.00.00, 7225.19.00.00, 7225.30.30.50, 7225.30.70.00, 7225.40.70.00, 7225.99.00.90, 7226.11.10.00, 7226.11.90.30, 7226.11.90.60, 7226.19.10.00, 7226.19.90.00, 7226.91.50.00, 7226.91.70.00, 7226.91.80.00, and 7226.99.00.00. Subject merchandise may also enter under 7210.70.30.00, 7210.90.90.00, 7211.14.00.30, 7212.40.10.00, 7212.40.50.00, and 7212.50.00.00. Although the HTSUS subheadings are provided for convenience and U.S. Customs purposes, the written description of the merchandise under investigation is dispositive.

Non-Market Economy Country Status

The Department has treated Ukraine as a NME country in all past antidumping investigations. *See, e.g., Notice of Preliminary Determinations of Sales at Less Than Fair Value: Steel Concrete Reinforcing Bars from Poland, Indonesia, and Ukraine*, 66 FR 8343 (January 30, 2001) and *Notice of Final Determination of Sales at Less Than Fair Value: Certain Cut-to-Length Carbon Steel Plate from Ukraine* (''*CTL Plate from Ukraine*'') 62 FR 61754 (November 19, 1997). This NME designation remains in effect until it is revoked by the Department (see section 771(18)(C) of the Act).

During this investigation, Zaporizhstal requested revocation of Ukraine's NME status. Following the official endorsement of this request by the Ukrainian government, the Department issued its *February 26, 2001 Letter* to Zaporizhstal and the Ukrainian Embassy requesting, *inter alia*, that the company and the Government of Ukraine submit evidence addressing the statutory criteria relevant to the NME status, as described in section 771(18)(B) of the Act. In addition, the Department requested that Zaporizhstal submit evidence of progress regarding those factors under section 771(18)(B) which Ukraine did not satisfy in its 1996 request for revocation. *See CTL Plate from Ukraine*, 62 FR 61754. For purposes of our *Preliminary Determination* on April 23, 2001, we continued to treat Ukraine as a NME because we had received no response to this request for information and there was no record evidence or argumentation regarding progress since the earlier determination.

As noted above, after the preliminary determination, several submissions were made regarding NME revocation. On May 18, 2001, Zaporizhstal and the Ukrainian State Committee on Industrial Policy jointly submitted information in response to the Department's *February 26, 2001 Letter* regarding market economy and market oriented industry issues. This submission addresses, in a narrative form, each of the statutory criteria specified in our *February 26, 2001 Letter*, and includes a discussion of recent factual trends, referencing certain relevant Ukrainian decrees/laws. On July 11, 2001, Zaporizhstal and the Ukrainian State Committee on Industrial Policy jointly submitted further commentary regarding the statutory criteria, including a more detailed reference to the applicable Ukrainian laws and decrees. On July 24, 2001, the petitioners submitted comments on Zaporizhstal's analysis. On August 8, 2001, the Ministry of Economy of Ukraine filed a submission that included much of the same information presented in the July 11, 2001 submission, in addition to further analysis of certain issues and excerpts from ''some legislative documents related to Market Status of Ukraine.''

We note that, in previous instances in which the Department has considered

graduation to market economy status, initial requests for revocation of NME status and supporting information have been submitted at the outset of the proceeding. *See e.g., Memorandum from Holly A. Kuga, to Troy H. Cribb: Antidumping Duty Investigation of Certain Steel Concrete Reinforcing Bars from Latvia—Request for Market Economy Status* (January 12, 2001); *Memorandum from David Mueller to Robert LaRussa: Antidumping Investigation of Certain Small Diameter Carbon and Alloy Seamless Standard Line and Pressure Pipe from the Czech Republic: Non-Market Economy (''NME'') Country Status*, (November 29, 1999); *Memorandum from Bernard Carreau to Troy Cribb: Antidumping Duty Determinations on Cold-Rolled Carbon-Quality Steel Products from the Slovak Republic—Market vs. Non-Market Economy Analysis*, (October 13, 1999); *Memorandum from Joseph A. Spetrini to Robert LaRussa: Antidumping Administrative Review of Tapered Roller Bearings and Parts Thereof, Finished or Unfinished, from Hungary—Market vs. Non-Market Economy (NME) Analysis Memorandum*, (February 23, 2000); Respondent's August 28, 1992 submission in the Investigation of Sales at less than Fair Value: Certain Cut-to-length Carbon Steel Plate from Poland; and submission from the Embassy of Ukraine, dated February 12, 1997, Investigation of Sales at less than Fair Value; Certain Cut-to-length Carbon Steel Plate from Ukraine. In all of these cases the initial requests to revoke a country's NME status, including supporting information, have been submitted well in advance of the preliminary determination, thereby giving the Department sufficient time to conduct a complicated and time-consuming analysis of the factors enunciated in section 771(18)(B) of the Act. In this case, although Zaporizhstal's initial request for revocation was submitted 66 days after the initiation, the company submitted its first response 25 days after the preliminary determination and 165 days after the initiation of this investigation. The Government of Ukraine's response was submitted nearly eight months after the initiation of this investigation, which is only slightly more than one month prior to the extended final determination. Given that Zaporizhstal's and the Government of Ukraine's responses were submitted so late in the proceeding, we were unable to adequately consider and analyze them, as mandated by the criteria outlined in section 771(B)(18) of the Act.

Market-Oriented Industry

As indicated above (*see* ''Case History''), Zaporizhstal, with the support of the Government of Ukraine, has requested MOI treatment for the hot-rolled steel industry in Ukraine. Accordingly, in our *February 26, 2001 Letter*, we requested that Zaporizhstal address the Department's criteria for granting MOI status. On May 18, 2001, Zaporizhstal and the Ukrainian State Committee on Industrial Policy jointly submitted a response to the Department's established criteria for granting MOI status.

The criteria for determining whether a MOI exists are: (1) For the merchandise under investigation, there must be virtually no government involvement in setting prices or amounts to be produced; (2) the industry producing the merchandise under investigation should be characterized by private or collective ownership; and (3) market-determined prices must be paid for all significant inputs, whether material or non-material (*e.g.*, labor and overhead), and for all but an insignificant portion of all the inputs accounting for the total value of the merchandise under review. *See, e.g., Certain Small Diameter Carbon and Alloy Seamless Standard, Line and Pressure Pipe from Romania, Final Determination of Sales at Less than Fair Value*, 65 FR 39125 (June 23, 2000) (''*Pressure Pipe from Romania*'') and *Freshwater Crawfish Tail Meat from the People's Republic of China, Final Determination of Sales at Less than Fair Value*, 62 FR 41347 (August 1, 1997) (''*Crawfish from China*''). Moreover, in order to make an affirmative determination that an industry in a NME country is a MOI, the Department requires information on virtually the entire industry. A MOI claim, and supporting evidence, must cover producers that collectively constitute the industry in question; otherwise, the MOI claim cannot be substantiated. *See, id. e.g. Crawfish from China* at 41353 and *Pressure Pipe from Romania* at 39125.

In this case, consistent with our *Preliminary Determination*, we continue to find that the hot-rolled industry in Ukraine does not meet the Department's criteria for an affirmative MOI finding because we do not have supporting evidence that would cover the entire hot-rolled industry in Ukraine. As we have noted above, there are three known producers of subject merchandise: Ilyich, Dnepropertrovsk, and Zaporizhstal. Of these three, Ilyich and Dnepropetrowsk have failed to respond to the Department's questionnaire. Although Zaporizhstal and the Government of Ukraine included in their May 18, 2001, submission documentation supporting MOI treatment, this documentation is specific to one company, Zaporizhstal, rather than to the entire hot-rolled industry. Moreover, we have not received any industry-wide information from the Government of Ukraine to support the claim that the hot-rolled industry is market-oriented. *See Crawfish from China* at 41353 (''Consistent with past practice, we require information on the entire industry, or virtually the entire industry, in order to make an affirmative determination that an industry is market-oriented.''). Therefore, for purposes of our final determination, we continue to find that the hot-rolled industry in Ukraine does not qualify for MOI treatment.

Ukraine-Wide Rate

As noted in the preliminary determination, we sent questionnaires to all three companies identified as potential respondents in the petition. We did not receive responses from Ilyich and Dnepropetrovsk. As discussed below in the ''Separate Rates'' section of the notice, Zaporizhstal has significantly impeded this investigation. Given that we did not make a determination of a separate rate for Zaporizhstal, it has been assigned the Ukraine-wide rate. In addition, U.S. import statistics indicate that the total quantity and value of U.S. imports of hot-rolled steel from Ukraine is greater than the total quantity and value of hot-rolled steel as reported by Zaporizhstal. *See Final FA/Corroboration Memorandum.* Accordingly, we are applying the Ukraine-wide rate to all exporters in Ukraine based on our presumption that those respondents who failed to respond to our questionnaire constitute a single enterprise under common control by the Government of Ukraine. *See, e.g., Final Determination of Sales at Less Than Fair Value: Bicycles from the People's Republic of China*, 61 FR 19026 (April 30, 1996) (''*Bicycles*''). Therefore, the Ukraine-wide rate applies to all entries of the subject merchandise from Ukraine.

Application of Facts Available

Section 776(a) of the Act provides that, if an interested party withholds information that has been requested by the Department, fails to provide such information in a timely manner or in the form or manner requested, significantly impedes a proceeding under the antidumping statute, or provides

information which cannot be verified, the Department shall use, subject to sections 782(d) and (e) of the Act, facts otherwise available in reaching the applicable determination. The statute requires that certain conditions be met before the Department may resort to facts available. Where the Department determines that a response to a request for information does not comply with the request, section 782(d) of the Act provides that the Department will so inform the party submitting the response and will, to the extent practicable, provide that party the opportunity to remedy or explain the deficiency. If the party fails to remedy the deficiency within the applicable time limits, the Department may, subject to section 782(e) of the Act, disregard all or part of the original and subsequent responses, as appropriate. Pursuant to section 782(e) of the Act, the Department shall not decline to consider information deemed ''deficient'' under section 782(d) of the Act if: (1) The information is submitted by the established deadline; (2) the information can be verified; (3) the information is not so incomplete that it cannot serve as a reliable basis for reaching the applicable determination; (4) the interested party has demonstrated that it acted to the best of its ability; and (5) the information can be used without undue difficulties.

In selecting from among the facts available, section 776(b) of the Act authorizes the Department to use an adverse inference, if the Department finds that an interested party failed to cooperate by not acting to the best of its ability to comply with the request for information. See also SAA at 870. The statute and the SAA provide that such an adverse inference may be based on secondary information, including information drawn from the petition.

In accordance with sections 776(a) and (b) of the Act, for the reasons explained below, we determine that the use of total adverse facts available is warranted with respect to respondents Dnepropetrovsk, Ilyich, and Zaporizhstal.

Ilyich and Dnepropetrovsk

As we have explained in our *Preliminary FA/Corroboration Memorandum*, Dnepropetrovsk and Ilyich failed to respond to the Department's questionnaire. Thus, pursuant to sections 776(a)(2)(A) and (C), we will continue using facts otherwise available with respect to these companies for purposes of our final determination. Moreover these companies' failure to respond to our requests for information demonstrates lack of cooperation within the meaning of section 776(b) of the Act. Therefore, consistent with our *Preliminary Determination*, we will continue using adverse inferences with respect to these companies when applying facts available for purposes of this final determination.

Zaporizhstal

Although Zaporizhstal made an attempt to respond in part to the Department's questionnaires and supplemental questionnaires over the course of this proceeding, its overall responses were too incomplete to be used as a basis for calculating a dumping margin. For a detailed analysis of Zaporizhstal's responses and their underlying deficiencies, *see Final FA/Corroboration Memorandum*. Therefore, for the reasons described in the *Final FA/Corroboration Memorandum*, we determined to use facts otherwise available, pursuant to section 776(a)(2)(A) and (B) of the Act.

We also find that the application of adverse inferences in this case is appropriate, pursuant to section 776(b) of the Act. In the course of this investigation, Zaporizhstal was afforded numerous opportunities to provide information in a form and manner required by the Department. Despite the Department's clear directions in both the original and many supplemental questionnaires, Zaporizhstal failed to provide critical information which was readily at the company's disposal. *See Final FA/Corroboration Memorandum* for a detailed explanation of the deficiencies in Zaporizhstal's responses.

Thus, we find that the company did not cooperate to the best of its ability in responding to the Department's request for information, and that, consequently, an adverse inference is warranted under section 776(b) of the Act when selecting facts available, consistent with the Department's practice. *See e.g., Notice of Final Determination of Sales at Less than Fair Value: Circular Seamless Stainless Steel Hollow Products from Japan*, 65 FR 42985 (July 12, 2000).

Selection and Corroboration of Facts Available

Section 776(b) of the Act states that an adverse inference may include reliance on information derived from the petition. *See also* SAA at 829–831. Section 776(c) of the Act provides that, when the Department relies on secondary information (such as the petition rates) as facts 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 may include, for example, published price lists, official import statistics and customs data, and information obtained from interested parties during the particular investigation. *Id.*

As discussed in our Preliminary Determination, we reviewed the adequacy and accuracy of the information in the petition during our pre-initiation analysis of the petition, to the extent appropriate information was available for this purpose. In order to determine the probative value of the petition margin for use as adverse facts available in this determination, we have re-examined evidence supporting the petition calculation (as adjusted by the Department). In accordance with section 776(c) of the Act, to the extent practicable, we examined the key elements of the U.S. price and normal value calculations on which the Department-adjusted petition margin was based and compared the sources used in the initiation to information from independent sources reasonably at our disposal. Since the *Preliminary Determination*, we reviewed updated information from independent sources and made the following changes: (1) We applied an updated inflation factor based on the entire POI; and (2) we applied an updated exchange rate based upon the entire POI. We have adjusted our calculation accordingly. These adjustments are discussed in the *Final FA/Corroboration Memorandum* at Attachment II. We conclude that the 90.33 percent margin, the highest rate from the petition (as adjusted by the Department), is relevant with respect to Zaporizhstal. *See Final FA/Corroboration Memorandum* at 8–10.

Separate Rates

It is the Department's policy to assign all exporters of merchandise subject to investigation in a NME country a single rate, unless an exporter can demonstrate that it is sufficiently independent from government control so as to be entitled to a separate rate. In this case, the single responding company, Zaporizhstal, has claimed to be sufficiently independent to warrant a separate rate. However, given that Zaporizhstal failed to cooperate in this investigation to the best of its ability, we did not make a determination as to whether Zaporizhstal merits a separate rate, and are assigning a single country-wide rate for all exporters of subject merchandise from Ukraine.

Final Determination of Investigation

We determine that the following weighted-average percentage margin exists for the period April1, 2000 through September 30, 2000:

Exporter/manufacturer	Weighted-average margin (in percent)
Ukraine-Wide Rate	90.33

Continuation of Suspension of Liquidation

In accordance with section 735(c)(1)(B) of the Act, we are instructing the U.S. Customs Service (''Customs'') to continue to suspend liquidation of all entries of subject merchandise entered, or withdrawn from warehouse, for consumption on or after the date of publication of this notice in the **Federal Register**. We will instruct Customs to continue 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 above. These suspension-of-liquidation instructions will remain in effect until further notice.

International Trade Commission Notification

In accordance with section 735(d) of the Act, we have notified the International Trade Commission (''ITC'') of our determination. As our final determination is affirmative, the ITC will, within 45 days, determine whether these imports are materially injuring, or threaten material injury to, the U.S. industry. If the ITC determines that material injury, or threat of material injury does not exist, the proceeding will be terminated and all securities posted will be refunded or canceled. If the ITC determines that such injury does exist, the Department will issue an antidumping duty order directing Customs officials to assess antidumping duties on all imports of the subject merchandise entered for consumption on or after the effective date of the suspension of liquidation.

This determination is issued and published in accordance with sections 735(d) and 777(i)(1) of the Act.

Dated: September 21, 2001.

Faryar Shirzad,

Assistant Secretary for Import Administration.

Appendix—Issues in Decision Memorandum

I. Facts Available
- Comment 1: Factors of Production/ Calculation Methodology and Format
- Comment 2: Product Codes
- Comment 3: Reporting of Sales
- Comment 4: Correspondence between Midland Resources' and Zaporizhstal's Datafiles

II. Rejection of Certain Submissions as Untimely Filed
- Comment 5: Rejection of Zaporizhstal's Submissions of June 28, June 29, and July 6, 2001

[FR Doc. 01–24751 Filed 10–2–01; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–533–820]

Notice of Final Determination of Sales at Less Than Fair Value: Certain Hot-Rolled Carbon Steel Flat Products From India

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

EFFECTIVE DATE: October 3, 2001.

FOR FURTHER INFORMATION CONTACT: Timothy Finn or John Conniff at (202) 482–0065 or (202) 482–1009 respectively, AD/CVD Enforcement, Office 4, Group II, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230.

SUPPLEMENTARY INFORMATION:

The Applicable Statute and Regulations

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

Final Determination

We determine that certain hot-rolled carbon steel flat products from India are being sold, or are likely to be sold, in the United States at less than fair value (LTFV), as provided in section 735 of the Act. The estimated margin of sales at LTFV is shown in the *Suspension of Liquidation* section of this notice.

Case History

On May 3, 2001, the Department of Commerce (Department) published the preliminary determination of the antidumping duty investigation of hot-rolled steel from India. *See Notice of Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination: Certain Hot-Rolled Carbon Steel Flat Products from India,* 66 FR 22157 (May 3, 2001) (*Preliminary Determination*). The period of investigation (POI) is October 1, 1999, through September 30, 2000. We conducted verification of the questionnaire responses of the respondents, Ispat Industries Ltd., (Ispat) during the weeks of April 30, 2001 and May 8, 2001, and Essar Steel Ltd., (Essar) during the weeks of June 11, 2001, and June 18, 2001. We gave interested parties an opportunity to comment on our Preliminary Determination and our findings at verification. On August 1, 2001, the respondents, Ispat Industries Ltd. (Ispat) and Essar Steel Ltd. (Essar), and the petitioners,[1] submitted case briefs; and on August 9, 2001, all parties submitted rebuttal briefs. The Department received requests for a public hearing from both petitioners and respondents which were later withdrawn; therefore no public hearing was held.

Although the deadline for this determination was originally September 17, 2001, in light of the events of September 11, 2001 and the subsequent closure of the Federal Government for reasons of security, the time frame for issuing this determination has been extended by four days.

The Department has conducted this investigation in accordance with section 731 of the Act.

Scope of Investigation

For purposes of these investigations, the products covered are certain hot-rolled carbon steel flat products of a rectangular shape, of a width of 0.5 inch or greater, neither clad, plated, nor coated with metal and whether or not painted, varnished, or coated with plastics or other non-metallic substances, in coils (whether or not in successively superimposed layers), regardless of thickness, and in straight lengths of a thickness of less than 4.75 mm and of a width measuring at least 10 times the thickness. Universal mill plate (*i.e.,* flat-rolled products rolled on four faces or in a closed box pass, of a width exceeding 150 mm, but not exceeding 1250 mm, and of a thickness of not less than 4.0 mm, not in coils and without patterns in relief) of a thickness not less than 4.0 mm is not included within the scope of these investigations.

[1] The petitioners in this investigation are Bethlehem Steel Corporation, Gallatin Steel Company, IPSCO Steel Inc., LTV Steel Company, Inc., National Steel Corporation, Nucor Corporation, Steel Dynamics, Inc., U.S. Steel Group (a unit of USX Corporation), Weirton Steel Corporation, Independent Steelworkers Union, and United Steelworkers of America (collectively the petitioners).

Specifically included within the scope of these investigations are vacuum degassed, fully stabilized (commonly referred to as interstitial-free (IF)) steels, high strength low alloy (HSLA) steels, and the substrate for motor lamination steels. IF steels are recognized as low carbon steels with micro-alloying levels of elements such as titanium or niobium (also commonly referred to as columbium), or both, added to stabilize carbon and nitrogen elements. HSLA steels are recognized as steels with micro-alloying levels of elements such as chromium, copper, niobium, vanadium, and molybdenum. The substrate for motor lamination steels contains micro-alloying levels of elements such as silicon and aluminum.

Steel products to be included in the scope of these investigations, regardless of definitions in the Harmonized Tariff Schedule of the United States (HTSUS), are products in which: (i) Iron predominates, by weight, over each of the other contained elements; (ii) the carbon content is 2 percent or less, by weight; and (iii) none of the elements listed below exceeds the quantity, by weight, respectively indicated:

1.80 percent of manganese, or
2.25 percent of silicon, or
1.00 percent of copper, or
0.50 percent of aluminum, or
1.25 percent of chromium, or
0.30 percent of cobalt, or
0.40 percent of lead, or
1.25 percent of nickel, or
0.30 percent of tungsten, or
0.10 percent of molybdenum, or
0.10 percent of niobium, or
0.15 percent of vanadium, or
0.15 percent of zirconium.

All products that meet the physical and chemical description provided above are within the scope of these investigations unless otherwise excluded. The following products, by way of example, are outside or specifically excluded from the scope of these investigations:

- Alloy hot-rolled steel products in which at least one of the chemical elements exceeds those listed above (including, *e.g.,* American Society for Testing and Materials (ASTM) specifications A543, A387, A514, A517, A506).
- Society of Automotive Engineers (SAE)/American Iron & Steel Institute (AISI) grades of series 2300 and higher.
- Ball bearing steels, as defined in the HTSUS.
- Tool steels, as defined in the HTSUS.
- Silico-manganese (as defined in the HTSUS) or silicon electrical steel with a silicon level exceeding 2.25 percent.
- ASTM specifications A710 and A736.
- USS abrasion-resistant steels (USS AR 400, USS AR 500).
- All products (proprietary or otherwise) based on an alloy ASTM specification (sample specifications: ASTM A506, A507).
- Non-rectangular shapes, not in coils, which are the result of having been processed by cutting or stamping and which have assumed the character of articles or products classified outside chapter 72 of the HTSUS.

The merchandise subject to these investigations is classified in the HTSUS at subheadings: 7208.10.15.00, 7208.10.30.00, 7208.10.60.00, 7208.25.30.00, 7208.25.60.00, 7208.26.00.30, 7208.26.00.60, 7208.27.00.30, 7208.27.00.60, 7208.36.00.30, 7208.36.00.60, 7208.37.00.30, 7208.37.00.60, 7208.38.00.15, 7208.38.00.30, 7208.38.00.90, 7208.39.00.15, 7208.39.00.30, 7208.39.00.90, 7208.40.60.30, 7208.40.60.60, 7208.53.00.00, 7208.54.00.00, 7208.90.00.00, 7211.14.00.90, 7211.19.15.00, 7211.19.20.00, 7211.19.30.00, 7211.19.45.00, 7211.19.60.00, 7211.19.75.30, 7211.19.75.60, and 7211.19.75.90. Certain hot-rolled carbon steel flat products covered by these investigations, including: vacuum degassed fully stabilized; high strength low alloy; and the substrate for motor lamination steel may also enter under the following tariff numbers: 7225.11.00.00, 7225.19.00.00, 7225.30.30.50, 7225.30.70.00, 7225.40.70.00, 7225.99.00.90, 7226.11.10.00, 7226.11.90.30, 7226.11.90.60, 7226.19.10.00, 7226.19.90.00, 7226.91.50.00, 7226.91.70.00, 7226.91.80.00, and 7226.99.00.00. Subject merchandise may also enter under 7210.70.30.00, 7210.90.90.00, 7211.14.00.30, 7212.40.10.00, 7212.40.50.00, and 7212.50.00.00. Although the HTSUS subheadings are provided for convenience and U.S. Customs purposes, the written description of the merchandise under investigation is dispositive.

Period of Investigation

The period of investigation (POI) is October 1, 1999, through September 30, 2000. This period corresponds to the four most recent fiscal quarters prior to the month of the filing of the petition (*i.e.,* November 2000).

Analysis of Comments Received

All issues raised in the case and rebuttal briefs by parties to this proceeding and to which we have responded are listed in the Appendix to this notice and addressed in the ''Issues and Decision Memorandum'' (*Decision Memorandum*), dated September 21, 2001, which is hereby adopted by this notice. Parties can find a complete discussion of the issues raised in this investigation and the corresponding recommendations in this public memorandum which is on file in the Central Records Unit, room B–099 (B–099) of the main Department building. In addition, a complete version of the *Decision Memorandum* can be accessed directly on the Web at http://ia.ita.doc.gov. The paper copy and electronic version of the *Decision Memorandum* are identical in content.

Changes Since the Preliminary Determination

Based on our findings at verification, and analysis of comments received, we have made adjustments to the preliminary determination calculation methodologies in calculating the final dumping margins in this proceeding. These adjustments are discussed in detail in the *Decision Memorandum* and are listed below:

Ispat

(1) We revised Ispat's pay dates for certain U.S. sales to reflect the actual date of payment.

(2) We recalculated the reported home market commission amounts to reflect changes from verification.

(3) We adjusted expenses for two home market sales to reflect changes from verification.

(4) We included credit expenses (the variable CREDITH) in calculating selling expense for the COP test.

(5) We made other ministerial corrections to ferro alloy inputs (RHALLOYs).

Essar

(1) We allowed the adjustment for duty drawback under the Advance License program.

(2) For U.S. Imputed Credit, we allowed adjustments based upon the actual pay date reported.

(3) For affiliated party inputs, we adjusted Essar's transfer price to reflect the market value for iron ore pellet because the transfer price for this product was below its market price.

(4) At verification, Essar reported, in accordance with the Department's policies, that it had failed to identify a small quantity of U.S. sales transactions that occurred during the POI.

There was key information concerning the transactions that was not included in the corrections Essar

presented, thus we could not pursue the most accurate margin possible for these sales. Pursuant to 776(a)(2) of the Act, we have determined that it is necessary to use facts available for these transactions. There is no evidence on the record that Essar has not acted to the best of its ability. Therefore, we have assigned to these sales a neutral facts available rate based upon the weighted-average dumping margin calculated for Essar's remaining U.S. sales. *See* Decision Memorandum at Comment 10.

Verification

As provided in section 782(i) of the Act, we verified the information submitted by the respondent for use in our final determination. We used standard verification procedures including examination of relevant accounting and production records, and original source documents provided by the respondent.

Suspension of Liquidation

Pursuant to section 735(c)(1)(B) of the Act, we are instructing the U.S. Customs Service (Customs) to continue to suspend liquidation of all entries of hot-rolled carbon steel flat products from India that are entered, or withdrawn from warehouse, for consumption on or after May 3, 2001 (the date of publication of the *Preliminary Determination* in the **Federal Register**). Customs shall continue to require a cash deposit or the posting of a bond equal to the estimated amount by which the normal value exceeds the U.S. price as shown above. We will adjust the deposit requirements to account for any export subsidies found in the companion countervailing duty investigation. The suspension of liquidation instructions will remain in effect until further notice.

Manufacturer/ exporter	Margin (percent)
Ispat Industries Ltd	43.07
Essar Steel Ltd	29.35
All Others	33.17

ITC Notification

In accordance with section 735(d) of the Act, we have notified the International Trade Commission (ITC) of our determination. As our final determination is affirmative, the ITC will determine, within 45 days, whether these imports are causing material injury, or threat of material injury, to an industry in the United States. If the ITC determines that material injury, or threat of injury does not exist, the proceeding will be terminated and all securities posted will be refunded or canceled. If the ITC determines that such injury does exist, the Department will issue an antidumping order directing Customs officials to assess antidumping duties on all imports of the subject merchandise entered or withdrawn from warehouse for consumption on or after the effective date of the suspension of liquidation.

This determination is issued and published in accordance with sections 735(d) and 777(i)(1) of the Act.

Dated: September 21, 2001.

Faryar Shirzad,

Assistant Secretary for Import Administration.

Appendix—Issues in Decision Memorandum

Common Issues

1. Duty Drawback Adjustment—DEPB Program
2. The Appropriate Date of U.S. Sales
3. Inclusion of Excise Taxes in Reported Costs

Essar Steel Ltd.

4. Duty Drawback Adjustment—Verification
5. Duty Drawback Adjustment—Advance License Program
6. U.S. Imputed Credit Expenses Disallowed in the Preliminary Determination
7. Treatment of Pre-Operative Expenses
8. Treatment of Cost of Services Provided by an Affiliated Party
9. Use of the Revised Interest Expense Ratio
10. Unreported U.S. Sales
11. Use of Updated Credit Periods to Calculate Home Market Credit Expenses

Ispat Industries Ltd.

12. Capitalization of Production Costs
13. Start-Up Adjustment—Hot-Strip Mill
14. Exclusion of Costs Related to Start-Up
15. IMIL ''Learning Curve''/Start-Up Adjustment
16. Overstated General and Administrative (G&A) Expenses
17. Scrap Revenue Offset to Costs
18. Proper Classification of Bad Debt Expense
19. Adjusting Home Market Price in the Cost Test for Imputed Credit Expense
20. Identifying the Proper Quality Characteristics
21. Calculating Credit Expenses Based on Home Market Price and Excise Tax
22. Verification Corrections
23. Ministerial Corrections

[FR Doc. 01–24752 Filed 10–2–01; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–421–807]

Notice of Final Determination of Sales at Less Than Fair Value; Certain Hot-Rolled Carbon Steel Flat Products From The Netherlands

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

EFFECTIVE DATE: October 3, 2001.

ACTION: Notice of final determination of sales at less than fair value.

FOR FURTHER INFORMATION CONTACT: Melissa Blackledge, Mike Heaney, or Robert James at (202) 482–3518, (202) 482–4475, or (202) 482–0649, respectively; Antidumping and Countervailing Duty Enforcement Group III, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230.

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 Tariff Act) by the Uruguay Round Agreements Act. In addition, unless otherwise indicated, all citations to Department of Commerce (Department) regulations refer to the regulations codified at 19 CFR part 351 (April 1, 2000).

Final Determinations

We determine that certain hot-rolled carbon steel flat products (hot-rolled steel) from the Netherlands are being sold, or are likely to be sold, in the United States at less than fair value (LTFV), as provided in section 735 of the Tariff Act. The estimated margins of sales at LTFV are shown in the ''Suspension of Liquidation'' section of this notice.

Case History

We published in the **Federal Register** the preliminary determination in this investigation on May 3, 2001. *See Notice of Preliminary Determination of Sales at Less Than Fair Value: Certain Hot-Rolled Carbon Steel Flat Products from the Netherlands,* 66 FR 22146(May 3, 2000) (*Preliminary Determination*). Since the publication of the Preliminary Determination the following events have occurred.

On May 22, 2001, the Corus Group plc (Corus), the respondent, requested that the Department postpone the final

determination the full sixty days as permitted by the statute and the Department's regulations. On June 4, 2001, the Department postponed the final determination until no later than 135 days after publication of the preliminary determination in the **Federal Register**. *See* 66 FR 32600 (June 15, 2001).

The Department verified sections A through C of Corus Staal BV (Corus Staal's) responses from May 7 through May 11, 2001, at Corus Staal's headquarters in IJmuiden, the Netherlands. The Department also verified section D of Corus Staal's response from May 1 through May 5, 2001, at Corus Staal's headquarters. *See* Memorandum To The File; ''Home Market Verification of the Corus Group plc's Questionnaire Response,'' July 2, 2001 (Home Market Sales Verification Report) and Memorandum To Neal M. Halper, Acting Director, Office of Accounting; ''Verification of the Cost of Production and Constructed Value Data Submitted by Corus Staal BV,'' June 15, 2001 (Home Market Cost Verification Report). From June 6 through June 7, 2001, the Department verified the responses submitted by Corus Staal relating to Rafferty-Brown of North Carolina (RBN) and Rafferty-Brown of Connecticut (collectively, the Rafferty-Brown Companies), at RBN's offices in Greensboro, North Carolina. *See* Memorandum To The File; ''U.S. Verification of the Corus Group plc's Questionnaire Response'', July 5, 2001 (U.S. Market Verification Report). Public versions of these, and all other Departmental memoranda referred to herein, are on file in the Central Records Unit, room B–099 of the main Commerce building.

On June 4, 2001, respondent and petitioners requested a public hearing. Petitioners submitted a letter on June 15, 2001, requesting that a product referred to as ''battery-quality hot-rolled steel'' continue to be included in the scope of the investigation and in any antidumping order to be issued in this case. On July 30, 2001, both the respondent and petitioners filed their case briefs with the Department. On July 31, 2001, petitioners submitted a letter informing the Department of a change in the name of one of the petitioners, from ''U.S. Steel Group, a unit of USX Corporation'' to ''United States Steel LLC''. We received rebuttal briefs from all parties on August 6, 2001. The hearing scheduled for August 9, 2001, was cancelled on August 8, 2001, at the request of both parties. Although the deadline for this determination was originally September 17, 2001, in light of the events of September 11, 2001, and the subsequent closure of the Federal Government for reasons of security, the time frame for issuing this determination has been extended by four days.

Period of Investigation

The period of investigation (POI) is October 1, 1999 through September 30, 2000.

Export Price Sales

As a result of our findings at verification we have reclassified certain sales as export price sales because we determined the sales were concluded between Corus Staal in the Netherlands and the first unaffiliated U.S. customer before the date of importation into the United States. *See* ''Final Determination Analysis Memorandum,'' dated September 21, 2001.

Analysis of Comments Received

All issues raised in the case and rebuttal briefs by parties to this investigation are addressed in the ''Issues and Decision Memorandum'' (Decision Memorandum) from Joseph A. Spetrini, Deputy Assistant Secretary, Import Administration, to Faryar Shirzad, Assistant Secretary for Import Administration, dated September 21, 2001, which is hereby adopted and incorporated by reference into this notice. A list of the issues which parties have raised and to which we have responded 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 decision memorandum which is on file in B–099.

In addition, a complete version of the Decision Memorandum can be accessed directly on the World Wide Web at *ia.ita.doc.gov/frn/frnhome.* The paper copy and electronic version of the Decision Memorandum are identical in content.

Scope of Investigation

For a description of the scope of this investigation, see the ''Scope of Investigation'' section of the Decision Memorandum, which is on file in B–099 and available on the Web at *ia.ita.doc.gov/frn/frnhome.*

Use of Facts Available

For a discussion of our application of facts available, see the ''Facts Available'' section of the Decision Memorandum, which is on file in B–099 and available on the Web at *ia.ita.doc.gov/frn/frnhome.*

Changes Since the Preliminary Determination

Based on our analysis of comments received and findings at verification, we have made certain changes in the margin calculations. We have also corrected certain programming and clerical errors in our preliminary results, where applicable. Any allegations of programming or clerical errors with which we do not agree are discussed in the relevant sections of the ''Decision Memorandum,'' accessible in B–099 and on the Web at *ia.ita.doc.gov/frn/.*

Suspension of Liquidation

Pursuant to section 735(c)(1)(B) of the Tariff Act, we are instructing Customs to continue to suspend liquidation of all entries of certain hot-rolled carbon steel flat products from the Netherlands that are entered, or withdrawn from warehouse, for consumption on or afterMay 3, 2001, the date of publication of the *Preliminary Determination.* The Customs Service shall continue to require a cash deposit or the posting of a bond based on the estimated weighted-average dumping margins shown below. The suspension of liquidation instructions will remain in effect until further notice.

We determine that the following weighted-average dumping margins exist for the period October 1, 1999 through September 30, 2000:

Exporter/ Manufacturer	Weighted-average margin (percent)
Corus Staal BV	3.06
All Others	3.06

ITC Notification

In accordance with section 735(d) of the Tariff Act, we have notified the International Trade Commission (ITC) of our determination. As our final determination is affirmative, the ITC will determine, within 45 days, whether these imports are causing material injury, or threat of material injury, to an industry in the United States. If the ITC determines that material injury or threat of injury does not exist, the proceeding will be terminated and all securities posted will be refunded or canceled. If the ITC determines that such injury does exist, the Department will issue an antidumping order directing Customs officials to assess antidumping duties on all imports of the subject merchandise entered, or withdrawn from warehouse for consumption on or after the effective date of the suspension of liquidation.

This determination is issued and published in accordance with sections 735(d) and 777(i)(1) of the Tariff Act.

Dated: September 21, 2001.

Faryar Shirzad,

Assistant Secretary for Import Administration.

Appendix I—Issues in Decision Memo

Comments and Responses

1. The Zeroing Methodology
2. Affiliation
3. Ordinary Course of Trade
4. Level of Trade
5. Interest Factor
6. Scope of the Order
7. Rebates
8. Inventory Carrying Costs
9. Non-prime Merchandise
10. Further Manufacturing Expenses
11. Gross Unit Price
12. Affiliated Party Inputs
13. Allocation of Costs
14. Unreported U.S. Sales
15. Interest Revenue

[FR Doc. 01–24754 Filed 10–2–01; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[C–549–818]

Final Affirmative Countervailing Duty Determination: Certain Hot-Rolled Carbon Steel Flat Products From Thailand

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

ACTION: Notice of final affirmative countervailing duty investigation.

SUMMARY: On April 20, 2001, the Department of Commerce (the Department) published in the **Federal Register** its preliminary affirmative determination in the countervailing duty investigation of certain hot-rolled carbon steel flat products from Thailand. Based on our analysis of the questionnaire responses, verification, and comments submitted by interested parties, we determine that subsidies are being conferred on the manufacture, production and export of certain hot-rolled carbon steel flat products in Thailand. The subsidy rates in this final determination differ from those in the preliminary determination. The revised final subsidy rates for the investigated producers/exporters are listed below in the ''Suspension of Liquidation'' section of this notice.

EFFECTIVE DATE: October 3, 2001.

FOR FURTHER INFORMATION CONTACT: Dana Mermelstein at (202) 482–1391, Sean Carey at (202) 482–3964, Javier Barrientos at (202) 482–2243, or Scott Lindsay at (202) 482–3782, Office of AD/CVD Enforcement VII, Group III, Import Administration, International Trade Administration, U.S. Department of Commerce, Room 7866, 14th Street and Constitution Avenue, NW, Washington, DC 20230.

SUPPLEMENTARY INFORMATION:

Applicable Statute and Regulations

Unless otherwise indicated, all citations to the statute are references to the Tariff Act of 1930, as amended (the Act). In addition, unless otherwise indicated, all citations to the Department's regulations are to the regulations codified at 19 CFR part 351 (2000).

Background

On April 20, 2001, the Department published the results of its preliminary determination in the investigation of certain hot-rolled carbon steel flat products from Thailand. *See Notice of Preliminary Affirmative Countervailing Duty Determination and Alignment With Final Antidumping Duty Determinations: Certain Hot-Rolled Carbon Steel Flat Products From Thailand,* 66 FR 20251 (April 20, 2001) (*Preliminary Determination*). We invited interested parties to comment on the preliminary determination.

In early May, we issued a supplemental questionnaire to the Royal Thai Government (RTG) and Sahaviriya Steel Industries Public Company Limited (SSI) (the respondents). On May 30, 2001, we received questionnaire responses from SSI and the RTG. On June 13, 2001, the Department published its notice, postponing the final determination in this investigation until September 17, 2001, pursuant to the postponement of the final determination in the companion antidumping duty investigation of certain hot-rolled carbon steel flat products from Thailand, with which this investigation is aligned. *See Notice of Postponement of Final Antidumping Duty Determination: Certain Hot-Rolled Carbon Steel Flat Products from Thailand; and Notice of Postponement of Final Countervailing Duty Determinations: Certain Hot-Rolled Carbon Steel Flat Products from Thailand and South Africa,* 66 FR 31888 (June 13, 2001).

On June 14, 2001, Bethlehem Steel Corporation, Gallatin Steel Company, IPSCO Steel Inc., LTV Steel Company, Inc., National Steel Corporation, Nucor Corporation, Steel Dynamics, Inc., U.S. Steel Group, a unit of USX Corporation, Weirton Steel Corporation, Independent Steelworkers Union, and the United Steelworkers of America (the petitioners), submitted a new subsidy allegation in this investigation pursuant to section 351.311 of the Department's regulations. *See* section 775 of the Act and 19 CFR 351.311(b). Petitioners alleged that benefits were provided to Thai hot-rolled steel producers under the Ministry of Industry's (MOI's) Steel Industrial Restructuring Plan (SIRP). On June 28, 2001, the Department decided to initiate on this program. *See Memorandum to the File Regarding MOI's SIP Allegation.* We subsequently issued supplemental questionnaires to the RTG and SSI. On July 9, 2001, we received the RTG's and SSI's responses to these supplemental questionnaires.

On July 9, 2001, we received comments from the petitioners regarding the verification of the questionnaire responses. Verification of the questionnaire responses submitted by the RTG and SSI took place from July 16 through 27, 2001. Respondents and petitioners submitted timely case and rebuttal briefs in this investigation. A public hearing was held on September 6, 2001.

Although the deadline for this determination was originally September 17, 2001, in light of the events of September 11, 2001 and the subsequent closure of the Federal Government for reasons of security, the timeframe for issuing this determination has been extended by four days.

Scope of the Investigation

The merchandise subject to this investigation is certain hot-rolled carbon steel flat products of a rectangular shape, of a width of 0.5 inch or greater, neither clad, plated, nor coated with metal and whether or not painted, varnished, or coated with plastics or other non-metallic substances, in coils (whether or not in successively superimposed layers), regardless of thickness, and in straight lengths, of a thickness of less than 4.75 mm and of a width measuring at least 10 times the thickness. Universal mill plate (*i.e.,* flat-rolled products rolled on four faces or in a closed box pass, of a width exceeding 150 mm, but not exceeding 1250 mm, and of a thickness of not less than 4 mm, not in coils and without patterns in relief) of a thickness not less than 4.0 mm is not included within the scope of this investigation.

Specifically included within the scope of this investigation are vacuum degassed, fully stabilized (commonly referred to as interstitial-free (IF)) steels, high strength low alloy (HSLA) steels, and the substrate for motor lamination steels. IF steels are recognized as low

carbon steels with micro-alloying levels of elements such as titanium or niobium (also commonly referred to as columbium), or both, added to stabilize carbon and nitrogen elements. HSLA steels are recognized as steels with micro-alloying levels of elements such as chromium, copper, niobium, vanadium, and molybdenum. The substrate for motor lamination steels contains micro-alloying levels of elements such as silicon and aluminum.

Steel products to be included in the scope of this investigation, regardless of definitions in the *Harmonized Tariff Schedule of the United States* (HTSUS), are products in which: (i) Iron predominates, by weight, over each of the other contained elements; (ii) the carbon content is 2 percent or less, by weight; and (iii) none of the elements listed below exceeds the quantity, by weight, respectively indicated:

1.80 percent of manganese, or
2.25 percent of silicon, or
1.00 percent of copper, or
0.50 percent of aluminum, or
1.25 percent of chromium, or
0.30 percent of cobalt, or
0.40 percent of lead, or
1.25 percent of nickel, or
0.30 percent of tungsten, or
0.10 percent of molybdenum, or
0.10 percent of niobium, or
0.15 percent of vanadium, or
0.15 percent of zirconium.

All products that meet the physical and chemical description provided above are within the scope of this investigation unless otherwise excluded. The following products, by way of example, are outside or specifically excluded from the scope of this investigation:

- Alloy hot-rolled steel products in which at least one of the chemical elements exceeds those listed above (including, e.g., American Society for Testing and Materials (ASTM) specifications A543, A387, A514, A517, A506).
- Society of Automotive Engineers (SAE)/American Iron & Steel Institute (AISI) grades of series 2300 and higher.
- Ball bearings steels, as defined in the HTSUS.
- Tool steels, as defined in the HTSUS.
- Silico-manganese (as defined in the HTSUS) or silicon electrical steel with a silicon level exceeding 2.25 percent.
- ASTM specifications A710 and A736.
- USS Abrasion-resistant steels (USS AR 400, USS AR 500).
- All products (proprietary or otherwise) based on an alloy ASTM specification (sample specifications: ASTM A506, A507).
- Non-rectangular shapes, not in coils, which are the result of having been processed by cutting or stamping and which have assumed the character of articles or products classified outside chapter 72 of the HTSUS.

The merchandise subject to this investigation is classified in the HTSUS at subheadings: 7208.10.15.00, 7208.10.30.00, 7208.10.60.00, 7208.25.30.00, 7208.25.60.00, 7208.26.00.30, 7208.26.00.60, 7208.27.00.30, 7208.27.00.60, 7208.36.00.30, 7208.36.00.60, 7208.37.00.30, 7208.37.00.60, 7208.38.00.15, 7208.38.00.30, 7208.38.00.90, 7208.39.00.15, 7208.39.00.30, 7208.39.00.90, 7208.40.60.30, 7208.40.60.60, 7208.53.00.00, 7208.54.00.00, 7208.90.00.00, 7211.14.00.90, 7211.19.15.00, 7211.19.20.00, 7211.19.30.00, 7211.19.45.00, 7211.19.60.00, 7211.19.75.30, 7211.19.75.60, and 7211.19.75.90. Certain hot-rolled carbon steel flat products covered by this investigation, including vacuum degassed fully stabilized; high strength low alloy; and the substrate for motor lamination steel may also enter under the following tariff numbers: 7225.11.00.00, 7225.19.00.00, 7225.30.30.50, 7225.30.70.00, 7225.40.70.00, 7225.99.00.90, 7226.11.10.00, 7226.11.90.30, 7226.11.90.60, 7226.19.10.00, 7226.19.90.00, 7226.91.50.00, 7226.91.70.00, 7226.91.80.00, and 7226.99.00.00. Subject merchandise may also enter under 7210.70.30.00, 7210.90.90.00, 7211.14.00.30, 7212.40.10.00, 7212.40.50.00, and 7212.50.00.00. Although the HTSUS subheadings are provided for convenience and U.S. Customs purposes, the Department's written description of the merchandise under investigation is dispositive.

Analysis of Programs and Analysis of Comments Received

The programs under investigation, as well as the issues raised in the case and rebuttal briefs submitted in this countervailing duty investigation are discussed and addressed in the *Issues and Decision Memorandum in the Final Affirmative Countervailing Duty Determination: Certain Hot-Rolled Carbon Steel Flat Products from Thailand,* from Joseph A. Spetrini, Deputy Assistant Secretary for AD/CVD Enforcement III, to Faryar Shirzad, Assistant Secretary for Import Administration, dated September 19, 2001 (*Decision Memorandum*), which is hereby adopted by this notice. Attached to this notice as an appendix is a list of the programs under investigation, as well as a list of the issues which parties have raised and to which we have responded in the *Decision Memorandum.* Parties can find a complete discussion of the programs and issues raised in this investigation, and the corresponding recommendations in this public memorandum, which is on file in the Department's Central Records Unit, in Room B–099. In addition, the *Decision Memorandum* can be accessed directly on the World Wide Web at *http://ia.ita.doc.gov,* under the heading ''**Federal Register** Notices.'' The paper copy and electronic version of the *Decision Memorandum* are identical in content.

Suspension of Liquidation

In accordance with section 705(c)(1)(B)(i)(I) of the Act, we have calculated a rate for the company under investigation. We have determined that the total estimated countervailable subsidy rate for SSI is 2.38 percent *ad valorem.* With respect to the ''all others'' rate, section 705(c)(5)(A)(i) of the Act requires that the ''all others'' rate equal the weighted-average countervailable subsidy rates established for exporters and producers individually investigated, excluding any zero and *de minimis* countervailable subsidy rates. Therefore, because SSI is the only producer/exporter, we are using its rate as the ''all others'' rate.

Producer/exporter	Subsidy rate (Percent)
Sahaviriya Steel Industries Public Company Ltd.	2.38 *Ad Valorem*
All others	2.38 *Ad Valorem*

In accordance with our preliminary affirmative determination, we instructed the U.S. Customs Service (Customs) to suspend liquidation of all entries of certain hot-rolled carbon steel flat products from Thailand, which were entered or withdrawn from warehouse for consumption on or after April 20, 2001, the date of the publication of our preliminary determination in the **Federal Register**, and to require a cash deposit or bond for such entries of the merchandise in the amounts indicated in the Preliminary Determination. In accordance with section 703(d)of the Act, we instructed Customs to discontinue the suspension of liquidation for merchandise entered on or after August 18, 2001, but to continue the suspension of liquidation of entries made between April 20, 2001 and August 17, 2001.

We will reinstate suspension of liquidation under section 706(a) of the

Act for all entries if the ITC issues a final affirmative injury determination, and we will require a cash deposit of the estimated countervailing duties for such entries of merchandise in the amounts indicated above. If the ITC determines that material injury, or threat of material injury, does not exist, this proceeding will be terminated and all estimated duties deposited or securities posted as a result of the suspension of liquidation will be refunded or canceled.

ITC Notification

In accordance with section 705(d) of the Act, we will notify the ITC of our determination. In addition, we are making available to the ITC all non-privileged and non-proprietary information related to this investigation. We will allow the ITC access to all privileged and business proprietary information in our files, provided that the ITC confirms that it will not disclose such information, either publically or under an administrative protective order (APO), without the written consent of the Assistant Secretary for Import Administration.

If the ITC determines that material injury, or threat of material injury, does not exist, these proceedings will be terminated. If however, the ITC determines that such injury does exist, we will issue a countervailing duty order.

Return or Destruction of Proprietary Information

In the event that the ITC issues a final negative injury determination, this notice will serve as the only reminder to parties subject to APO of their responsibility concerning the destruction of proprietary information disclosed under APO in accordance with 19 CFR 351.305(a)(3). Failure to comply is a violation of the APO.

This determination and notice are issued and published in accordance with sections 705(d) and 777(i) of the Act.

Dated: September 21, 2001.

Faryar Shirzad,

Assistant Secretary for Import Administration.

Appendix I: Issues and Decision Memorandum

I. *Subsidies Valuation Information*
A. Allocation Period
B. Discount Rates
C. Calculation of *Ad Valorem* Subsidy Rate
II. *Programs Determined to Confer Subsidies*
A. Incentives Under the Investment Promotion Act
1. Duty Exemptions on Imports of Machinery Under IPA Section 28
2. Duty Exemptions on Imports of Raw and Essential Materials Under IPA Section 30
3. Duty Exemptions on Imports of Raw and Essential Materials Under IPA Section 36(1)
4. Additional Tax Deductions Under IPA Section 35
B. Provision of Electricity For Less Than Adequate Remuneration
III. *Programs Determined Not to Confer Subsidies*
A. SSI and PPC Debt Restructuring
B. VAT Exemptions under the Investment Promotion Act
IV. *Programs Determined to be Not Used*
A. Duty Exemptions to PPC under Investment Promotion Act Section 29
B. Corporate Income Tax Exemptions under IPA Section 31
C. Incentive Under Investment Promotion Act Sections 36(2) and 36(4)
D. Ministry of Industry's Steel Industrial Restructuring Plan
E. Loans from the Industrial Finance Corporation of Thailand and the Thai Export-Import Bank
F. Other Loans and Loan Guarantees from Banks Owned, Controlled, or Influenced by the RTG
G. Export Packing Credits
H. Pre-shipment Finance Facilities
I. Trust Receipt Financing for Raw Materials
J. Export Insurance Program
K. Tax Certificates for Export
L. Import Duty Exemptions for Industrial Estates
M. Export Processing Zone Incentives
V. *Programs Determined Not to Exist*
A. IPA Subsidies for Construction of SSI's On-Site Power Plant
B. Provision of Water Infrastructure for Less Than Adequate Remuneration
VI. Analysis of Comments
Comment 1: Availability of IPA benefits to companies and industries within Thailand
Comment 2: Tariff Rate for Duty Exemptions for Raw and Essential Materials UnderIPA Sections 30 and 36
Comment 3: Countervailability of Section 36(1) Benefits
Comment 4: Countervailability of a Portion of Section 36(1) Benefits
Comment 5: Benefits under IPA Section 35(3)
Comment 6: Countervailability of Section 28 Imports Identified by Respondents as Recurring
Comment 7: Methodology for Calculating IPA Section 28 Benefits
Comment 8: The Time Value of Money and Countervailability of VAT Exemptions under the Investment Promotion Act
Comment 9: IPA Benefits and Investments by SSI's Initial Investors
Comment 10: Provision of Electricity as General Infrastructure
Comment 11: The Uniform National Tariff and Specificity
Comment 12: Provision of Electricity and Adequate Remuneration
Comment 13: PEA's Financial Performance and Adequacy of Remuneration
Comment 14: Provision of Electricity and Adjustment of Benefit
Comment 15: CDRAC List of 351 and Specificity
Comment 16: Objective and Neutral Criteria and RTG Discretion
Comment 17: SSI's BOI Certificate and Debt Restructuring
Comment 18: Specificity and Facts Available
Comment 19: SSI Loans before Debt Restructuring and Creditworthiness of PPC
Comment 20: Benefit from Restructured Loans from Private Creditors
Comment 21: Benefit from Private Creditors' Loans and Equity Infusions
Comment 22: RTG Financial Contribution and SSI's Debt Restructuring
Comment 23: Financial Contribution: The Bangkok Approach and CDRAC
Comment 24: Terms of SSI's and PPC's Debt Restructuring and Financial Contribution from the RTG
VII. *Total Ad Valorem Rate*
VIII. *Recommendation*

[FR Doc. 01–24753 Filed 10–2–01; 8: 45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[C–791–810]

Final Affirmative Countervailing Duty Determination: Certain Hot-Rolled Carbon Steel Flat Products from South Africa

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

ACTION: Notice of Final Affirmative Countervailing Duty Investigation.

SUMMARY: On April 20, 2001, the Department of Commerce (the Department) published in the **Federal Register** its preliminary affirmative determination in the countervailing duty investigation of certain hot-rolled carbon steel flat products from South Africa.

The subsidy rates in the final determination differ from those in the preliminary determination. The revised final subsidy rates for the investigated producers/exporters are listed below in the ''Suspension of Liquidation'' section of this notice.

EFFECTIVE DATE: October 3, 2001.

FOR FURTHER INFORMATION CONTACT: Sally C. Gannon at (202) 482–0162, Mark Hoadley at (202) 482–0666, or Julio Fernandez at (202) 482–0190, Office of AD/CVD Enforcement VII, Group III, Import Administration, International Trade Administration, U.S. Department of Commerce, Room 7866, 14th Street and Constitution Avenue, NW., Washington, DC 20230.

SUPPLEMENTARY INFORMATION:

Applicable Statute and Regulations

Unless otherwise indicated, all citations to the statute are references to the Tariff Act of 1930 (the Act), as amended. In addition, unless otherwise indicated, all citations to the Department's regulations are to the regulations codified at 19 CFR Part 351 (2000).

Background

This investigation covers three producers/exporters: Highveld Steel and Vanadium Corporation Limited (Highveld), Iscor, Ltd. (Iscor), and Saldanha Steel Ltd. (Saldanha Steel). On April 20, 2001, the Department published the results of its preliminary determination in the investigation of certain hot-rolled carbon steel flat products from South Africa. *See Notice of Preliminary Affirmative Countervailing Duty Determination and Alignment With Final Antidumping Duty Determinations: Certain Hot-Rolled Carbon Steel Flat Products From South Africa*, 66 FR 20261 (April 20, 2001) (*Preliminary Determination*). We invited interested parties to comment on the *Preliminary Determination*. On April 26, 2001, Saldanha Steel Ltd. (Saldanha Steel) submitted comments on what it alleged to be clerical errors in the preliminary determination calculations. The Department addressed these allegations in the *Memorandum to Joseph A. Spetrini From Barbara E. Tillman Regarding Clerical Error Allegations* (May 7, 2001) (*Clerical Error Memo*) (on file in the Department's Central Records Unit, in Room B–099).

On May 7, 2001, we received comments from petitioners regarding the verification of the questionnaire responses. Verification of the parties' questionnaire responses was conducted from May 7 through May 21, 2001. On June 13, 2001, we postponed the final determination in this investigation until September 17, 2001, pursuant to the postponement of the final determination in the companion antidumping duty investigation of certain hot-rolled carbon steel flat products from Thailand with which this investigation had previously been aligned. *See Notice of Postponement of Final Antidumping Duty Determination: Certain Hot-Rolled Carbon Steel Flat Products from Thailand; and Notice of Postponement of Final Countervailing Duty Determinations: Certain Hot-Rolled Carbon Steel Flat Products from Thailand and South Africa*, 66 FR 31888 (June 13, 2001).

The GOSA, Saldanha Steel, and Iscor, as well as the petitioners, submitted timely case briefs in this investigation. On August 29, 2001, we received rebuttal briefs from Saldanha Steel and petitioners. On August 30, 2001, we conducted a public hearing.

Although the deadline for this final determination was September 17, 2001, in light of the events of September 11, 2001 and the subsequent closure of the Federal Government for reasons of security, the time frame for issuing this determination has been extended by four days.

Scope of the Investigation

The merchandise subject to this investigation is certain hot-rolled carbon steel flat products of a rectangular shape, of a width of 0.5 inch or greater, neither clad, plated, nor coated with metal and whether or not painted, varnished, or coated with plastics or other non-metallic substances, in coils (whether or not in successively superimposed layers), regardless of thickness, and in straight lengths, of a thickness of less than 4.75 mm and of a width measuring at least 10 times the thickness. Universal mill plate (*i.e.,* flat-rolled products rolled on four faces or in a closed box pass, of a width exceeding 150 mm, but not exceeding 1250 mm, and of a thickness of not less than 4 mm, not in coils and without patterns in relief) of a thickness not less than 4.0 mm is not included within the scope of this investigation.

Specifically included within the scope of this investigation are vacuum degassed, fully stabilized (commonly referred to as interstitial-free (IF)) steels, high strength low alloy (HSLA) steels, and the substrate for motor lamination steels. IF steels are recognized as low carbon steels with micro-alloying levels of elements such as titanium or niobium (also commonly referred to as columbium), or both, added to stabilize carbon and nitrogen elements. HSLA steels are recognized as steels with micro-alloying levels of elements such as chromium, copper, niobium, vanadium, and molybdenum. The substrate for motor lamination steels contains micro-alloying levels of elements such as silicon and aluminum.

Steel products included in the scope of this investigation, regardless of definitions in the *Harmonized Tariff Schedule of the United States* (HTSUS), are products in which: (i) iron predominates, by weight, over each of the other contained elements; (ii) the carbon content is 2 percent or less, by weight; and (iii) none of the elements listed below exceeds the quantity, by weight, respectively indicated:

1.80 percent of manganese, or
2.25 percent of silicon, or
1.00 percent of copper, or
0.50 percent of aluminum, or
1.25 percent of chromium, or
0.30 percent of cobalt, or
0.40 percent of lead, or
1.25 percent of nickel, or
0.30 percent of tungsten, or
0.10 percent of molybdenum, or
0.10 percent of niobium, or
0.15 percent of vanadium, or
0.15 percent of zirconium.

All products that meet the physical and chemical descriptions provided above are within the scope of this investigation unless otherwise excluded. The following products, by way of example, are outside or specifically excluded from the scope of this investigation:

- Alloy hot-rolled steel products in which at least one of the chemical elements exceeds those listed above (including, *e.g.,* American Society for Testing and Materials (ASTM) specifications A543, A387, A514, A517, A506).
- Society of Automotive Engineers (SAE)/American Iron & Steel Institute (AISI) grades of series 2300 and higher.
- Ball bearings steels, as defined in the HTSUS.
- Tool steels, as defined in the HTSUS.
- Silico-manganese (as defined in the HTSUS) or silicon electrical steel with a silicon level exceeding 2.25 percent.
- ASTM specifications A710 and A736.
- USS Abrasion-resistant steels (USS AR 400, USS AR 500).
- All products (proprietary or otherwise) based on an alloy ASTM specification (sample specifications: ASTM A506, A507).
- Non-rectangular shapes, not in coils, which are the result of having been processed by cutting or stamping and which have assumed the character of articles or products classified outside chapter 72 of the HTSUS.

The merchandise subject to this investigation is classified in the HTSUS at subheadings: 7208.10.15.00, 7208.10.30.00, 7208.10.60.00, 7208.25.30.00, 7208.25.60.00, 7208.26.00.30, 7208.26.00.60, 7208.27.00.30, 7208.27.00.60, 7208.36.00.30, 7208.36.00.60, 7208.37.00.30, 7208.37.00.60, 7208.38.00.15, 7208.38.00.30, 7208.38.00.90, 7208.39.00.15, 7208.39.00.30, 7208.39.00.90, 7208.40.60.30, 7208.40.60.60, 7208.53.00.00, 7208.54.00.00, 7208.90.00.00, 7211.14.00.90, 7211.19.15.00, 7211.19.20.00, 7211.19.30.00, 7211.19.45.00, 7211.19.60.00, 7211.19.75.30, 7211.19.75.60, and 7211.19.75.90. Certain hot-rolled carbon steel flat

products covered by this investigation, including vacuum degassed fully stabilized; high strength low alloy; and the substrate for motor lamination steel may also enter under the following tariff numbers: 7225.11.00.00, 7225.19.00.00, 7225.30.30.50, 7225.30.70.00, 7225.40.70.00, 7225.99.00.90, 7226.11.10.00, 7226.11.90.30, 7226.11.90.60, 7226.19.10.00, 7226.19.90.00, 7226.91.50.00, 7226.91.70.00, 7226.91.80.00, and 7226.99.00.00. Subject merchandise may also enter under 7210.70.30.00, 7210.90.90.00, 7211.14.00.30, 7212.40.10.00, 7212.40.50.00, and 7212.50.00.00. Although the HTSUS subheadings are provided for convenience and U.S. Customs purposes, the Department's written description of the merchandise under investigation is dispositive.

Analysis of Programs and Analysis of Comments Received

The programs under investigation as well as the issues raised in the case and rebuttal briefs submitted in this countervailing duty investigation are discussed in the *Issues and Decision Memorandum in the Final Affirmative Countervailing Duty Determination: Certain Hot-Rolled Carbon Steel Flat Products from South Africa*, from Joseph A. Spetrini, Deputy Assistant Secretary for AD/CVD Enforcement III, to Faryar Shirzad, Assistant Secretary for Import Administration, dated September 21, 2001 (*Decision Memorandum*), which is hereby adopted by this notice. Attached to this notice as an appendix is a list of the programs under investigation and a list of the issues the parties raised and to which we have responded in the *Decision Memorandum*. Parties can find a complete discussion of the programs and issues raised in this investigation and the corresponding recommendations in this public memorandum, which is on file in the Department's Central Records Unit, in Room B–099. In addition, the *Decision Memorandum* can be accessed directly on the World Wide Web at *http://ia.ita.doc.gov,* under the heading ''**Federal Register** Notices.'' The paper copy and electronic version of the *Decision Memorandum* are identical in content.

Subsidy Rates

In accordance with section 705(c)(1)(B)(i)(I) of the Act, we have calculated an individual rate for the companies under investigation, Highveld, Iscor and Saldanha. We have determined that the total estimated countervailable subsidy rate for Highveld is 0.45 percent *ad valorem*, which is *de minimis*. In accordance with section 705(c)(2) of the Act, we, therefore, determine that no countervailable subsidies are being provided to Highveld for the production or exportation of subject merchandise. As discussed in the ''Cross-Ownership and Attribution of Subsidies'' section of the *Decision Memorandum*, we are treating Saldanha Steel and Iscor as a single entity and, therefore, have calculated a single rate to be applied to these companies. With respect to the ''all others'' rate, section 705(c)(5)(A)(i) of the Act requires that the ''all others'' rate equal the weighted-average countervailable subsidy rates established for exporters and producers individually investigated, excluding any zero and *de minimis* countervailable subsidy rates. Therefore, because Highveld's rate is *de minimis*, we are using the Saldanha/Iscor rate as the ''all others'' rate.

Producer/Exporter	Subsidy rate
Saldanha Steel/Iscor	6.37% *Ad Valorem*
Highveld	0.45% *Ad Valorem*
All Others	6.37% *Ad Valorem*

Suspension of Liquidation

In accordance with our preliminary affirmative determination, we instructed the U.S. Customs Service (Customs) to suspend liquidation of all entries of certain hot-rolled carbon steel flat products from South Africa, which were entered or withdrawn from warehouse for consumption on or after April 20, 2001, the date of the publication of our *Preliminary Determination* in the **Federal Register**, and to require a cash deposit or bond for such entries of the merchandise in the amounts indicated in the *Preliminary Determination*. In the *Preliminary Determination*, in accordance with section 703(d) of the Act, we instructed Customs to discontinue the suspension of liquidation for merchandise entered on or after August 18, 2001, but to continue the suspension of liquidation of entries made between April 20, 2001 and August 17, 2001.

We will reinstate suspension of liquidation under section 706(a) of the Act for all entries, except those from Highveld, if the International Trade Commission (ITC) issues a final affirmative injury determination, and we will require a cash deposit of estimated countervailing duties for such entries of merchandise in the amounts indicated above. If the ITC determines that material injury, or threat of material injury, does not exist, this proceeding will be terminated and all estimated duties deposited or securities posted as a result of the suspension of liquidation will be refunded or canceled.

ITC Notification

In accordance with section 705(d) of the Act, we will notify the ITC of our determination. In addition, we are making available to the ITC all non-privileged and non-proprietary information related to this investigation. We will allow the ITC access to all privileged and business proprietary information in our files, provided that the ITC confirms that it will not disclose such information, either publically or under an administrative protective order (APO), without the written consent of the Assistant Secretary for Import Administration.

If the ITC determines that material injury, or threat of material injury, does not exist, these proceedings will be terminated. If however, the ITC determines that such injury does exist, we will issue a countervailing duty order.

Return or Destruction of Proprietary Information

In the event that the ITC issues a final negative injury determination, this notice will serve as the only reminder to parties subject to the APO of their responsibility concerning the destruction of proprietary information disclosed under the APO in accordance with 19 CFR 351.305(a)(3). Failure to comply is a violation of the APO.

This determination is published pursuant to sections 705(d) and 777(i) of the Act.

Dated: September 21, 2001.

Faryar Shirzad,

Assistant Secretary for Import Administration.

Appendix I—Issues and Decision Memorandum

I. Subsidies Valuation Information

A. Industrial Development Corporation
B. Diversification of the South African Economy and Specificity of Programs
C. Allocation Period
D. Realignment of the Benefit Stream
E. Calculation of Discount Rates and Benchmark Loan Rates
F. Creditworthiness
G. Cross-Ownership and Attribution of Subsidies
H. Trading Companies

II. Programs Determined to Confer Subsidies

A. Section 37E Tax Allowances
B. Industrial Loan Financing Provided by the IDC and Findevco Ltd.
C. Loan Guarantees Provided by the IDC
D. Wharfage Fees for Exports

III. Programs Determined Not to Confer Subsidies

A. The IDC's Equity Infusions in Saldanha Steel
B. Improvements to Saldanha Bay Port
C. Improvements to the Sishen-Saldanha Rail Line

IV. Analysis of Comments

Comment 1: Treatment of the IDC
Comment 2: Diversification of the South African Economy and Specificity of Programs
Comment 3: Average Useful Life of Assets
Comment 4: Realignment of the Benefit Stream
Comment 5: Creditworthiness
Comment 6: Cross-Ownership
Comment 7: Section 37E and Specificity as an Export Subsidy
Comment 8: Section 37E and Specificity as a Domestic Subsidy
Comment 9: Equity Infusions
Comment 10: Loan Guarantees Provided by the IDC
Comment 11: Rates for Loan Guarantees
Comment 12: Wharfage Fees
Comment 13: Saldanha Bay Port Expansion Project, the Sishen-Saldanha Rail Line Upgrade and General Infrastructure
Comment 14: Improvements to the Sishen-Saldanha Rail Line
Comment 15: Improvements to Saldanha Bay Port
Comment 16: Saldanha Steel's Sales Values

V. Total Ad Valorem Rate

VI. Recommendation

[FR Doc. 01–24755 Filed 10–2–01; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 092801B]

Proposed Information Collection; Comment Request; Survey to Measure Effectiveness of Community-oriented Policing for ESA Enforcement

AGENCY: National Oceanic and Atmospheric Administration, Department of Commerce.

ACTION: Notice.

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 December 3, 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 Dayna Matthews, National Marine Fisheries Service, 510 Desmond Drive S.E. Suite 103, Lacey, WA 98503.

SUPPLEMENTARY INFORMATION:

I. Abstract

Community-oriented policing promotes the use of various resources and policing-community partnerships for developing strategies to identify, analyze, and address community law enforcement problems at their source. Recognizing the significant role non-traditional enforcement efforts play in Endangered Species Act (ESA) enforcement in the Northwest, the National Marine Fisheries Service proposes to conduct a survey to evaluate the success of its Office for Law Enforcement's community-oriented policing program for ESA enforcement for anadromous species in the Pacific Northwest.

II. Method of Collection

Information will be gathered through both voluntary self-administered surveys and in-depth interviews.

III. Data

OMB Number: 0648–0435.

Form Number: None.

Type of Review: Regular submission.

Affected Public: Individuals or households; Federal, state and local Government.

Estimated Number of Respondents: 4,300 (4000 surveys, 300 interviews).

Estimated Time Per Response: 20 minutes per survey, 80 minutes per interview.

Estimated Total Annual Burden Hours: 1,733 hours.

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: September 26, 2001.

Gwellnar Banks,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. 01–24760 Filed 10–2–01; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 090601B]

Small Takes of Marine Mammals Incidental to Specified Activities; Building Demolition Activities at Mugu Lagoon, CA

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

ACTION: Notice of issuance of an incidental harassment authorization.

SUMMARY: In accordance with provisions of the Marine Mammal Protection Act (MMPA) as amended, notification is hereby given that an Incidental Harassment Authorization (IHA) to take small numbers of pinnipeds by harassment incidental to the demolition and removal of buildings located at the entrance of Mugu Lagoon in Point Mugu, CA has been issued to the Department of Navy, Naval Base Ventura County (NBVC).

DATES: Effective from September 26, 2001, until September 26, 2002.

ADDRESSES: The application and authorization are available by writing to Donna Wieting, Chief, Marine Mammal Conservation Division, Office of Protected Resources, NMFS, 1315 East-West Highway, Silver Spring, MD 20910–3225, or by telephoning one of the contacts listed here.

FOR FURTHER INFORMATION CONTACT: Simona P. Roberts, (301) 713–2322, ext 106 or Christina Fahy, (562) 980–4023.

SUPPLEMENTARY INFORMATION:

Background

Sections 101 (a)(5)(A) and (D) of the MMPA (16 U.S.C. 1361 *et seq.*) direct the Secretary of Commerce to allow, upon request, the incidental, but not intentional taking of small numbers of marine mammals by U.S. citizens who engage in a specified activity (other than commercial fishing) within a specified geographical region if certain findings are made and either regulations are issued or, if the taking is limited to harassment, notice of a proposed authorization is provided to the public for review.

Permission may be granted if NMFS finds that the taking will have no more than a negligible impact on the species or stock(s) and will not have an unmitigable adverse impact on the availability of the species or stock(s) for subsistence uses and that the permissible methods of taking and requirements pertaining to the monitoring and reporting of such taking are set forth.

On April 10, 1996 (61 FR 15884), NMFS published an interim rule establishing, among other things, procedures for issuing incidental harassment authorizations (IHAs) under section 101 (a)(5)(D) of the MMPA for activities in Arctic waters. For additional information on the procedures to be followed for this authorization, please refer to that document.

Summary of Request

On May 23, 2001, NMFS received an application from NBVC requesting an authorization for the harassment of small numbers of marine mammals incidental to the demolition and removal of approximately 12 buildings and associated infrastructures. The demolition site encompasses a total area of approximately 8 acres (3.2 hectares (ha)) at the entrance of Mugu Lagoon in Point Mugu, CA.

There will be two phases to the demolition activities. No explosives will be used during any phase of the project and demolition crews will work only during daylight periods. During the first phase, one building requiring specialized procedures will be demolished and the resulting material removed from the site. In addition, the first phase will involve the excavation and removal of sand and soil around another building. This first phase will take approximately 5 weeks to complete. Construction equipment to be used during the first phase will include: a 2000-gallon water truck; a John Deere 710 4-wheel-drive backhoe with a 2000–pound hydraulic concrete breaker attachment; a front end loader with a 3-cubic-yard bucket; and, standard half-ton work pickup and dump trucks. The second phase of the project will be the demolition and removal of the remaining structures using standard construction procedures and equipment. This second phase may last 3 weeks, but is more likely to be completed in 2 weeks. Specific construction equipment to be used during phase two will include: a 973 loader; a 450 Hitachi excavator; a 320 loader; a Case 621 loader; a 710 4-wheel-drive backhoe; a 545D skip loader; a 1000-gallon water truck; a dump truck; and, a Bobcat loader. A more detailed description of the work proposed for 2001 is contained in the application (The Environmental Company and LGL Ltd., 2001) which is available upon request (see **ADDRESSES**).

Comments and Responses

On June 29, 2001 (66 FR 34618), NMFS published a notice of receipt and a 30-day public comment period was provided on the application and proposed authorization. A recommendation to issue the requested authorization was received from the Marine Mammal Commission (MMC). No other comments were received.

Description of Habitat and Marine Mammals Affected by the Activity

Mugu Lagoon is one of the largest salt marshes in southern California, encompassing approximately 350 acres (142 ha) of water and tidal flats. The beaches around the Mugu Lagoon entrance are used year-round by harbor seals (*Phoca vitulina*) for resting, molting, and breeding. The Navy reported a peak count of 361 adults in the Mugu Lagoon on June 6, 2000 (The Environmental Company and LGL Ltd., 2001). Two other pinniped species are known to occur infrequently in the area of the proposed activity during certain times of the year: northern elephant seals (*Mirounga angustirostris*) and California sea lions (*Zalophus californianus*). When present, these latter species haul out at the mouth of the lagoon and on Family Beach, located south of the demolition project area on the ocean side. Descriptions of the biology and local distribution of these species can be found in the application as well as other sources such as, Hanan (1996), Stewart and Yochem (1994, 1984), Forney *et al.* (2000), Koski *et al.* (1998), Barlow *et al.* (1993), Stewart and DeLong (1995), and Lowry *et al.* (1992). Please refer to those documents for information on these species.

Isolated observations of cetaceans have occurred in the Mugu Lagoon area. Two gray whale (*Eschrichtius robustus*) strandings have been recorded (one 20 years ago and one in the early 1980s). There is also one recorded observation of a gray whale moving in and out of the entrance to Mugu Lagoon (T. Keeney, NBVC Point Mugu Environmental Division, pers. comm., 2001). Sightings of Dall's porpoise (*Phocoenoides dalli*), bottlenose dolphin (*Tursiops truncatus*), common dolphin (*Delphinus delphis*or *D. capensis*), and pilot whale (*Globicephala macrorhynchus*) have been made within 3 nautical miles (nm) (5.6 kilometers (km)) of shore in the vicinity of Point Mugu (Koski *et al.*, 1998); however, none of these species would be expected to occur within the lagoon.

Potential Effects of Demolition Activities on Marine Mammals

Acoustic and visual stimuli generated by the use of heavy equipment during the demolition and removal activities, as well as the increased presence of personnel, may cause short-term disturbance to pinnipeds hauled out closest to the work area. This disturbance from acoustic and visual stimuli is the principal means of marine mammal taking associated with these activities. Based on the measured sounds of construction equipment, such as might be used during the Point Mugu demolition project, sound levels from all equipment (except the concrete breaker to be used during the first phase) drops to below 100 decibels, A-weighted (dBA) within 50 feet (ft)(15.2 meters (m)) of the source (CALTRANS, 2001).

Pinnipeds sometimes show startle reactions when exposed to sudden brief sounds. An acoustic stimulus with sudden onset (such as a sonic boom) may be analogous to a ''looming'' visual stimulus (Hayes and Saif, 1967), which may elicit flight away from the source (Berrens et al., 1988). The onset of operations by a loud sound source, such as the concrete breaker during phase one, may elicit such a reaction. In addition, the movements of the large hydraulic arms of the backhoes or the Hitachi excavator may represent a ''looming'' visual stimulus to seals hauled out in close proximity. Seals exposed to such acoustic and visual stimuli may either exhibit a startle response or leave the haul-out site.

Harbor seals that haul out in Mugu Lagoon have clearly habituated to very loud airborne sounds at this location, as well as to the presence of humans and vehicle movement along the road that passes through the demolition area. For instance, biologists observed harbor seal haul-out sites in Mugu Lagoon during repeated overflights of a F-14a Tomcat jet aircraft in full afterburner as it performed touch-and-go maneuvers at nearby Mugu airfield. No more overt reactions than a momentary elevation of the hind flippers of a single juvenile seal were observed (The Environmental Company and LGL Ltd., 2001). Based on Air Force data, the received sound levels at the Mugu Lagoon haul-out sites under the jet's flight path could have reached a sound exposure level (SEL) of 117-121 dB re 20 micro-Pascal (Pa) during these maneuvers (from C. Malme, data in the USAF aircraft noise database). In areas where harbor seals are not exposed to regular aircraft noise or other acoustic stimuli, it should be noted that this type of reaction is not typical. For instance, Bowles and Stewart (1980) reported that harbor seals on San Miguel Island, CA reacted to low-altitude jet overflights with alert postures and often with rapid movement across the haul-out sites, especially when aircraft were visible.

For the purposes of their application, NBVC assumed that when behavioral patterns of pinnipeds are disrupted by the demolition activities, they will be taken by harassment. In general, if the received level of the noise stimulus exceeds both the background (ambient) noise level and the auditory threshold of the animals, and especially if the stimulus is novel to them, then there may be a behavioral response. The probability and degree of response will also depend on the season, the group composition of the pinnipeds, and the type of activity in which they are engaged. The Navy considers minor and brief responses, such as momentary startle or alert reactions not to be ''takes'' by harassment (The Environmental Group and LGL Ltd., 2001; see 64 FR 9925). However, when startle and alert reactions are accompanied by large-scale movements, such as stampedes into the water, this may have adverse effects on individuals and considered a ''take'' because of the potential for injury or death. As described here, harbor seals in the Mugu Lagoon are exposed to noise levels far greater than those expected during the demolition activities described in NBVC's application, and there is no evidence that noise-induced injury or deaths have occurred. The effects of the demolition activities are expected to be limited to short-term and localized behavioral changes (The Environmental Group and LGL Ltd., 2001).

For a further discussion on the anticipated effects of the planned demolition activities on marine mammals in the area and their food sources, please refer to the application (The Environmental Company and LGL Ltd., 2001). Information in the application and referenced sources is preliminarily adopted by NMFS as the best information available on this subject.

Numbers of Marine Mammals Expected to Be Taken

NBVC estimates that the following numbers of marine mammals may be subject to Level B harassment, as defined in 50 CFR 216.3:

Species	*Potential Harassment Takes 2001*
Harbor Seals*	288
Northern Elephant Seal*	8
California Sea Lion*	12

* Some individual seals may be harassed more than once

Effects of Demolition Activities on Marine Mammal Habitat

NBVC anticipates no loss or modification to the habitat used by marine mammal populations that haul out within the Mugu Lagoon. Demolition activities will occur on shore above the highest tide mark, and the demolition contractor will ensure that building refuse will not enter the waters of the lagoon (New World Technology, 2001). The tidal patterns in the lagoon and structure of the nearby sandy haul-out areas will not be altered by these shore-based demolition activities.

The pinnipeds that may be present in Mugu Lagoon leave the lagoon area to feed in the open sea (T. Keeney, NBVC Point Mugu Environmental Division, pers. comm., 1998); therefore, it is not expected that the demolition activities will have any impact on the food or feeding success of these marine mammals.

Effects of Demolition Activities on Subsistence Needs

There are no subsistence uses for these pinniped species in California waters, and thus there are no anticipated effects on subsistence needs.

Mitigation

No pinniped mortality and no significant long-term effect on the stocks of pinnipeds hauled out in the Mugu Lagoon are expected based on the relatively low levels of sound generated by the demolition equipment (i.e., 100 dBA within 50 ft (15.2 m) from the source) and the relatively short time period over which the project will take place (approximately 8 weeks). However, NBVC does expect that the demolition activities may cause disturbance reactions by some of the pinnipeds on the beaches. To reduce the potential for disturbance from visual and acoustic stimuli associated with the demolition project, NBVC will undertake a variety of mitigation measures. In addition to these measures to be taken by NBVC, the construction contractor has developed detailed work plans for the project, which emphasize that special consideration is required to minimize disturbances to the resident harbor seal population (New World Technology, 2001). In addition to not using explosives and only operating

during daylight hours, NBVC will adopt the following mitigation measures:

(1) Prior to each day of demolition or removal activities, NBVC Point Mugu Environmental Division personnel will inspect the work site to ensure compliance with the construction contractor's work plan, and to assess the number and types of marine mammals that are occupying the lagoon. Depending on results of initial observations and subsequent planned activities, the NBVC personnel will decide each day whether marine mammal monitoring for the entire day is needed (see Monitoring section). Work will be suspended or conducted in another area in the event that a monitoring biologist or a member of the demolition crew sights a marine mammal hauled out in an area where there is a risk that the animal may come into physical contact with construction machinery or personnel.

(2) The demolition contractor will ensure that work areas are caution taped as a barricade against inadvertent entry of unauthorized personnel where physical barriers are not already present. Before start of the activities, demolition personnel will be advised of all marine mammal mitigation measures.

(3) Work outside of the fenced boundary on the lagoon side of the site will be minimized to the extent possible. Work within 100 feet (30.48 meters) of the lagoon will be done manually where possible (New World Technology, 2001).

(4) During excavations, tarps will be carefully placed over areas in such a way as to reduce ''flapping'' during installation by unfolding the tarps in sections as they are installed. The edges of the tarps will be held down and secured with sandbags and/or tent stakes to prevent movement of the tarp during windy conditions.

(5) To reduce sound levels in proximity to harbor seal haul-out sites, concrete slabs that form the bases of some buildings and the pools will be sectioned using concrete cutting saws, rather than the hydraulic concrete breaker, where possible.

Monitoring

As part of its application, NBVC provided a proposed monitoring plan for assessing impacts to marine mammals from demolition activities in Mugu Lagoon. This monitoring would be entirely land-based and is designed to determine if there are disturbance reactions, to determine the area over which reactions occur, and to characterize harbor seal reactions to demolition sounds.

The monitoring program will be conducted by NMFS-approved and biologically-trained marine mammal monitors via land-based visual observations. NBVC must conduct a minimum of twice-daily monitoring efforts for each day of the two phases of demolition, and conduct all-day monitoring when marine mammals are present or when new procedures or equipment are employed relative to previous project activities. Marine mammal monitors are required to record a variety of information including: (1) date and time, (2) weather, (3) tide state, (4) composition and locations of the haul-out groups of pinnipeds within the lagoon, (5) marine mammal behavior patterns observed before, during, and after the activities, (6) horizontal visibility (estimated by determining what the furthest visible object is relative to the interacting seals using known positions of local objects and accounting for obstructing terrain), and (7) occurrence, or planned occurrence, of any other military aircraft activity or other anthropogenic activities in or around the lagoon.

Through direct visual observation, the number of seals hauled out and haul-out locations will be documented during the demolition. This monitoring plan also provides data required to characterize the extent and nature of marine mammal takings.

Reporting

NBVC will provide an initial report to NMFS within 90 days after the demolition and removal activities cease. This report will provide dates and locations of demolition activities, details of seal behavioral observations, and estimates of the amount and nature of all takes of seals by harassment or in other ways. In the unanticipated event that any cases of pinniped mortality are judged to result from demolition activities, this will be reported to NMFS immediately.

Endangered Species Act Consultation

NBVC's activities will not affect any listed species. Therefore, NMFS has determined that a section 7 consultation under the Endangered Species Act is not required at this time.

National Environmental Policy Act (NEPA)

The Department of the Navy, following Council on Environmental Quality regulations (40 CFR 1500), has found that demolition and disposal involving buildings or structures neither on, nor eligible for, listing on the National Register of Historic Places and requiring removal of hazardous materials, are categorically excluded from further documentation under NEPA (32 CFR 775, Department of Navy Procedures for Implementing the National Environmental Policy Act). NBVC is preparing a Record of Categorical Exclusion for all phases of this demolition project.

In accordance with section 6.01 of NOAA Administrative Order 216-6 (Environmental Review Procedures for Implementing the National Environmental Policy Act, May 20, 1999), NMFS has analyzed both the context and intensity of this action and determined based on previous programmatic environmental reviews contained in NBVC's request for an IHA and the Draft Environmental Impact Statement/Overseas Environmental Impact Statement for the Point Mugu Sea Range (Department of Navy Naval Air Warfare Center Weapons Division, July 2000) that the issuance of this IHA to NBVC by NMFS will not individually or cumulatively result in a significant impact on the quality of the human environment as defined in 40 CFR 1508.27 and is therefore categorically excluded from further NEPA analysis. In addition to the required NEPA analysis for categorical exclusion, NMFS' rulemaking for the issuance of IHAs (61 FR 15884; April 10, 1996) stated that for issuance of an IHA, NMFS must first determine that the taking (by harassment) would not result in any serious injury or death to a marine mammal, would have no more than a negligible impact on marine mammals and their habitat, and would not have an unmitigable adverse impact on the availability of the species or stock(s) for subsistence uses. Therefore, NMFS' decision-making process for IHA issuance or denial independently and separately analyzes factors similar to those suggested under section 6.01 of NOAA Administrative Order 216-6 for determining the significance of agency actions for the purposes of NEPA.

Determinations

Based on the evidence provided in the application and this document, and taking into consideration comments received on the application and proposed authorization notice, NMFS has determined that the effects of the planned demolition activities will have no more than a negligible impact on pinniped species and stocks. NMFS is assured that the short-term impact of conducting demolition and removal activities at the entrance of Mugu Lagoon in Point Mugu, California will result, at worst, in a temporary modification in behavior by certain species of pinnipeds. While behavioral

modifications may be made by these species as a result of demolition and removal activities, previous observations of the responses of pinnipeds to loud military overflights and regular human activities near the Mugu Lagoon haul-out sites have not shown injury, mortality, or extended disturbance.

Since the number of potential harassment takings of harbor seals, northern elephant seals, and California sea lions is estimated to be small, no take by injury and/or death is anticipated and will be avoided through the incorporation of the mitigation measures mentioned in this document and required under the IHA, and the activities will not have an unmitigable adverse impact on the availability of these pinniped stocks for subsistence uses, NMFS has determined that the requirements of section 101(a)(5)(D) of the MMPA have been met and the authorization can be issued.

Authorization

NMFS has issued an IHA to NBVC for demolition and building emoval activities to take place in Mugu Lagoon, CA during a 1-year period provided the mitigation, monitoring, and reporting requirements described in this document and the IHA are undertaken.

Dated: September 26, 2001.

Wanda L. Cain

Acting Deputy Director, Office of Protected Resources, National Marine Fisheries Service..

[FR Doc. 01–24761 Filed 10–2–01; 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 the Republic of Korea

September 27, 2001.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs adjusting limits.

EFFECTIVE DATE: October 3, 2001.

FOR FURTHER INFORMATION CONTACT: Ross Arnold, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–4212. For information on the quota status of these limits, refer to the Quota Status Reports posted on the bulletin boards of each Customs port, call (202) 927–5850, or refer to the U.S. Customs Web site at http://www.customs.gov. For information on embargoes and quota re-openings, refer to the Office of Textiles and Apparel Web site at http://otexa.ita.doc.gov.

SUPPLEMENTARY INFORMATION:

Authority: Section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); Executive Order 11651 of March 3, 1972, as amended.

The current limits for certain categories are being adjusted for swing, carryover, carryforward and special shift.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 65 FR 82328, published on December 28, 2000). Also see 65 FR 69740, published on November 20, 2000.

D. Michael Hutchinson,

Acting Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

September 27, 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 November 14, 2000, 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 the Republic of Korea and exported during the twelve-month period which began on January 1, 2001 and extends through December 31, 2001.

Effective on October 3, 2001, you are directed to adjust the limits for the following categories, as provided for under the Uruguay Round Agreement on Textiles and Clothing:

Category	Adjusted twelve-month limit [1]
Group I	
200–223, 224–V [2], 224–O [3], 225–227, 300–326, 360–363, 369pt. [4], 400–414, 464, 469pt. [5], 600–629, 666, 669–P [6], 669pt. [7] and 670–O [8], as a group.	435,123,587 square meters equivalent.
Sublevels within Group I	
200	584,932 kilograms.
201	2,777,763 kilograms.
611	4,659,498 square meters.
619/620	107,587,736 square meters.
624	10,022,181 square meters.
625/626/627/628/629	19,348,007square meters.
Group II	
237, 239pt. [9], 331–348, 350–352, 359–H [10], 359pt. [11], 431, 433–438, 440–448, 459–W [12], 459pt. [13], 631, 633–652, 659–H [14], 659–S [15] and 659pt. [16], as a group.	614,613,158 square meters equivalent.
Sublevels within Group II	
333/334/335	336,981 dozen of which not more than 172,237 dozen shall be in Category 335.
336	63,242 dozen.
338/339	1,497,695 dozen.
340	834,425 dozen of which not more than 425,444 dozen shall be in Category 340–D [17].
341	212,276 dozen.
342/642	273,359 dozen.
345	146,043 dozen.
347/348	656,766 dozen.
350	20,712 dozen.
351/651	287,170 dozen.
352	223,468 dozen.
433	15,238 dozen.
434	7,815 dozen.
435	40,096 dozen.
436	16,973 dozen.
438	66,802 dozen.
442	57,359 dozen.
443	344,600 numbers.
444	61,357 numbers.
445/446	57,162 dozen.
447	95,701 dozen.
448	40,352 dozen.
459–W	109,155 kilograms.
631	377,324 dozen pairs.
633/634/635	1,431,487 dozen of which not more than 162,328 dozen shall be in Category 633 and not more than 604,945 dozen shall be in Category 635.
636	324,307 dozen.
638/639	5,573,277 dozen.
640–D [18]	3,016,129 dozen.
640–O [19]	2,858,064 dozen.
641	1,155,309 dozen of which not more than 43,705 dozen shall be in Category 641–Y [20].
644	1,313,756 numbers.
645/646	4,093,880 dozen.
647/648	1,367,192 dozen.

Category	Adjusted twelve-month limit [1]
650	30,309 dozen.
659–H	1,529,884 kilograms.
659–S	224,962 kilograms.
Sublevel within Group III	
835	31,783 dozen.
Group IV	
846	473,548 dozen.
Group VI	
369–L/670–L/870 [21], as a group.	73,213,015 square meters equivalent.

[1] The limits have not been adjusted to account for any imports exported after December 31, 2000.

[2] Category 224–V: only HTS numbers 5801.21.0000, 5801.23.0000, 5801.24.0000, 5801.25.0010, 5801.25.0020, 5801.26.0010, 5801.26.0020, 5801.31.0000, 5801.33.0000, 5801.34.0000, 5801.35.0010, 5801.35.0020, 5801.36.0010 and 5801.36,0020.

[3] Category 224–O: all remaining HTS numbers in Category 224.

[4] Category 369pt.: 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); 5601.10.1000, 5601.21.0090, 5701.90.1020, 5701.90.2020, 5702.10.9020, 5702.39.2010, 5702.49.1020, 5702.49.1080, 5702.59.1000, 5702.99.1010, 5702.99.1090, 5705.00.2020 and 6406.10.7700.

[5] Category 469pt.: all HTS numbers except 5601.29.0020, 5603.94.1010 and 6406.10.9020.

[6] Category 669–P: only HTS numbers 6305.32.0010, 6305.32.0020, 6305.33.0010, 6305.33.0020 and 6305.39.0000.

[7] Category 669pt.: all HTS numbers except 6305.32.0010, 6305.32.0020, 6305.33.0010, 6305.33.0020, 6305.39.0000 (Category 669–P); 5601.10.2000, 5601.22.0090, 5607.49.3000, 5607.50.4000 and 6406.10.9040.

[8] Category 670–O: All HTS numbers except only HTS numbers 4202.12.8030, 4202.12.8070, 4202.92.3020, 4202.92.3031, 4202.92.9026 and 6307.90.9907 (Category 670–L).

[9] Category 239pt.: only HTS number 6209.20.5040 (diapers).

[10] Category 359–H: only HTS numbers 6505.90.1540 and 6505.90.2060.

[11] Category 359pt.: all HTS numbers except 6505.90.1540, 6505.20.2060 (Category 359–H); and 6406.99.1550.

[12] Category 459–W: only HTS number 6505.90.4090.

[13] Category 459pt.: all HTS numbers except 6505.90.4090 (Category 459–W); 6405.20.6030, 6405.20.6060, 6405.20.6090, 6406.99.1505 and 6406.99.1560.

[14] 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.

[15] 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.

[16] Category 659pt.: all HTS numbers except 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, 6211.12.1020 (Category 659–S); 6406.99.1510 and 6406.99.1540.

[17] Category 340–D: only HTS numbers 6205.20.2015, 6205.20.2020, 6205.20.2025 and 6205.20.2030.

[18] Category 640–D: only HTS numbers 6205.30.2010, 6205.30.2020, 6205.30.2030, 6205.30.2040, 6205.90.3030 and 6205.90.4030.

[19] Category 640–O: only HTS numbers 6203.23.0080, 6203.29.2050, 6205.30.1000, 6205.30.2050, 6205.30.2060, 6205.30.2070, 6205.30.2080 and 6211.33.0040.

[20] Category 641–Y: only HTS numbers 6204.23.0050, 6204.29.2030, 6206.40.3010 and 6206.40.3025.

[21] 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.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

D. Michael Hutchinson,

Acting Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 01–24675 Filed 10–2–01; 8:45 am]

BILLING CODE 3510–DR–S

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Adjustment of Import Limits for Certain Cotton, Wool and Man-Made Fiber Textiles and Textile Products and Silk Blend and Other Vegetable Fiber Apparel Produced or Manufactured in Malaysia

September 27, 2001.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs adjusting limits.

EFFECTIVE DATE: October 3, 2001.

FOR FURTHER INFORMATION CONTACT: Ross Arnold, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–4212. For information on the quota status of these limits, refer to the Quota Status Reports posted on the bulletin boards of each Customs port, call (202) 927–5850, or refer to the U.S. Customs Web site at *http://www.customs.gov.* For information on embargoes and quota re-openings, refer to the Office of Textiles and Apparel Web site at *http://otexa.ita.doc.gov.*

SUPPLEMENTARY INFORMATION:

Authority: Section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); Executive Order 11651 of March 3, 1972, as amended.

The current limits for certain categories are being adjusted for swing, special swing, special shift and carryforward.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 65 FR 82328, published on December 28, 2000). Also see 65 FR 69914, published on November 21, 2000.

D. Michael Hutchinson,

Acting Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

September 27, 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 November 15, 2000, by the Chairman, Committee for the Implementation of Textile Agreements. That directive concerns imports of certain cotton, wool and man-made fiber textiles and textile products and silk blend and other vegetable fiber apparel, produced or manufactured in Malaysia and exported during the twelve-month period which began on January 1, 2001 and extends through December 31, 2001.

Effective on October 3, 2001, you are directed to adjust the limits for the following categories, as provided for under the Uruguay Round Agreement on Textiles and Clothing:

Category	Adjusted twelve-month limit [1]
Fabric Group	
218–220, 225–227, 313–326, 611–O [2], 613/614/615/617, 619 and 620, as a group	153,707,380 square meters equivalent.
Other specific limits	
200	429,274 kilograms.
237	370,720 dozen.
331/631	3,163,955 dozen pairs.
333/334/335/835	411,006 dozen of which not more than 227,337 dozen shall be in Category 333 and not more than 227,337 dozen shall be in Category 835.
336/636	742,020 dozen.
338/339	1,823,801 dozen.
340/640	1,974,072 dozen.
341/641	1,928,399 dozen of which not more than 832,397 dozen shall be in Category 341.
342/642/842	592,447 dozen.
345	248,599 dozen.
347/348	682,930 dozen.
350/650	188,310 dozen.
351/651	417,802 dozen.

Category	Adjusted twelve-month limit [1]
604	1,890,903 kilograms.
634/635	1,176,690 dozen.
638/639	789,053 dozen.
645/646	394,976 dozen.
647/648	2,699,181 dozen of which not more than 1,729,445 dozen shall be in Category 647–K [3] and not more than 1,729,445 dozen shall be in Category 648–K [4].
Group II 201, 222–224, 239pt. [5], 332, 352, 359pt. [6], 360–362, 369pt. [7], 400–431, 433, 434, 436, 438–O [8], 440, 443, 444, 447, 448, 459pt. [9], 464, 469pt. [10], 600–603, 606, 607, 618, 621, 622, 624–629, 633, 643, 644, 649, 652, 659pt. [11], 666, 669pt. [12], 670, 831, 833, 834, 836, 838, 840, 843–858 and 859pt. [13], as a group.	63,075,381 square meters equivalent.

[1] The limits have not been adjusted to account for any imports exported after December 31, 2000.

[2] Category 611–O: all HTS numbers except 5516.14.0005, 5516.14.0025 and 5516.14.0085

[3] Category 647–K: only HTS numbers 6103.23.0040, 6103.23.0045, 6103.29.1020, 6103.29.1030, 6103.43.1520, 6103.43.1540, 6103.43.1550, 6103.43.1570, 6103.49.1020, 6103.49.1060, 6103.49.8014, 6112.12.0050, 6112.19.1050, 6112.20,.1060 and 6113.00.9044.

[4] Category 648–K: only HTS numbers 6104.23.0032, 6104.23.0034, 6104.29.1030, 6104.29.1040, 6104.29.2038, 6104.63.2006, 6104.63.2011, 6104.63.2026, 6104.63.2028, 6104.63.2030, 6104.63.2060, 6104.69.2030, 6104.69.2060, 6104.69.8026, 6112.12.0060, 6112.19.1060, 6112.20.1070, 6113.00.9052 and 6117.90.9070.

[5] Category 239pt.: only HTS number 6209.20.5040 (diapers).

[6] Category 359pt.: all HTS numbers except 6406.99.1550.

[7] Category 369pt.: all HTS numbers except 5601.10.1000, 5601.21.0090, 5701.90.1020, 5701.90.2020, 5702.10.9020, 5702.39.2010, 5702.49.1020, 5702.49.1080, 5702.59.1000, 5702.99.1010, 5702.99.1090, 5705.00.2020 and 6406.10.7700.

[8] Category 438–O: only HTS numbers 6103.21.0050, 6103.23.0025, 6105.20.1000, 6105.90.1000, 6105.90.8020, 6109.90.1520, 6110.10.2070, 6110.30.1550, 6110.90.9072, 6114.10.0020 and 6117.90.9025.

[9] Category 459pt.: all HTS numbers except 6405.20.6030, 6405.20.6060, 6405.20.6090, 6405.99.1505 and 6406.99.1560.

[10] Category 469pt.: all HTS numbers except 5601.29.0020, 5603.94.1010 and 6406.10.9020.

[11] Category 659pt.: all HTS numbers except 6406.99.1510 and 6406.99.1540.

[12] Category 669pt.: all HTS numbers except 5601.10.2000, 5601.22.0090, 5607.49.3000, 5607.50.4000 and 6406.10.9040.

[13] Category 859pt.: only HTS numbers 6115.19.8040, 6117.10.6020, 6212.10.5030, 6212.10.9040, 6212.20.0030, 6212.30.0030, 6212.90.0090, 6214.10.2000 and 6214.90.0090.

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.01–24676 Filed 10–2–01; 8:45 am]

BILLING CODE 3510–DR–S

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Adjustment of Import Limits for Certain Cotton and Man-Made Fiber Textile Products Produced or Manufactured in the Philippines

September 27, 2001.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs adjusting limits.

EFFECTIVE DATE: October 3, 2001.

FOR FURTHER INFORMATION CONTACT: Naomi Freeman, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–4212. For information on the quota status of these limits, refer to the Quota Status Reports posted on the bulletin boards of each Customs port, call (202) 927–5850, or refer to the U.S. Customs Web site at *http://www.customs.ustreas.gov.* For information on embargoes and quota re-openings, refer to the Office of Textiles and Apparel Web site at *http://otexa.ita.doc.gov.*

SUPPLEMENTARY INFORMATION:

Authority: Section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); Executive Order 11651 of March 3, 1972, as amended.

The current limits for certain categories are being adjusted for special shift.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 65 FR 82328, published on December 28, 2000). Also see 65 FR 69742, published on November 20, 2000.

D. Michael Hutchinson,

Acting Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

September 27, 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 November 14, 2000, by the Chairman, Committee for the Implementation of Textile Agreements. That directive concerns imports of certain cotton, wool and man–made fiber textiles and textile products and silk blend and other vegetable fiber apparel, produced or manufactured in the Philippines and exported during the twelve-month period which began on January 1, 2001 and extends through December 31, 2001.

Effective on October 3, 2001, you are directed to adjust the limits for the following categories, as provided for under the Uruguay Round Agreement on Textiles and Clothing:

Category	Adjusted twelve-month limit [1]
Levels in Group I	
338/339	3,456,497 dozen.
638/639	2,651,177 dozen.

[1] The limits have not been adjusted to account for any imports exported after December 31, 2000.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

D. Michael Hutchinson,

Acting Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc.01–24677 Filed 10–2–01; 8:45 am]

BILLING CODE 3510–DR–S

DEPARTMENT OF ENERGY

Environmental Management Site-Specific Advisory Board, Savannah River

AGENCY: Department of Energy.

ACTION: Notice of open meeting.

SUMMARY: This notice announces a meeting of the Environmental Management Site-Specific Advisory Board (EM SSAB), Savannah River. The Federal Advisory Committee Act, 5 U.S.C. App. 2 § 10(a)(2) requires that public notice of these meetings be announced in the **Federal Register**.

DATES: Monday, October 22, 2001, 1 p.m.–9 p.m.; Tuesday, October 23, 2001, 8:30 a.m.–4:30 p.m.

ADDRESSES: Sheraton Augusta Hotel, 2551 Perimeter Parkway,Augusta, Georgia 30909.

FOR FURTHER INFORMATION CONTACT: Gerri Flemming, Science Technology & Management Division, Department of Energy Savannah River Operations Office, P.O. Box A, Aiken, SC 29802; Phone: (803) 725–5374.

SUPPLEMENTARY INFORMATION:

Purpose of the Board: The purpose of the Board is to make recommendations to DOE and its regulators in the areas of environmental restoration, waste management, and related activities.

Tentative Agenda

Monday, October 22, 2001

1 p.m. Groundwater Program Orientation
6:30 p.m.–7 p.m. Public comment session
7 p.m.–9 p.m Issues-based committee meetings
9 p.m Adjourn

Tuesday, October 23, 2001

8:30–10:30 a.m. Approval of minutes; Agency updates; Public comment session; Facilitator update
10:30–11:45 a.m. Waste Management Committee Report
11:45–12 a.m. Public Comments
12 noon Lunch Break
1–2 p.m. Strategic & Long-Term Issues Committee
2–3 p.m. Nuclear Materials Committee Report
3–4:30 p.m. Administrative Committee Report; SSAB Chairs Trip Report; Public Comments
4:30 p.m. Adjourn

If needed, time will be allotted after public comments for items added to the agenda, and administrative details. A final agenda will be available at the meeting Monday, October 22, 2001.

Public Participation: The meeting is open to the public. Written statements may be filed with the Board either before or after the meeting. Individuals who wish to make the oral statements pertaining to agenda items should contact Gerri Flemming's office at the address or telephone listed above. Requests must be received five days prior to the meeting and reasonable provision will be made to include the presentation in the agenda. The Deputy Designated Federal Officer is empowered to conduct the meeting in a fashion that will facilitate the orderly conduct of business. Each individual wishing to make public comment will be provided equal time to present their comments.

Minutes: The minutes of this meeting will be available for public review and copying at the Freedom of Information Public Reading Room, 1E–190, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585 between 9 a.m. and 4 p.m., Monday through Friday, except Federal holidays. Minutes will also be available by writing to Gerri Fleming, Department of Energy Savannah River Operations Office, P.O. Box A, Aiken, SC 29802, or by calling her at (803) 725–5374.

Issued at Washington, DC, on September 27, 2001.

Rachel M. Samuel,

Deputy Advisory Committee Management Officer.

[FR Doc. 01–24679 Filed 10–2–01; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Environmental Management Site-Specific Advisory Board, Paducah

AGENCY: Department of Energy (DOE).

ACTION: Notice of Open Meeting.

SUMMARY: This notice announces a meeting of the Environmental Management Site-Specific Advisory Board (EM SSAB), Paducah. The Federal Advisory Committee Act, 5 U.S.C. App. 2 10(a)(2) requires that public notice of these meetings be announced in the **Federal Register**.

DATES: Thursday, October 18, 2001 5:30 p.m.—9:00 p.m.

ADDRESSES: 111 Memorial Drive, Barkley Centre, Paducah, Kentucky.

FOR FURTHER INFORMATION CONTACT: W. Don Seaborg, Deputy Designated FederalOfficer, Department of Energy Paducah Site Office, Post Office Box 1410, MS–103, Paducah,Kentucky 42001, (270) 441–6806.

SUPPLEMENTARY INFORMATION: Purpose of the Board: The purpose of the Board is to make recommendations to DOE and its regulators in the areas of environmental restoration and waste management activities.

Tentative Agenda:

5:30 p.m. Informal Discussion
6:00 p.m. Call to Order; Approve Minutes
6:10 p.m. DDFO's Comments; Board Response; Public Comments
7:00 p.m. Presentation on 746-U Landfill
8:30 p.m. Task Force and Subcommittee Reports; Board Response; Public Comments
9:00 p.m. Administrative Issues
9:30 p.m. Adjourn

Copies of the final agenda will be available at the meeting.

Public Participation: The meeting is open to the public. Written statements may be filed with the Committee either before or after the meeting. Individuals who wish to make oral statements pertaining to agenda items should contact Pat J. Halsey at the address or by telephone at 1–800–382–6938, #5. Requests must be received five days prior to the meeting and reasonable provision will be made to include the presentation in the agenda. The Designated Federal Officer is empowered to conduct the meeting in a fashion that will facilitate the orderly conduct of business. Each individual wishing to make public comment will be provided a maximum of five minutes to present their comments as the first item of the meeting agenda.

Minutes: The minutes of this meeting will be available for public review and copying at the Freedom of Information Public Reading Room, 1E–190, Forrestal Building, 1000 Independence Avenue, SW, Washington, DC 20585 between 9:00 a.m. and 4 p.m., Monday-Friday, except Federal holidays. Minutes will also be available at the Department of Energy's Environmental Information Center and Reading Room at 115 Memorial Drive, Barkley Centre,Paducah, Kentucky between 8:00 a.m. and 5:00 p.m. on Monday thru Friday or by writing to Pat J. Halsey, Department of Energy Paducah Site Office, Post Office Box 1410, MS–103, Paducah, Kentucky 42001 or by calling her at 1–800–382–6938, #5.

Issued at Washington, DC on September 27, 2001.

Rachel M. Samuel,

Deputy Advisory Committee Management Officer.

[FR Doc. 01–24680 Filed 10–2–01; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Environmental Management Site-Specific Advisory Board, Hanford

AGENCY: Department of Energy.

ACTION: Notice of Open Meeting.

SUMMARY: This notice announces a meeting of the Environmental Management Site-Specific Advisory Board (EM SSAB), Hanford. The Federal Advisory Committee Act, 5 U.S.C. App. 2 § 10(a)(2) requires that public notice of these meeting be announced in the **Federal Register**.

DATES: Thursday, November 1, 2001 9:00 a.m.—5:00 p.m.

Friday, November 2, 2001 8:30 a.m.—3:00 p.m.

ADDRESSES: Red Lion, Hanford House, 802 George Washington Way, Richland, WA 99352 (509–946–7611).

FOR FURTHER INFORMATION CONTACT: Gail McClure, Public Involvement Program Manager, Department of Energy Richland Operations Office, P.O. Box 550 (A7–75), Richland, WA, 99352; Phone: (509) 373–5647; Fax: (509) 376–1563.

SUPPLEMENTARY INFORMATION: Purpose of the Board: The purpose of the Board is to make recommendations to DOE and its regulators in the areas of environmental restoration and waste management.

Tentative Agenda:

Thursday morning, November 1, 2001

- Board Business
- Central Plateau Workshop

Thursday afternoon, November 1, 2001

- Central Plateau Workshop (continued)
- Tri-Party Agreement—2001 Overview (tentative)

Friday morning, November 2, 2001

- Site Technology Coordination Group
- Discussion of Upcoming Site Specific Advisory Board Groundwater Workshop
- Committee Updates
- Institutional Controls
- TRU (Transuranic) Retrieval Environmental Assessment
- Solid Waste Environmental Impact Statement (EIS) Update
- Tank Waste Treatment Risk Discussion
- Update on the Environmental Management Site-Specific Advisory Board, Idaho National Engineering and Environmental Laboratory (INEEL) Meeting

Public Participation: The meeting is open to the public. Written statements may be filed with the Board either before or after the meeting. Individuals who wish to make oral statements pertaining to agenda items should contact Gail McClure's office at the address or telephone number listed above. Requests must be received five days prior to the meeting and reasonable provision will be made to include the presentation in the agenda. The Deputy Designated Federal Officer is empowered to conduct the meeting in a fashion that will facilitate the orderly conduct of business. Each individual wishing to make public comment will be provided equal time to present their comments.

Minutes: The minutes of this meeting will be available for public review and copying at the Freedom of Information Public Reading Room, 1E–190, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585 between 9:00 a.m. and 4:00 p.m., Monday–Friday, except Federal holidays. Minutes will also be available by writing to Gail McClure, Department of Energy Richland Operation Office, P.O. Box 550, Richland, WA 99352, or by calling her at (509) 373–5647.

Issued at Washington, DC on September 27, 2001.

Rachel M. Samuel,

Deputy Advisory Committee Management Officer.

[FR Doc. 01–24681 Filed 10–2–01; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Office of Civilian Radioactive Waste Management Site Recommendation Consideration Process—Public Hearing Sessions in Various Localities To Receive Comments on Yucca Mountain Site Recommendation Consideration

AGENCY: Office of Civilian Radioactive Waste Management, Department of Energy.

ACTION: Notice of additional public hearing sessions to receive public comments.

SUMMARY: The Department of Energy (the Department) announces additional opportunities, in various localities in Nevada and California, for the public to provide comments on the possible recommendation of the Yucca Mountain site in Nevada for development of a spent nuclear fuel and high-level radioactive waste geologic repository. These public hearing sessions are being held in addition to the public hearings scheduled in Las Vegas, Amargosa Valley, and Pahrump, Nevada.

DATES: The public hearing sessions will be held in various Nevada counties and in Inyo County, California during the period of October 3–October 12, 2001 (details provided in **SUPPLEMENTARY INFORMATION**).

ADDRESSES: Written comments may also be addressed to Carol Hanlon, U.S. Department of Energy, Yucca Mountain Site Characterization Office (M/S #205), P.O. Box 30307, North Las Vegas, Nevada, 89036–0307.

FOR FURTHER INFORMATION CONTACT: U.S. Department of Energy, Office of Civilian Radioactive Waste Management, Yucca Mountain Site Characterization Office, (M/S #025), P.O. Box 30307, North Las Vegas, Nevada 89036–0307, 1–800–967–3477.

SUPPLEMENTARY INFORMATION: In the August 21, 2001, **Federal Register** Notice (66 FR 43850–43851), the Department announced the scheduling of public hearings in Las Vegas, Nevada, on September 5, 2001, in Amargosa Valley, Nevada on September 12, 2001, and in Pahrump, Nevada on September 13, 2001. The Department decided to postpone the latter two hearings in light of the recent terrorist attacks on the United States. In a notice published on September 27, 2001 (66 FR 49372–49373), the latter two hearings were rescheduled to October 10 and October 12, 2001, in Amargosa Valley, Nevada and Pahrump, Nevada, respectively.

In order to provide residents in other locations of Nevada and in California an opportunity to participate in the public comment process, the Department is providing additional opportunities to provide comments on the possible recommendation of the Yucca Mountain Site for development as a spent nuclear fuel and high-level radioactive waste repository prior to the end of the comment period. Local and regional newspapers will also provide information on these public hearing sessions. Departmental and contractor staff will be available to answer questions, and a court reporter will be present to record comments. The location, date and time for these sessions are listed as follows:

Lander County: Battle Mountain Civic Center, 625 S. Broad, Battle Mountain, NV; October 4 and 11, 3:00 p.m.–8:00 p.m.

Eureka County: Crescent Valley Town Hall, 5045 Tenabo Ave., Crescent Valley, NV; October 5 and 10, 3:00 p.m.–8:00 p.m.

Elko County: Elko Convention and Visitors Authority, 700 Moren Way (Cedar Room), Elko, NV; October 3, 3:00 p.m.–8:00 p.m.

Churchill County: Sandtrap Lounge & Restaurant, 2655 Country Club Dr., Fallon, NV; October 5 and 12, 3:00 p.m.–8:00 p.m.

Humboldt County: Winnemucca Convention Center, 50 W. Winnemucca Blvd., Winnemucca, NV; October 3 and 10, 3:00 p.m.–8:00 p.m.

Pershing County: Lovelock Community Center, 820 6th St., Lovelock, NV; October 4 and 11, 3:00 p.m.–8:00 p.m.

Lincoln County: Caliente Senior Citizens Center, 240 Front St., Caliente, NV; October 4 and 11, 3:00 p.m.–8:00 p.m.

White Pine County: Bristlecone Convention Center, 150 6th St., Ely,

NV; October 3 and 10, 3:00 p.m.–8:00 p.m.

Inyo County: American Legion Hall, 205 S. Edwards St., Independence, CA; October 3, 3:00 p.m.–8:00 p.m.

Inyo County: Statham Hall, 138 Jackson St., Lone Pine, CA; October 10, 3:00 p.m.–8:00 p.m.

Esmeralda County: Goldfield Community Center, 301 Crook St., Goldfield, NV; October 4 and 11, 3:00 p.m.–8:00 p.m.

Mineral County: Mineral Chamber of Commerce Convention Center, 932 E St., Hawthorne, NV; October 5 and 12, 3:00 p.m.–8:00 p.m.

Storey County: Storey County Senior Center, Corner of Mill & E Sts.,Virginia City, NV; October 3 and 12, 3:00 p.m.–8:00 p.m.

Washoe County: Washoe County District Health Department, 1001 E. 9th St., Bldg. B, Auditorium B, Reno, NV; October 4, 3:00 p.m.–8:00 p.m.

Carson City: Old Capitol Building, Supreme Court Chambers, 101 N. Carson St. (Corner of Carson and Musser Sts.), Carson City, NV; October 3, 3:00 p.m.–8:00 p.m.

Douglas County: Sharkey's Rib Room, 1440 Highway 395, Gardnerville, NV; October 4 and 10, 3:00 p.m.–8:00 p.m.

Lyon County: Lyon County Administrative Complex, 27 S. Main St., Yerrington, NV; October 5 and 11, 3:00 p.m.–8:00 p.m.

Additional information on these public hearing sessions and the Civilian Radioactive Waste Management program may be obtained at the Yucca Mountain web site at *www.ymp.gov* or by calling 1–800–967–3477. Local and regional newspapers will also provide related information.

Issued in Washington, D.C. on September 28, 2001.

Lake H. Barrett,

Acting Director.

[FR Doc. 01–24767 Filed 10–2–01; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP01–612–000]

ANR Pipeline Company; Notice of Tariff Filing

September 27, 2001.

Take notice that on September 24, 2001, ANR Pipeline Company (ANR), tendered for filing as part of its FERC Gas Tariff, Second Revised Volume No. 1, Seventh Revised Sheet No. 1, Original Sheet No. 75G, Original Sheet No. 75G.01, Original Sheet No. 75G.02, Original Sheet No. 75G.03, Second Revised Sheet No. 86A, and Seventh Revised Sheet No. 89, to be effective October 24, 2001.

In this filing, ANR is seeking to implement a new *pro forma* Associated Liquefiables Agreement for the allocation and transportation of Pipeline Thermal Reduction ''PTR'', Pipeline Condensate reduction ''PCR'', and Flash Gas. ANR is also proposing to add the definitions of Pipeline Condensate and Flash Gas to the General Terms and Conditions of its Tariff.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection. This filing may also be viewed on the web at *http://www.ferc.gov* using the ''RIMS'' link, select ''Docket#'' and follow the instructions (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 under the ''e-Filing'' link.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 01–24695 Filed 10–2–01; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP01–445–000]

El Paso Natural Gas Company; Notice of Request Under Blanket Authorization

September 27, 2001.

Take notice that on September 21, 2001, El Paso Natural Gas Company (El Paso), Post Office Box 1087, Colorado Springs, Colorado 80904, filed in Docket No. CP01–445–000 a request pursuant to Sections 157.205 and 157.216 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205 and 157.216) for authorization to abandon, in place, a 17.23 mile segment of the Globe-Miami First Loop Line, located in Hidalgo County, New Mexico, under El Paso's blanket certificate issued in Docket No. CP82–435–000 pursuant to Section 7 of the Natural Gas Act, all as more fully set forth in the request which is on file with the Commission and open to public inspection. This filing may be viewed on the Web at *http://www.ferc.gov* using the ''RIMS'' link, select ''Docket #'' from the RIMS Menu and follow the instructions (please call 202–208–2222 for assistance).

El Paso proposes to abandon, in place, approximately 17.23 miles of the 6-inch diameter Globe-Miami First Loop Line (Line No. 2005), between Block Valve 4¼ and block Valve 6¼, located in Hidalgo County, New Mexico. El Paso states that by Commission order issued May 20, 1947, in Docket No. G–881 (6 FPC 670 (1947)), El Paso was authorized to construct Line No. 2005 to loop their existing 8⅝-inch diameter Globe-Miami Line (Line No. 2004), directly parallel and adjacent to Line No. 2004. El Paso indicates that these loop facilities were installed for the direct sale of additional gas volumes to Phelps Dodge Corporation (Phelps Dodge) to be utilized at its Morenci Plant. El Paso asserts that it will continue to operate three additional loop segments of Line No. 2005 and a 12¾-inch diameter Globe-Miami Second Loop Line (Line No. 2085).

El Paso states that El Paso and Dodge Phelps are parties to a Transportation Service Agreement, dated August 16, 1991, providing for the firm transportation of Phelps Dodge's full requirements for its mining operations in the states of Arizona and New Mexico, including the Morenci Plant. El Paso indicates that the 17.23 mile segment of Line no. 2005, proposed herein to be abandoned in place, was originally constructed to provide increased volumes of natural gas to the Morenci Plant.

El Paso states that as part of their routine maintenance program, they recently identified corrosion and integrity problems on Line No. 2005, between Block Valve 4¼ and Block Valve 6¼, which forced El Paso to shut-in this segment of Line No. 2005. El Paso asserts that there was no reduction in natural gas service being provided to the Phelps Dodge Morenci Plant resulting from the shut-in of this segment of Line No. 2005. El Paso indicates that they have redirected natural gas service through Line Nos.

2004 and 2085 to maintain the previous service levels. El Paso states that since service has not been affected at the Morenci Plant, El Paso and Phelps Dodge have determined that service through this 17.23 mile segment of Line no. 2005 is no longer necessary. Based upon this determination, El Paso states that Phelps Dodge has agreed to the abandonment of the 17.23 mile segment of Line No. 2005 in a letter agreement.

El Paso asserts that the proposed abandonment of this segment of Line No. 2005 will not affect El Paso's ability to provide transportation service on its pipeline system, and will not adversely affect El Paso or its customers in any manner.

Any questions regarding the application should be directed to Robert T. Tomlinson, Director, Regulatory Affairs Department, El Paso Natural Gas Company, Post Office Box 1087, Colorado Springs, Colorado 80904, at (719) 520–3788.

Any person or the Commission's staff may, within 45 day after issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to Section 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205), a protest to the request. If no protest is filed within the time allowed therefor, the proposed activity shall be deemed to be authorized effective the day after the time allowed for protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to Section 7 of the Natural Gas Act. Copies of this filing are on file with the Commission and are available for public inspection. 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 under the ''e-Filing'' link.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 01–24688 Filed 10–2–01; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP00–298–005]

Kern River Gas Transmission Company; Notice of Proposed Changes in FERC Gas Tariff

September 27, 2001.

Take notice that on September 24, 2001, Kern River Gas Transmission Company (Kern River) tendered for filing as part of its FERC Gas Tariff, Second Revised Volume No. 1, the following tariff sheets, to be effective October 1, 2001:

Fifth Revised Sheet No. 5
Third Revised Sheet No. 6

Kern River states that the purpose of this filing is to implement rates under Kern River's previously approved extended-term (ET) rate program.

Kern River states that it has served a copy of this filing upon each person designated on the official service list compiled by the Secretary in this proceeding.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Copies of this filing are on file with the Commission and are available for public inspection. This filing may also be viewed on the web at *http://www.ferc.gov* using the ''RIMS'' link, select ''Docket#'' and follow the instructions (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 under the ''e-Filing'' link.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 01–24694 Filed 10–2–01; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP97–255–033]

TransColorado Gas Transmission Company; Notice of Compliance Filing

September 27, 2001.

Take notice that on September 25, 2001, TransColorado Gas Transmission Company (TransColorado) tendered for filing as part of FERC Gas Tariff, Original Volume No. 1, Thirty-Third Revised Sheet No. 21 and Sixth Revised Sheet No. 22A, to be effective September 17, 2001.

TransColorado states that the filing is being made in compliance with the Commission's letter order issued March 20, 1997, in Docket No. RP97–255–000.

TransColorado states that the tendered tariff sheets propose to revise TransColorado's Tariff to reflect one new negotiated-rate contract. TransColorado requested waiver of 18 CFR 154.207 so that the tendered tariff sheets may become effective September 17, 2001.

TransColorado stated that a copy of this filing has been served upon all parties to this proceeding, TransColorado's customers, the Colorado Public Utilities Commission and the New Mexico Public Utilities Commission.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Copies of this filing are on file with the Commission and are available for public inspection. This filing may also be viewed on the Web at *http://www.ferc.gov* using the ''RIMS'' link, select ''Docket#'' and follow the instructions (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 under the ''e-Filing'' link.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 01–24693 Filed 10–2–01; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice Soliciting Comments, Final Terms and Conditions, Recommendations, and Prescriptions

September 27, 2001.

Take notice that the following hydroelectric application and applicant prepared environmental assessment has been filed with the Commission and is available for public inspection:

a. *Type of Application:* New Major License.

b. *Project No.:* P–309–036.

c. *Date filed:* October 11, 2000 .

d. *Applicant:* Reliant Energy Mid-Atlantic Power Holdings, LLC.

e. *Name of Project:* Piney Hydroelectric Project.

f. *Location:* On the Clarion River in Clarion County, Pennsylvania. The project would not utilize any federal lands or facilities.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. *Applicant Contact:* Mr. Thomas Teitt; Reliant Energy Mid-Atlantic Power Holdings, LLC; 1001 Broad Street; Johnstown, Pennsylvania 15907–1050; (814) 533–8028.

i. *FERC Contact:* John Costello, E-mail address, *john.costello@ferc.fed.us,* or telephone (202) 219–2914.

j. *Deadline for filing comments, final terms and conditions, recommendations, and prescriptions:* 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.

The Commission's Rules of Practice and Procedure require all intervenors filing documents with the Commission to serve a copy of that document on each person whose name appears on the official service list for the project. Further, if an intervenor 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.

Protests, comments on filings, comments on environmental assessments and environmental impact statements, and reply comments 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 (*http://www.ferc.gov*) under the ''e-filing'' link.

k. *Status of environmental analysis:* This application has been accepted for filing and is ready for environmental analysis at this time.

l. *Description of the Project:* The project consists of the following: (1) The 427-foot-long and 139-foot-high concrete arch dam with crest elevation at 1,075 feet msl, an 84-foot-long left non-overflow wall, and a 200-foot-long right non overflow wall; (2) an 800-acre surface area reservoir; (3) an 84-foot-wide integral intake; (4) three 230-foot-long, 14-foot-diameter penstocks; (5) a powerhouse with 3 generating units totaling 28,300 kilowatts; (6) a 250-foot-long tailrace; (7) 700-foot-long and 900-foot-long transmission lines; and (8) appurtenant facilities.

m. *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 20246, or by calling (202) 208–1371. The application may be viewed on the Web at *http://www.ferc.gov* (call (202) 208–2222 for assistance). A copy is also available for inspection and reproduction at the Johnstown, Pennsylvania, address in item h. above.

Filing and Service of Responsive Documents—The application is ready for environmental analysis at this time, and the Commission is requesting comments, reply comments, recommendations, terms and conditions, and prescriptions.

The Commission directs, pursuant to Section 4.34(b) of the Regulations (see Order No. 533 issued May 8, 1991, 56 FR 23108, May 20, 1991) that all comments, recommendations, terms and conditions and prescriptions concerning the application be filed with the Commission within 60 days from the issuance date of this notice. All reply comments must be filed with the Commission within 105 days from the date of this notice.

Anyone may obtain an extension of time for these deadlines from the Commission only upon a showing of good cause or extraordinary circumstances in accordance with 18 CFR 385.2008.

All filings must (1) bear in all capital letters the title ''COMMENTS'', ''REPLY COMMENTS'', ''RECOMMENDATIONS,'' ''TERMS AND CONDITIONS,'' or ''PRESCRIPTIONS;'' (2) set forth in the heading the name of the applicant and the project number of the application to which the filing responds; (3) furnish the name, address, and telephone number of the person submitting the filing; and (4) otherwise comply with the requirements of 18 CFR 385.2001 through 385.2005. All comments, recommendations, terms and conditions or prescriptions must set forth their evidentiary basis and otherwise comply with the requirements of 18 CFR 4.34(b). Agencies may obtain copies of the application directly from the applicant. Any of these documents must be filed by providing the original and the number of copies required 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, Office of Energy Projects, Division of Environmental and Engineering Review, Federal Energy Regulatory Commission, at the above address. Each filing must be accompanied by proof of service on all persons listed on the service list prepared by the Commission in this proceeding, in accordance with 18 CFR 4.34(b), and 385.2010.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 01–24690 Filed 10–2–01; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Application Tendered for Filing With the Commission and Soliciting Additional Study Requests

September 27, 2001.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection.

a. *Type of Application:* Minor License.

b. *Project No.:* P–11485–001.

c. *Date filed:* September 04, 2001.

d. *Applicant:* Midwest Hydro, Inc.

e. *Name of Project:* Delhi Milldam Hydroelectric Project.

f. *Location:* On the Maquoketa River, Delaware County, Iowa. This project would not utilize Federal lands.

g. *Filed Pursuant to:* Federal Power Act 16 U.S.C. 791 (a)—825(r).

h. *Applicant Contact:* Mr. Loyal Gake, P. E., Midwest Hydro, Inc., 116 State Street, P.O. Box 167, Neshkoro, WI 54960, 920–293–4628.

i. *FERC Contact:* John Ramer, john.ramer@ferc.fed.us, (202) 219–2833.

j. *Deadline for filing additional study requests:* November 30, 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. Additional study requests 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 (*http://www.ferc.gov*) under the ''e-Filing'' link.

The Commission's Rules of Practice require all intervenors 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 intervenor 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. The application is not ready for environmental analysis at this time.

l. *Project Description:* The Delhi Milldam Hydroelectric Project consists of the following existing facilities: (1) An existing 702-foot-long and about 59-foot-high dam, with an 86-foot-long ogee type spillway and 25-foot-wide by 17-foot-high vertical sluice gates; (2) an existing 880-acre reservoir having a negligible storage capacity at elevation 892 feet mean sea level (msl); (3) a 61-foot-long by approximately 51-foot-wide powerhouse containing two inoperative open-flume Francis turbines each with a maximum hydraulic capacity of 276 cubic feet per second (cfs) and two generators each rated at 750 kilowatts (kW) for a total installed capacity of 1500 kW; and (4) appurtenant facilities, such as, govenors and electric switchgear. No transmission line exists, although a commercial sub-station is located within 100 feet of the powerhouse. The dam and existing project facilities are owned by Lake Delhi Recreation Association, Inc.

The Delhi Project will include refurbishing each of the existing turbine/generator sets. New govenors, electric switchgear, and controls will be installed, including a programmable control system which will automatically operate the project with capability of remote surveillance and operation. No civil work is proposed. The project's generating capacity will be 1500 kW and will generate an average of about 2.96 million kilowatt hours annually.

m. A copy of the application is on file with the Commission and is available for public inspection. This filing may also be viewed on the web at *http://www.ferc.gov* using the ''RIMS'' link—select ''Docket #'' and follow the instructions (call 202–208–2222 for assistance). A copy is also available for inspection and reproduction at the address in item h above.

n. With this notice, we are initiating consultation with the *Iowa State Historic Preservation Officer (SHPO),* as required by § 106, National Historic Preservation Act, and the regulations of the Advisory Council on Historic Preservation, 36 CFR 800.4.

David P. Boergers.

Secretary.

[FR Doc. 01–24691 Filed 10–2–01; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Application Accepted for Filing and Soliciting Comments, Motions To Intervene, and Protests

September 27, 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:* 12107–000.

c. *Date Filed:* August 20, 2001.

d. *Applicant:* Granite County .

e. *Name of Project:* Flint Creek Hydroelectric Project.

f. *Location:* The proposed project would be located on Flint Creek near the Town of Philipsburg, in Granite and Deer Lodge Counties, Montana. The project dam is owned and operated by Granite County.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. *Applicant Contact:* Mr. Mike Kahoe, Project Coordinator, Office of the Board of County Commissioners, Granite County, P.O. Box 925, Philipsburg, MT 59858–0925, Phone: (406) 859–3771; Fax: (406) 859–3817.

i. *FERC Contact:* Any questions on this notice should be addressed to Mr. Lynn R. Miles, Sr. at (202) 219–2671, or e-mail address: *lynn.miles@ferc.fed.us.*

j. *Deadline for filing motions to intervene, protests and comments:* 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 interventions may be filed electronically via the Internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the ''e-Filing'' link.

The Commission'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. *Competing Application:* Project No. 12106–000, Date Filed: August 17, 2001, Public Notice issued: August 31, 2001, Public comment period ends: October 31, 2001.

l. *Description of Project:* The proposed project would be using the existing Flint Creek Dam, which is 55 feet-high, 330-feet-wide at the base, and a 30 inch diameter penstock. The proposed project would consists of, (1) a new steel branch pipe with shutoff valve and bypass capability, (2) a new 7,500 foot penstock with a 34 inch low pressure steel and/or polymer section (6,000 feet) and a 1500-foot long 15 inch high pressure steel section, (3) a powerhouse containing a single 2 megawatt (MW) turbine/generator with a total installed capacity of 2 MW, (4) a 12 kv transmission line approximately 100 miles long; and (5) appurtenant facilities.

The project would have an annual generation of 11 GWh.

m. *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, Washington, DC 20426, or by calling (202) 208–1371. Copies of this filing are on file with the Commission and are available for public inspection. This filing may also be viewed on the web at *http://www.ferc.gov* using the ''RIMS'' link, select ''Docket#'' and follow the instructions (call 202–208–2222 for assistance).

n. Preliminary Permit—Public notice of the filing of the initial preliminary permit application, which has already been given, established the due date for filing competing preliminary permit applications or notices of intent. Any competing preliminary permit or development application or notice of intent to file a competing preliminary permit or development application must be filed in response to and in compliance with the public notice of the initial preliminary permit application. No competing applications or notices of intent to file competing applications may be filed in response to this notice. A competing license application must conform with 18 CFR 4.30 (b) and 4.36.

o. 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.

p. 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.

q. Filing and Service of Responsive Documents—Any filings must bear in all capital letters the title ''COMMENTS'', ''NOTICE OF INTENT TO FILE COMPETING APPLICATION'', ''COMPETING APPLICATION'', ''PROTEST'', ''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 Project Review, Federal Energy Regulatory Commission, at the above-mentioned address. A copy of any notice of intent, competing application or motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

r. 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. 01–24692 Filed 10–2–01; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EX01–1–000]

Ensuring Sufficient Capacity Reserves in Today's Energy Markets; Notice Requesting Comments

September 27, 2001.

Take notice that on September 26, 2001, the Commission posted on its Website (*www.ferc.gov,* click on ''Discussion Papers for Commission Meeting on September 26, 2001, click on ''Ensuring Sufficient Capacity Reserves in Today's Energy Markets'') a Commission Staff Study Team Discussion Paper entitled ''Ensuring Sufficient Capacity Reserves in Today's Energy Markets.''

Comments on new ways to ensure sufficient capacity reserves, in response to that discussion paper, should be submitted on or before October 17, 2001. Comments should reference Docket No. EX01–1–000. Comments longer than 5 pages should include a brief executive summary.

David P. Boergers,

Secretary.

[FR Doc. 01–24689 Filed 10–2–01; 8:45 am]

BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–7072–4]

Request for Applications, Ecology and Oceanography of Harmful Algal Blooms Program

AGENCY: Environmental Protection Agency.

ACTION: Notice of financial assistance for project assistance.

SUMMARY: The purpose of this notice is to advise the public that the participating agencies are soliciting individual research proposals of up to 3 years duration, and depending on appropriations, multi-disciplinary regional studies of up to 5 years duration for the Ecology and Oceanography of Harmful Algal Blooms (ECOHAB) program. This program provides support for research on algal species whose populations may cause or result in deleterious effects on ecosystems and human health. Studies of the causes of such blooms, their detection, effects, mitigation, and control in U.S. coastal waters (including estuaries and Great Lakes) are solicited. This document details the requirements for applications for research support that will be considered by the Federal research partnership.

DATES: The deadline for applications is January 10, 2002 by 4 EST.

ADDRESSES: Submit the original and eighteen copies of your proposal to Coastal Ocean Program Office, N/SCI2, SSMC#4, 8th Floor, Room 8243, 1305 East-West Highway, Silver Spring, MD 20910. The required forms for applications with instructions are accessible on the Internet at http://es.epa.gov/ncerqa/rfa/forms/downlf.html. Forms may be printed from this site.

The complete program announcement can be accessed on the Internet at *http://www.epa.gov/ncerqa,* under ''announcements.''

AWARDS: Final selection of awardees by the participating agencies will be determined on the basis of peer and panel recommendations, applicability of the proposed effort to the interests and objectives of an agency, and the availability of funds. It is anticipated that each award will be made and be administered by a single agency; however, several agencies may participate in providing assistance to individual components of multi-institutional projects. Applicants recommended for funding will be requested to resubmit their applications and may be asked to modify their budgets and/or work plans to comply with special requirements of the particular agency supporting their awards. Awards will be subject to the terms and conditions of the sponsoring agency.

FOR FURTHER INFORMATION CONTACT: Technical Information: Susan Banahan, ECOHAB Coordinator, CSCOR/COP Office, 301–713–3338/ext 148, EMail: *susan.banahan@noaa.gov.* Administrative Information: Gina Perovich, EPA/NCER, 202–564–2248, Email: *perovich.gina@epa.gov.*

SUPPLEMENTARY INFORMATION:

Program Goals and Topic Areas

The National Center for Environmental Research/Environmental Protection Agency (EPA); the Coastal Ocean Program and the Office of Protected Resources/ National Oceanic and Atmospheric Administration

(NOAA)/Department of Commerce; the Directorate for Geosciences, Division of Ocean Sciences/National Science Foundation (NSF); the Office of Naval Research (ONR)/Department of Defense; and the Office of Earth Science/National Aeronautics Space Administration (NASA) are cooperating in an opportunity for investigators to propose activities to address fundamental ecological and oceanographic questions related to the national harmful algal bloom (HAB) problem.

Proposals are encouraged in the following areas: (1) the prevention, control, and mitigation of HABs and their impacts, (2) the transition of current biophysical models for HABs in specific regions into operational HAB forecasts, (3) biological and physical oceanographic regional studies that include the development of linked biophysical models of bloom development and transport, and (4) studies addressing gaps in general knowledge of HAB phenomena. These special emphasis areas are described in greater detail in the complete program announcement (see **ADDRESSES**).

ECOHAB will support projects ranging from laboratory studies by individual Investigators or small teams, up to larger teams of investigators conducting coordinated, well-integrated, multi-disciplinary regional field programs. For individuals and small teams, support may be requested for 1–3 years duration. Projects focused on multi-disciplinary regional studies may request support for up to 5 years duration. However, the size and duration of the latter studies are dependent on appropriations, and potential applicants are encouraged to correspond with the ECOHAB Coordinator (see ''Contacts'' in this announcement) prior to preparation of proposals.

Eligibility

Academic and not-for-profit institutions located in the U.S., and state or local governments, are eligible under all existing authorizations. Some participating agencies are authorized to make awards to profit-making firms and international institutions. NOAA and other permitted Federal partnering agencies may fund investigators from Federal laboratories that successfully compete through the ECOHAB Program announcement, but salaries of full time Federal employees will be in accord with individual agency policies. Federal investigators will be required to submit certifications or documentation which clearly show that they have specific legal authority to receive funds from another Federal agency in excess of their appropriations. Applications from non-Federal and Federal applicants will be competed against each other. Proposals selected for funding from non-Federal applicants will be funded through a project grant or cooperative agreement under the terms of this announcement. Proposals from Federal researchers deemed acceptable and selected for funding will be funded through a medium other than a grant or cooperative agreement, such as inter-or intra-agency transfers, where legal authority exists for such funding.

How to Apply

The original and eighteen (18) copies of the fully developed application (19 in all) and one (1) additional copy of the abstract, prepared in accordance with the full announcement, must be received by NOAA no later than 4:00 P.M. Eastern Time on the closing date, January 10, 2002.

Program Authorities

For COP: 33 U.S.C. 883d and P.L. 105–383; for Office of Protected Resources/NOAA: 16 U.S.C. 1382 and 16 U.S.C. 1421a; EPA: 33 U.S.C 1251 *et. seq.* and 40 CFR parts 30 and 40; for NSF: 42 U.S.C. 1861 *et. seq.;* for ONR: 10 U.S.C 2358 as amended and 31 U.S.C 6304; and for NASA: 14 CFR part 1260

Catalog of Federal Domestic Assistance (CFDA) Numbers. 11.478 for the Coastal Ocean Program; 11.472 for NOAA/Office of Protected Resources; 66.500 for the Environmental Protection Agency; 47.050 for the National Science Foundation, and 12.300 for the Office of Naval Research.

Dated: September 19, 2001.

Henry L. Longest II,

Acting Assistant Administrator for Research and Development.

[FR Doc. 01–24717 Filed 10–2–01; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–7072–6]

Peer Consultation Workshop on Alternative Approaches to the Health Assessment of PAH Mixtures

AGENCY: Environmental Protection Agency.

ACTION: Notice of peer consultation workshop.

SUMMARY: The Environmental Protection Agency (EPA) is announcing a workshop for scientific peer consultation on alternative approaches to the health risk assessment of polycyclic aromatic hydrocarbon (PAH) mixtures. The workshop is sponsored by EPA's National Center for Environmental Assessment of the Office of Research and Development. Versar, Inc., an EPA contractor, is providing logistical support for the workshop. The individual scientific opinions of the experts participating in the workshop will be taken into consideration by EPA when developing the Integrated Risk Information System (IRIS) health assessment for PAH mixtures.

DATES: The workshop will be held on Wednesday, October 24, 2001, from 8:30 a.m. to 5 p.m. and on Thursday, October 25, 2001, from 8:30 a.m. to 3:30 p.m.

ADDRESSES: The workshop will be held at the Key Bridge Marriott, 1401 Lee Highway, Arlington, VA. Versar, Inc., an EPA contractor, is providing logistical support for the workshop. To attend the workshop as an observer, visit www.versar.com/pahrisk/ and register by October 19, 2001. Space is limited, and reservations will be accepted on a first-come, first-served basis. There will be a limited time for comments from the public during the workshop. Please let Versar know if you wish to make a brief statement not to exceed five minutes.

EPA has prepared a discussion document, ''Workshop on Approaches to Polycyclic Aromatic Hydrocarbon (PAH) Health Assessment: Discussion Document,'' to provide experts participating in the workshop background information on current EPA practices for assessing PAH health risk and an overview of alternative approaches to health assessment for PAH mixtures. A copy of this document is available from Versar.

Comments related to PAH health assessment approaches may be mailed to Susan Rieth, U.S. Environmental Protection Agency (8601D), 1200 Pennsylvania Ave., NW., Washington, DC 20460 or delivered to Susan Rieth, U.S. Environmental Protection Agency, 808 17th St, NW., Washington, DC 20006. Electronic comments may be emailed to rieth.susan@epa.gov.

Please note that all comments received in response to this notice will be public information. For that reason, commentors should not submit personal information (such as medical data or home address), Confidential Business Information, or information protected by copyright. Due to limited resources, acknowledgments will not be sent.

FOR FURTHER INFORMATION CONTACT: For further information concerning the peer consultation workshop please contact Traci Bludis, Versar, Inc.; telephone: 1–800–2-VERSAR ext 449; email: *bluditra@versar.com.* For technical inquiries, please contact Susan Rieth,

U.S. Environmental Protection Agency (8601D), 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone 202–564–1532; facsimile 202–565–0075; email rieth.susan@epa.gov.

SUPPLEMENTARY INFORMATION: At the request of several EPA program offices, the EPA IRIS Program is undertaking a health assessment for PAHs. The IRIS Program develops EPA consensus scientific positions on potential human health effects that may result from chronic exposure to chemical substances found in the environment; assessments for approximately 540 chemical substances can be found in the IRIS database (66 FR 11165).

Currently, the IRIS database contains entries developed in the early 1990s for 15 non-methylated PAHs with three or more rings. These entries provide assessments of the carcinogenic and noncarcinogenic effects of individual PAHs; however, the IRIS database does not provide assessments for other PAHs with carcinogenic potential (e.g., ''supercarcinogens,'' methylated PAHs, etc.), and does not consider issues associated with the environmental occurrence of PAHs as complex mixtures.

The initiation of the IRIS PAH assessment follows closely on the release of the EPA Risk Assessment Forum's Supplementary Guidance for Conducting Health Risk Assessment of Chemical Mixtures (EPA/630/R–00/002), which sets forth EPA's risk assessment paradigm for mixtures. The framework for chemical mixture assessment provided in the supplemental guidance will be applied in the current IRIS effort.

Because of the complexity of the scientific literature related to PAH mixtures, the EPA is sponsoring a two-day peer consultation workshop with experts in PAH toxicology and chemistry and the assessment of chemical mixtures to examine alternative approaches to the health assessment of PAH mixtures. Because information needed to support development of a mixtures approach for assessing the noncancer effects of PAHs is limited or lacking, it is expected that the workshop will largely focus on the extensive carcinogenicity literature for PAHs.

Objectives of the workshop will be to generate individual scientific opinions on (1) the extent to which each of the alternative approaches to PAH health assessment is supported by the current scientific literature and (2) how well each approach addresses the range of exposure situations and monitoring data encompassed by EPA program offices. The individual expert opinions and recommendations generated in this workshop will be taken into consideration by EPA in developing an appropriate and scientifically defensible health assessment procedure(s) for inclusion in the IRIS assessment for PAHs.

Dated: September 26, 2001.

Art Payne,

Acting Director, National Center for Environmental Assessment.

[FR Doc. 01–24718 Filed 10–2–01; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[OPP–42080; FRL–6798–8]

Nebraska State Plan for Certification of Applicators of Restricted Use Pesticides; Notice of Availability

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of intent.

SUMMARY: The State of Nebraska has submitted to EPA several statutory, regulatory, and programmatic amendments to its State Plan for Certification and Training of Applicators of Restricted Use Pesticides. The proposed amendments include the establishment of new commercial and noncommercial categories and subcategories along with their respective standards of competency, and the payment of appropriate fees for the licensing of commercial, noncommercial and private applicators. Notice is hereby given of the intention of the Regional Administrator, Region VII, to approve the revised Plan for the Certification of Applicators of Restricted Use Pesticides. EPA is soliciting comments on the proposed amendments.

DATES: Comments, identified by docket control number OPP–42080, must be received on or before November 2, 2001.

ADDRESSES: Comments may be submitted by mail, electronically, or in person. Please follow the detailed instructions for each method as provided in Unit I. of the **SUPPLEMENTARY INFORMATION**. To ensure proper receipt by EPA, it is imperative that you identify docket control number OPP–42080 in the subject line on the first page of your response.

FOR FURTHER INFORMATION CONTACT: John Tice, Water, Wetlands and Pesticide Division, WWPD/PESP, 901 N. 5th Street, Kansas City, KS 66101; telephone number: (402) 437–5080; e-mail address: Tice.john@epa.gov.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

This action is directed to the public in general. This action may, however, be of interest to those involved in agriculture and anyone involved with the distribution and application of pesticides for agricultural purposes. Others involved with pesticides in a non-agricultural setting may also be affected. In addition, it may be of interest to others, such as, those persons who are or may be required to conduct testing of chemical substances under the Federal Food, Drug, and Cosmetic Act (FFDCA), or the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA). Since other entities may also be interested, the Agency has not attempted to describe all the specific entities that may be affected by this action. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

B. How Can I Get Copies of the Amended State Plan, Other Related Documents, and Additional Information?

To obtain copies of the amended Nebraska Certification Plan, other related documents, or additional information contact:

1. John Tice at the address listed under **FOR FURTHER INFORMATION CONTACT**.

2. Tim Creger, P.O. Box 94756, Lincoln, NE 68509–4756; telephone number: (402) 471–2394; e-mail address: timlc@agr.state.ne.us.

3. Jeanne Heying, Office of Pesticide Programs, Field and External Affairs Division (7506C), Environmental Protection Agency, 1200 Pennsylvania Ave., NW.; telephone number: (703) 308–3240; e-mail address: Heying.Jeanne@epa.gov.

4. The Nebraska Certification plan and proposed changes may be viewed on the internet at the following URL: http://www.agr.state.ne.us/division/bpi/pes/p07.pdf

C. How and to Whom Do I Submit Comments?

You may submit comments through the mail, in person, or electronically to John Tice at the address listed under **FOR FURTHER INFORMATION CONTACT**. To ensure proper receipt by EPA, it is imperative that you identify docket control number OPP–42080 in the subject line on the first page of your response. Electronic comments can be

submitted by e-mail or you can submit a computer disk. When submitting comments electronically do not submit any information that you consider to be CBI. Avoid the use of special characters and any form of encryption. Electronic submissions will be accepted in WordPerfect 6.1/8.0/7/8/9 or ASCII file format. All comments in electronic form must be identified by docket control number OPP–42080.

D. How Should I Handle CBI that I Want to Submit to the Agency?

Do not submit any information electronically that you consider to be CBI. You may claim information that you submit to EPA in response to this document as CBI by marking any part or all of that information as CBI. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. In addition to one complete version of the comment that includes any information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public version of the official record. Information not marked confidential will be included in the public version of the official record without prior notice. If you have any questions about CBI or the procedures for claiming CBI, please consult the person identified under **FOR FURTHER INFORMATION CONTACT**.

E. What Should I Consider as I Prepare My Comments for EPA?

You may find the following suggestions helpful for preparing your comments:

1. Explain your views as clearly as possible.

2. Describe any assumptions that you used.

3. Provide copies of any technical information and/or data you used that support your views.

4. If you estimate potential burden or costs, explain how you arrived at the estimate that you provide.

5. Provide specific examples to illustrate your concerns.

6. Make sure to submit your comments by the deadline in this notice.

7. To ensure proper receipt by EPA, be sure to identify the docket control number assigned to this action in the subject line on the first page of your response. You may also provide the name, date, and **Federal Register** citation.

II. What Action is the Agency Taking?

EPA has reviewed the revised Nebraska Certification Plan and finds it in compliance with FIFRA and 40 CFR part 171 and is announcing its intention to appprove the amended plan and seeks public comment.

List of Subjects

Environmental protection, Education, Pests and pesticides.

Dated: September 18, 2001.

Michael J. Sanderson,

Acting Regional Administrator, Region VII.

[FR Doc. 01–24604 Filed 10–2–01; 8:45 am]

BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

[FRL–7072–9]

RIN 2060–AG85

Waste Characterization Program Documents Applicable to Transuranic Radioactive Waste From the Idaho National Engineering and Environmental Laboratory Proposed for Disposal at the Waste Isolation Pilot Plant

AGENCY: Environmental Protection Agency.

ACTION: Notice of availability; opening of public comment period.

SUMMARY: The Environmental Protection Agency (EPA, or ''we'') is announcing the availability of, and soliciting public comments for 30 days on, Department of Energy (DOE) documents on waste characterization programms applicable to certain transuranic (TRU) radioactive waste at the Iadhoo National Engineering and Environmental Laboratory (INEEL) proposed for disposal at the Waste Isolation Pilot Plant (WIPP). The documents are procedures for elements of the system of controls that INEEL proposes to use to charactize organic sludges that constitute transuranic (TRU) radioactive waste. The documents are available for review in the public dockets listed in **ADDRESSES**. We will use these and other documents to evaluate the waste characterization system at INEEL as it applies to organic sludge TRU waste, during an inspection conducted in accordance with EPA's WIPP Compliance Criteria in October 2001. The purpose of the inspection is to verify theat INEEL can characterize transuranic organic sludge waste adequately, consistent with the WIPP Compliance Criteria and Condition 3 of EPA's final certification decision for the WIPP. This notice of the inspection and comment period accords with 40 CFR 194.8.

DATES: The EPA is requesting public comment on these documents. Comments must be received by EPA's official Air Docket on or before November 2, 2001.

ADDRESSES: Comments should be submitted to: Docket No. A–98–49, Air Docket, Room M–1500 (LE–131), U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC, 20460.

DOE documents related to NDA systemms and AK pertaining to organic sludge waste are available for review in the official EPA Air Docket in Washington, D.C., Docket No. A–98–49, Category II–A–2, and at the following three EPA WIPP information docket locations in New Mexico: in Carlsbad at the Municipal Library, Hours: Monday–Thursday, 10am–9pm, Friday–Saturday, 10am–6pm, and Sunday, 1pm–5pm; in Albuquerque at the Government Publications Department, General Library, University of New Mexico, Hours: vary by semester; and in Santa Fe at the New Mexico State Library, Hours: Monday–Friday, 9am–5pm.

Copies of items in the docket may be requested by writing to Docket A–98–49 at the address provided above, or by calling (202) 260–7548. As provided in EPA's regulation at 40 CFR Part 2, and in accordance with normal EPA docket procedures, a reasonable fee may be charged for photocopying. Air Docket A–98–49 in Washington, DC, accepts comments sent electronically or by fax (fax no.: 202–260–4400; E-mail: a-and-r-docket@epa.gov).

FOR FURTHER INFORMATION CONTACT: Ed Feltcorn, Office of Radiation and Indoor Air, (202) 564–9422, or call EPA's 24-hour, toll-free WIPP Information Line, 1–800–331–WIPP, or visit our website at http://www.epa.gov/radiation/wipp/announce.html.

SUPPLEMENTARY INFORMATION: The DOE is developing the WIPP near Carlsbad in southeastern New Mexico as a deep geologic repository for disposal of TRU radioactive waste. As defined by the WIPP Land Withdrawal Act (LWA) of 1992 (Pub. L. No. 102–579), as amended (Pub. L. No. 104–201), TRU waste consists of materials containing elements having atomic numbers greater than 92 (with half-lives greater than twenty years), in concentrations greater than 100 nanocuries of alpha-emitting TRU isotopes per gram of waste. Most TRU waste consists of items contaminated during the production of nuclear weapons, such as rags, equipment, tools, and organic and inorganic sludges.

On May 13, 1998, EPA announced its final compliance certification decision to the Secretary of Energy (published May 18, 1998, 63 FR 27354). This decision states that the WIPP will comply with the EPA's radioactive waste disposal regulations at 40 CFR part 191, subparts B and C.

The final WIPP certification decision includes a condition that prohibits shipment of TRU waste for disposal at WIPP from any site other than LANL until EPA has approved the procedures developed to comply with the waste characterization requirements of § 194.24(c)(4) (Condition 3 of Appendix A to 40 CFR part 194). The EPA's approval process for waste generator sites is described in § 194.8. As part of EPA's decision making process, DOE is required to submit to EPA relevant documentation of waste characterization programs at each DOE waste generator site seeking approval for shipment of TRU radioactive waste to the WIPP. In accordance with § 194.8, EPA will place such documentation in the official Air Docket in Washington, DC, and in informational dockets in the State of New Mexico, for public review and comment.

We initially approved certain waste characterization processes at INEEL following an inspection on July 28–30, 1998. INEEL has requested approval to characterize organic sludge waste using nondestructive assay systems and other processes previously approved for characterization of other waste streams. Several relevant INEEL documents related to nondestructive assay systems and acceptable knowledge have been placed in Air Docket A–98–49. They are as follows: (1) TPR–1573, Rev. 34, 8/10/01, Passive-Active Neutron (PAN) Assay System; (2) TPR–1588, Rev. 26, 1/4/01, SWEPP Gamma-Ray Spectrometer System; (3) TPR–1654, Rev. 2, 8/6/01, SWEPP Waste Assay Gamma Spectrometer (WAGS) System; (4) TPR–1719, Rev. 12, 7/17/01, Calibration of SWEPP Radioassay Systems; (5) MCP–2988, Rev. 14, 8/28/01, Confirmation, Resolution, and Reevaluation of Acceptable Knowledge Information; and (6) MCP–2989, Rev. 7, 11/29/00, Collection, Review, and Management of Acceptable Knowledge Documentation. These procedures are for processes that apply to organic sludges and other waste streams.

In accordance with § 194.8 of the WIPP compliance criteria, we are providing the public 30 days to comment on the documents. In the event that the inspection occurs during the comment period, we will respond to relevant comments received prior to, during, and after the inspection.

If EPA determines that the provisions in the documents are adequately implemented, we will notify DOE by letter and place the letter in the official Air Docket in Washington, DC, and also in the informational dockets located in New Mexico. A positive approval letter will allow DOE to ship TRU waste from INEEL to WIPP for disposal. We will not make a determination of compliance prior to the inspection or before the 30-day comment period has closed.

Information on EPA's radioactive waste disposal standards (40 CFR part 191), the compliance criteria (40 CFR part 194), and EPA's certification decision is filed in the official EPA Air Docket, Dockets No. R–89–01, A–92–56, and A–93–02, respectively, and is available for review in Washington, DC, and at the three EPA WIPP informational docket locations in New Mexico. The dockets in New Mexico contain only major items from the official Air Docket in Washington, DC, plus those documents added to the official Air Docket after the October 1992 enactment of the WIPP LWA.

Dated: September 26, 2001.

Robert Brenner,

Acting Assistant Administrator for Air and Radiation.

[FR Doc. 01–24716 Filed 10–2–01; 8:45 am]

BILLING CODE 6560–50–M

ENVIRONMENTAL PROTECTION AGENCY

[FRL–7073–1]

Change in Dates of EPA Inspection of Transuranic Waste Characterization Systems and Processes at the Savannah River Site Related to the Waste Isolation Pilot Plant

AGENCY: Environmental Protection Agency.

ACTION: Notice of availability and extending of comment period.

SUMMARY: Today, the Environmental Protection Agency (EPA, or ''we''), is announcing a change in the dates of an inspection previously planned for the week of September 24, 2001 at the Savannah River Site (SRS). The August 29 **Federal Register** notice announced the purpose of the EPA inspection and availability of Department of Energy (DOE) documents in the EPA Docket, and solicited public comments on the documents available in the docket for a period of 30 days (66 FR 45679). Now, the inspection will be held during the week of October 15, 2001. The following DOE documents entitled: (1) ''CCP–PO–001—Revision 2,7/23/01—CCP Transuranic Waste Quality Assurance Characterization Project Plan'' (2) ''CCP–PO–002—Revision 2, 7/23/01—CCP Transuranic Waste Certification Plan''(3)—Savannah River Site Statement of Work (SOW) 1E8863—Revision 2,9/17/01—Clarification of SRS TRU Waste'' and (4) CBFOA–02–09—''Carlsbad Field Office Audit Plan.''These documents are available for review in the public dockets listed in **ADDRESSES.** In addition to changing the inspection dates, we areextending the public comment period for 30 additional days. The extension of the public comment period provides additional opportunity to interested individuals/entities if they have not already done so. We will consider public comments received on or before September 28 (the last day for the first 30-day comment period), and those received since then but on or before the due date mentioned in **DATES.** In accordance with EPA's WIPP Compliance Criteria at 40 CFR 194.8, we will conduct an inspection at SRS to verify that using the systems and processes developed as part of the DOE Carlsbad Office's central characterizations project (CCP), DOE can characterize TRU waste at SRS properly, consistent with the Compliance Criteria. This notice of the inspection and comment period accords with 40 CFR 194.8.

DATES: Comments must be received by EPA's official Air Docket on or before November 2, 2001.

ADDRESSES: Comments should be submitted to: Docket No. A–98–49, Air Docket, Room M–1500 (LE–131), U.S. Environmental Protection Agency, 1200 Pennsylvania Ave., NW, Washington, DC, 20460.

DOE documents related to the CCP are available for review in the official EPA Air Docket in Washington, D.C., Docket No. A–98–49, Category II–A2, and at the following three EPA WIPP informational docket locations in New Mexico: in Carlsbad at the Municipal Library, Hours: Monday–Thursday, 10 am–9 pm, Friday–Saturday, 10 am–6 pm, and Sunday, 1 pm–5 pm; in Albuquerque at the Government Publications Department, General Library, University of New Mexico, Hours: vary by semester; and in Santa Fe at the New Mexico State Library, Hours: Monday–Friday, 9 am–5 pm. The documents also are available electronically at EPA's WIPP Homepage and may be accessed at: *http://www.epa.gov/radiation/wipp.*

Copies of items in the docket may be requested by writing to Docket A–98–49 at the address provided above, or by calling (202) 260–7548. As provided in

EPA's regulations at 40 CFR Part 2, and in accordance with normal EPA docket procedures, a reasonable fee may be charged for photocopying Air Docket A–98–49 in Washington, DC, accepts comments sent electronically or by fax (fax no.: 202–260–4400; E-mail: a-and-r-docket@epa.gov).

FOR FURTHER INFORMATION CONTACT: Ms. Rajani D. Joglekar, Office of Radiation and Indoor Air, (202) 564–9310, or call EPA's 24-hour, toll-free WIPP Information Line, 1–800–331–WIPP, or visit our website at *http://www.epa.gov/radiation/wipp/announce.html*.

SUPPLEMENTARY INFORMATION: See 66 FR 45679–80, August 29, 2001.

Dated: September 26, 2001.

Robert Brenner,

Acting Assistant Administrator for Air and Radiation.

[FR Doc. 01–24715 Filed 10–2–01; 8:45 am]

BILLING CODE 6560–50–M

ENVIRONMENTAL PROTECTION AGENCY

[OPP–00728; FRL–6790–4]

Public Report on Minor Use Pesticides; Notice of Availability

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA hereby announces the availability of a public report prepared by the Office of Pesticide Programs on minor uses of pesticides pursuant to requirements of the Federal Insecticide, Fungicide, and Rodenticide Act, as amended by the Food Quality Protection Act of 1996. This report includes descriptions of measures that EPA, in cooperation with the U.S. Department of Agriculture, the Department of Health and Human Resources, and the Food and Drug Administration, has undertaken to consider minor use needs in registering and reregistering minor use pesticides.

FOR FURTHER INFORMATION CONTACT: Patricia Cimino, Office Director's Immediate Office (7501C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone number: (703) 308–9357; fax number: (703) 308–4776; e-mail address: cimino.pat@epa.gov.

SUPPLEMENTARY INFORMATION:

I. General Information

This action is directed to the public in general. This action may, however, be of interest to crop producers, public health vector control programs and those persons who are or may be required to conduct testing of chemical substances under the Federal Food, Drug, and Cosmetic Act (FFDCA), or the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA). Since other entities may also be interested, the Agency has not attempted to describe all the specific entities that may be affected by this action. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT.**

II. What Action is the Agency Taking?

In amending FIFRA, the Food Quality Protection Act of 1996 includes a directive for the Office of Pesticide Programs (OPP) to prepare a public report concerning the progress made and activities related to the registration and reregistration of minor use pesticides (7 U.S.C. 136w–6b (FIFRA section 31(b))). With this document, EPA is announcing the availability of the public report prepared by OPP pursuant to this directive.

The Report describes EPA's minor use activities since enactment of FQPA. These include establishment of the position of Minor Crop Advisor/Ombudsperson reporting directly to the OPP Director and creation of the Minor Use Team composed of representatives from each of the relevant OPP divisions. Other important activities include expedited registration of minor use and reduced risk pesticides with increasing numbers of registration decisions being made. Also, EPA established the position of Public Health Coordinator and a steering committee to address public health minor use issues. The report addresses issues raised by the public: Maintaining an adequate supply of effective pesticides; retaining critically needed pesticide uses; relying on sound science and real world data in making decisions; establishing a transparent regulatory process; ensuring a reasonable transition for agriculture to new methods and alternatives; maintaining a level playing field in world markets, increasing outreach and communications. The report specifies the significant progress that EPA has made in addressing these issues.

III. How Can I Get A Copy of this Report?

1. *Electronically*. You may access an electronic copy of this report through the OPP Internet Home Page at http://www.epa.gov/pesticides. To access this document, on the Home Page select ''Pesticide Use,'' and under this select ''Minor Use Report.''

2. *By mail*. You may submit a request to have this document mailed to you by submitting a written request to the Public Information and Records Integrity Branch (PIRIB), Information Resources and Services Division (7502C), Office of Pesticide Programs (OPP), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460. You may also contact the contact person listed under **FOR FURTHER INFORMATION CONTACT.**

List of Subjects

Environmental protection, Minor crops, IR–4, Pesticides, Public health vector control programs.

Dated: August 30. 2001.

Marcia E. Mulkey,

Director, Office of Pesticide Programs.

[FR Doc. 01–24489 Filed 10–2–01; 8:45 am]

BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

[Docket No. FRL–7072–5]

Availability of ''Guidelines for Implementing the Three Percent Set-Aside Provision Contained in the State and Tribal Assistance Grants Account Section of the Agency's FY 2001 Appropriations Act''

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of document availability.

SUMMARY: EPA is announcing availability of a memorandum entitled ''Guidelines for Implementing the Three Percent Set-Aside Provision Contained in the State and Tribal Assistance Grants Account Section of the Agency's FY 2001 Appropriations Act.'' This memorandum provides information and guidelines on how EPA will implement the three percent set-aside provision contained in the State and Tribal Assistance Grants (STAG) account section of the Agency's FY 2001 Appropriations Act (Public Law 106–377). The provision authorizes EPA to establish a permanent set-aside to support the Agency's management and oversight of projects identified in the STAG account of FY 2001 and subsequent Appropriations Acts. The set-aside can only be used to fund grants to the States, interagency agreements with the Corps of Engineers and contracts. The Corps of Engineers and State agencies will receive a copy of this document from EPA.

ADDRESSES: See **SUPPLEMENTARY INFORMATION** section for electronic access of the guidance memorandum.

FOR FURTHER INFORMATION CONTACT: Valerie G. Martin, (202) 564–0623 or martin.Valerie@epamail.epa.gov.

SUPPLEMENTARY INFORMATION: The subject memorandum may be viewed and downloaded at http://www.epa.gov/owm/mab/owm0318.pdf.

Dated: September 29, 2001.

Michael B. Cook,

Director, Office of Wastewater Management.

[FR Doc. 01–24719 Filed 10–2–01; 8:45 am]

BILLING CODE 6560–50–M

ENVIRONMENTAL PROTECTION AGENCY

[FRL–7070–1]

Public Water System Supervision Program Revision for the State of Nebraska

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of tentative approval.

SUMMARY: Notice is hereby given that the State of Nebraska is revising its approved Public Water System Supervision Program. The State of Nebraska has adopted drinking water regulations requiring Consumer Confidence Reporting, that correspond to federal regulations published by EPA on August 19, 1998 (63 FR 44512). EPA has determined that this revision is no less stringent than the corresponding federal regulation. Therefore, EPA intends to approve this State program revision.

All interested parties may request a public hearing. A request for a public hearing must be submitted by November 2, 2001 to the Regional Administrator at the address shown below. Frivolous or insubstantial requests for a hearing may be denied by the Regional Administrator. However, if there is a substantial request, a public hearing will be held. If no timely and appropriate request for a hearing is received and the Regional Administrator does not elect to hold a hearing on his own motion, this determination shall become final and effective on November 2, 2001.

Any request for a public hearing shall include the following information: The name, address, and telephone number of the individual organization, or other entity requesting a hearing; A brief statement of the requesting person's interest in the Regional Administrator's determination and a brief statement of the information that the requesting person intends to submit at such hearing; The signature of the individual making the request, or, if the request is made on behalf of an organization or other entity, the signature of a responsible official of the organization or other entity.

ADDRESSES: All documents relating to this determination are available for inspection between the hours of 8 a.m., and 4 p.m., Monday through Friday, at the following office: U.S. Environmental Protection Agency, Region 7, Drinking Water / Ground Water Management Branch, 901 N. Fifth Street, Kansas City, Kansas, 66101.

FOR FURTHER INFORMATION CONTACT: Crystal Harriel at (913) 551–7261.

Reference: The Safe Drinking Water Act as amended (1996), and 40 CFR part 142 of the National Primary Drinking Water Regulations.

Dated: August 30, 2001.

William W. Rice,

Acting Regional Administrator, Region 7.

[FR Doc. 01–24487 Filed 10–2–01; 8:45 am]

BILLING CODE 6560–50–P

COUNCIL ON ENVIRONMENTAL QUALITY

Energy Task Force

AGENCY: Council of Environmental Quality.

ACTION: Notice extending comment period.

SUMMARY: By **Federal Register** notice, CEQ has invited interested parties to (1) provide basic information about major pending projects or major projects under development that may be relevant to Task Force efforts to streamline energy permitting decisions and (2) comment on the proposed nature and scope of Task Force activities and provide specific suggestions and examples of permitting or other decision making processes which should be improved or streamlined. 66 Fed. Reg. 43586–43587 (August 20, 2001). Interested parties have requested that CEQ extend the time to file comments. The deadline for comments was October 1, 2001. By this notice, CEQ is extending the time period for public comment to October 31, 2001. Although the time for comments has been extended, CEQ requests that interested parties provide information about major pending projects or major projects under development as soon as possible. In addition, following the comment period, the Task Force will engage in an ongoing dialog with the public regarding permitting or other decision making processes which should be improved or streamlined.

DATES: Written comments should be submitted on or before October 31, 2001.

ADDRESSES: Direct electronic written comments to Chair, Council on Environmental Quality, through the CEQ Web site at *www.whitehouse.gov/ceq*. Written comments may also be submitted to the Chair, Council on Environmental Quality, Executive Office of the President, 17th and G Streets, NW., Washington, DC 20503. Attention: Task Force. Written comments may also be faxed to the Task Force at (202) 456–6546.

FOR FURTHER INFORMATION CONTACT: Requests for copies the ''National Energy Policy Report of the National Energy Policy Development Group'' may be directed to CEQ at the above address. The report is available on the White House Web site (*http://www.whitehouse.gov/eneergy/National-Energy-Policy.pdf*) and on the Department of Energy Web site *http://www.energy.gov/HQPress/releases01/maypr/energy_policy.htm*). Copies of the report (ISBN 0–16–050814–2) can also be purchased from the Superintendent of Documents, U.S. Government Printing Office, by calling (202) 512–1800 or mailing your request to U.S. GPO, Mail Stop SSOP, Washington, DC 20402–0001.

SUPPLEMENTARY INFORMATION: On May 18, 2001, the President signed Executive Order 13212 recognizing the importance of environmentally sound production and transmission of energy to all American people. The Order established a federal interagency task force (''Task Force''), chaired by the Chairman of the Council on Environmental Quality (''CEQ''), to work with and monitor federal agencies'' efforts to expedite their review of permits or take other actions as necessary to accelerate the completion of energy-related projects, while maintaining safety, public health, and environmental protections. That task force is also charged with helping agencies create mechanisms to coordinate Federal, State, tribal and local permitting in geographic areas where increased permitting activity is expected.

In order to further the work of this task force, CEQ believes that it would be beneficial to have public input on federal agency activities to implement Executive Order 13212. Such input may include recommendations for improving agency activities, consistent with the purposes and policies of the National Environmental Policy Act, 42 U.S.C. 4321 *et seq.*, (1) to accelerate the completion of energy-related projects; (2) to increase energy production and

conservation; (3) to improve transmission of energy; and (4) to coordinate permitting in geographic areas where increased permitting activity is expected.

Public comments are requested by October 31, 2001.

Dated: September 26, 2001.

James L. Connaughton,

Chairman, Council on Environmental Quality.

[FR Doc. 01–24696 Filed 10–2–01; 8:45 am]

BILLING CODE 3125–01–P

FEDERAL HOUSING FINANCE BOARD

[No. 2001–N–11]

Submission for OMB Review; Comment Request

AGENCY: Federal Housing Finance Board.

ACTION: Notice.

SUMMARY: In accordance with the requirements of the Paperwork Reduction Act of 1995, the Federal Housing Finance Board (Finance Board) hereby gives notice that it has submitted the information collection entitled ''Federal Home Loan Bank Directors'' to the Office of Management and Budget (OMB) for review and approval of a three-year extension of the OMB control number, which is due to expire on September 30, 2001.

DATES: Interested persons may submit comments on or before November 2, 2001.

ADDRESSES: Submit comments to the Office of Information and Regulatory Affairs of OMB, Attention: Desk Officer for the Federal Housing Finance Board, Washington, DC 20503. Address requests for copies of the information collection and supporting documentation to Elaine L. Baker, Secretary to the Board, 202/408–2837, *bakere@fhfb.gov*, Federal Housing Finance Board, 1777 F Street, NW., Washington, DC 20006.

FOR FURTHER INFORMATION CONTACT: Patricia L. Sweeney, Program Analyst, Program Assistance Division, Office of Policy, Research and Analysis by telephone at 202/408–2872, by electronic mail at *sweeneyp@fhfb.gov,* or by regular mail to the Federal Housing Finance Board, 1777 F Street, NW., Washington, DC 20006.

SUPPLEMENTARY INFORMATION:

A. Need For and Use of Information Collection

Section 7 of the Federal Home Loan Bank Act (Bank Act) and the Federal Housing Finance Board (Finance Board) implementing regulation establish the eligibility requirements and the procedures for electing and appointing Federal Home Loan Bank (FHLBank) directors. *See* 12 U.S.C. 1427; 12 CFR part 915. Under part 915, the FHLBanks determine the eligibility of elective directors and director nominees and run the director election process. The Finance Board determines the eligibility of and selects all appointive FHLBank directors. To determine eligibility, the FHLBanks use the Elective Director Eligibility Certification Form, and the Finance Board uses the Appointive Director Eligibility Certification Form.

The Finance Board uses the information collection contained in the Appointive Director Eligibility Certification Form, and part 915 to determine whether prospective and incumbent appointive directors satisfy the statutory and regulatory eligibility and reporting requirements. Only individuals meeting these requirements may serve as appointive FHLBank directors. *See* 12 U.S.C. 1427(a). The FHLBanks, and where appropriate, the Finance Board, use the information collection in the Elective Director Eligibility Certification Form, and part 915 to determine whether elective directors and director nominees satisfy the statutory and regulatory eligibility and reporting requirements. Only individuals meeting these requirements may serve as elective FHLBank directors. *See* 12 U.S.C. 1427(a).

The likely respondents include FHLBanks, FHLBank members, and prospective and incumbent FHLbank directors.

The OMB number for the information collection is 3069–0002. The OMB clearance for the information collection expires on September 30, 2001.

B. Burden Estimate

The Finance Board estimates the total number of respondents to be 4,410. The respondents include the 12 FHLBanks and 4,398 FHLBank members, and prospective and incumbent appointive and elective directors. The estimated number of total annual responses is 4,998. The average number of responses per respondent is 1.13.

The Finance Board estimates that the total annual hour burden for all respondents is 4,208.55 hours. This includes 2,019.05 hours attributed to the FHLBanks and 1,399.5 hours attributed to FHLBank members, and prospective and incumbent appointive and elective directors. The average number of burden hours per respondent is 0.95 hours.

C. Comment Request

In accordance with the requirements of 5 CFR 1320.8(d), the Finance Board published a request for public comments regarding this information collection in the **Federal Register** on April 2, 2001. *See* 66 FR 17557 (April 2, 2001). The 60-day comment period closed on June 1, 2001. The Finance Board received no public comments. Written comments are requested on: (1) Whether the collection of information is necessary for the proper performance of Finance Board functions, including whether the information has practical utility; (2) the accuracy of the Finance Board's estimates of the burdens of the collection of information; (3) ways to enhance the quality, utility, and clarity of the information collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Comments may be submitted to OMB in writing at the address listed above.

By the Federal Housing Finance Board.

Dated: September 27, 2001.

James L. Bothwell,

Managing Director.

[FR Doc. 01–24674 Filed 10–2–01; 8:45 am]

BILLING CODE 6725–01–P

FEDERAL MARITIME COMMISSION

Notice of Agreement(s) Filed

The Commission hereby gives notice of the filing of the following agreement(s) under the Shipping Act of 1984. Interested parties can review or obtain copies of agreements at the Washington, DC offices of the Commission, 800 North Capitol Street, N.W., Room 940. Interested parties may submit comments on an agreement to the Secretary, Federal Maritime Commission, Washington, DC 20573, within 10 days of the date this notice appears in the **Federal Register**.

Agreement No.: 011367–021.

Title: Colombia Discussion Agreement.

Parties: Frontier Liner Services, Inc.,A.P. Moller-Maersk Sealand,Seaboard Marine Ltd.,King Ocean Services, S.A.

Synopsis: The proposed modification amends Article 5.1 by: (1) defining interim space charters as not exceeding 90 days in duration; (2) requiring that any on-going charter for more than 90 days must be separately filed with the Commission and not implemented until effective; and (3) providing for filing of

reports on a quarterly calendar year basis regarding any charters arranged.

Dated: September 28, 2001.

By Order of the Federal Maritime Commission.

Bryant L. VanBrakle,

Secretary.

[FR Doc. 01–24756 Filed 10–2–01; 8:45 am]

BILLING CODE 6730–01–P

FEDERAL MARITIME COMMISSION

Ocean Transportation Intermediary License; Revocations

The Federal Maritime Commission hereby gives notice that the following Ocean Transportation Intermediary licenses have been revoked pursuant to section 19 of the Shipping Act of 1984 (46 U.S.C. app. 1718) and the regulations of the Commission pertaining to the licensing of Ocean Transportation Intermediaries, effective on the corresponding date shown below:

License Number: 4014F
Name: Air Cargo Centralam, Inc.
Address: 8001 SW 157th Court, Miami, FL 33193
Date Revoked: August 11, 2001.
Reason: Failed to maintain a valid bond.

License Number: 2543
Name: Anka International Freight Forwarding Corp.
Address: 1334–36 NW 78th Avenue, Miami, FL 33126
Date Revoked: August 16, 2001.
Reason: Failed to maintain a valid bond.

License Number: 4153F
Name: Coda International, Inc.
Address: 239 New Road, Bldg. #A, Rm. 103, Parsippany, NJ 07054
Date Revoked: August 19, 2001.
Reason: Failed to maintain a valid bond.

License Number: 16191N
Name: Edco Export & Ocean Freight Corporation
Address: 5220 NW 163 Street, Miami Lakes, FL 33014
Date Revoked: August 31, 2001.
Reason: Failed to maintain a valid bond.

License Number: 11356N
Name: Hanmi Express Corporation dba Hanmi Express
Address: 16961 S. Central Avenue, Carson, CA 90746
Date Revoked: August 27, 2001.
Reason: Failed to maintain a valid bond.

License Number: 4186F
Name: Hanmi Shipping, Inc.
Address: 619 Thomas Drive, Bensenville, IL 60106
Date Revoked: August 20, 2001.
Reason: Failed to maintain a valid bond.

License Number: 3005F
Name: Nova Enterprises Ltd.
Address: 605–C Country Club Drive, Bensenville, IL 60106
Date Revoked: August 16, 2001.
Reason: Failed to maintain a valid bond.

License Number: 3691F
Name: Princess Forwarding, Inc.
Address: 125 Eastin Road, Lexington, KY 40505
Date Revoked: August 11, 2001.
Reason: Failed to maintain a valid bond.

License Number: 4368F
Name: Rencor, Inc.
Address: 10434 S.W. 16th Street, Hollywood, FL 33025
Date Revoked: August 16, 2001.
Reason: Failed to maintain a valid bond.

License Number: 12540N
Name: U-States Forwarding Services Corp.
Address: 817 W. Beverly Blvd., Suite #205, Montebello, CA 90640
Date Revoked: August 5, 2001.
Reason: Failed to maintain a valid bond.

License Number: 4134F
Name: World Exchange, Inc.
Address: 8840 Bellanca Avenue, Los Angeles, CA 90045
Date Revoked: August 18, 2001.
Reason: Failed to maintain a valid bond.

Sandra L. Kusumoto,

Director, Bureau of Consumer Complaints and Licensing.

[FR Doc. 01–24757 Filed 10–2–01; 8:45 am]

BILLING CODE 6730–01–P

FEDERAL MARITIME COMMISSION

Ocean Transportation Intermediary License; Applicants

Notice is hereby given that the following applicants have filed with the Federal Maritime Commission an application for licenses as Non-Vessel Operating Common Carrier and Ocean Freight Forwarder—Ocean Transportation Intermediary pursuant to section 19 of the Shipping Act of 1984 as amended (46 U.S.C. app. 1718 and 46 CFR 515).

Persons knowing of any reason why the following applicants should not receive a license are requested to contact the Office of Transportation Intermediaries, Federal Maritime Commission, Washington, DC 20573.

Non-Vessel-Operating Common Carrier Ocean Transportation Intermediary Applicants:

E–Z Express Corporation
58 N. Virginia Ct.
Englewood Cliffs, NJ 07632
Officers:
Sangki Kim, Vice President (Qualifying Individual)
Bora Kim, President

Utopia Logistic New York, Inc.
149–35 177 Street., #104
Jamaica, NY 11434
Officer:
Jong S. Lee, President (Qualifying Individual)

Micom Logistics Inc.
10300 NW 19 Street, Suite 109
Miami, FL 33172
Officers:
Miriam Perez, Director (Qualifying Individual)
John Hendrix, Director

Non-Vessel Operating Common Carrier and Ocean Freight Forwarder Transportation Intermediary Applicants:

Perry Supply, Inc.
831 1st Avenue N.
Birmingham, AL 35201
Officers:
Joseph Michael Ruggerio, Jr., Operations Manager (Qualifying Individual)
Mike Zervos, President

General Freight, Inc.
148–08 Guy R. Brewer Boulevard
Jamaica, NY 11434
Officers:
Enrico Gentile, Vice President (Qualifying Individual)
France Dal Cin, Director/President

Ocean Freight Forwarder—Ocean Transportation Intermediary Applicant:

Global 2000, Inc.
950 Thornedale Avenue
Elk Grove, IL 60007
Officer:
Kitty Pon, President (Qualifying Individual)

Dated: September 28, 2001.

Bryant L. VanBrakle,

Secretary.

[FR Doc. 01–24758 Filed 10–2–01; 8:45 am]

BILLING CODE 6730–01–P

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR Part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or

bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. The application also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act (12 U.S.C. 1843). Unless otherwise noted, nonbanking activities will be conducted throughout the United States. Additional information on all bank holding companies may be obtained from the National Information Center Website at *www.ffiec.gov/nic/.*

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than October 26, 2001.

A. Federal Reserve Bank of Atlanta (Cynthia C. Goodwin, Vice President) 1000 Peachtree Street, N.E., Atlanta, Georgia 30309–4470:

1. Black Diamond Financial Group, Inc., Tampa, Florida; to become a bank holding company by acquiring 100 percent of the voting shares of Bank of St. Petersburg, St. Petersburg, Florida.

2. First Dozier Bancshares, Inc., Dozier, Alabama; to become a bank holding company by acquiring 100 percent of the voting shares of The First National Bank of Dozier, Dozier, Alabama.

3. Regions Financial Corporation, Birmingham, Alabama; to merge with First Bancshares of Texas, Inc., Houston, Texas, and thereby indirectly acquire voting shares of First Bank of Texas, Tomball, Texas.

4. South Group Bancshares, Inc., Glennville, Georgia; to become a bank holding company by acquiring 100 percent of the voting shares of South Georgia Bank, Glennville, Georgia.

B. Federal Reserve Bank of Chicago (Phillip Jackson, Applications Officer) 230 South LaSalle Street, Chicago, Illinois 60690–1414:

1. Lincoln Bancorp, Inc., Rochelle, Illinois; to become a bank holding company by acquiring 100 percent of the voting shares of Lincoln State Bank, S.B., Rochelle, Illinois.

Board of Governors of the Federal Reserve System, September 27, 2001.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. 01–24658 Filed 10–2–01; 8:45 am]

BILLING CODE 6210–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the Secretary

Meeting of the National Human Research Protection Advisory Committee

AGENCY: Office of Public Health and Science, Office for Human Research Protection, HHS.

ACTION: Notice of October 30–31, 2001 Meeeting.

SUMMARY: Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of a meeting of the National Human Research Protections Advisory Committee (NHRPAC).

The meeting will be open to the public, with attendance limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the contact person listed below. Individuals planning on attending the meeting and who want to ask questions must submit their requests in writing in advance of the meeting to the contact person listed below.

DATES: The Committee will hold its next meeting on October 30–31, 2001. The meeting will convene from 8:30 a.m. to its recess at approximately 5:30 p.m. on October 30 and resume at 8:30 a.m. to 5 p.m. EST on October 31.

ADDRESSES: Double Tree Hotel, 1750 Rockville Pike, Rockville, MD, (301) 468–1100.

FOR FURTHER INFORMATION CONTACT: Ms. Kate-Louise Gottfried, Executive Director, National Human Research Protections Advisory Committee, Office for Human Research Protections, 6100 Executive Boulevard, Room 3B01 (MSC 7507), Rockville, Maryland 20892–7507, (301) 496–7005. The electronic mail address is: kg123a@nih.gov.

SUPPLEMENTARY INFORMATION: The National Human Research Protections Advisory Committee was established on June 6, 2000, to provide expert advice and recommendations to the Secretary of HHS, Assistant Secretary for Health, the Director, Office for Human Research Protections, and other departmental officials on a broad range of issues and topics pertaining to or associated with the protection of human research subjects.

Information about NHRPAC, and the draft agenda for the Committee's meeting, will be posted on the NHRPAC website at: http://ohrp.osophs.dhhs.gov/nhprac/nhrpac.htm.

Dated: September 27, 2001.

Greg Koshi,

Executive Secretary, National Human Research Protections Advisory Committee.

[FR Doc. 01–24669 Filed 10–2–01; 8:45 am]

BILLING CODE 4150–28–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Agency for Health Care Research and Quality

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: Agency for Healthcare Research and Quality, HHS.

ACTION: Notice.

SUMMARY: This notice announces the intention of the Agency for Healthcare Research and Quality (AHRQ) to request the Office of Management and Budget (OMB) to allow the proposed information collection project; ''Medical Expenditure Panel Survey—Medical Provider Component (MEPS–MPC) for 2001 and 2002''. In accordance with the Paperwork Reduction Act as amended (see in particular 44 U.S.C. 3506(c)(2)(A)), AHRQ invites the public to comment on this proposed information collection.

DATES: Comments on this notice must be received by December 3, 2001.

ADDRESSES: Written comments should be submitted to: Cynthia D. McMichael, Reports Clearance Officer, AHRQ, 2101 East Jefferson Street, Suite 500, Rockville, MD 20852–4908.

Copies of the proposed collection plans, data collection instruments, and specific details on the estimated burden can be obtained from the AHRQ Reports Clearance Officer.

FOR FURTHER INFORMATION CONTACT: Cynthia D. McMichael, AHRQ, Reports Clearance Officer, (301) 594–3132.

SUPPLEMENTARY INFORMATION:

Proposed Project

''Medical Expenditure Panel Survey—Medical Provider Component (MEPS–MPC) for 2001 and 2002.''

The MEPS–MPC is a survey of hospitals, physicians and other medical providers. The purpose of this survey is

to supplement and verify the information provided by household respondents in the household component of the MEPS (MEPS–HC) about the use of medical services in the United States based on a nationally representative sample.

With the permission of members of the households surveyed in the MEPS–HC, AHRQ contractor will contact the medical providers of the HC Survey respondents to determine the actual dates of service, the diagnoses, the services provided, the amount that was charged, the amount that was paid and the source of payment. Thus, the MPC is derived from or is based upon the core survey, (MEPS–HC) and will improve the quality of the core survey data.

The Medical Expenditure Panel Survey Household Component (MEPS–HC) to be conducted in 2001 through 2003, will provide annual, nationally representative estimates of health care use, expenditures, sources of payment and insurance coverage, for the U.S. civilian non-institutionalized population for 2001 and 2002 respectively. MEPS is co-sponsored by the Agency for Healthcare Research and Quality (AHRQ) and the National Center For Health Statistics (NCHS). Data from medical providers linked to household respondents in the MEPS Household component for calendar year 2001, will be collected beginning in 2002 and continuing into the year 2003, data for calendar year 2002 will be collected beginning in 2003 and continue into the year 2004.

Data Confidentiality Provisions

MEPS data confidentiality is protected under the AHRQ and NCHS confidentiality statutes, sections 308(d) as well as the section 924(c) of the Public Service Act (42 U.S.C. 242m(d) and 42 U.S.C. 299c–3(c) respectively).

Method of Collection

The medical provider survey will be conducted predominantly by telephone, but may include self-administered mail surveys, if requested by the respondent.

The *MPC for Calendar year 2001* estimated annual hour burden is as follows:

Type of provider	No. of respondents	Average No. of patients/providers	Average No. of events/patient	Average burden/event (in minutes)	Total hours of burden
Hospital	5,000	2.15	3.2	5 (.083 hrs.)	2,867
Office-based Doctor	23,000	1.15	3.5	5	7,715
Separately Billing Doctor	11,200	1.22	1.3	5	1,480
Home Health	500	1.0	5.8	5	242
Pharmacy	9,000	1.75	10.3	3	8,111
Estimated Annual Burden Total					20,415

MPC FOR CALENDAR YEAR 2002

Type of provider	No. of respondents	Average No. of patients/providers	Average No. of events/patient	Average burden/event (in minutes)	Total hours of burden
Hospital	5,000	2.60	3.2	5 (.083 hrs.)	3,467
Office-based Doctor	18,000	1.15	3.5	5	6,038
Separately Billing Doctor	13,360	1.22	1.3	5	1,766
Home Health	600	1.00	5.8	5	290
Pharmacy	10,700	1.75	10.3	3	9,643
Estimated Annual Burden Total					21,204

Request for Comments

Comments are invited on: (a) The necessity of the proposed collections; (b) the accuracy of the Agency's estimate of 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 upon the respondents, including the use of automated collection techniques or other forms of information technology.

Comments submitted in response to this notice will be summarized and included in the request for OMB approval of the proposed information collection. All comments will become a matter of public record.

Copies of these proposed collection plans and instruments can be obtained from the AHRQ Reports Clearance Officer (see above).

Dated: September 27, 2001.

John M. Eisenberg,

Director.

[FR Doc. 01–24744 Filed 10–2–01; 8:45 am]

BILLING CODE 4160–90–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Agency for Toxic Substances and Disease RegistrySenior Executive Service; Performance Review Board Members

AGENCY: Centers for Disease Control and Prevention (CDC), and Agency for Toxic Substances and Disease Registry (ATSDR), Department of Health and Human Services.

ACTION: Notice.

SUMMARY: Title 5, U.S. Code, Section 4314(c)(4) of the Civil Service Reform Act of 1978, Public Law 95–454,

requires that appointment of Performance Review Board members be published in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: Connie Clayton, Human Resources Management Office, Office of Management and Operations, Centers for Disease Control and Prevention, 4770 Buford Highway, Mailstop K–07, Atlanta, Georgia 30341–3724, telephone 770–488–1874.

SUPPLEMENTARY INFORMATION: The following persons will serve on the Performance Review Board which oversees the evaluation of performance appraisals of Senior Executive Service members of the Department of Health and Human Services in the Centers for Disease Control and Prevention, and the Agency for Toxic Substances and Disease Registry:

Virginia Shankle Bales, Chairperson
Stephen B. Blount, M.D., M.P.H.
Janet L. Collins, Ph.D.
Henry Falk, M.D., M.P.H.
Stephen B. Thacker, M.D.

Dated: September 26, 2001.

Virginia Shankle Bales,

Deputy Director for Program Management, Centers for Disease Control and Prevention (CDC).

[FR Doc. 01–24678 Filed 10–2–01; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

[Document Identifier: CMS–10040]

Agency Information Collection Activities: Submission for OMB Review; Comment Request

AGENCY: Centers for Medicare & Medicaid Services, HHS.

In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Centers for Medicare & Medicaid Services (CMS) (formerly known as the Health Care Financing Administration (HCFA)), Department of Health and Human Services, is publishing the following summary of proposed collections for public comment. Interested persons are invited to send comments regarding this burden estimate or any other aspect of this collection of information, including any of the following subjects: (1) The necessity and utility of the proposed information collection for the proper performance of the agency's functions; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

Type of Information Collection Request: New collection; *Title of Information Collection:* NMEP Regional Survey of Medicare Beneficiaries; *Form No.:* HCFA–10040 (OMB# 0938–NEW); *Use:* HCFA is proposing to conduct a survey by selecting 2,000 Medicare beneficiaries per HCFA region from HCFA's administrative databases with oversampling for underserved populations as a part of the continuous assessment on the knowledge and understanding of the Medicare program and the NMEP/Medicare+Choice outreach and educational efforts to systematically quantify current knowledge and awareness and to assess future direction; *Frequency:* On occasion; *Affected Public:* Individuals or households, Business or other for-profit, Not-for-profit institutions; *Number of Respondents:* 20,000; *Total Annual Responses:* 20,000; *Total Annual Hours:* 5,000.

To obtain copies of the supporting statement and any related forms for the proposed paperwork collections referenced above, access CMS' Web Site address at http://www.hcfa.gov/regs/prdact95.htm, or E-mail your request, including your address, phone number, OMB number, and CMS document identifier, to Paperwork@hcfa.gov, or call the Reports Clearance Office on (410) 786–1326. Written comments and recommendations for the proposed information collections must be mailed within 30 days of this notice directly to the OMB desk officer: OMB Human Resources and Housing Branch, Attention: Allison Eydt, New Executive Office Building, Room 10235, Washington, D.C. 20503.

Dated: September 10, 2001.

John P. Burke III,

CMS Reports Clearance Officer, CMS Office of Information Services, Security and Standards Group, Division of CMS Enterprise Standards.

[FR Doc. 01–24741 Filed 10–2–01; 8:45 am]

BILLING CODE 4120–03–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

[Document Identifier: CMS–576]

Agency Information Collection Activities: Submission for OMB Review; Comment Request

AGENCY: Centers for Medicare & Medicaid Services, HHS.

In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Centers for Medicare and Medicaid Services (CMS) (formerly known as the Health Care Financing Administration (HCFA), Department of Health and Human Services, is publishing the following summary of proposed collections for public comment. Interested persons are invited to send comments regarding this burden estimate or any other aspect of this collection of information, including any of the following subjects: (1) The necessity and utility of the proposed information collection for the proper performance of the agency's functions; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

Type of Information Collection Request: Extension of a currently approved collection; *Title of Information Collection:* Organ Procurement Organization (OPO) Request for Designation and Supporting Regulations in 42 CFR 486.301–486.325; *Form No.:* CMS–576 (OMB# 0938–0512); *Use:* The information provided on this form serves as a basis for certifying OPOs for participation in the Medicare and Medicaid programs and will indicate whether the OPO is meeting the specified performance standards for reimbursement of service; *Frequency:* Annually; *Affected Public:* Business or other for-profit, and Not-for-profit institutions; *Number of Respondents:* 69; *Total Annual Responses:* 69; *Total Annual Hours:* 138.

To obtain copies of the supporting statement and any related forms for the proposed paperwork collections referenced above, access CMS' Web Site address at http://www.hcfa.gov/regs/prdact95.htm, or E-mail your request, including your address, phone number, OMB number, and CMS document identifier, to Paperwork@hcfa.gov, or

call the Reports Clearance Office on (410) 786–1326. Written comments and recommendations for the proposed information collections must be mailed within 30 days of this notice directly to the OMB desk officer: OMB Human Resources and Housing Branch, Attention: Allison Eydt, New Executive Office Building, Room 10235, Washington, D.C. 20503.

Dated: July 18, 2001.

John P. Burke III,

CMS Reports Clearance Officer, CMS Office of Information Services, Security and Standards Group, Division of CMS Enterprise Standards.

[FR Doc. 01–24742 Filed 10–2–01; 8:45 am]

BILLING CODE 4120–03–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

[CMS–4029–N]

Medicare Program: Request for Nominations for the Advisory Panel on Medicare Education

AGENCY: Centers for Medicare & Medicaid Services (CMS), HHS.

ACTION: Notice.

SUMMARY: This notice requests nominations for individuals to serve on the Advisory Panel on Medicare Education (the Panel). The Panel advises and makes recommendations to the Secretary of the Department of Health and Human Services (HHS) and the Administrator of the Centers for Medicare & Medicaid Services (CMS), on opportunities for CMS to optimize the effectiveness of the National Medicare Education Program and other CMS programs that help Medicare beneficiaries understand Medicare and the range of Medicare options available under the Medicare+Choice program.

EFFECTIVE DATE: Nominations will be considered if we receive them at the appropriate address, provided below, no later than 5:00 pm. on October 29, 2001.

ADDRESSES: Mail or deliver nominations to the following address: Nancy M. Caliman, Center for Beneficiary Choices, Centers for Medicare & Medicaid Services, 7500 Security Boulevard, S2–23–05, Baltimore MD, 21244–1850.

FOR FURTHER INFORMATION CONTACT: Nancy M. Caliman, Health Insurance Specialist, Division of Partnership Development, Center for Beneficiary Choices, Centers for Medicare & Medicaid Services, 7500 Security Boulevard, S2–23–05, Baltimore, MD, 21244–1850, (410) 786–5052. Please refer to the CMS Advisory Committees Information Line (1–877–449–5659 toll free)/(410–786–9379 local) or the Internet (*http://www.hcfa.gov/events/apme/homepage.htm*) for additional information and updates on committee activities, or contact Ms. Caliman via e-mail at *APME@cms.hhs.gov.* Press inquiries are handled through the CMS Press Office at (202) 690–6145.

SUPPLEMENTARY INFORMATION: Section 222 of the Public Health Service Act, as amended, grants to the Secretary the authority to establish an advisory panel if the Secretary finds the panel necessary and in the public interest. The Secretary signed the charter establishing this Panel on January 21, 1999 and the charter renewing the Panel on January 18, 2001. The Advisory Panel on Medicare Education advises the Department of Health and Human Services and the Centers for Medicare & Medicaid Services on opportunities to enhance the effectiveness of consumer education materials serving the Medicare program.

The goals of the Panel are to provide advice on the following:

- Developing and implementing a national Medicare education program that describes the options for selecting a health plan under Medicare.
- Enhancing the Federal government's effectiveness in informing the Medicare consumer, including the appropriate use of public-private partnerships.
- Expanding outreach to vulnerable and underserved communities, including racial and ethnic minorities, in the context of a national Medicare education program.
- Assembling an information base of best practices for helping consumers evaluate health plan options and building a community infrastructure for information, counseling, and assistance.

The Panel shall consist of a maximum of 20 members. The Chair shall either be appointed from among the 20 members, or a Federal official will be designated to serve as the Chair. The charter requires that meetings shall be held approximately four times per year. Members will be expected to attend all meetings. The members and the Chair shall be selected from authorities knowledgeable in the fields of senior citizen advocacy; outreach to minority communities; health communications; disease-related health advocacy; disability policy and access; health economics research; health insurers and plans; providers and clinicians; and matters of labor and retirement; and from representatives of the general public.

This notice is an invitation to interested organizations or individuals to submit their nominations for membership on the Panel. Current members whose terms expire in 2002 will be considered for reappointment, if renominated, subject to committee service guidelines. The Secretary, or his designee, will appoint new members to the Panel from among those candidates determined to have the expertise required to meet specific agency needs, and in a manner to ensure an appropriate balance of membership.

Each nomination must state that the nominee has expressed a willingness to serve as a Panel member and must be accompanied by a short resume or description of the nominee's experience. In order to permit an evaluation of possible sources of conflict of interest, potential candidates will be asked to provide detailed information concerning such matters as financial holdings, consultancies, and research grants or contracts. Self-nominations will also be accepted.

(Section 222 of the Public Health Service Act (42 USC 217(a)) and section 10(a) of Public Law 92–463 (5 U.S.C. App. 2, section 10(a) and 41 CFR 102–3)

(Catalog of Federal Domestic Assistance Program No. 93.773, Medicare—Hospital Insurance Program; and Program No. 93.774, Medicare—Supplementary Medical Insurance Program)

Dated: September 30, 2001.

Thomas A. Scully,

Administrator, Centers for Medicare & Medicaid Services.

[FR Doc. 01–24913 Filed 10–2–01; 8:45 am]

BILLING CODE 4120–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 00D–1543]

Draft Guidance for Industry; Electronic Records; Electronic Signatures, Glossary of Terms; Availability; Correction

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice; correction.

SUMMARY: The Food and Drug Administration (FDA) is correcting a notice that appeared in the **Federal Register** of September 24, 2001 (66 FR 48886). The document announced the availability of a draft guidance entitled ''Guidance for Industry, 21 CFR Part 11; Electronic Records; Electronic

Signatures, Glossary of Terms.'' The document published with an inadvertent error. This document corrects that error.

DATES: October 3, 2001

FOR FURTHER INFORMATION CONTACT: Joyce Strong, Office of Policy, Planning, and Legislation (HF–27), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–7010.

SUPPLEMENTARY INFORMATION: In FR Doc. 01–23805, appearing in the **Federal Register** of Monday, September 24, 2001, the following correction is made: On page 48886, in the third column, ''[Docket No. 00N–1543]'' is corrected to read, ''[Docket No. 00D–1543]''.

Dated: September 27, 2001.

Margaret M. Dotzel,

Associate Commissioner for Policy.

[FR Doc. 01–24768 Filed 10–2–01; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

Amendment to the Charter of the Advisory Committee on Organ Transplantation

AGENCY: Health Resources and Services Administration (HRSA), HHS.

ACTION: Notice of amendment to the Charter of the Advisory Committee on Organ Transplantation.

SUMMARY: The Acting Administrator, HRSA, announces an amendment to the Charter of the Advisory Committee on Organ Transplantation (ACOT) to expand the scope of its responsibilities and increase the size of its membership. In addition to its current responsibilities, the Committee has been charged with advising the Secretary on ways to improve Federal and other efforts to increase organ donation nationally. The number of allowable Committee members has been increased from 20 to 41. Further, it has been specified that the term of service of the Committee Chairperson shall be 1 year; new member terms have been restricted to 2, 3 and 4 years; management and support services have been transferred to the Office of SpecialPrograms, HRSA; and meeting frequency has been specified as approximately 3 times per year. Revised annual cost estimates have been provided.

ADDRESSES: Questions concerning this action may be addressed to Jack Kress, Executive Director, Advisory Committee on Organ Transplantation, Office of Special Programs, Health Resources and Services Administration, 5600 Fishers Lane, Room 7–100, Rockville, MD 20857. A request for a copy of the Charter, as amended, for the Advisory Committee on Organ Transplantation should be submitted to Miguel Kamat, M.D., M.P.H., Division of Transplantation, Health Resources and Services Administration, 5600 Fishers Lane, Room 7C–22, Rockville, MD 20857, or may be viewed on the Division's Web site at *www.hrsa.gov/osp/dot.*

FOR FURTHER INFORMATION, CONTACT: Jack Kress, (301) 443–8653.

SUPPLEMENTARY INFORMATION:

On September 28, 2000, HRSA published a **Federal Register** Notice regarding establishment of the ACOT pursuant to 42 CFR 121.12 and Public Law 92–463, the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2) (65 FR 58279). The unamended Charter included sections on the purpose, authority, function, structure, meetings, compensation, annual cost estimates, reports and termination dates of the Committee. The expanded scope of responsibilities and increased membership of the ACOT will ensure that the Secretary will receive advice on all aspects of organ donation, procurement, allocation, and transplantation. The Amendment specifies that, as one of its principal functions, the Committee shall advise the Secretary on ways to maximize Federal efforts to increase living and cadaveric organ donation nationally. The additional members will provide expert input to the deliberations of the ACOT when it considers questions on organ donation, including issues on living donation. The Committee will advise the Secretary through the Administrator, HRSA, on all the above issues, as well as on other matters that the Secretary may seek recommendation.

The Charter, as amended, is reprinted below.

Advisory Committee on Organ Transplantation Charter, as Amended

Purpose

The Department of Health and Human Services (HHS) has a vital role in safeguarding and promoting public health by overseeing the development of an equitable and effective organ donation, procurement, allocation, and transplantation system in the United States. The recommendations of the Advisory Committee on Organ Transplantation will facilitate HHS efforts to oversee the Organ Procurement and Transplantation Network (OPTN), as envisioned in the National Organ Transplant Act of 1984, as amended.

Authority

42 U.S.C. 217a; Sec. 222 of the PHS Act, as amended; 42 CFR 121.12 (64 FR 56661). The Committee is governed by the provisions of Public Law 92–463, as amended (5 U.S.C. Appendix 2), which sets forth standards for the formation and use of advisory committees.

Function

The Committee shall advise the Secretary, acting through the Administrator, Health Resources and Services Administration (HRSA), on all aspects of organ donation, procurement, allocation, and transplantation, and on such other matters that the Secretary determines. One of its principal functions shall be to advise the Secretary on ways to maximize Federal efforts to increase living and cadaveric organ donation nationally.

The Committee shall, at the request of the Secretary, review significant proposed OPTN policies submitted for Secretarial approval to recommend whether they should be made enforceable. It shall provide expert input to the Secretary on the latest advances in the science of transplantation, the OPTN's system of collecting, disseminating and ensuring the validity, accuracy, timeliness and usefulness of data, and additional medical, public health, ethical, legal, financial coverage, and socioeconomic issues that are relevant to transplantation.

Structure

The Committee shall consist of up to 41 members, including the Chair. Members and Chair shall be selected by the Secretary from individuals knowledgeable in such fields as organ donation, health care public policy, transplantation medicine and surgery, critical care medicine and other medical specialties involved in the identification and referral of donors, non-physician transplant professions, nursing, epidemiology, immunology, law and bioethics, behavioral sciences, economics and statistics, as well as representatives of transplant candidates, transplant recipients, organ donors, and family members. To the extent practicable, Committee members should represent the minority, gender and geographic diversity of transplant candidates, transplant recipients, organ donors and family members served by the OPTN. The Secretary may appoint non-voting Ex-Officio members, or designees of such officials, as the

Secretary deems necessary for the Committee to effectively carry out its function.

As necessary, standing and ad hoc subcommittees, composed of members of the parent committee, may be established to perform specific functions within the Committee's jurisdiction. The Department Committee Management Officer shall be notified upon establishment of each subcommittee, and shall be provided information on its name, membership, function, and estimated frequency of meetings.

Members shall be invited to serve for overlapping 4-year terms, except that initially the Secretary shall appoint a portion of the members to terms of 2 years, and 3 years. Terms past the termination date of the Committee are contingent upon renewal of the Committee by appropriate action prior to this date. Members may serve after the expiration of their terms until their successors have taken office. The Secretary shall appoint a Chair from among the Committee members to serve for a term of 1 year, and may invite the Chair to serve additional term(s).

A vacancy on the Advisory Committee shall be filled in the manner in which the original appointment was made and shall be subjected to any conditions that applied with respect to the original appointment. An individual chosen to fill a vacancy shall be appointed for the remainder of the term of the member replaced. The vacancy shall not affect the power of the remaining members to execute the duties of the Committee.

Management and support services shall be provided by the Office of Special Programs, Health Resources and Services Administration.

Meetings

Meetings shall be held approximately 3 times per year at the call of the Chair with the advance approval of a Government official, who shall also approve the agenda. A Government official shall be present at all meetings.

A majority of the Committee shall constitute a quorum.

Meetings shall be open to the public except as determined otherwise by the Secretary or other officials to whom the authority has been delegated. Notice of all meetings shall be provided to the public.

Meetings shall be conducted, and records of the proceedings kept, as required by applicable laws and Departmental regulations.

Compensation

Members shall be paid at a rate not to exceed the daily equivalent of the rate in effect for Executive Level IV of the Executive Schedule, for each day they are engaged in the performance of their duties as members of the Committee. Members shall receive per diem and travel expenses as authorized by 5 U.S.C. 5703, Title 5 U.S.C., as amended, for persons employed intermittently in the Government service. Members who are officers or employees of the United States shall not receive compensation for service on the Committee.

Annual Cost Estimate

Estimated annual cost for operating the Committee, including compensation and travel expenses for members but excluding staff support, is $281,144. Estimated annual person-years of staff support required is 2.45, at an estimated annual cost of $218,425.

Reports

In the event a portion of a meeting is closed to the public, a report shall be prepared that shall contain, at a minimum, a list of members and their business addresses, the Committee's function, dates and places of meetings, and a summary of Committee activities and recommendations made during the fiscal year. A copy of the report shall be provided to the Department Committee Management Officer.

Termination Date

Unless renewed by appropriate action prior to its expiration, the Advisory Committee on Organ Transplantation shall terminate two years from the date this charter is approved.

Dated: September 27, 2001.

Elizabeth M. Duke,

Acting Administrator.

[FR Doc. 01–24638 Filed 10–2–01; 8:45 am]

BILLING CODE 4165–15–U

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Indian Health Service

Statement of Mission, Organization, Functions and Delegation of Authority

Part G, of the Statement of Organization, Functions, and Delegations of Authority of the Department of Health and Human Services, as amended at 60 FR 56606, November 9, 1995, and most recently amended at 61 FR 67048, December 19, 1996, is amended to reflect a reorganization of the Bemidji Area Indian Health Service (GFE). The changes are as follows:

Delete the functional statements for the Bemidji Area in their entirety and replace with the following:

Section GFE–00, Bemidji Area Indian Health Service-Mission. The Bemidji Area IHS defines its mission as a commitment to the well-being and cultural integrity of Indian people through a participatory and consultative process. The goal of the Bemidji Area IHS is to elevate the health status of American Indian and Alaska Native (AI/AN) people to the highest possible level by (1) providing and/or assuring availability, (2) providing increasing opportunities for Indians to manage and operate their own health programs; and (3) serving as an advocate for Indian people.

Section GFE–10, Functions. Office of the Director (GFE1). (1) Plans, develops and directs the Area program within the framework of IHS policy in pursuit of the IHS mission; (2) coordinates the IHS activities and resources internally and externally with those of other governmental and non-governmental programs; (3) ensures the full application of the principles of Indian Preference and Equal Employment Opportunity; (4) provides Indian Tribes and other Indian community groups with ways of participating in the development of Indian health programs through the use of communications with the Tribal Health Board that develop the goals and objectives of the Bemidji Area IHS; and (5) promotes optimum utilization of health care services through development of networking strategies between State Health Offices and IHS Tribal participation.

Office of Self-Determination (GFE1–1). (1) Plans, coordinates, evaluates, directs, and implements Public Law 93–638, the Indian Self Determination and Education Assistance Act program; (2) plans, coordinates, evaluates, directs and implements Public Law 106–260, Section 513, the Tribal Self-Governance Amendments of 2000; (3) develops, coordinates, and monitors the program aspects of Tribal contracts and grants; (4) provides technical assistance to Tribal organizations and urban groups; (5) coordinates and stimulates consultant activities designed to promote Indian participation in IHS health programs; (6) serves as liaison with State and Tribal governments as well as with other agencies and organizations; (7) provides a bi-annual report to Tribes and Federal Service Units on the state of public health in the Bemidji Area; (8) interprets policy and provides direction in the conduct of Self-Determination, contracting,

compacting and grants activities; and (9) plans, develops, and provides analyses of resource allocation methodologies for distribution of funds to Tribes and Service Units.

Division of Contracting (GFE1–2). (1) Interprets policy and provides direction in the conduct of the Bemidji Area procurement and grants activities; (2) administers contracts awarded to health care organizations for urban health and substance abuse services in the Bemidji Area; and (3) manages contract activities for sanitation processes and Self-Determination contract procedures.

Office of Program Support (GFE2). (1) Plans, directs, and evaluates on all matters related to Area management and administrative support activities in the area of financial management, personnel management, area procurement, and Service Unit operations; (2) interprets policy and provides direction in the conduct of the Area business office functions; (3) maintains necessary liaison with various components of the IHS and the PHS in furtherance of Area management activities; (4) advises the Area Director on all matters related to the administrative operations of the Area office and Service Unit operations; (5) coordinates and stimulates activities designed to promote Indian participation in IHS health programs; (6) plans, evaluates, coordinates and implements the Area environmental health service programs, the Facilities Management Branch, and Biomedical Engineering Branch; (7) provides direction in constructing, improving and extending essential sanitation facilities in Indian homes and communities; and (8) provides direction in constructing, maintaining and improving IHS health facilities.

Environmental Health & Engineering Branch (GFE2–1). (1) Coordinates activities designed to identify problems and effect improvement in Indian homes, communities, and work and institutional environments; (2) provides advisory and consultative services regarding sanitation practices, hazardous conditions and those physical, social and behavioral factors which affect the environment; and (3) provides management of owned and leased real property, including quarters.

Finance Staff (GFE2–2). (1) Provides guidance to the Area on financial management activities including program policy interpretation in budget formulation and execution; (2) provides financial management of grants and contracts; and (3) monitors Area funds, controls, and provides status reports to Area management.

Personnel Staff (GFE2–3). (1) Plans, coordinates, implements, develops the hiring/staffing program to ensure the placement of qualified staff in the Bemidji Area.

Management Analysis Staff (GFE2–4). (1) Plans, coordinates, implements, develops the administrative programs in the Bemidji Area in directives, delegation control program, record management and all office services functions.

Office of Clinical Support (GFE3). (1) Plans, coordinates, implements, develops and evaluates a national recruitment/retention program to ensure a cadre of qualified health professionals are available in the Bemidji Area; (2) identifies program resources in collaboration with State, private and other Federal agencies for public health focuses and ensures that all health care services delivered in the Bemidji Area are of the highest quality compatible with available resources; (3) plans, coordinates, implements, directs and evaluates the Area clinical elements as identified by Tribal and congressional mandates; (4) provides for the evaluation and assessment of health data collection activities for the Bemidji Area; (5) coordinates specific health related data collection activities by Tribes and IHS; (6) interprets policy and provides direction in the conduct of the Area contract health program; (7) provides guidance and direction regarding the Area's information resources management; and (8) advises the Area Director on all matters related to health care programs.

Management Information Systems Branch (GFE3–1). (1) Provides guidance and direction regarding the Area's information resources management; (2) develops, coordinates and maintains Area policy and standards concerning information resources management; and (3) installs, maintains and troubleshoots Resource and Patients Management System (RPMS) computer equipment.

Behavioral Health Staff (GFE3–2). (1) Plans, coordinates, implements Area activities related to mental health and substance abuse, including state liaison, development of quality improvement efforts, collaboration on software training for case management and data collection.

Health Resource Management Staff (GFE3–3). (1) Works with Tribal Service Unit programs through the provision of technical assistance on all aspects of the contract health service program, including development of equitable allocation methods and policy formulation.

Health Professions Recruitment Staff (GFE3–4). (1) Provides assistance to Federal Service Units and Tribal programs in the recruitment of physicians, dentists, mid-level provider staff and allied health staff.

Health Information Staff (GFE3–5). (1) Serves as software program manager for all health service data collection; (2) coordinates Health Promotion/Disease Prevention initiatives; (3) develops surveillance process for Government Performance and Results Act; (4) provides training on RPMS software program; and (5) provides technical assistance for accreditation of quality improvement, privacy act, and information coordination.

Section GFE–20, Bemidji Area, IHS—Delegation of Authority. All delegations and redelegations of authority made to officials in the Bemidji Area, IHS that were in effect immediately prior to this reorganization, and that are consistent with this reorganization, shall continue in effect pending further redelegation.

This reorganization shall be effective on the date of signature.

Dated: September 27, 2001.

Michael H. Trujillo,

Assistant Surgeon General, Director, Indian Health Service.

[FR Doc. 01–24769 Filed 10–2–01; 8:45 am]

BILLING CODE 4160–16–M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4650–N–71]

Notice of Submission of Proposed Information Collection to OMB Information Request to Owners of HUD-Assisted Multifamily Housing in Boston, Pursuant to Section III.A of Consent Decree in N.A.A.C.P., Boston Chapter v. Martinez

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:* November 2, 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 (2510–0008) 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 proposals; (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 revisions 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: Information request to owners of HUD-assisted multifamily housing in Boston, pursuant to Section III.A of Consent Decree in N.A.A.C.P., *Boston Chapter* v. *Martinez.*

OMB Approval Number: 2510–0008.

Form Numbers: HUD–23002.

Description of the Need for the Information and its Proposed Use: Pursuant to Section III.A of the Consent Decree in NAACP, Boston Chapter v. Martinez, as modified, HUD is required to submit annual reports to the Court setting forth the current racial makeup, family composition, and vacancy rate of HUD-assisted multifamily rental housing located in the City of Boston. The information is required to prepare reports to determine if there has been any progress toward achieving the goal of the Decree.

Respondents: Business or other for profit, Not-for-profit institutions.

Frequency of Submission: Annually.

	Number of respondents	×	Frequency of response	×	Hours per response	=	Burden hours
Reporting burden	213		1		1		213

Total Estimated Burden Hours: 213.

Status: Reinstatement, with change.

Authority: Section 3507 of the Paperwork Reduction Act of 1995, 44 U.S.C. 35, as amended.

Dated: September 27, 2001.

Wayne Eddins,

Departmental Reports Management Officer, Office of the Chief Information Officer.

[FR Doc. 01–24655 Filed 10–2–01; 8:45 am]

BILLING CODE 4210–72–M

DEPARTMENT OF INTERIOR

Fish and Wildlife Service

Availability of an Environmental Action Statement and Receipt of an Application From Paramount Farming Company for a Permit To Enhance the Survival of the San Joaquin Kit Fox in Kern County, CA

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of Availability.

SUMMARY: Paramount Farming Company (Applicant) has applied to the Fish and Wildlife Service (Service) for an enhancement of survival permit pursuant to section 10(a)(1)(A) of the Endangered Species Act of 1973, as amended. The permit application includes a proposed Safe Harbor Agreement (Agreement) between the Applicant and the Service. The Agreement allows for management and conservation of the endangered San Joaquin kit fox (*Vulpes macrotis mutica*) on 1,668 acres of private land, owned by the Applicant, between the Lost Hills oil field and the California Aqueduct, in western Kern County. The proposed duration of both the Agreement and permit is 3 years, and can be extended on an annual basis.

The Service has made a preliminary determination that the proposed Agreement and permit application are eligible for categorical exclusion under the National Environmental Policy Act of 1969. The basis for this determination is contained in an Environmental Action Statement, which also is available for public review.

DATES: Written comments should be received on or before November 2, 2001.

ADDRESSES: Comments should be addressed to Chief, Conservation Planning Division, Fish and Wildlife Service, 2800 Cottage Way, W–2605, Sacramento, California, 95825–1846 or sent by facsimile to (916) 414–6713.

FOR FURTHER INFORMATION CONTACT: Susan Jones, Fish and Wildlife Biologist, at (916) 414–6600 (see **ADDRESSES**).

SUPPLEMENTARY INFORMATION:

Document Availability

Individuals wishing copies of the application, Agreement, and Environmental Action Statement should immediately contact the Service by telephone at (916) 414–6600 or by letter to the Sacramento Fish and Wildlife Office. Copies of the documents are also available for public inspection at the Sacramento Fish and Wildlife Office during regular business hours.

Background

Under a Safe Harbor Agreement, participating landowners voluntarily undertake management activities on their property to enhance, restore, or maintain habitat benefitting species listed under the Endangered Species Act of 1973, as amended. Safe Harbor Agreements encourage private and other non-Federal property owners to implement conservation efforts for listed species by assuring property owners they will not be subjected to increased property use restrictions if their efforts attract listed species to their property or increase the numbers or distribution of listed species already on their property. Application requirements and issuance criteria for enhancement of survival permits through Safe Harbor Agreements are found in 50 CFR 17.22(c).

The Applicant has developed the proposed Agreement for the conservation of the endangered San Joaquin kit fox on 1,668 acres of their land in Kern County, California. The escape dens are being placed purposely in an active acricultural area to determine if, while foraging in agricultural fields, San Joaquin kit foxes can escape predation by coyotes, red foxes, and other canids. During the 3-year period, some escape dens may be relocated in response to data from the

study. Approximately 25 escape dens will be installed in above-ground mounds, to reduce the risk of flooding from crop irrigation, especially with regard to row crops. Of these, approximately four will consist of a concrete or metal chamber that is generally buried several feet below the surface and connected to the surface by means of one or two 8-inch pipes. The remaining escape dens will be suitable diameter pipes placed on the surface and covered with dirt in such a way as to leave one or both ends of the pipe open. The total surface area buffer around the escape den sites that needs to be kept free of earth moving activities, planting, or other disturbance will be no less than 10 feet and up to 30 feet when possible. To minimize the amount of affected agricultural land, the escape dens will be located along existing agricultural roads, irrigation canals, or other areas not in current agricultural use. To optimize distribution, some escape dens may be located on land currently in agricultural use. Use of the escape dens will be monitored by the Endangered Species Recovery Program, a cooperative research program based out of California State University at Fresno, California. Monitoring will be conducted using radio telemetry of radio-collared San Joaquin kit fox, spotlighting, track plates, remote cameras, and physical inspection. Scheduling of all activities related to this project will occur to ensure that there is no interference with agricultural activities on Paramount Farm's land.

Threats to survival of the San Joaquin kit fox include loss and degradation of habitat by agricultural and industrial developments and urbanization, and fragmentation of habitat by development and roads, as detailed in the Recovery Plan for Upland Species of the San Joaquin Valley prepared by the Service in 1998. The Agreement provides a net conservation benefit to San Joaquin kit fox by (1) providing information about San Joaquin kit fox use of escape dens on agricultural lands and (2) facilitating movement of San Joaquin kit fox across agricultural lands. The biological goal of San Joaquin kit fox conservation measures in the Agreement is to improve movement of San Joaquin kit foxes between populations that are becoming more and more isolated. Recovery of the species would be enhanced by more movement of San Joaquin kit foxes between populations and lower predation rates of San Joaquin kit fox on agricultural lands.

Consistent with the Service's Safe Harbor Agreement, regulation and policy, under the Agreement, the Service would issue a permit to the Applicant authorizing incidental take as a result of normal agricultural activities on the 1,668 acres. Cotton, barley, wheat, and safflower are grown on about 69 percent of these acres; pistachios cover about 21 percent, and almonds 5 percent. Approximately 5 percent is a former orchard that is now a disced field. Normal agricultural practices that are expected to occur on these lands and that are proposed to be included in the Agreement are discing, irrigation, and harvesting. Application of pesticides will not be covered by the Safe Harbor Agreement.

The Applicant also will receive incidental take authorization, should San Joaquin kit fox activity on their land be enhanced through the artificial escape dens. While unlikely, it is possible that in the course of normal agricultural activities, a San Joaquin kit fox accidently could be injured or killed.

This Agreement will allow the Applicant to remove the artificial escape dens and return the area to it's prior, or baseline condition (*i.e.,* no San Joaquin kit fox dens) after 3 years, if so desired by the Applicant.

The Service has made a preliminary determination that approval of the Agreement qualifies as a categorical exclusion under the National Environmental Policy Act, as provided by the Department of Interior Manual (516 DM 2, Appendix 1 and 516 DM 6, Appendix 1) based on the following criteria: (1) Implementation of the Agreement would result in minor or negligible effects on federally listed, proposed, and candidate species and their habitats; (2) implementation of the Agreement would result in minor or negligible effects on other environmental values or resources; and (3) impacts of the Agreement, considered together with the impacts of other past, present and reasonably foreseeable similarly situated projects would not result, over time, in cumulative effects to environmental values or resources which would be considered significant. As more fully explained in our Environmental Action Statement, the Agreement qualifies for a Categorical Exclusion from NEPA for the following reasons:

1. Approval of the Agreement would result in minor or negligible effects on the San Joaquin kit fox. The Service does not anticipated significant direct or cumulative effects to the San Joaquin kit fox resulting from the proposed project.

2. Approval of the Agreement would not have adverse effects on unique geographic, historic or cultural sites, or involve unique or unknown environmental risks.

3. Approval of the Agreement would not result in any cumulative or growth inducing impacts and, therefore, would not result in significant adverse effects on public health or safety.

4. The project does not require compliance with Executive Order 11988 (Floodplain Management), Executive Order 11990 (Protection of Wetlands), or the Fish and Wildlife Coordination Act, nor does it threaten to violate a Federal, State, local or tribal law or requirement imposed for the protection of the environment.

5. Approval of the Agreement would establish a precedent for future actions or represent a decision in principle about future actions with potentially significant environmental effects.

Based upon this preliminary determination, we do not intend to prepare further NEPA documentation. The Service will consider public comments in making it final determination on whether to prepare such additional documentation.

The Service provides this notice pursuant to section 10(c) of the Endangered Species Act and pursuant to implementing regulations for NEPA (40 CFR 1506.6). All comments received on the permit application and Agreement, including names and addresses, will become part of the Administrative record and may be released to the public. We will evaluate the permit application, the Agreement, and comments submitted thereon to determine whether the application meets the requirements of section 10(a) of the Act and NEPA regulations. If the requirements are met, the Service will sign the proposed Agreement and issue an enhancement of survival permit under section 10(a)(1)(A) of the Endangered Species Act to the Applicant for take of San Joaquin kit fox incidental to otherwise lawful activities of the project. The Service will not make a final decision until after the end of the 30-day comment period and will fully consider all comments received during the comment period.

Dated: September 27, 2001.

Duane K. McDermond,

Acting Deputy Manager, California/Nevada Operations Office, Fish and Wildlife Service, Sacramento, California.

[FR Doc. 01–24759 Filed 10–2–01; 8:45 am]

BILLING CODE 4130–55–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[WY–920–1320–EM, WYW136142]

Federal Coal Lease Modification

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of availability of the Documentation of Land Use Plan Conformance and Determination of NEPA Adequacy (DNA) and notice of public hearing on the Modification of Federal Coal Lease WYW136142 at the North Antelope/Rochelle Mine Complex operated by Powder River Coal Company, in Campbell County, WY.

SUMMARY: Pursuant to the National Environmental Policy Act (NEPA) and implementing regulations and other applicable statutes, the Bureau of Land Management (BLM) announces the availability of the DNA for the modification of Federal coal lease WYW136142 in the Wyoming Powder River Basin, and announces the scheduled date and place for a public hearing pursuant to 43 CFR 3432, 3425.3 and 3425.4. The draft DNA addresses the impacts of modifying this Federal coal lease and mining the modification area as a part of the North Antelope/Rochelle Mine Complex operated by Powder River Coal Company, in Campbell County, WY. The purpose of the hearing is to solicit public comments on the DNA, the fair market value, the maximum economic recovery, and the proposed noncompetitive offer of the coal included in the proposed lease modification. This lease modification is being considered for offer as a result of a request received from Powder River Coal Company on June 19, 2000. The tract as requested includes about 19.97 acres containing approximately 2.5 million tons of Federal coal reserves.

DATES: A public hearing will be held at 7 p.m. MDT, on October 9, 2001, at the Clarion Western Plaza Motel, 2009 S. Douglas Highway, Gillette, Wyoming. Written comments on the DNA will be accepted on or before November 2, 2001.

ADDRESSES: Please address questions, comments or requests for copies of the DNA to the BLM Casper Field Office, Attn: Mike Karbs, 2987 Prospector Drive, Casper, WY 82604; or you may e-mail them to the attention of Mike Karbs at casper_wymail@blm.gov; or fax them to 307–261–7587.

FOR FURTHER INFORMATION CONTACT: Mike Karbs or Nancy Doelger at the above address, or phone: 307–261–7600.

SUPPLEMENTARY INFORMATION: The BLM Casper Field Office has received a request to modify an existing Federal coal lease at the North Antelope/Rochelle Mine Complex. This mine is operated by Powder River Coal Company, and is located in Campbell County, WY, approximately 20 miles southeast of Wright. On June 19, 2000, Powder River Coal Company filed an application with the BLM to modify Federal lease WYW136142 by adding the following lands:

T. 41 N., R. 70 W., 6th PM, Wyoming

Section 18: Lot 6 (N½) or (N½NW¼NE¼)

This tract is adjacent to Powder River Coal Company's North Antelope/Rochelle Mine Complex and includes 19.97 acres more or less with an estimated 2.5 million tons of coal. This application was filed as a lease modification under the provisions of 43 CFR 3432.

BLM believes that this lease modification serves the interests of the United States because it allows for a more efficient recovery of coal in a narrow or ''neck'' area of the current lease. This modification area is logically recovered as a part of the planned operations on the existing lease, and while this area could be recovered as part of a later competitive coal lease tract, that is not a certainty. If this coal is recovered in concert with the existing lease, it would result in minimal additional surface disturbance.

BLM further believes that there is no current competitive interest in the lands proposed for lease modification, although as noted above, this area could be recovered as part of a later competitive coal lease tract, but that may or may not occur. This lease modification would not reduce the competitive value of a later competitive coal lease tract. Under the lease modification process, the modified lands would be added to the existing lease without competitive bidding. Before offering the lease modification the BLM will prepare an appraisal of the fair market value of the lease. The United States would receive fair market value of the lease for the added lands.

The proposed lease modification is within the mine permit area of the North Antelope/Rochelle Mine Complex. No new facilities or employees would be needed to mine the coal. Haul distances would not be increased. If production at the North Antelope/Rochelle Mine continues at the 2000 rate of 70 million tons of coal, the 2.5 million tons of coal included in the proposed lease modification would represent less than one-half month of production. The lands have most recently been studied under the National Environmental Policy Act of 1969 (NEPA) as part of the Powder River/Thundercloud LBA EIS (lease by application environmental impact statement), as well as several earlier NEPA analyses. BLM prepared a DNA for this action to make most effective use of these existing NEPA analyses. If this tract is modified into the current lease, the new lands must be incorporated into the existing mining plans for the North Antelope/Rochelle Mine Complex. The Office of Surface Mining Reclamation and Enforcement (OSM) is a cooperating agency in the preparation of the environmental document because it is the Federal agency that is responsible for any required actions necessary to incorporate these lands into the current mining plan.

BLM conducted scoping during August 2001, soliciting specific concerns that should be considered in processing this modified lease application, with scoping comments accepted through September 7, 2001. The DNA addresses issues identified or information received during this scoping period for the proposed lease modification. In addition to preparing the DNA, BLM will also develop possible stipulations regarding mining operations, determine the fair market value of the tract and evaluate maximum economic recovery of the coal in the proposed tract while processing this lease modification.

Comments on the DNA, the fair market value, the maximum economic recovery, and the proposed noncompetitive offer of the coal included in the proposed lease modification, as well as scoping comments already received, including names and street addresses of respondents, will be available for public review at the address below during regular business hours (7:45 a.m.–4:30 p.m.), Monday through Friday, except holidays. Individual respondents may request confidentiality. If you wish to withhold your name or street address from public review or from disclosure under the Freedom of Information Act, you must state this prominently at the beginning of your written comment. Such requests will be honored to the extent allowed by law. All submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, will be made available for public inspection in their entirety.

Dated: August 30, 2001.

Alan Rabinoff,

Deputy State Director, Minerals and Lands.

[FR Doc. 01–24662 Filed 10–2–01; 8:45 am]

BILLING CODE 4310–22–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[ES–020–01–1310–EI]

Notice of Intent To Prepare Planning Anslyses/Environmental Assessments

AGENCY: Bureau of Land Management (BLM), Interior.

ACTION: Notice of intent to prepare planning analyses/environmental assessments.

SUMMARY: The Jackson Field Office, Eastern States will prepare Planning Analyses/Environmental Assessments (PA/EA) to consider leasing scattered tracts of Federal mineral estate for oil and gas exploration and development. This notice is issued pursuant to Title 40 Code of Federal Regulations (CFR) 1501.7 and Title 43 CFR 1610.2(c). The planning effort will follow the procedures set forth in Title 43 CFR part 1600. The public is invited to participate in this planning process, beginning with the identification of planning issues and criteria.

DATES: Comments relating to the identification of planning issues and criteria will be accepted for 30 days from the date of this publication.

ADDRESSES: Send comments to: Bureau of Land Management, Jackson Field Office, 411 Briarwood Drive, Suite 404, Jackson, MS 39206.

FOR FURTHER INFORMATION CONTACT: John Reiss, Lead for PA/EA, Jackson Field Office, (601–977–5400).

SUPPLEMENTARY INFORMATION: The BLM has responsibility to consider nominations to lease Federal mineral estate for oil and gas exploration and development. An interdisciplinary team will be used in the preparation of the PA/EAs. Preliminary issues, subject to change as a result of public input, are (1) potential impacts of oil and gas exploration and development on the surface resources and (2) consideration of restrictions on lease rights to protect surface resources. The number of separate analyses that will be prepared for the tracts will depend on their proximity to each other. Tract locations, along with acreage, are listed below.

Alabama, Clarke County, St. Stephens Meridian

T 6 N, R 3 E—Section 4: W½NE¼,SE¼NE¼

T 9 N, R 1 E—Section 31: SW¼NW¼

Alabama, Conecuh and Monroe Counties, St. Stephens Meridian

T 6 N, R 8 E—Section 34: NE¼ SE¼, SE¼NE¼

T 6 N, R 9 E—Section 19: S½SE¼,NW¼SE¼

Alabama, Lamar County, Huntsville Meridian

T 16 S, R 16 W—Section 5:N½NE¼, Section 11: NE¼SW¼, Section 20: NW¼NE¼

Alabama, St. Clair County, Huntsville Meridian

T 13 S, R 4 E—Section 24: E½E½, Section 25: NE¼NE¼

Arkansas, Ouachita County, 5th Meridian

T 15 S, R 14 W—Section 31: NE¼NE¼NE¼SE¼

T 15 S, R 15 W—Section 23: S½SE¼SE¼W¼NW¼

T 16 S, R 14 W—Section 4: NE¼NE¼NE¼SE¼

Arkansas, Yell County, 5th Meridian

T 5 N, R 23 W—Section 18: N½NW¼NE¼, N½S½NW¼NE¼, E½NW¼

T 5 N, R 24 W—Section 13: SE¼SE¼

Louisiana, East Carroll Parish, Louisiana Meridian

T 18 N, R 13 W—Sections 41, 42, 43, 46, 47, 48, 50 51, 52

Louisiana, Webster Parish, Louisiana Meridian

T 19 N, R 8 W—Section 22: E½NW¼NE¼SW¼

Due to the limited scope of this PA/EA process, public meetings are not scheduled.

Bruce E. Dawson,

Field Manager, Jackson Field Office.

[FR Doc. 01–24663 Filed 10–2–01; 8:45 am]

BILLING CODE 4310–GJ–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[WY–920–1320–EL; WYW150210, WYW150318, WYW151134, WYW151643, & WYW154001]

Federal Coal, Environmental Impact Statement and Notice of Scoping

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of Intent to Prepare an Environmental Impact Statement on four maintenance lease applications received for five Federal coal tracts in the decertified Powder River Federal Coal Production Region, Wyoming, and Notice of Scoping.

SUMMARY: The Bureau of Land Management (BLM) has received the following competitive coal lease applications:

1. On March 10, 2000, Powder River Coal Company applied for a maintenance coal lease for approximately 4,500 acres (approximately 564 million recoverable tons of coal) in two tracts adjacent to the North Antelope/Rochelle Mine Complex in Campbell County, WY. The tracts, which are referred to as the NARO North Lease by Application (LBA) Tract and the NARO South LBA Tract, were assigned case numbers WYW150210 and WYW154001, respectively.

2. On March 23, 2000, Ark Land Company applied for a maintenance coal lease for approximately 2,799.5 acres (approximately 383.6 million in-place tons of coal) adjacent to the Black Thunder Mine in Campbell County, WY. The tract, which is referred to as the Little Thunder LBA Tract, was assigned case number WYW150318. On June 14, 2001, Ark Land Company filed an application to modify the Little Thunder LBA Tract. As currently filed, the tract includes approximately 3,449.317 acres and 440 million tons of recoverable coal reserves.

3. On July 28, 2000, Triton Coal Company applied for a maintenance coal lease for approximately 1,868 acres (approximately 173.2 million in-place tons of coal) adjacent to the North Rochelle Mine in Campbell County, WY. The tract, which is referred to as the West Roundup LBA Tract, was assigned case number WYW151134.

4. On September 12, 2000, Antelope Coal Company applied for a maintenance coal lease for approximately 3,500 acres (approximately 292.5 million in-place tons of coal) adjacent to the Antelope Mine in Campbell and Converse Counties, WY. The tract, which is referred to as the West Antelope LBA Tract, was assigned case number WYW151643. On June 27, 2001, Antelope Coal Company filed an application to modify the West Antelope LBA Tract. As currently filed, the tract includes approximately 3,542 acres and 293.9 million tons of in place coal reserves.

The tracts were applied for as maintenance tract LBAs under the provisions of 43 CFR 3425.1. The Powder River Regional Coal Team (RCT) reviewed these lease applications at a public meeting held on October 25, 2000, in Cheyenne, WY. The RCT recommended that BLM process these four lease applications. As part of the LBA process, BLM will prepare an environmental analysis in accordance with the requirements of the National Environmental Policy Act (NEPA),

develop possible stipulations regarding mining operations, determine the fair market value (FMV) of the Federal coal included in each tract, and evaluate maximum economic recovery (MER) of the coal in each proposed tract.

BLM has determined that the requirements of NEPA would be best served by preparing one environmental impact statement (EIS) for these four lease applications, which are part of a contiguous group of five mines located south and east of Wright, WY. The purpose of the public scoping period and public scoping meeting is to allow interested parties to submit comments and/or relevant information that BLM should consider in preparing a draft EIS and in evaluating the FMV and MER of the Federal coal included in these four coal lease applications in the Wyoming Powder River Basin.

DATES: Scoping comments should be submitted by October 31, 2001, in order to be fully considered in the draft EIS. A public scoping meeting is scheduled to be held at 7 p.m. on Wednesday, October 10, 2001, at the Clarion Western Plaza Motel, 2009 S. Douglas Highway, Gillette, WY.

If you have concerns or issues that you believe the BLM should address in processing this exchange proposal, you can express them verbally at the scoping meetings; or you can mail, e-mail or fax written c1omments to BLM at the addresses given below by October 31, 2001.

ADDRESSES: Please address questions, comments or concerns to the BLM Casper Field Office, Attn: Nancy Doelger, 2987 Prospector Drive, Casper, WY 82604, fax them to 307–261–7587, or send e-mail comments to the attention of Nancy Doelger at casper__wymail@blm.gov.

FOR FURTHER INFORMATION CONTACT: Nancy Doelger or Mike Karbs at the above address, or phone: 307–261–7600.

SUPPLEMENTARY INFORMATION: On March 10, 2000, Powder River Coal Company filed a coal lease application for the following lands in two tracts adjacent to the North Antelope/Rochelle Mine Complex in Campbell County, WY:

NARO North—WYW150210

T. 42 N., R. 70 W., 6th PM, Wyoming
Section 28: Lots 5–16;
Section 29: Lots 5–16;
Section 30: Lots 9–20;
T. 42 N., R. 71 W., 6th PM, Wyoming
Section 25: Lots 5–15;
Section 26: Lots 7–10;
Section 35: Lots 1, 2, 7–10, 15, 16.

Containing 2,369.38 acres, more or less.

NARO South—WYW 154001

T. 41 N., R. 70 W., 6th PM, Wyoming
Section 19: Lots 6–11, 12(S½), 13–20;
Section 20: Lots 5(S½), 6(S½), 7(S½), 8(S½), 9–16;
Section 21: Lots 5(S½), 12,13;
Section 28: Lots 3–6, 11, NE¼ SW¼;
Section 29: Lots 1–12;
Section 30: Lots 5—12.

Containing 2,133.635 acres, more or less.

The tracts as applied for include an estimated 564 million tons of recoverable coal. According to the application filed for the NARO North and NARO South LBA Tracts, mining the coal included in these maintenance tracts would extend the life of the North Antelope/Rochelle Mine Complex.

On March 23, 2000, Ark Land Company filed a coal lease application for lands adjacent to the Black Thunder Mine in Campbell County, WY. The following lands are included in the tract as currently filed:

Little Thunder—WYW150318

T. 43 N., R. 71 W., 6th PM, Wyoming
Section 2: Lots 5, 6, 11–14, 19, 20;
Section 11: Lots 1, 2, 7–10, 15, 16;
Section 12: Lots 2 (W½ and SE¼), 3–16;
Section 13: Lots 1–16;
Section 14: Lots 1, 2, 6–9, 14, 15;
Section 24: Lots 1–16;
Section 25: Lots 1, 2, 7–10, 15, 16;
T. 44 N., R. 71 W., 6th PM, Wyoming
Section 35: Lots 1, 2, 7–10, 15, 16.

Containing 3,449.317 acres more or less.

The tract includes an estimated 440 million tons of in-place coal. According to the application, the coal is needed to maintain existing mining operations at the Black Thunder Mine and would be used for electric power generation.

On July 28, 2000, Triton Coal Company, LLC filed a coal lease application for the following lands adjacent to the North Rochelle Mine in Campbell County, WY:

West Roundup—WYW151134

T. 42 N., R. 70 W., 6th PM, Wyoming
Section 6: Lots 8–23;
Section 7: Lots 5–14;
Section 8: Lots 1–12;
Section 9: Lots 11,12,14;
T. 43 N., R. 70 W., 6th PM, Wyoming
Section 31: Lots 13–20;
T. 42 N., R. 71 W., 6th PM, Wyoming
Section 1: Lots 5,6,11–13.

Containing 1,868.120 acres more or less.

The tract includes an estimated 173.2 million tons of in-place coal.

On September 12, 2000, Antelope Coal Company filed a coal lease application for lands adjacent to the Antelope Mine in Campbell and Converse Counties, WY. The following lands are included in the tract as currently filed:

West Antelope—WYW151643

T. 40 N., R. 71 W., 6th PM, Wyoming
Section 3: Lots 15–18;
Section 4: Lots 5–20;
Section 5: Lots 5–7, 10–15, 19, 20;
Section 9: Lot 1;
Section 10: Lots 3, 4;
T. 41 N., R. 71 W., 6th PM, Wyoming
Section 28: Lots 1–16;
Section 29: Lots 1–16;
Section 32: Lots 1–3, 6–11, 14–16;
Section 33: Lots 1–16.

Containing 3,542.19 acres more or less.

The West Antelope tract includes an estimated 293.9 million tons of in-place coal. According to the application, mining this coal would extend the life of the existing mine and the coal would be mined for sale to electrical power generating plants.

As part of the coal leasing process, BLM will evaluate the tract configurations for each of these tracts and may decide to add or subtract Federal coal to avoid bypassing coal or to increase estimated FMV.

Each of the mines adjacent to the applied for LBA tracts (North Antelope/Rochelle Mine Complex, Black Thunder Mine, North Rochelle Mine, and Antelope Mine), has an approved mining and reclamation plan from the Land Quality Division of the Wyoming DEQ and an approved air quality permit from the Air Quality Division of the Wyoming DEQ. Each mine has previously acquired maintenance coal leases using the LBA process.

The U.S. Forest Service (FS) will be a cooperating agency in the preparation of the EIS because the surface of some of the land included for consideration for leasing is owned by the Federal government and administered by the FS as part of the Thunder Basin National Grasslands.

The Office of Surface Mining Reclamation and Enforcement (OSM) will be a cooperating agency in the preparation of the EIS. If the tracts are leased as maintenance tracts, each new lease must be incorporated into the existing mining and reclamation plan for the adjacent mine and the Secretary of the Interior must approve the revision to the Mineral Leasing Act (MLA) mining plan before the Federal coal in each tract can be mined. OSM is the Federal agency that would be responsible for recommending approval, approval with conditions, or disapproval of the revised MLA mining plans to the office of the Secretary of the Interior if any or all of these tracts are leased.

Several issues have been raised during processing previous applications to lease Federal coal in the Wyoming Powder River Basin. These include:

1. The need for resolution of conflicts between existing and proposed oil and

gas development, including coal bed methane, and coal mining on the tracts proposed for leasing;

2. Potential impacts to big game herds and hunting;

3. Potential impacts to sage grouse;

4. Potential impacts to Threatened and Endangered species;

5. The need for considering the cumulative impacts of leasing decisions combined with other existing and proposed development in the Wyoming Powder River Basin;

6. Potential health impacts related to blasting; and

7. The potential impacts on air and water quality.

If you have specific concerns about these issues, or have other concerns or issues that BLM should consider in processing this application, please express them at the public meeting or address them in writing to the above address. Written comments should be received by October 31, 2001, in order to be fully considered in the draft EIS.

Comments, including names and street addresses of respondents, will be available for public review at the address listed above during regular business hours (7:45 a.m.–4:30 p.m.), Monday through Friday, except holidays. Individual respondents may request confidentiality. If you wish to withhold your name or street address from public review or from disclosure under the Freedom of Information Act, you must state this prominently at the beginning of your written comment. Such requests will be honored to the extent allowed by law. All submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, will be made available for public inspection in their entirety.

Dated: August 29, 2001.

Donald E. Shepard,

Acting Deputy State Director, Minerals and Lands.

[FR Doc. 01–24661 Filed 10–2–01; 8:45 am]

BILLING CODE 4310–22–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[UT–080–1610–DO]

Vernal Field Office Resource Management Plan and Environmental Impact Statement

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of intent to hold public scoping meetings for the Vernal Field Office Resource Management Plan and Environmental Impact Statement.

SUMMARY: Notice is hereby given that the Bureau of Land Management (BLM), Vernal Field Office, Utah, is initiating public scoping meetings in order to provide for public involvement opportunities for the Vernal Field Office Resource Management Plan (RMP) and Environmental Impact Statement (EIS). The new RMP is being prepared in coordination with other Federal, State, and local agencies, and affected public land users.

DATES: The BLM will be hosting local and regional scoping meetings/open houses throughout October and November of 2001. Locations of scoping meetings/open houses will also be published in the local and regional news papers at least 15 days before the meetings.

ADDRESSES: Meetings will be held at the following locations and times; Duchesne County Courthouse, 734 North Center Street, Duchesne, Utah, Wednesday, October 17, 2001, 7 to 9 p.m. Vernal Western Park, 302 East 200 North, Vernal, Utah, Thursday, October 18, 2001, 7 to 9 p.m. Utah Department of Natural Resources, 1594 West Temple, Suite 1040, Salt Lake City, Utah, Thursday, October 25, 2001, 7 to 9 p.m. Daggett County Courthouse, 95 North 100 West, Manila, Utah, Thursday, November 1, 2001, 6 to 8 p.m. Green River City Office, 240 East Main Street, Green River, Utah, Thursday, November 8, 2001, 6 to 8 p.m.

FOR FURTHER INFORMATION CONTACT: Dave Howell, Field Manager or David Moore, Supervisory Planning Coordinator, Vernal Field Office, Vernal, Utah, (435) 781–4400.

SUPPLEMENTARY INFORMATION: On March 12, 2001, the Vernal Field Office published in the **Federal Register**, (Volume 66, Number 48, pages 14415–14417), a notice of intent to plan, and prepare a resource management plan and environmental impact statement. The notice provided early opportunities for the public to comment on preliminary issues and planning criteria. It also requested additional information that the public may have on various resources within the field office area. The notice stated that another **Federal Register** Notice would be published to identify the dates and locations of future scoping meetings. This notice constitutes that notification.

Individual comments received during the scoping/open house meetings including names and addresses of respondents, will be available for public review at the BLM office listed above during regular business hours. Comments received during the scoping meetings will also be summarized and made available in a scoping report, shortly after the public meetings have been held.

If you wish to withhold your name and/or address from public review or from disclosure under the Freedom of Information Act, you must state this prominently at the beginning of your written comments. Such requests will be honored to the extent allowed by law. We will not, however, consider anonymous comments. All submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, will be made available for public inspection in their entirety.

Dated: September 14, 2001.

Sally Wisely,

State Director.

[FR Doc. 01–24665 Filed 10–2–01; 8:45 am]

BILLING CODE 4310–$$–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[WY–920–1310–01; WYW 134944]

Notice of Proposed Reinstatement of Terminated; Oil and Gas Lease

August 23, 2001.

Pursuant to the provisions of 30 U.S.C. 188(d) and (e), and 43 CFR 3108.2–3(a) and (b)(1), a petition for reinstatement of oil and gas lease WYW 134944 for lands in Natrona County, Wyoming, was timely filed and was accompanied by all the required rentals accruing from the date of termination.

The lessee has agreed to the amended lease terms for rentals and royalties at rates of $10.00 per acre, or fraction thereof, per year and 16⅔ percent, respectively.

The lessee has paid the required $500 administrative fee and $158 to reimburse the Department for the cost of this **Federal Register** notice. The lessee has met all the requirements for reinstatement of the lease as set out in Section 31 (d) and (e) of the Mineral Lands Leasing Act of 1920 (30 U.S.C. 188), and the Bureau of Land Management is proposing to reinstate lease WYW13944 effective February 1, 2001, subject to the original terms and conditions of the lease and the

increased rental and royalty rates cited above.

Pamela J. Lewis,

Chief, Fluid Minerals Adjudication.

[FR Doc. 01–24683 Filed 10–2–01; 8:45 am]

BILLING CODE 4310–22–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[WY–920–1310–01; WYW134943]

Notice of Proposed Reinstatement of Terminated; Oil and Gas Lease

August 23, 2001.

Pursuant to the provisions of 30 U.S.C. 188(d) and (e), and 43 CFR 3108.2–3(a) and (b)(1), a petition for reinstatement of oil and gas lease WYW134943 for lands in Natrona County, Wyoming, was timely filed and accompanied by all the required rentals accruing from the date of termination. The lease has agreed to the amended lease terms for rentals and royalties at rates of $10.00 per acre, or fraction thereof, per year and 15⅔ percent, respectively.

The lessee has paid the required $500 administrative fee and $158 to reimburse the Department for the cost of this **Federal Register** notice. The lessee has met all the requirements for reinstatement of the lease as set out in Section 31(d) and (e) of the Mineral Lands Leasing Act of 1920 (30 U.S.C. 188), and the Bureau of Land Management is proposing to reinstate lease WYW13943 effective February 1, 2001, subject to the original terms and conditions of the lease and the increased rental and royalty rates cited above.

Pamela J. Lewis,

Chief Fluid Minerals Adjudication.

[FR Doc. 01–24684 Filed 10–2–01; 8:45 am]

BILLING CODE 4310–22–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[ES–960–9820–BJ–ES02] ES–51215, Group 101, Michigan]

Notice of Filing of Plat of Survey; Michigan

The plat of the dependent resurvey of a portion of the subdivisional lines and the subdivision of sections 11, 14, and 15, Township 45 North, Range 19 West, Michigan Meridian, Michigan, will be officially filed in Eastern States, Springfield, Virginia at 7:30 a.m., on November 9, 2001.

The survey was made at the request of the U.S. Forest Service.

All inquiries or protests concerning the technical aspects of the survey must be sent to the Chief Cadastral Surveyor, Eastern States, Bureau of Land Management, 7450 Boston Boulevard, Springfield, Virginia 22153, prior to 7:30 a.m., November 9, 2001.

Copies of the plat will be made available upon request and prepayment of the appropriate fee.

Dated: September 10, 2001.

Stephen D. Douglas,

Chief Cadastral Surveyor.

[FR Doc. 01–24664 Filed 10–2–01; 8:45 am]

BILLING CODE 4310–GJ–P

DEPARTMENT OF THE INTERIOR

National Park Service

Notice of Request for Reinstatement, With Change, of a Previously Approved Information Collection

AGENCY: National Park Service, DOI.

ACTION: Notice of submission to OMB and request for comments.

SUMMARY: This notice announces that the National Park Service (NPS) has requested from the Office of Management and Budget (OMB) a reinstatement of, and revisions to, a previously approved information collection for certain activities related to 36 CFR Part 61. The title of 36 CFR Part 61 is Procedures for State, Tribal, and Local Government Historic Preservation Programs. NPS has based the proposed revisions on a fresh analysis of existing requirements for responding and record keeping in certain elements of State and local historic preservation programs. NPS received no comments on its October 31, 2000, **Federal Register** notice of intent to seek OMB reinstatement of this information collection (65 FR 64984). NPSs is publishing this notice is accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3507 *et se.*) and OMB rules (5 CFR Part 1320).

DATES: Comments on this notice must be received by November 2, 2001 to be assured of consideration.

ADDRESSES: Send comments on this information collection to: Desk Officer for the Interior Department (1024–0038), Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503.

A copy of the comments should be sent to: Mr. John W. Renaud, Project Coordinator, Branch of State, Tribal, and Local Programs, Heritage Preservation Services, National Park Service, U.S. Department of the Interior, 1849 C St., NW., NC200, Washington, DC 20240 or via e-mail at *John Renaud@nps.gov.*

FOR FURTHER INFORMATION CONTACT: Mr. John W. Renaud, Project Coordinator, Branch of State, Tribal, and Local Programs, Heritage Preservation Services Division, National Park Service, U.S. Department of the Interior, 1849 C St., NW, NC200, Washington, DC 20240, (202) 343–1059, *John_Renaud@nps.gov.*

SUPPLEMENTARY INFORMATION:

Title: 36 CFR Part 61, Procedures for State, Tribal, and Local Government Historic Preservation Programs.

OMB Number: 1024–0038.

Type of Request: Reinstatement, with change, of a previously approved collection for which approval has expired.

Abstract: This information collection has an impact on State, Tribal, and local governments that wish to participate formally in the national historic preservation program and who wish to apply for Historic Preservation Fund grant assistance. The National Park Service uses the information to ensure compliance with the National Historic Preservation Act and government-wide grant requirements.

Respondents/Record Keepers: State, Tribal, and Local Governments.

Estimate of Burden: NPS estimates that the public reporting burden for this collection of information will average 9.06 hours per response and 0.60 hours per record, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed and reviewing the collection of information.

Estimated Number of Respondents/Record Keepers: NPS estimates that there are 450 respondents and 83 record keepers. This is the gross number of respondents and record keepers for all of the documents included in this information collection. The net number of States, Tribal, and local governments participating in this information collection annually is 136. The frequency of response varies depending upon activity. States complete Grant application and end-of-year report documents once a year. NPS requires project documents at the beginning and end of each subgrant with a large Federal share. NPS reviews each State's program once every four years. NPS requires information from a local government when it applies for certification. NPS requires that each State maintain one record for each property in its inventory and one record per project for tracking its responses to Federal agency requests for State

review. Pursuant to Section 101(d) of the National Historic Preservation Act, federally recognized Indian Tribes, after agreement with the National Park Service (NPS), may assume responsibilities specified in Section 101(b)(3) and therefore use related information collections.

Estimated Number of Responses per Respondent: 1.

Estimated Number of Records per Record Keeper: 350.

Estimated Total Annual Burden on Respondents: 4,078 hours.

Estimated Total Annual Burden on Record Keepers: 17,430 hours.

Estimated Total Annual Burden: 21,508 hours.

You may obtain copies of this information collection from Mr. John W. Renaud, Project Coordinator.

NPS is soliciting comments regarding:

(1) Whether the collection of information is necessary for the proper performance of the functions of NPS, including whether the information will have practical utility;

(2) The accuracy of the burden estimate including the validity of the method and assumptions used;

(3) The quality, utility, and clarity of the information to be collected;

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

(5) Any other aspect of this collection of information.

All comments will also become a matter of public record.

Dated: September 27, 2001.

Betsy Chittenden,

Information Collection Clearance Officer, National Park Service.

[FR Doc. 01–24650 Filed 10–2–01; 8:45 am]

BILLING CODE 4310–70–M

DEPARTMENT OF THE INTERIOR

National Park Service

Automobile National Heritage Area

AGENCY: National Park Service, Interior.

ACTION: Notice of availability of the draft general management plan environmental assessment for the Automobile National Heritage Area, Michigan.

SUMMARY: Pursuant to the Automobile National Heritage Area Act of 1998 (Pub. L. 105–355) and the National Environmental Policy Act (Pub. L. 91–190) the Automobile National Heritage Area Partnership, Incorporated (hereafter, ''the Partnership'') and the National Park Service (NPS) announce the expected availability of a draft general management plan/draft environmental assessment (DGMP/DEA) for the Automobile National Heritage Area (ANHA), located in southeastern and central Michigan. The document describes alternative means by which the region's unique heritage can be utilized to accomplish historic preservation, to provide educational and recreational opportunities, to attract visitors, and to build community pride.

DATES: The DGMP/DEA is expected to be available for public distribution on September 11, 2001. There will be a 30-day public review period for comments on this document. Comments on the DGMP/DEA must be received no later than October 12, 2001. A public meeting will be held on Tuesday, September 11, 2001 to introduce the DGMP/DEA to the public. A location and specific time for the meeting is still pending. Persons interested in attending the meeting should contact the ANHA at the address below for further information.

ADDRESSES: Comments on the DGMP/DEA should be submitted to Constance Bodurow, Executive Director, Automobile National Heritage Area, 300 River Place, Suite 1600, Detroit, Michigan 48207. Copies of the DGMP/DEA may be inspected at the ANHA office. An electronic version of the document can be found at *http://www.autoheritage.org.* Copies also are available by request by writing the same address, by phoning 313–259–3425, or by e-mail at cbodurow@autoheritage.org

FOR FURTHER INFORMATION CONTACT: Constance Bodurow, Executive Director, ANHA, at the aforementioned address and telephone number.

SUPPLEMENTARY INFORMATION: The Automobile National Heritage Area Act (Act) of 1998 established the ANHA in southeastern and central Michigan. The Act also designated the Automobile National Heritage Area Partnership, Inc. (the Partnership) as the managing entity for the ANHA. The Partnership is a nonprofit corporation established under laws of the State of Michigan. Founding members of the partnership include DaimlerChrysler Corporation, Ford Motor Company, General Motors Corporation, the United Auto Workers, and NPS. National Heritage Areas are considered affiliated units of the National Park System, where residents, businesses, institutions and local government join together to conserve and celebrate heritage and unique landscapes. The NPS role in ANHA is currently limited to providing technical and financial assistance to encourage local entities to work in partnership to preserve and interpret the region's rich resources.

Dated: July 31, 2001.

David N. Given,

Acting Regional Director.

[FR Doc. 01–24649 Filed 10–2–01; 8:45 am]

BILLING CODE 4310–70–P

DEPARTMENT OF THE INTERIOR

National Park Service

Dry Tortugas National Park, FL

AGENCY: National Park Service, Interior.

ACTION: Notice of availability of the Record of Decision for the Final General Management Plan Amendment/Environmental Impact Statement, Dry Tortugas National Park, Florida.

SUMMARY: The U.S. Department of the Interior's National Park Service has signed a Record of Decision (July 27, 2001) for the Final General Management Plan Amendment for Dry Tortugas National Park. The plan is designed to afford a high level of protection to park resources and provide for appropriate types and levels of high quality visitor experiences. This will be accomplished through management zoning, establishing visitor carrying capacity, using commercial services to direct and structure visitor use, and instituting a permit system for private boaters. A wide range of recreational and educational opportunities will be available to visitors. Visitor experiences will be enhanced due to expanded access throughout the park and higher quality resources to enjoy.

Management zones will provide guidance for managing specific areas for desired resource condition and visitor experiences. The Historic/Adaptive Use zone (where Ft. Jefferson is located) will be the focus of the greatest visitor activities including guided tours, historical interpretation, bird watching, photography, picnicking, boating, snorkeling, scuba diving and recreational fishing. The Natural/Cultural zone will be managed to improve natural resource quality and allow visitors to experience remoteness and solitude with opportunities for swimming, scuba diving, recreational fishing and viewing wildlife. Visitors could enjoy natural resources with almost no facilities or services and experience the ''vast expanse of sea and sky'' characteristic of this remote National Park. The Research Natural Area zone will allow for protection of outstanding marine and terrestrial habitats, spawning fish species and pristine coral reefs. The use of anchors

will not be permitted and scientific research and other educational activities consistent with the management of this zone would require advance permits from the National Park Service. No fishing will be allowed in the Research Natural Area in order to protect and build up important fish nursery and spawning areas that will produce greater abundance and diversity of fish in other important recreational and commercial fisheries. This will also meet the park's legislative mandate to protect a pristine sub-tropical marine ecosystem and unique and outstanding cultural resources. Wildlife viewing, snorkeling, diving, boating and sightseeing would primarily be done using commercial tour guides. Special Protection zones will be established in areas requiring protection from human impact, such as sea turtle and bird nesting areas, shallow or sensitive corals and significant submerged cultural resources. Boundaries of the Special Protection zones could be adjusted to protect areas at certain critical periods of the year.

Commercial transportation operators will continue to transport visitors to the park by self-contained ferry and seaplane operations. One concession contract will be issued for a single seaplane operator who will be authorized to carry up to 60 people per day. A second concession contract will be for a ferry operator who will be authorized to carry up to 150 people per day. The role of the ferry operator will be expanded to provide water-based transportation from Garden Key to other park locations, thereby increasing the range of opportunities for visitors throughout the park. Other appropriate commercial services in the park, such as guided fishing, sailing and diving trips will be authorized by Commercial Use Authorizations.

An initial visitor carrying capacity for Garden Key (Ft. Jefferson) will allow for a maximum total of 330 people per day. Twenty-four people per day will be permitted to visit Loggerhead Key. Monitoring will determine if these numbers are achieving desired visitor experience and resource conditions; if not the numbers may be adjusted. A park entrance fee will be instituted and private boaters will be required to obtain a permit to navigate park waters. Fifty-four percent of the park will remain open for recreational fishing. Commercial fishing activities, spear fishing and the harvest of lobster and conch are banned in park waters.

Implementation of this plan will be coordinated with the National Oceanic and Atmospheric Administration's Tortugas Ecological Reserve in the Florida Keys National Marine Sanctuary adjoining the park. The combined action will result in comprehensive protection for nationally significant coral reef habitats and communities extending from shallow park waters into the sanctuary's deep waters.

FOR FURTHER INFORMATION CONTACT: Superintendent, Dry Tortugas National Park, (305) 242–7800.

SUPPLEMENTARY INFORMATION: A copy of the Record of Decision on the Final General Management Plan Amendment for Dry Tortugas National Park can be obtained via the Internet by visiting the National Park Service web site at *http://www.nps.gov/planning* or by calling (305) 242–7700.

Dated: August 16, 2001.

Val Knight,

Acting Regional Director, Southeast Region.

[FR Doc. 01–24651 Filed 10–2–01; 8:45 am]

BILLING CODE 4310–70–M

DEPARTMENT OF THE INTERIOR

National Park Service

Fort Frederica National Monument, St. Simons Island, GA

AGENCY: National Park Service, Interior.

ACTION: Notice of availability for public review of a Draft Environmental Impact Statement (EIS) for the General Management Plan (GMP) for Fort Frederica National Monument, Saint Simons Island, Georgia.

SUMMARY: The National Park Service (NPS) has prepared a draft Environmental Impact Statement on the General Management Plan for Fort Frederica National Monument. The statement evaluates potential environmental impacts associated with various types and levels of visitor use and resources management within the National Monument. This GMP and EIS have been prepared in response to the requirements of the National Parks and Recreation Act of 1978, Public Law 95–625, and in accord with Director's Order Number 2, the planning guidance for National Park Service units that became effective May 27, 1998. The NPS has conducted public scoping meetings in the local area to receive input from interested parties on issues, concerns, and suggestions pertinent to the management of Fort Frederica. The comment period for the Draft GMP/EIS will be 60 days and will end on November 30, 2001.

DATES: All written comments on the draft GMP/EIS should be received by NPS on or before November 30, 2001. Additionally, the NPS will hold public meetings on the draft EIS for the GMP. These public meetings will be conducted during the week of November 12–16, 2001 on Saint Simons Island, Geogia and Brunswick, Georgia at times and locations to be published in local newspapers.

ADDRESSES: Comments on the EIS should be submitted to the following address to ensure adequate consideration by the Service: Superintendent, Fort Frederica National Monument, Route 9, Box 286C, St. Simons Island, Georgia 31522.

FOR FURTHER INFORMATION CONTACT: Superintendent, Fort Frederica National Monument, St. Simons Island, Georgia, telephone 912–638–3639.

SUPPLEMENTARY INFORMATION: The Draft and Final General Management Plan Amendment and Environmental Impact Statement will be made available to all known interested parties and appropriate agencies. Full public participation by federal, state, and local agencies as well as other concerned organizations and private citizens is invited throughout the preparation process of this document.

Please note that due to public disclosure requirements, the National Park Service, if requested, is required to make the names and addresses of those who submit written comments public. Anonymous comments will not be considered. However, individual respondents may request that we withhold their names and addresses from the public record. If you wish to withhold your name and/or address, you must state that request prominently at the beginning of your comment. We will make all submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, available for public inspection in their entirety.

The responsible official for this Environmental Impact Statement is Jerry Belson, Regional Director, Southeast Region, National Park Service, 100 Alabama Street SW, 1924 Building, Atlanta, Georgia 30303.

Dated: August 9, 2001.

W. Thomas Brown,

Acting Regional Director, Southeast Region.

[FR Doc. 01–24652 Filed 10–2–01; 8:45 am]

BILLING CODE 4310–70–M

INTERNATIONAL TRADE COMMISSION

[Investigations Nos. 701–TA–365–366 and 731–TA–734–735 (Review)]

Pasta From Italy and Turkey

AGENCY: United States International Trade Commission.

ACTION: Scheduling of expedited five-year reviews concerning the countervailing duty and antidumping duty orders on pasta from Italy and Turkey.

SUMMARY: The Commission hereby gives notice of the scheduling of expedited reviews pursuant to section 751(c)(3) of the Tariff Act of 1930 (19 U.S.C. 1675(c)(3)) (the Act) to determine whether revocation of the countervailing duty and antidumping duty orders on pasta from Italy and Turkey would be likely to lead to continuation or recurrence of material injury within a reasonably foreseeable time. For further information concerning the conduct of these reviews and rules of general application, consult the Commission's Rules of Practice and Procedure, part 201, subparts A through E (19 CFR part 201), and part 207, subparts A, D, E, and F (19 CFR part 207).

EFFECTIVE DATE: September 4, 2001.

FOR FURTHER INFORMATION CONTACT: Debra Baker (202–205–3180), Office of Investigations, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436. Hearing-impaired persons can obtain information on this matter by contacting the Commission's TDD terminal on 202–205–1810. 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).

SUPPLEMENTARY INFORMATION:

Background

On September 4, 2001, the Commission determined that the domestic interested party group responses to its notice of institution (66 FR 29831, June 1, 2001) were adequate and the respondent interested party group responses were inadequate. The Commission did not find any other circumstances that would warrant conducting full reviews.[1] Accordingly, the Commission determined that it would conduct expedited reviews pursuant to section 751(c)(3) of the Act.

Staff Report

A staff report containing information concerning the subject matter of the reviews will be placed in the nonpublic record on October 15, 2001, and made available to persons on the Administrative Protective Order service list for these reviews. A public version will be issued thereafter, pursuant to § 207.62(d)(4) of the Commission's rules.

Written Submissions

As provided in section 207.62(d) of the Commission's rules, interested parties that are parties to the reviews and that have provided individually adequate responses to the notice of institution,[2] and any party other than an interested party to the reviews may file written comments with the Secretary on what determinations the Commission should reach in the reviews. Comments are due on or before October 17, 2001, and may not contain new factual information. Any person that is neither a party to the five-year reviews nor an interested party may submit a brief written statement (which shall not contain any new factual information) pertinent to the reviews by October 17, 2001. However, should Commerce extend the time limit for its completion of the final results of its review, the deadline for comments (which may not contain new factual information) on Commerce's final results is three business days after the issuance of Commerce's results. If comments contain business proprietary information (BPI), they must conform with the requirements of §§ 201.6, 207.3, and 207.7 of the Commission's rules. The Commission's rules do not authorize filing of submissions with the Secretary by facsimile or electronic means.

In accordance with §§ 201.16(c) and 207.3 of the rules, each document filed by a party to the reviews must be served on all other parties to the reviews (as identified by either the public or BPI service list), and a certificate of service must be timely filed. The Secretary will not accept a document for filing without a certificate of service.

Authority: These reviews are being conducted under authority of title VII of the Tariff Act of 1930; this notice is published pursuant to § 207.62 of the Commission's rules.

Issued: September 27, 2001.

By order of the Commission.

Donna R. Koehnke,

Secretary.

[FR Doc. 01–24668 Filed 10–2–01; 8:45 am]

BILLING CODE 7020–02–P

[1] A record of the Commissioners' votes, the Commission's statement on adequacy, and any individual Commissioner's statements will be available from the Office of the Secretary and at the Commission's web site.

[2] The Commission has found the responses submitted by American Italian Pasta Co., Borden Foods Corp., Dakota Growers Pasta Co., and New World Pasta Co. (all U.S. producers of pasta); by Molisana U.S., Inc. and Rienzi & Sons, Inc. (both U.S. importers of Italian product); and by La Molisana Industrie Alimentari S.p.A. and N. Puglisi & F. Industria Paste Alimentari S.p.A. (both producers in Italy of pasta) to be individually adequate. Comments from other interested parties will not be accepted (see 19 CFR 207.62(d)(2)).

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Manufacturer of Controlled Substances; Notice of Application

Pursuant to § 1301.33(a) of Title 21 of the Code of Federal Regulations (CFR), this is notice that on May 8, 2001, Cambridge Isotope Lab, 50 Frontage Road, Andover, Massachusetts 01810, made application by renewal to the Drug Enforcement Administration (DEA) for registration as a bulk manufacturer of the basic classes of controlled substances listed below:

Drug	Schedule
Methaqualone (2565)	I
Dimethyltryptamine (7435)	I
Amphetamine (1100)	II
Methamphetamine (1105)	II
Pentobarbital (2270)	II
Secobarbital (2315)	II
Phencyclidine (7471)	II
Cocaine (9041)	II
Codeine (9050)	II
Oxycodone (9143)	II
Hydromorphone (9150)	II
Benzoylecgonine (9180)	II
Methadone (9250)	II
Dextropropoxyphene, bulk (non-dosage forms) (9273).	II
Morphine (9300)	II
Fentanyl (9801)	II

The firm plans to manufacture small quantities of the listed controlled substances to produce isotope labeled standards for drug analysis.

Any other such applicant and any person who is presently registered with DEA to manufacture such substances may file comments or objections to the issuance of the proposed registration.

Any such comments or objections may be addressed, in quintuplicate, to the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration, United States Department of Justice, Washington, DC 20537, Attention: DEA

Federal Register Representative (CCR), and must be filed no later than December 3, 2001.

Dated: September 25, 2001.

Laura M. Nagel,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 01–24641 Filed 10–2–01; 8:45 am]

BILLING CODE 4410–09–M

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Manufacturer of Controlled Substances; Notice of Application

Pursuant to § 1301.33(a) of Title 21 of the Code of Federal Regulations (CFR), this is notice that on April 16, 2001, Roche Diagnostics Corporation, Attn: Regulatory Compliance, 9115 Hague Road, Indianapolis, Indiana 46250, made application by letter to the Drug Enforcement Administration (DEA) for registration as a bulk manufacturer of Alphamethadol (9605), a basic class of controlled substance listed in Schedule I.

Roche Diagnostics Corporation plans to manufacture small quantities of the above listed controlled substances for incorporation in drug of abuse detection kits.

Any other such applicant and any person who is presently registered with DEA to manufacture such substance may file comments or objections to the issuance of the proposed registration.

Any such comments or objections may be addressed, in quintuplicate, to the Deputy Assistance Administrator, Office of Diversion Control, Drug Enforcement Administration, United States Department of Justice, Washington, DC 20537, Attention: DEA Federal Register Representative (CCR), and must be filed no later than December 3, 2001.

Dated: September 24, 2001.

Laura M. Nagel,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 01–24642 Filed 10–2–01; 8:45 am]

BILLING CODE 4410–09–M

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

[Docket No. ICR–1218–0069(2001)]

Commercial Diving-Operations Standards (29 CFR part 1910, subpart T); Extension of the Office of Management and Budget's Approval of Information-Collection (Paperwork) Requirements

AGENCY: Occupational Safety and Health Administration (OSHA), Labor.

ACTION: Request for comments.

SUMMARY: OSHA solicits comments concerning its request to increase the total burden-hour estimate for, and to extend OMB approval of, the collection-of-information requirements specified by the Commercial Diving-Operations Standards (29 CFR part 1910, subpart T).[1] These standards specify paperwork requirements for equipment and procedures that expose employees to hazards associated with diving and diving-support operations, and that apply to general industry, construction, ship repairing, shipbuilding, shipbreaking, and longshoring.

DATES: Submit written comments on or before December 3, 2001.

ADDRESSES: Submit written comments to the Docket Office, Docket No. ICR–1218–0069(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 specified by the Commercial-Diving Operations Standards is available for inspection and copying in the Docket Office, or by requesting a copy from Theda Kenney at (202) 693–2222 or Todd Owen at (202) 693–2444. For electronic copies of the ICR, contact OSHA on the Internet at *http://www.osha.gov* 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 costs) is minimal, collection instruments are understandable, and OSHA's estimate of the information-collection burden is correct.

The following provisions of the Commercial-Diving Operations Standards (the ''Standards'') contain paperwork requirements: §§ 1910.401(b); 1910.410(a)(3) and (a)(4); 1910.420(a) and (b); 1910.421(b), (f), and (h); 1910.422(e); 1910.423(b)(1)(ii) through (b)(2), (d), and (e); 1910.430(a), (b)(4), (c)(1)(i), (c)(3)(i), (f)(3)(ii), and (g)(2); and 1910.440(a)(2) and (b). These provisions ensure that employers: Notify OSHA if they deviate from the operational requirements of the Standards; train every diver in cardiopulmonary resuscitation and first aid, and mixed-gas divers (and those who control exposure of divers to mixed-gas breathing conditions) in diving-related physics and physiology; develop and make available to employees a safe-practices manual; maintain a list of emergency telephone or call numbers at the diving location; brief dive-team members on diving-related tasks, safety procedures, hazards, and revisions to operating procedures; display a code flag ''A'' if diving from a surface other than a vessel in navigable waters; develop and maintain a depth-time profile for each dive; and instruct divers on reporting diving-related illnesses and injuries, and the procedures specified for detecting, treating, and preventing these problems.

The Standards also mandate that employers: Record and maintain diving logs that contain required information; investigate, and provide a written evaluation of, any incident involving decompression sickness; mark diving umbilicals as required; inspect, test, and calibrate specified diving equipment; record modifications, repairs, tests, calibrations, and maintenance performed on any diving equipment; make a record of diving-related injuries and illnesses that result in a diver

[1] Based on its assessment of the paperwork requirements contained in these standards, the Agency estimates that the total burden hours increased compared to its previous burden-hour estimate. Under this notice, OSHA is *not* proposing to revise these paperwork requirements in any substantive manner, only to increase the burden hours imposed by the existing paperwork requirements.

remaining in a hospital for over 24 hours; and establish, and disclose to specific parties on request, the written records required by the Standard, and maintain these records for delineated periods.

The Standards' paperwork requirements allow employers to deviate from established diving practices and tailor diving operations to unusually hazardous diving conditions, and to analyze diving records (including hospitalization and treatment records) for information they can use to improve diving operations. These requirements are also a direct and efficient means for employers to inform dive-team members about diving-related hazards, procedures to use in avoiding and controlling these hazards, and recognizing and treating diving-related illnesses and injuries. Additionally, employers can review equipment records to ensure that employees performed the required actions, and that the equipment is in safe working order.

Disclosing the records to employees and their designated representatives permits them to identify operational and equipment conditions that may contribute to diving accidents or diving-related medical conditions. Moreover, the records provide the most efficient means for OSHA compliance officers to determine that employers are performing the regulatory requirements of the Standards.

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 costs) 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 increase the existing burden-hour estimate, and to extend the Office of Management and Budget's (OMB) approval, of the collection-of-information requirements specified by the Standards. In this regard, the Agency is requesting to increase the current burden-hour estimate from 91,326 hours to 205,248 hours, a total increase of 113,922 hours. This increase largely occurred because this ICR accounts for paperwork requirements in the Standards not included in the previous ICR. OSHA 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 a currently-approved information-collection requirement.

Title: Commercial-Diving Operations Standards (29 CFR part 1910, subpart T).

OMB Number: 1218–0069.

Affected Public: Business or other for-profit; not-for-profit institutions; Federal Government; State, local, or tribal governments.

Number of Respondents: 3,000.

Frequency of Recordkeeping: On occasion; annually.

Average Time per Response: Varies from one minute (.02 hour) to retain a specified record to two hours to provide OSHA with written notification regarding deviations from regulatory requirements.

Estimated Total Burden Hours: 205,248.

Estimated Cost (Operation and Maintenance): $0.

IV. Authority and Signature

John L. Henshaw, 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 September 21, 2001.

John L. Henshaw,

Assistant Secretary of Labor.

[FR Doc. 01–24653 Filed 10–2–01; 8:45 am]

BILLING CODE 4510–26–M

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

[Docket No. ICR–1218–0242(2001)]

Standard on Powered Industrial Trucks; Extension of the Office of Management and Budget's Approval of Information-Collection (Paperwork) Requirements

AGENCY: Occupational Safety and Health Administration (OSHA), Labor.

ACTION: Request for comment.

SUMMARY: OSHA requests comments on its proposal to increase the burden-hour estimate for, and to extend OMB approval of, the collection-of-information requirements specified by the Standard on Powered Industrial Trucks (29 CFR 1910.178).[1] This standard contains several information-collection requirements addressing truck design, construction, and modification, as well as training certification for truck operators. These requirements ensure that the trucks are in proper working order and that truck operators have the requisite skills, knowledge, and ability to operate them safely.

DATES: Submit written comments on or before December 3, 2001.

ADDRESSES: Submit written comments to the Docket Office, Docket No. ICR–1218–0242(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 specified in the Standard on Powered Industrial Trucks is available for inspection and copying in the Docket Office, or by requesting a copy from Theda Kenney at (202) 693–2222 or Todd Owen at (202) 693–2444. For electronic copies of the ICR, contact OSHA on the Internet at *http://www.osha.gov,* 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

[1] Based on its assessment of the paperwork requirements contained in this standard, the Agency estimates that the total burden hours increased compared to its previous burden-hour estimate. Under this notice, OSHA is *not* proposing to revise these paperwork requirements in any substantive manner, only to increase the burden hours imposed by the existing paperwork requirements.

program ensures that information is in the desired format, reporting burden (time and costs) is minimal, collection instruments are understandable, and OSHA's estimate of the information-collection burden is correct.

The paperwork requirements in paragraphs (a)(3) through (a)(6) of the Standard on Powered Industrial Trucks (the ''Standard'') specify that employers must place a marker (*e.g.,* label) on an approved truck indicating that a national testing laboratory accepted its design and construction,[2] and must obtain the manufacturer's written approval before modifying a truck in a manner that affects its capacity and safe operation. If the manufacturer grants such approval, the employer must revise capacity, operation, and maintenance instruction plates, tags, and decals accordingly. For front-end attachments not installed by the manufacturer, employers must provide a marker that identifies the attachment, as well as the weight of both the truck and the attachment when the attachment is at maximum elevation with a laterally center load. Employers also must ensure that any marker required by these provisions remains affixed to trucks and is legible.

Paragraphs (l)(1) through (l)(6) of the Standard contain the paperwork requirements necessary to certify the training provided to a truck operator. These paragraphs specify the duties and qualifications of training supervisors, program content, requirement for operator evaluation, conditions for refresher training, and operator certification.

Requiring markers notifies employees of the conditions under which they can safely operate the trucks, thereby preventing such hazards as fires and explosions caused by poorly designed electrical systems, rollovers/tipovers that result from exceeding a truck's stability characteristics, and falling loads that occur when loads exceed the lifting capacities of attachments. The training-certification requirement ensures the employer will know that an employee received the training necessary to operate a truck within its capacity and control limitations; this record also provides the most efficient means for an OSHA compliance officer to determine that an employer performed the required training. Therefore, by ensuring that employees operate only trucks that are in proper working order, and do so safely, employers prevent severe injury and death to truck operators and other employees who are in the vicinity of the trucks.

[2] A national testing laboratory evaluates a truck's electrical system for fire safety.

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 costs) 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 is proposing to increase the existing burden-hour estimate for, and to extend OMB approval of, the collection-of-information requirements specified by the Standard. In this regard, the Agency is requesting to increase the current burden-hour estimate from 543,860 hours to 813,963 hours, a total increase 270,103 of hours. This adjustment occurred largely because OSHA is accounting for paperwork requirements in the Standard not included in the previous ICR, and because the number of operators requiring initial training, evaluation, and certification increased substantially. The Agency will summarize the comments submitted in response to this notice, and will include this summary in its request to OMB to extend its approval of these information-collection requirements.

Type of Review: Extension of a currently approval information-collection requirements.

Title: Powered Industrial Trucks (29 CFR 1910.178).

OMB Number: 1218–0242.

Affected Public: Business or other for-profit; not-for-profit institutions; Federal Government; State, local, or tribal government.

Number of Respondents: 4,400,000.

Frequency of Recordkeeping: On occasion; annually; triennially.

Average Time per Response: Ranges from two minutes ((.03 hour) to mark an approved truck to 6.50 hours to train new truck operators.

Estimated Total Burden Hours: 813,963.

Estimated Cost (Operation and Maintenance): $0.

IV. Authority and Signature

John L. Henshaw, 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 September 27, 2001.

John L. Henshaw,

Assistant Secretary of Labor.

[FR Doc. 01–24699 Filed 10–2–01; 8:45 am]

BILLING CODE 4510–26–M

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

[Docket No. ICR–1218–0185(2001)]

Cadmium in General Industry Standard; Extension of the Office of Management and Budget's (OMB) Approval of the Information-Collection (Paperwork) Requirements

AGENCY: Occupational Safety and Health Administration (OSHA), Labor.

ACTION: Request for comments.

SUMMARY: OSHA solicits comments concerning its proposal to decrease the total burden-hour estimates for, and to extend OMB approval of, the collection-of-information requirements specified by the Cadmium in General Industry Standard (29 CFR 1910.1027).[1] This standard controls occupational exposure to cadmium, thereby preventing serious disease (*e.g.,* lung cancer, prostate cancer, kidney disease) and death among exposed employees.

DATES: Submit written comments on or before December 3, 2001.

ADDRESSES: Submit written comments to the Docket Office, Docket No. ICR–1218–0815(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: Todd Owen, Directorate of Policy, OSHA, U.S. Department of Labor, Room

[1] Based on its assessment of the paperwork requirements contained in this standard, the Agency estimates that the total burden hours decreased compared to its previous burden-hour estimate. Under this notice, OSHA is *not* proposing to revise these paperwork requirements in any substantive manner, only to decrease the burden hours imposed by the existing paperwork requirements.

N–3641, 200 Constitution Avenue, NW, Washington, DC 20210; telephone (202) 693–2444. A copy of the Agency's Information-Collection Request (ICR) supporting the need for the information collections specified in the Cadmium in General Industry 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 understandable, and OSHA's estimate of the information-collection burden is correct. The Occupational Safety and Health Act of the 1970 (the Act) authorizes information collection by employers as necessary or appropriate for enforcement of the Act or for developing information regarding the causes and prevention of occupational injuries; illnesses, and accidents (29 U.S.C. 657).

The information-collection requirements specified in the Cadmium in General Industry Standard (§ 1910.1027; ''the Standard'') protect employees from the adverse health effects that may result from occupational exposure to cadmium. The major information-collection requirements in the Standard include conducting employee exposure monitoring, notifying employees of their cadmium exposures, implementing a written compliance program, implementing medical surveillance of employees, providing examining physicians with specific information, ensuring that employees receive a copy of their medical-surveillance results, maintaining employees' exposure-monitoring and medical-surveillance records for specific periods, and providing access to these records by OSHA, the National Institute of Occupational Safety and Health, the employee who is the subject of the records, the employee's representative, and other designated parties.

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 is requesting to decrease the existing burden-hour estimate for, and to extend OMB approval of, the collection-of-information requirements specified by the Standard. In this regard, the Agency is requesting to decrease the current burden-hour estimate from 148,172 hours to 120,770 hours, a total decrease of 27,402 hours. This decrease results mainly from removing the burden hours required for employers to conduct respirator fit testing; the Agency now accounts for these burden hours under the ICR for the Respiratory Protection Standard § 1910.134; OMB control number 1218–0099). OSHA will summarize the comments submitted in response to this notice, and will include this summary in its request to OMB to extend its approval of these information-collection requirements.

Type of Review: Extension of currently approved information-collection requirements.

Title: Cadmium in General industry.

OMB Number: 1218–0185.

Affected Public: Business or other for-profit; not-for-profit institutions; Federal Government; State, local, or tribal governments.

Number of Respondents: 53,161.

Frequency of Response: On occasion; semi-annually; annually.

Average Time per Response: Varies from five minutes (.08 hour) for several provisions (e.g., maintaining an employee's exposure-monitoring or medical-surveillance record, providing information about an employee to the physician), to 1.5 hours to review and update a compliance program or to administer an employee medical examination.

Estimated Total Burden Hours: 120,770 hours.

Estimated Cost Operation and Maintenance): $6,190,792.

IV. Authority and Signature

John L. Henshaw, 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 September 27th, 2001.

John L. Henshaw,

Assistant Secretary of Labor.

[FR Doc. 01–24700 Filed 10–2–01; 8:45 am]

BILLING CODE 4510–26–M

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

[Docket No. ICR–1218–0199(2001)]

Standards on Walking-Working Surfaces; Extension of the Office of Management and Budget's Approval of Information-Collection (Paperwork) Requirements

AGENCY: Occupational Safety and Health Administration (OSHA), Labor.

ACTION: Request for comment.

SUMMARY: OSHA requests comment on its proposal to extend OMB approval of the information-collection requirements contained in the Standards on Walking-Working Surfaces (29 CFR part 1910, subpart D). These requirements prevent serious injury and death among employees by notifying them of clearance limits in passageways and aisles, floor-loading limits, defective ladders, and the proper construction and erection of outrigger scaffolds.

DATES: Submit written comments on or before December 3, 2001.

ADDRESSES: Submit written comments to the Docket Office, Docket No. ICR–1218–0199(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, OSHS, 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 specified by the Standards

on Walking-Working Surfaces is available for inspection and copying in the Docket Office, or by requesting a copy from Theda Kenney at (202) 693–2222 or Todd Owen at (202) 693–2444. For electronic copies of the ICR, contact OSHA on the Internet at *http://www.osha.gov,* 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 costs) is minimal, collection instruments are understandable, and OSHA's estimate of the information-collection burden is correct.

The following provisions of the Standards on Walking-Working Surfaces (29 CFR part 1910, subpart D; ''the Standards'') specify collection-of-information requirements: §§ 1910.22(b)(2), 1910.22(d)(1), 1910.26(c)(2)(vii), and 1910.28(e)(3). These provisions require employers to: Permanently mark aisles and passageways in buildings; post signs in a conspicuous location that show floor-loading limits approved by the building official, and replace these signs if lost, removed, or defaced; mark defective ladders and remove them from service until repaired; and, if a registered professional engineer designs an outrigger scaffold, construct and erect it according to this design, and maintain at the jobsite a copy of the detailed drawings and specifications showing the sizes and spacing of members. These paperwork requirements prevent serious injury and death among employees by notifying them of: Clearance limits in aisles and passageways to avoid improper use (and resulting impact) by mechanical-handling equipment; maximum loadings to prevent floor collapse; defective ladders that could become unstable or collapse during use; and proper construction and erection of outrigger scaffolds to avoid instability or collapse.

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 functions, including whether the information is useful;
- The accuracy of OSHA's estimate of the burden (time and costs) 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 is proposing to extend OMB approval of the information-collection requirements contained in the Standards on Walking-Working Surfaces (29 CFR part 1910, subpart D). 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 a currently-approved information-collection requirement.

Title: Walking-Working Surfaces (20 CFR part 1910, subpart D).

OMB Number: 1218–0199.

Affected Public: Business or other for-profit; not-for-profit institutions; Federal Government; State, local, or tribal governments.

Number of Respondents: 60,500.

Frequency of Recordkeeping: Initially; on occasion.

Average Time per Response: Varies from one minute to maintain at the jobsite a set of drawings and specifications for outrigger scaffolds, to two hours to mark aisles and passageways.

Estimated Total Burden Hours: 33,837.

Estimated Cost (Operation and Maintenance): $0.

IV. Authority and Signature

John L. Henshaw, 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 September 27, 2001.

John L. Henshaw,

Assistant Secretary of Labor.

[FR Doc. 01–24701 Filed 10–2–01; 8:45 am]

BILLING CODE 4510–26–M

NATIONAL SCIENCE FOUNDATION

Advisory Committee for Environmental Research and Education Notice of Meeting;

In accordance with the Federal Advisory Committee Act (Pub. Law 92–463, as amended), the National Science Foundation announces the following meeting:

Name: Advisory Committee for Environmental Research and Education (9487).

Dates: October 17, 2001; 11:45 a.m.–5:30 p.m., October 18, 2001; 8:30 a.m.–2:30 p.m.

Place: National Science Foundation, Room 1235, 4201 Wilson Blvd, Arlington, VA.

Type of Meeting: Open.

Contact Person: Dr. Margaret Cavanaugh, Office of the Director, National Science Foundation, Suite 1205, 4201 Wilson Blvd, Arlington, Virginia 22230. Phone 703–292–8002.

Minutes: May be obtained from the contact person listed above.

Purpose of Meeting: To provide advice, recommendations, and oversight concerning support for environmental research and education.

Agenda:

October 17 Presentations on interdisciplinary environmental activities in Japan and England
AC–ERE Task Group meetings
October 18 Meeting with the NSF Director
Meeting with Assistant Director for Education and Human Resources
Continuation of discussion of directions in interdisciplinary environmental research.

Dated: September 28, 2001.

Susanne Bolton,

Committee Management Officer.

[FR Doc. 01–24686 Filed 10–2–01; 8:45 am]

BILLING CODE 7555–01–M

NUCLEAR REGULATORY COMMISSION

[Docket Nos. 50–325 and 50–324]

Carolina Power & Light Company; Brunswick Steam Electric Plant, Units 1 and 2; Environmental Assessment and Finding of No Significant Impact

The U.S. Nuclear Regulatory Commission (NRC) is considering issuance of an exemption from Title 10 of the Code of Federal Regulations (10 CFR) Part 50, Appendix G, for Facility Operating License Nos. DPR–71 and DPR–62 issued to Carolina Power & Light Company (CP&L, the licensee), for operation of the Brunswick Steam Electric Plant, Units 1 and 2, located in Brunswick County, North Carolina. As required by 10 CFR 51.21, the NRC is

issuing this environmental assessment and finding of no significant impact.

Environmental Assessment

Identification of the Proposed Action

The proposed action would allow CP&L to use American Society of Mechanical Engineers (ASME) Code Case N–640 as the basis for establishing the fracture toughness values used in pressure-temperature (P–T) limit calculations. Code Case N–640 permits application of the lower bound static initiation fracture toughness value equation (K_{Ic} equation) as the basis for establishing the P–T curves in lieu of using the lower bound crack arrest fracture toughness value equation (i.e., the K_{Ia} equation, the method invoked by Appendix G to Section XI of the ASME Code) as the basis for the curves.

The proposed action is in accordance with the licensee's application dated May 1, 2001, as supplemented by letter dated August 20, 2001.

The Need for the Proposed Action

10 CFR 50.60 requires that all light-water nuclear power reactors must meet the fracture toughness requirements of Appendix G of 10 CFR 50. 10 CFR Part 50, Appendix G requires P–T limit curves to be at least as conservative as limits obtained by following the methods of analysis and the margins of safety of Appendix G of Section XI of the ASME Code. Requests for exemptions to the requirements of 10 CFR Part 50, Appendices G and H, may be submitted pursuant to 10 CFR 50.60(b), which allows licensees to use alternatives to the respective fracture toughness and reactor vessel material surveillance program requirements of the appendices, if an exemption to use the alternatives is granted by the Commission pursuant to 10 CFR 50.12. According to 10 CFR 50.12(a)(1), the Commission may grant exemptions to the requirements of 10 CFR Part 50 if the exemptions are authorized by law, and will not present an undue risk to the public health and safety, and are consistent with the common defense and security.

Environmental Impacts of the Proposed Action

The NRC has completed its evaluation of the proposed action and concludes that the proposed action involves an administrative activity (a recalculation of a required table in technical specifications.)

The proposed action will not significantly increase the probability or consequences of accidents, no changes are being made in the types of effluents that may be released off site, and there is no significant increase in occupational or public radiation exposure. Therefore, there are no significant radiological environmental impacts associated with the proposed action.

With regard to potential nonradiological impacts, the proposed action does not have a potential to affect any historic sites. It does not affect nonradiological plant effluents and has no other environmental impact. Therefore, there are no significant nonradiological environmental impacts associated with the proposed action.

Accordingly, the NRC concludes that there are no significant environmental impacts associated with the proposed action.

Environmental Impacts of the Alternatives to the Proposed Action

As an alternative to the proposed action, the staff considered denial of the proposed action (i.e., the ''no-action'' alternative). Denial of the application would result in no change in current environmental impacts. The environmental impacts of the proposed action and the alternative action are similar.

Alternative Use of Resources

The action does not involve the use of any different resource than those previously considered in the Final Environmental Statement for the Brunswick Steam Electric Plant, dated January 1974.

Agencies and Persons Consulted

On August 27, 2001, the staff consulted with Mr. Johnny James of the North Carolina Department of Environment and Natural Resources, regarding the environmental impact of the proposed action. The State official had no comments.

Finding of No Significant Impact

On the basis of the environmental assessment, the NRC concludes that the proposed action will not have a significant effect on the quality of the human environment. Accordingly, the NRC has determined not to prepare an environmental impact statement for the proposed action.

For further details with respect to the proposed action, see the licensee's letter dated May 1, 2001, as supplemented by letter dated August 20, 2001. Documents may be examined, and/or copied for a fee, at the NRC's Public Document Room (PDR), located at One White Flint North, 11555 Rockville Pike (first floor), Rockville, Maryland. Publicly available records will be accessible electronically from the ADAMS Public Library component on the NRC Web site, *http://www.nrc.gov* (the Public Electronic Reading Room). If you do not have access to ADAMS or if there are problems in accessing the documents located in ADAMS, contact the NRC PDR Reference staff at 1–800–397–4209, or 301–415–4737, or by e-mail at *pdr@nrc.gov.*

Dated at Rockville, Maryland, this 27th day of September 2001.

For the Nuclear Regulatory Commission.

Richard P. Correia,

Chief, Section 2, Project Directorate II, Division of Licensing Project Management, Office of Nuclear Reactor Regulation.

[FR Doc. 01–24705 Filed 10–2–01; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket 72–12]

Entergy Nuclear Operations, Inc. James A. Fitzpatrick Nuclear Power Plant; Independent Spent Fuel Storage Installation Issuance of Environmental Assessment; and Finding of No Significant Impact

The U.S. Nuclear Regulatory Commission (NRC or Commission) is considering issuance of an exemption, pursuant to 10 CFR 72.7, from the provisions of 10 CFR 72.212(a)(2), 72.212(b)(2)(i)(A), 72.212(b)(7) and 72.214 to Entergy Nuclear Operations, Inc. (Entergy). The requested exemption would allow Entergy to deviate from the condition in Certificate of Compliance 1014, Appendix A, Surveillance Requirement 3.2.3.1 and Figure 3.2.3–1, for the HI–STORM 100 Cask System, listed in 10 CFR 72.214, at the James A. FitzPatrick Independent Spent Fuel Storage Installation (ISFSI). This exemption would allow alternative surveillance requirements to be used rather than those specified in the HI–STORM 100 Cask System Certificate of Compliance.

Environmental Assessment

Identification of Proposed Action

By letter dated August 24, 2001, Entergy requested an exemption from the requirements of 10 CFR 72.212(a)(2), 72.212(b)(2)(i)(A), and 72.214 to deviate from the requirements of Certificate of Compliance 1014, Appendix A, Surveillance Requirement 3.2.3.1 and Figure 3.2.3–1, for the HI–STORM 100 Cask System, authorized by NRC to use spent fuel storage casks approved under 10 CFR Part 72, Subpart K. The staff is

also considering an exemption to 10 CFR 72.212(b)(7).

Entergy plans to use the HI–STORM 100 Cask System to store spent nuclear fuel, generated at the James A. FitzPatrick Nuclear Power Plant, at an ISFSI located in Oswego, New York, on the James A. FitzPatrick Nuclear Power Plant site. The FitzPatrick ISFSI has been constructed for interim dry storage of spent nuclear fuel.

By exempting Entergy from 10 CFR 72.212(a)(2), 72.212(b)(2)(i)(A), 72.212(b)(7) and 72.214, Entergy will be authorized to perform the following surface dose measurements on the loaded HI–STORM 100 Cask Systems:

A minimum of 12 dose rate measurements shall be taken on the side of the OVERPACK in three sets of four measurements. One measurement set shall be taken approximately at the cask mid-height plane, 90 degrees apart around the circumference of the cask. The second and third measurement sets shall be taken approximately 60 inches above and below the mid-height plane, respectively, also 90 degrees apart around the circumference of the cask. The average of the 12 dose rate measurements shall be compared to the limit specified in LCO 3.2.3.a.

A minimum of five (5) dose rate measurements shall be taken of the top of the OVERPACK. One dose rate measurement shall be taken at approximately the center of the lid and four measurements shall be taken at locations on the top concrete shield, approximately half way between the center and the edge of the top shield, 90 degrees apart around the circumference of the lid. The average of the five (5) dose rate measurements shall be compared to the limit specified in LCO 3.2.3.b.

A dose rate measurement shall be taken adjacent to each inlet and outlet vent duct. The average of the eight (8) inlet and outlet duct dose rates shall be compared to the limit specified in LCO 3.2.3.c.

The surface dose measurement locations specified above would be in lieu of those specified in Certificate of Compliance 1014, Appendix A, Surveillance Requirement 3.2.3.1 and Figure 3.2.3–1, for the HI–STORM 100 Cask System, authorized by NRC to use spent fuel storage casks approved under 10 CFR Part 72, Subpart K. This figure shows the required surface dose rate measurement locations on a Holtec HI–STORM 100 cask. To replace the figure, the applicant added verbiage to SR 3.2.3.1, to direct users to the proper locations for taking dose rate measurements necessary to demonstrate compliance with Limiting Condition for Operation (LCO) 3.2.3. The new verbiage added to SR 3.2.3.1, along with the deletion of Figure 3.2.3–1, results in the same performance of average surface dose rate measurement determinations as is currently approved. The proposed action before the Commission is whether to grant this exemption under 10 CFR 72.7.

The NRC staff has reviewed the Entergy application, evaluated the public health and safety and environmental impacts of the proposed exemption and determined that revised surface dose measurement surveillance is acceptable because the revised surveillance results in the same performance of average surface dose rate measurement determinations as is currently approved. NRC staff has determined that the revised surface dose measurement surveillance is acceptable and granting the exemption would not result in any significant impacts. Additionally, the NRC staff has found that use of the revised surveillance would have minimal impact on the design basis and would not be inimical to public health and safety.

Need for the Proposed Action

The James A. FitzPatrick Nuclear Power Plant will lose full core off-load capability in the James A. FitzPatrick spent fuel pool after the upcoming refueling outage in the fall of 2002. In order to ensure that full core off-load capability in the James A. FitzPatrick spent fuel pool is maintained after the refueling outage, Entergy must load three 68 assembly multi-purpose canisters. Unless the exemption is granted or the Certificate is amended, Entergy will not be in full conformance with the Certificate and not be able to load the multi-purpose canisters. On July 3, 2001, the cask designer, Holtec International (Holtec) submitted to the NRC an application to amend Certificate of Compliance 1014 (HI–STORM Amendment 1). The application includes a request to revise the surveillance requirements. Because NRC review and the 10 CFR Part 72 rulemaking to amend the Certificate will not be completed prior to the date that Entergy plans to begin loading HI–STORM 100 Cask Systems, the NRC is granting this exemption based on the staff's technical review of information submitted by Entergy.

Environmental Impacts of the Proposed Action

The potential environmental impact of using the HI–STORM 100 Cask System was initially presented in the Environmental Assessment (EA) for the Final Rule to add the HI–STORM 100 Cask System to the list of approved spent fuel storage casks in 10 CFR 72.214 (65 FR 25241, dated May 1, 2000). The revised surveillance does not increase the probability or consequence of accidents. No changes have been requested to the types or quantities of any radiological effluents that may be released offsite, and there is not significant increase in occupational or public radiation exposure. There are no significant radiological environmental impacts associated with the proposed action. The HI–STORM 100 Cask System is designed to mitigate the effects of design basis accidents that could occur during storage. Design basis accidents account for human-induced events and the most severe natural phenomena reported for the site and surrounding area. Postulated accidents analyzed for an ISFSI include tornado winds and tornado generated missiles, design basis earthquake, design basis flood, accidental cask drop, lightning effects, fire, explosions, and other incidents. Considering the specific cask and site design requirements for each accident condition, the design of the cask would prevent loss of containment, shielding, and criticality control. Without the loss of either containment, shielding, or criticality control, the risk to public health and safety is not compromised. Therefore, the staff has determined that there is no reduction in the safety margin nor significant environmental impacts as a result of revising the surface dose surveillance.

Alternative to the Proposed Action

Since there is no significant environmental impact associated with the proposed action, alternatives with equal or greater environmental impact are not evaluated. The alternative to the proposed action would be to deny approval of the exemption. Denial of the exemption request will have the same environmental impact.

Agencies and Persons Consulted

On September 4, 2001, Mr. J. Spath of the New York State Energy Research and Development Authority, was contacted about the Environmental Assessment for the proposed action and had no comments.

Finding of No Significant Impact

The environmental impacts of the proposed action have been reviewed in accordance with the requirements set forth in 10 CFR Part 51. Based upon the foregoing EA, the Commission finds that the proposed action of granting an exemption from 10 CFR 72.212(a)(2), 72.212(b)(2)(i)(A), 72.121(b)(7) and 72.214 so that Entergy may utilize

modified surveillance requirements for the HI–STORM 100 Cask Systems at the FitzPatrick ISFSI will not significantly impact the quality of the human environment. Accordingly, the Commission has determined not to prepare an environmental impact statement for the proposed exemption.

The NRC maintains an Agencywide Documents Access and Management System (ADAMS), which provides text and image files of NRC's public documents. These documents may be accessed through the NRC's Public Electronic Reading Room on the Internet at http://www.nrc.gov/NRC/ADAMS/index.html. If you do not have access to ADAMS or if there are problems in accessing the documents located in ADAMS, contact the NRC Public Document Room (PDR) Reference staff at 1–800–397–4209, 301–415–4737 or by e-mail to pdr@nrc.gov.

Dated at Rockville, Maryland, this 17th day of September 2001.

For the Nuclear Regulatory Commission.

E. William Brach,

Director, Spent Fuel Project Office, Office of Nuclear Material Safety and Safeguards.

[FR Doc. 01–24706 Filed 10–2–01; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Advisory Committee on Nuclear Waste; Procedures for Meetings

Background

This notice describes procedures to be followed with respect to meetings conducted pursuant to the Federal Advisory Committee Act by the Nuclear Regulatory Commission's (NRC's) Advisory Committee on Nuclear Waste (ACNW). These procedures are set forth so that they may be incorporated by reference in future notices for individual meetings.

The ACNW advises the Nuclear Regulatory Commission on nuclear waste disposal issues. This includes facilities covered under 10 CFR parts 60, 61, and 63 and other applicable regulations and legislative mandates, such as the Nuclear Waste Policy Act, the Low-Level Radioactive Waste Policy Act and amendments, and the Uranium Mill Tailings Radiation Control Act, as amended. The Committee's reports become a part of the public record.

The ACNW meetings are normally open to the public and provide opportunities for oral or written statements from members of the public to be considered as part of the Committee's information gathering process. The meetings are not adjudicatory hearings such as those conducted by the NRC's Atomic Safety and Licensing Board Panel as part of the Commission's licensing process. ACNW meetings are conducted in accordance with the Federal Advisory Committee Act.

General Rules Regarding ACNW Meetings

An agenda is published in the **Federal Register** for each full Committee meeting and is available on the Internet at *http://www.nrc.gov/ACRSACNW.* There may be a need to make changes to the agenda to facilitate the conduct of the meeting. The Chairman of the Committee is empowered to conduct the meeting in a manner that, in his/her judgment, will facilitate the orderly conduct of business, including making provisions to continue the discussion of matters not completed on the scheduled day during another meeting. Persons planning to attend the meeting may contact the Designated Federal Official specified in the individual **Federal Register** Notice prior to the meeting to be advised of any changes to the agenda that may have occurred. This individual can be contacted between 7:30 a.m. and 3:30 p.m., Eastern Time.

The following requirements shall apply to public participation in ACNW meetings:

(a) Persons wishing to submit written comments regarding the agenda items may do so by sending a readily reproducible copy addressed to the Designated Federal Official specified in the **Federal Register** Notice for the individual meeting in care of the Advisory Committee on Nuclear Waste, U.S. Nuclear Regulatory Commission, Washington, DC 20555. Comments should be in the possession of the Designated Federal Official prior to the meeting to allow time for reproduction and distribution. Comments should be limited to topics being considered by the Committee. Written comments may also be submitted by providing a readily reproducible copy to the Designated Federal Official at the beginning of the meeting.

(b) Persons desiring to make oral statements at the meeting should make a request to do so to the Designated Federal Official. If possible, the request should be made five days before the meeting, identifying the topics to be discussed and the amount of time needed for presentation so that orderly arrangements can be made. The Committee will hear oral statements on topics being reviewed at an appropriate time during the meeting as scheduled by the Chairman.

(c) Information regarding topics to be discussed, changes to the agenda, whether the meeting has been canceled or rescheduled and the time allotted to present oral statements can be obtained by contacting the Designated Federal Official between 7:30 a.m. and 3:30 p.m., Eastern Time.

(d) During the ACNW meeting presentations and discussions, questions may be asked by ACNW members, Committee consultants, NRC staff, and the ACNW staff.

(e) The use of still, motion picture, and television cameras will be permitted at the discretion of the Chairman and subject to the condition that the physical installation and presence of such equipment will not interfere with the conduct of the meeting. The Designated Federal Official will have to be notified prior to the meeting and will authorize the installation or use of such equipment after consultation with the Chairman. The use of such equipment will be restricted as is necessary to protect proprietary or privileged information that may be in documents, folders, etc., in the meeting room. Electronic recordings will be permitted only during those portions of the meeting that are open to the public.

(f) A transcript is kept for certain open portions of the meeting and will be available in the NRC Public Document Room, One White Flint North, Room O–1F21, 11555 Rockville Pike, Rockville, MD 20852–2738, or from the Publicly Available Records System (PARS) component of NRC's document system (ADAMS) which is accessible from the NRC Web site at *http://www.nrc.gov/NRC/ADAMS/index.html* (the Public Electronic Reading Room). A copy of the certified minutes of the meeting will be available at the same location on or before three months following the meeting. Copies may be obtained upon payment of appropriate reproduction charges. ACNW meeting agenda, meeting transcripts, and letter reports are available for downloading or viewing on the Internet at *http://www.nrc.gov/ACRSACNW.*

(g) Video teleconferencing service is available for observing open sessions of some ACNW meetings. Those wishing to use this service for observing ACNW meetings should contact Mr. Theron Brown, ACNW Audio Visual Technician, (301–415–8066) between 7:30 a.m. and 3:30 p.m. Eastern Time at least 10 days before the meeting to ensure the availability of this service. Individuals or organizations requesting this service will be responsible for telephone line charges and for providing the equipment and facilities that they

use to establish the video teleconferencing link. The availability of video teleconferencing services is not guaranteed.

ACNW Working Group Meetings

ACNW Working Group meetings will also be conducted in accordance with these procedures, as appropriate. When Working Group meetings are held at locations other than at NRC facilities, reproduction facilities may not be available at a reasonable cost. Accordingly, 25 additional copies of the materials to be used during the meeting should be provided for distribution at such meetings.

Special Provisions When Proprietary Sessions Are To Be Held

If it is necessary to hold closed sessions for the purpose of discussing matters involving proprietary information, persons with agreements permitting access to such information may attend those portions of the ACNW meetings where this material is being discussed upon confirmation that such agreements are effective and related to the material being discussed.

The Designated Federal Official should be informed of such an agreement at least five working days prior to the meeting so that it can be confirmed, and a determination can be made regarding the applicability of the agreement to the material that will be discussed during the meeting. The minimum information provided should include information regarding the date of the agreement, the scope of material included in the agreement, the project or projects involved, and the names and titles of the persons signing the agreement. Additional information may be requested to identify the specific agreement involved. A copy of the executed agreement should be provided to the Designated Federal Official prior to the beginning of the meeting for admittance to the closed session.

Dated: September 28, 2001.

Andrew L. Bates,

Advisory Committee Management Officer.

[FR Doc. 01–24703 Filed 10–2–01; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Advisory Committee on Reactor Safeguards; Procedures for Meetings

Background

This notice describes procedures to be followed with respect to meetings conducted by the Nuclear Regulatory Commission's (NRC's) Advisory Committee on Reactor Safeguards (ACRS) pursuant to the Federal Advisory Committee Act. These procedures are set forth so that they may be incorporated by reference in future notices for individual meetings.

The ACRS is a statutory group established by Congress to review and report on applications for the licensing of nuclear power reactor facilities and on certain other nuclear safety matters. The Committee's reports become a part of the public record.

The ACRS meetings are conducted in accordance with the Federal Advisory Committee Act; they are normally open to the public and provide opportunities for oral or written statements from members of the public to be considered as part of the Committee's information gathering process. ACRS reviews do not normally encompass matters pertaining to environmental impacts other than those related to radiological safety.

The ACRS meetings are not adjudicatory hearings such as those conducted by the NRC's Atomic Safety and Licensing Board Panel as part of the Commission's licensing process.

General Rules Regarding ACRS Meetings

An agenda is published in the **Federal Register** for each full Committee meeting. There may be a need to make changes to the agenda to facilitate the conduct of the meeting. The Chairman of the Committee is empowered to conduct the meeting in a manner that, in his/her judgment, will facilitate the orderly conduct of business, including making provisions to continue the discussion of matters not completed on the scheduled day on another meeting day. Persons planning to attend the meeting may contact the Designated Federal Official specified in the individual **Federal Register** Notice prior to the meeting to be advised of any changes to the agenda that may have occurred. This individual can be contacted between 7:30 a.m. and 3:30 p.m., Eastern Time.

The following requirements shall apply to public participation in ACRS full Committee meetings:

(a) Persons wishing to submit written comments regarding the agenda items may do so by sending a readily reproducible copy addressed to the Designated Federal Official specified in the **Federal Register** Notice, care of the Advisory Committee on Reactor Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555. Comments should be limited to items being considered by the Committee. Comments should be in the possession of the Designated Federal Official prior to the meeting to allow time for reproduction and distribution. Written comments may also be submitted by providing a readily reproducible copy to the Designated Federal Official at the beginning of the meeting.

(b) Persons desiring to make oral statements at the meeting should make a request to do so to the Designated Federal Official. If possible, the request should be made five days before the meeting, identifying the topics to be discussed and the amount of time needed for presentation so that orderly arrangements can be made. The Committee will hear oral statements on topics being reviewed at an appropriate time during the meeting as scheduled by the Chairman.

(c) Information regarding topics to be discussed, changes to the agenda, whether the meeting has been canceled or rescheduled, and the time allotted to present oral statements can be obtained by contacting the Designated Federal Official between 7:30 a.m. and 3:30 p.m., Eastern Time.

(d) During the presentations and discussions at ACRS meetings, questions may be asked only by ACRS members, ACRS consultants and staff, and the NRC staff.

(e) The use of still, motion picture, and television cameras will be permitted at the discretion of the Chairman and subject to the condition that the physical installation and presence of such equipment will not interfere with the conduct of the meeting. The Designated Federal Official will have to be notified prior to the meeting and will authorize the installation or use of such equipment after consultation with the Chairman. The use of such equipment will be restricted as is necessary to protect proprietary or privileged information that may be in documents, folders, etc., in the meeting room. Electronic recordings will be permitted only during those portions of the meeting that are open to the public.

(f) A transcript is kept for certain open portions of the meeting and will be available in the NRC Public Document Room, One White Flint North, Room O–1F21, 11555 Rockville Pike, Rockville, MD 20852–2738, or from the Publicly Available Records System (PARS) component of NRC's document system (ADAMS) which is accessible from the NRC Web site at *http://www.nrc.gov/NRC/ADAMS/index.html* (the Public Electronic Reading Room). A copy of the certified minutes of the meeting will be available at the same location on or before three months following the meeting. Copies may be obtained upon payment of appropriate reproduction

charges. ACRS meeting agenda, meeting transcripts, and letter reports are available for downloading or viewing on the internet at *http://www.nrc.gov/ACRSACNW.*

(g) Video teleconferencing service is available for observing open sessions of ACRS meetings. Those wishing to use this service for observing ACRS meetings should contact Mr. Theron Brown, ACRS Audio Visual Technician, (301–415–8066) between 7:30 a.m. and 3:30 p.m. Eastern Time at least 10 days before the meeting to ensure the availability of this service. Individuals or organizations requesting this service will be responsible for telephone line charges and for providing the equipment and facilities that they use to establish the video teleconferencing link. The availability of video teleconferencing services is not guaranteed.

ACRS Subcommittee Meetings

ACRS Subcommittee meetings will also be conducted in accordance with the above procedures, as appropriate. When Subcommittee meetings are held at locations other than at NRC facilities, reproduction facilities may not be available at a reasonable cost. Accordingly, 25 additional copies of the materials to be used during the meeting should be provided for distribution at such meetings.

Special Provisions When Proprietary Sessions Are To Be Held

If it is necessary to hold closed sessions for the purpose of discussing matters involving proprietary information, persons with agreements permitting access to such information may attend those portions of the ACRS meetings where this material is being discussed upon confirmation that such agreements are effective and related to the material being discussed.

The Designated Federal Official should be informed of such an agreement at least five working days prior to the meeting so that it can be confirmed, and a determination can be made regarding the applicability of the agreement to the material that will be discussed during the meeting. The minimum information provided should include information regarding the date of the agreement, the scope of material included in the agreement, the project or projects involved, and the names and titles of the persons signing the agreement. Additional information may be requested to identify the specific agreement involved. A copy of the executed agreement should be provided to the Designated Federal Official prior to the beginning of the meeting for admittance to the closed session.

Dated: September 28, 2001.

Andrew L. Bates,

Advisory Committee Management Officer.

[FR Doc. 01–24704 Filed 10–2–01; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Biweekly Notice; Applications and Amendments to Facility Operating Licenses Involving No Significant Hazards Considerations

Note: The publication date for this notice will change from every other Wednesday to every other Tuesday, effective January 8, 2002. The notice will contain the same information and will continue to be published biweekly.

I. Background

Pursuant to Public Law 97–415, the U.S. Nuclear Regulatory Commission (the Commission or NRC staff) is publishing this regular biweekly notice. Public Law 97–415 revised section 189 of the Atomic Energy Act of 1954, as amended (the Act), to require the Commission to publish notice of any amendments issued, or proposed to be issued, under a new provision of section 189 of the Act. This provision grants the Commission the authority to issue and make immediately effective any amendment to an operating license upon a determination by the Commission that such amendment involves no significant hazards consideration, notwithstanding the pendency before the Commission of a request for a hearing from any person.

This biweekly notice includes all notices of amendments issued, or proposed to be issued from September 10, 2001 through September 21, 2001. The last biweekly notice was published on September 19, 2001 (66 FR 48283).

Notice of Consideration of Issuance of Amendments to Facility Operating Licenses, Proposed No Significant Hazards Consideration Determination, And Opportunity for a Hearing

The Commission has made a proposed determination that the following amendment requests involve no significant hazards consideration. Under the Commission's regulations in 10 CFR 50.92, this means that operation of the facility in accordance with the proposed amendment would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety. The basis for this proposed determination for each amendment request is shown below.

The Commission is seeking public comments on this proposed determination. Any comments received within 30 days after the date of publication of this notice will be considered in making any final determination.

Normally, the Commission will not issue the amendment until the expiration of the 30-day notice period. However, should circumstances change during the notice period such that failure to act in a timely way would result, for example, in derating or shutdown of the facility, the Commission may issue the license amendment before the expiration of the 30-day notice period, provided that its final determination is that the amendment involves no significant hazards consideration. The final determination will consider all public and State comments received before action is taken. Should the Commission take this action, it will publish in the **Federal Register** a notice of issuance and provide for opportunity for a hearing after issuance. The Commission expects that the need to take this action will occur very infrequently.

Written comments may be submitted by mail to the Chief, Rules and Directives Branch, Division of Administrative Services, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, and should cite the publication date and page number of this **Federal Register** notice. Written comments may also be delivered to Room 6D22, Two White Flint North, 11545 Rockville Pike, Rockville, Maryland from 7:30 a.m. to 4:15 p.m. Federal workdays. Copies of written comments received may be examined at the NRC Public Document Room, located at One White Flint North, 11555 Rockville Pike (first floor), Rockville, Maryland. The filing of requests for a hearing and petitions for leave to intervene is discussed below.

By November 2, 2001, the licensee may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written request for a hearing and a petition for leave to intervene. Requests for a hearing and a petition for leave to intervene shall be filed in accordance with the Commission's ''Rules of Practice for

Domestic Licensing Proceedings'' in 10 CFR part 2. Interested persons should consult a current copy of 10 CFR 2.714, which is available at the NRC's Public Document Room, located at One White Flint North, 11555 Rockville Pike (first floor), Rockville, Maryland 20852. Publicly available records will be accessible electronically from the Agencywide Documents Access and Management Systems (ADAMS) Public Electronic Reading Room on the internet at the NRC Web site, *http://www.nrc.gov/NRC/ADAMS/index.html.* If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition; and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of a hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) The nature of the petitioner's right under the Act to be made a party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to 15 days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than 15 days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter. Each contention must consist of a specific statement of the issue of law or fact to be raised or controverted. In addition, the petitioner shall provide a brief explanation of the bases of the contention and a concise statement of the alleged facts or expert opinion which support the contention and on which the petitioner intends to rely in proving the contention at the hearing. The petitioner must also provide references to those specific sources and documents of which the petitioner is aware and on which the petitioner intends to rely to establish those facts or expert opinion. Petitioner must provide sufficient information to show that a genuine dispute exists with the applicant on a material issue of law or fact. Contentions shall be limited to matters within the scope of the amendment under consideration. The contention must be one which, if proven, would entitle the petitioner to relief. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

If a hearing is requested, the Commission will make a final determination on the issue of no significant hazards consideration. The final determination will serve to decide when the hearing is held.

If the final determination is that the amendment request involves no significant hazards consideration, the Commission may issue the amendment and make it immediately effective, notwithstanding the request for a hearing. Any hearing held would take place after issuance of the amendment.

If the final determination is that the amendment request involves a significant hazards consideration, any hearing held would take place before the issuance of any amendment.

A request for a hearing or a petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Attention: Rulemaking and Adjudications Branch, or may be delivered to the Commission's Public Document Room, located at One White Flint North, 11555 Rockville Pike (first floor), Rockville, Maryland 20852, by the above date. A copy of the petition should also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, and to the attorney for the licensee.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for a hearing will not be entertained absent a determination by the Commission, the presiding officer or the Atomic Safety and Licensing Board that the petition and/or request should be granted based upon a balancing of factors specified in 10 CFR 2.714(a)(1)(i)–(v) and 2.714(d).

For further details with respect to this action, see the application for amendment which is available for public inspection at the Commission's Public Document Room, located at One White Flint North, 11555 Rockville Pike (first floor), Rockville, Maryland. Publicly available records will be accessible from the Agencywide Documents Assess and Management Systems (ADAMS) Public Electronic Reading Room on the internet at the NRC Web site, *http://www.nrc.gov/NRC/ADAMS/index.html.* If you do not have access to ADAMS or if there are problems in accessing the documents located in ADAMS, contact the NRC Public Document room (PDR) Reference staff at 1–800–397–4209, 304–415–4737 or by e-mail to *pdr@nrc.gov.*

AmerGen Energy Company, LLC, Docket No. 50–461, Clinton Power Station, Unit 1, DeWitt County, Illinois

Date of amendment request: June 21, 2001 (U–603490)

Description of amendment request: The proposed amendment would eliminate the Technical Specification leakage limit for any one main steam line as measured by main steam isolation valve leakage of less than or equal to 28 standard cubic feet per hour (scfh) and replace that requirement with an aggregate leakage limit of less than or equal to 112 scfh for all four main steam lines.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration which is presented below:

Does the change involve a significant increase in the probability or consequences of an accident previously evaluated?

The MSIVs [main steam isolation valves] are not initiators of or precursors to any of the accident scenarios presented in the Updated Safety Analysis Report. Therefore, this change does not involve an increase in the probability of any accident previously evaluated.

The proposed change to the TS [Technical Specifications] modifies the allowed main steam line leakage limit to an aggregate value (i.e., leakage for all four main steam lines combined) with no change to the currently allowed total leakage rate. This is the value currently used for calculation of dose consequences for the bounding accident for which MSIV closure is credited, the large-break loss of coolant accident (LOCA). This proposed change does not impact or increase

the assumed radionuclide source term therefore; this change does not involve an increase in consequences of any accident previously evaluated.

In summary, the proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

Does the change create the possibility of a new or different kind of accident from any accident previously evaluated?

The proposed change does not involve a change to the plant design or operation. No new equipment will be installed or utilized, and no new operating conditions will be initiated as a result of this change. The safety function of the MSIVs is to provide timely steam line isolation to mitigate the release of radioactive steam and limit reactor inventory loss under certain accident and transient conditions. Changing the leakage limits to include an aggregate value does not affect the isolation function performed by the MSIVs. Therefore, the proposed change does not create the possibility of a new or different kind of accident from any previously evaluated.

Does the change involve a significant reduction in a margin of safety?

The total allowed leakage rate for all four main steam lines remains unchanged at ≤112 scfh. The proposed change does not challenge the integrity of the fuel cladding, reactor coolant pressure boundary, or the primary containment.

The margin of safety that has the potential of being impacted by the proposed change involves the offsite dose consequences of postulated accidents which are directly related to containment leakage. As stated above, the total allowed leakage rate for all four main steam lines remains unchanged. In addition, there will not be a change in the types or amounts of any effluents released offsite. The radiological analyses remain unchanged and within the guidelines of 10 CFR 100, ''Reactor Site Criteria,'' and 10 CFR 50, ''Domestic Licensing of Production and Utilization Facilities,'' Appendix A, ''General Design Criteria for Nuclear Power Plants,'' General Design Criterion 19, ''Control Room.''

Therefore, the proposed change does not involve a significant reduction in the margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: Robert Helfrich, Mid-West Regional Operating Group, Exelon Generation Company, LLC, 1400 Opus Place, Suite 900, Downers Grove, IL 60515.

NRC Section Chief: Anthony J. Mendiola.

AmerGen Energy Company, LLC, Docket No. 50–461, Clinton Power Station, Unit 1, DeWitt County, Illinois

Date of amendment request: June 21, 2001 (U–603495).

Description of amendment request: The proposed amendment would modify the Technical Specification requirement that the main steam line safety relief valves (SRVs) open when they are manually actuated by instead requiring that the SRV valve actuators stroke on a manual actuation.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration which is presented below:

Does the change involve a significant increase in the probability or consequences of an accident previously evaluated?

The proposed changes modify TS [Technical Specification] SR [surveillance requirements] 3.4.4.3, SR 3.5.1.7 and SR 3.6.1.6.1. The proposed changes will eliminate the TS requirement that each valve opens during the manual actuation of the SRVs [safety relief valves]. Accidents are initiated by the malfunction of plant equipment, or the catastrophic failure of plant structures, systems or components. The performance of SRV testing is not a precursor to any accident previously evaluated and does not change the manner in which the SRVs are operated. The proposed testing requirements will not contribute to the failure of the SRVs nor any plant structure, system or component. Thus, the proposed changes to the performance of SR 3.4.4.3, SR 3.5.1.7 and SR 3.6.1.6.1 do not have any affect on the probability of an accident previously evaluated.

The performance of SRV testing provides assurance that the SRVs are capable of depressurizing the reactor pressure vessel (RPV). This will protect the reactor vessel from overpressurization and allowing the combination of the Low Pressure Coolant Injection (LPCI) System and Low Pressure Core Spray (LPCS) System to inject into the RPV as designed. The LLS [low-low set] logic causes two LLS valves to be opened at a lower pressure than the relief or safety mode pressure setpoints and causes all the LLS valves to stay open longer, such that reopening of more than one SRV is prevented on subsequent actuations. Thus, the LLS function prevents excessive short duration SRV cycles with valve actuation at the relief setpoint. The proposed changes involve the manner in which the subject valves are tested, and have no affect on the types or amounts of radiation released or the predicted offsite doses in the event of an accident. The proposed testing requirements are sufficient to provide confidence that the SRVs, ADS valves and the LLS valves will perform their intended safety functions. Thus, the radiological consequences of any accident previously evaluated are not increased.

Therefore, the proposed changes do not involve a significant increase in the probability or consequences of an accident previously evaluated.

Does the change create the possibility of a new or different kind of accident from any accident previously evaluated?

The proposed changes to SR 3.4.4.3, SR 3.5.1.7 and SR 3.6.1.6.1 do not affect the assumed accident performance of the SRVs, nor any plant structure, system or component previously evaluated. The proposed changes do not install any new equipment, and installed equipment is not being operated in a new or different manner. The valves continue to be bench-tested to verify the safety and relief modes of valve operation. The proposed changes will allow the testing of the manual actuation electrical circuitry, solenoid and air control valve, and the actuator without causing the SRV to open. No setpoints are being changed which would alter the dynamic response of plant equipment. Administrative controls, such as verifying that the actuator assembly has been recoupled following testing, minimize the potential for valve failures. Accordingly, no new failure modes are introduced. The changes credit the performance of bench testing, setpoint verification and in-situ actuator exercising with providing sufficient testing to ensure the valves will perform their required safety functions.

Therefore, the proposed changes do not create the possibility of a new or different kind of accident from any accident previously evaluated.

Does the change involve a significant reduction in a margin of safety?

The proposed changes to SR 3.4.4.3, SR 3.5.1.7 and SR 3.6.1.6.1 will allow the uncoupling of the SRV stem from the other components associated with the manual actuation of the SRVs. The proposed changes will allow the testing of the manual actuation electrical circuitry, solenoid and air control valve, and the actuator without causing the SRV to open. The SRVs will continue to be manually actuated by the bench-test valve control system of the setpoint testing program and prior to installation in the plant. The proposed changes do not effect the valve setpoint or the operational criteria that directs the SRVs to be manually opened during plant transients. There are no changes proposed which alter the setpoints at which protective actions are initiated, and there is no change to the operability requirements for equipment assumed to operate for accident mitigation.

Thus, the proposed changes do not involve a significant reduction in the margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: Robert Helfrich, Mid-West Regional Operating Group, Exelon Generation Company, LLC, 1400 Opus Place, Suite 900, Downers Grove, IL 60515.

NRC Section Chief: Anthony J. Mendiola.

Duke Energy Corporation, Docket No. 50–287, Oconee Nuclear Station, Unit 3, Oconee County, South Carolina

Date of amendment request: March 5, 2001, supplemented September 4, 2001

Description of amendment request: The proposed amendments would revise the Technical Specifications for Unit 3 to allow a one-time extension of the 10 CFR Part 50, Appendix J Containment Integrated Leak Rate Test interval. Presently the 10-year interval test is required to be performed prior to the operating cycle before the outage when the steam generators will be replaced. The proposed amendment would extend the test approximately 16 months to the outage when they will be replaced (i.e., no later than April 11, 2005), thereby precluding the need to perform the test during two subsequent outages. The No Significant Hazards Consideration Determination contained in the March 5, 2001, submittal was superceded in the September 4, 2001, submittal and is presented below.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Do the proposed changes involve a significant increase in the probability or consequences of an accident previously evaluated?

Response: No

The proposed revision to the Oconee Nuclear Station, Unit 3 (ONS–3) Technical Specifications (TS) adds a one-time extension to the current interval for Type A testing (containment Integrated Leak Rate Testing (ILRT)). The current test interval of 10 years, would be extended on a one time basis to 12 years 7 months from the last Type A test. The proposed extension to Type A testing cannot increase the probability of an accident previously evaluated since the containment Type A testing extension is not a modification to plant systems, or a change to plant operation that could initiate an accident. The proposed extension to Type A testing does not involve a significant increase in the consequences of an accident since research documented in NUREG–1493 found that, generically, very few potential containment leakage paths fail to be identified by Type B and C tests. In fact, an analysis of 144 ILRT results, including 23 failures, found that no failures were due to containment liner breach. The NUREG concluded that reducing the Type A testing frequency to one per twenty years would lead to an imperceptible increase in risk. The NUREG conclusions are supported by an ONS–3 specific evaluation of risk and consequences. ONS–3 provides a high degree of assurance through testing and inspection that the containment will not degrade in a manner detectable only by Type A testing. Inspections required by the Maintenance Rule and American Society of Mechanical Engineers (ASME) code are performed in order to identify indications of containment degradation that could affect leak tightness. Type B and C testing required by the ONS–3 TS will identify any containment opening, such as valves, that would otherwise be detected by the Type A tests. Type B and C testing is performed at the frequency specified by 10 CFR 50, Appendix J, Option A, § D.2 and § D.3, respectively. These factors show that a ONS–3 Type A test extension will not represent a significant increase in the consequences of an accident.

2. Do the proposed changes create the possibility of a new or different kind of accident from any accident previously evaluated?

Response: No

The proposed extension to Type A testing cannot create the possibility of a new or different type of accident since there are no physical changes [b]eing made to the plant. There are no changes to the operation of the plant that could introduce a new failure mode creating the possibility of a new or different kind of accident.

3. Do the proposed changes involve a significant reduction in the margin of safety?

Response: No

The proposed extension to Type A testing will not significantly reduce the margin of safety. The NUREG–1493 generic study of the effects of extending containment leakage testing found that a 20 year extension in Type A leakage testing resulted in an imperceptible increase in risk to the public. NUREG–1493 found that, generically, the design containment leakage rate contributes a very small amount to the individual risk, and that the decrease in Type A testing frequency would have a minimal affect on this risk since most potential leakage paths are detected by Type C testing. The NUREG conclusions are supported by an ONS–3 specific evaluation of risk and consequences.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: Anne W. Cottington, Winston and Strawn, 1200 17th Street, NW., Washington, DC 20005.

NRC Section Chief: Richard L. Emch, Jr.

Entergy Nuclear Operations, Inc., Docket No. 50–286, Indian Point Nuclear Generating Unit No. 3, Westchester County, New York

Date of amendment request: April 24, 2001.

Description of amendment request: The proposed amendment would revise the Indian Point 3 (IP3) Final Safety Analysis Report (FSAR) to reflect the original plant design. It will indicate that a portion of one loop of the Component Cooling Water (CCW) System is routed in the non-safety-related portion of the Fuel Storage Building (FSB).

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

Operation of the Indian Point 3 plant in accordance with the proposed amendment would not involve a significant hazards consideration as defined in 10 CFR 50.92 since it would not:

1. Involve a significant increase in the probability or consequences of an accident previously evaluated.

The proposed change to the FSAR revises it to reflect the as built configuration of the Component Cooling Water (CCW) system. One loop is routed to the Spent Fuel Pit Heat Exchanger (SFPHX) located in the Fuel Storage Building (FSB). The portion of the FSB where the CCW is located is seismic Class III rather than the seismic Class I required by design criteria in the FSAR. The proposed change demonstrates that the CCW loop and SFPHX will not be affected by a seismic event and that operator, action with credit for the Primary Water Storage Tank (PWST) providing redundancy (a source of water to maintain CCW), will assure that the CCW system function can be performed following a tornado. The proposed change does not affect the probability of an accident previously evaluated because there is no design change and the probability of natural phenomena does not change. The proposed change does not affect the consequences of an accident previously evaluated because the CCW system function is maintained by operator action following a tornado with missile damage to a small bore CCW pipe.

2. Create the possibility of a new or different kind of accident from any accident previously evaluated.

The proposed change to the FSAR revises it to reflect the as built configuration of the CCW system. One loop is routed to the Spent Fuel Pit Heat Exchanger (SFPHX) located in the Fuel Storage Building (FSB). The portion of the FSB where the CCW is located is seismic Class III rather than the seismic Class I required by design criteria in the FSAR. The proposed change demonstrates that the CCW loop and SFPHX will not be affected by a seismic event and that operator action with credit for the PWST inventory (a source of water to maintain CCW) will assure

that the CCW system function can be performed following a tornado. The proposed change does not create the possibility of a new or different kind of accident because the CCW system will not be operated differently than designed and operator action and the use of components to perform redundant functions to cope with a tornado is currently approved in the FSAR. Also, the CCW is designed to be operated by separating the loops.

3. Involve a significant reduction in a margin of safety.

The proposed change to the FSAR revises it to reflect the as built configuration of the CCW system. One loop is routed to the Spent Fuel Pit Heat Exchanger (SFPHX) located in the Fuel Storage Building (FSB). The portion of the FSB where the CCW is located is seismic Class III rather than the seismic Class I required by design criteria in the FSAR. The proposed change demonstrates that the CCW loop and SFPHX will not be affected by a seismic event and that operator action with credit for the PWST inventory (a source of water to maintain CCW) will assure that the CCW system function can be performed following a tornado. The proposed change does not involve a significant reduction in a margin of safety because the existing plant design considers the use of operator action and redundant components to mitigate the effects of a tornado. Also, the proposed change is for damage caused by a low risk event. The risk of tornado damage to the CCW piping in the FSB is low. The IP3 examination of external events found the probability of any tornado striking IP3 to be 1.59E–4/year. For tornados with wind speeds in excess of 180 mph, the frequency decreases to 8.62E–7/year. For the design basis tornado with a 300 mph wind speed, the frequency is 1.02E–9/year. The risk of a tornado following a LOCA is lower. The frequency of a LOCA followed by any tornado within 30 days is 3.02E–8/year. The frequency of the event can be used as a conservative estimate of core damage frequency (CDF). When compared to the nominal CDF at IP3, the frequency is negligible.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: Mr. John Fulton, Assistant General Counsel, Entergy Nuclear Generating Station, 600 Rocky Hill Road, Plymouth, MA 02360.

NRC Section Chief: Peter Tam, Acting.

Exelon Generation Company, LLC, Docket Nos. STN 50–456 and STN 50–457, Braidwood Station, Unit Nos. 1 and 2, Will County, Illinois; Docket Nos. STN 50–454 and STN 50–455, Byron Station, Unit Nos. 1 and 2, Ogle County, Illinois; Docket Nos. 50–237 and 50–249, Dresden Nuclear Power Station, Units 2 and 3, Grundy County, Illinois; Docket Nos. 50–373 and 50–374, LaSalle County Station, Units 1 and 2, LaSalle County, Illinois; Docket Nos. 50–254 and 50–265, Quad Cities Nuclear Power Station, Units 1 and 2, Rock Island County, Illinois

Date of amendment request: March 23, 2001.

Description of amendment request: The proposed amendment would incorporate changes to the Physical Security Plan and Guard Force Training and Qualification Plans for the identified facilities. The proposed changes would modify current escorting and control requirements for non-designated vehicles, lighting requirements for exterior areas within the protected area, and annual weapons qualifications.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

A. The proposed changes do not involve a significant increase in the probability or consequences of an accident previously evaluated.

No physical plant changes are being made as a result of changing the vehicle, lighting, and weapons qualification requirements. The proposed changes involve revising requirements that provide little or no value in the protection of the facility with regards to the design basis threat as described in 10 CFR part 73, ''Physical Protection of Plants and Materials,'' paragraph 1(a). Because the defensive strategies at each station have been proven to be effective without reliance on these requirements, it is concluded that the proposed changes do not involve a significant increase in the probability or consequences of an accident previously evaluated.

B. The proposed changes do not create the possibility of a new or different kind of accident from any accident previously evaluated.

There are no physical changes being made to the plant as a result of changing the vehicle, lighting, and weapons qualification requirements. The defensive strategies at each station remain unchanged under the proposed changes. A review of possible intrusion scenarios has confirmed that no event would result in a new sequence of events that could lead to a new accident scenario. Based on this review, it is concluded that no accident scenarios, failure mechanisms or limiting single failures are introduced as a result of the proposed changes. Therefore, the proposed Physical Security Plan and Guard Force Training and Qualification Plan changes do not create the possibility of a new or different kind of accident from any accident previously evaluated.

C. The proposed changes do not involve a significant reduction in the margin of safety.

It has been shown during recent Operational Safeguards Readiness Evaluations (OSRE), that the proposed changes do not impact the security's ability to protect the facility from the threat of radiological sabotage. The risk of radiological sabotage would not be increased by changing the vehicle, lighting, and weapons qualification requirements. Additionally, proposed change in weapons qualifications provides a more realistic evaluation of a responder's ability to protect the station from the threat of radiological sabotage. Based on this review, the proposed amendment does not involve a significant reduction in the margin of safety.

Therefore, based upon the above evaluation, Exelon Generation Company, LLC has concluded that these changes do not involve significant hazards considerations.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the requested amendments involve no significant hazards consideration.

Attorney for licensee: Mr. Edward J. Cullen, Jr., Vice President and General Counsel, Exelon Generation Company, LLC, 300 Exelon Way, KSB 3-W, Kennett Square, PA 19348.

NRC Section Chief: Anthony J. Mendiola.

FirstEnergy Nuclear Operating Company, et al., Docket No. 50–412, Beaver Valley Power Station, Unit Nos. 1 and 2 (BVPS–1 and 2), Beaver County, Pennsylvania

Date of amendment requests: May 22, 2001.

Description of amendment requests: The proposed amendments would revise the BVPS–1 and 2 technical specifications (TSs) to implement improvements endorsed in the Nuclear Regulatory Commission's (NRC's) Final Policy Statement on Technical Specification Improvements for Nuclear Power Reactors, dated July 22, 1993 (58 FR 39132). These license amendment requests propose the addition of an administrative control program for explosive gas and storage tank radioactivity monitoring to the administrative controls section of the BVPS–1 and 2 TSs consistent with the corresponding standard TS program. The amendment requests propose to

relocate the TS requirements associated with the curie content limit for liquid and gaseous waste storage system and the explosive gas concentration limit for gaseous waste storage systems. The addition of the standard TS program provides an appropriate level of control for the affected requirements in the TSs that allows these details to be relocated. The TSs proposed for relocation will be placed in the BVPS–1 and 2 Offsite Dose Calculation Manual or the BVPS–1 and 2 Licensing Requirements Manual. The net effect of the proposed changes is to provide adequate regulatory control in the TSs while making the content of the BVPS–1 and 2 TSs more consistent with the standard TSs for Westinghouse plants as presented in NUREG–1431 and simplifying the BVPS–1 and 2 TSs consistent with the goals of the NRC Final Policy Statement on TS improvements for nuclear power reactors.

Additionally, revisions to BVPS–1 and 2 TS 6.9.3, ''Annual Radioactive Release Report,'' are proposed to include changes to the reporting requirements. The changes proposed also include various administrative revisions to support the relocations.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Does the change involve a significant increase in the probability or consequences of an accident previously evaluated?

The proposed amendment does not involve a significant increase in the probability of an accident previously evaluated because no changes are being made to any event initiator. Nor is any analyzed accident scenario being revised. The initiating conditions and assumptions for accidents described in the UFSAR [Updated Final Safety Analysis Report] remain as previously analyzed.

The proposed amendment also does not involve a significant increase in the consequences of an accident previously evaluated. The amendment does not reduce the current operability requirements contained in the TS proposed for relocation. The proposed relocation of TS requirements only affects the level of regulatory control involved in future changes to the requirements. The proposed changes include additions to the TS in the form of programmatic controls that effectively replace the key TS requirements being relocated. As such, the TS proposed for relocation no longer meet the 10 CFR 50.36 criteria for retention in the TS.

The additional administrative changes are editorial in nature, and are made to support the relocation of TS. The additional administrative changes and the changes to Specification 6.9.3 have no adverse effect on the safety analyses for design basis accidents described in the UFSAR. The initiating conditions and assumptions for accidents described in the UFSAR remain as previously analyzed.

Therefore, the proposed amendment does not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Does the change create the possibility of a new or different kind of accident from any accident previously evaluated?

The proposed amendment does not involve any physical changes to the plant or the modes of plant operation defined in the TS. The proposed amendment does not involve the addition or modification of plant equipment nor does it alter the design or operation of any plant systems. No new accident scenarios, transient precursors, failure mechanisms, or limiting single failures are introduced as a result of these changes.

There are no changes in this amendment that would cause the malfunction of safety-related equipment assumed to be operable in accident analyses. No new mode of failure has been created and no new equipment performance requirements are imposed. The proposed amendment has no effect on any previously evaluated accident.

Therefore, the proposed amendment does not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. Does the change involve a significant reduction in a margin of safety?

The margin of safety depends on the maintenance of specific operating parameters and systems within design requirements and safety analysis assumptions.

The proposed amendment does not involve revisions to any safety limits or safety system setting that would adversely impact plant safety. The proposed amendment does not alter the functional capabilities assumed in a safety analysis for any system, structure, or component important to the mitigation and control of design bases accident conditions within the facility. Nor does this amendment revise any parameters or operating restrictions that are assumptions of a design basis accident. In addition, the proposed amendment does not affect the ability of safety systems to ensure that the facility can be placed and maintained in a shutdown condition for extended periods of time.

The proposed change includes the addition of programmatic controls that allow the affected TS to be relocated. The relocation of TS does not reduce the effectiveness of the requirements being relocated. Rather, the relocation of the TS results in a change in the regulatory control required for future changes made to the requirements. Additionally, due to the new programmatic controls, the TS proposed for relocation no longer meet the 10 CFR 50.36 criteria for retention in the TS.

The requirements contained within the affected TS will continue to be implemented by the appropriate plant procedures (e.g., operating and maintenance procedures) in the same manner as before. However, future changes to the relocated requirements will be controlled in accordance with 10 CFR 50.59 instead of a license amendment pursuant to 10 CFR 50.90. The provisions of 10 CFR 50.59 establish adequate controls over requirements removed from the TS and assure future changes to these requirements will be consistent with safe plant operation.

The additional administrative changes are editorial in nature, and are made to support the relocation of TS. The additional administrative changes and the proposed changes to Specification 6.9.3 do not alter any operating parameters or design requirements assumed in a safety analysis for systems or components important to the mitigation and control of design bases accident conditions within the facility. Nor do these changes alter safety limits or safety system settings required for safe operation of the plant or the assumptions of any safety analysis.

Therefore, the proposed amendment does not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: Mary O'Reilly, FirstEnergy Nuclear Operating Company, FirstEnergy Corporation, 76 South Main Street, Akron, OH 44308.

NRC Section Chief: Peter Tam (Acting).

FirstEnergy Nuclear Operating Company, et al., Docket No. 50–412, Beaver Valley Power Station, Unit 2 (BVPS–2), Beaver County, Pennsylvania

Date of amendment request: July 25, 2001.

Description of amendment request: The proposed license amendment for BVPS–2 would increase the limits for boron concentration in the refueling water storage tank (RWST) and in the reactor coolant system (RCS) accumulators. The RCS minimum boron concentration limit for Mode 6 would also be revised to make it consistent with the RWST boron concentration limit. The increase in the boron concentration limits in the RWST and accumulators is needed to address higher reactor core reactivity levels associated with core operation at higher plant capacity factors. TS Bases changes are also proposed to reflect the changes discussed above.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Does the change involve a significant increase in the probability or consequences of an accident previously evaluated?

No. The proposed change to increase the boron concentration in the Beaver Valley Power Station (BVPS) Unit 2 Refueling Water Storage Tank (RWST), Accumulators and in the Reactor Coolant System (RCS) during Mode 6 will maintain the safety analyses results in Chapter 15 of the BVPS Unit 2 Updated Final Safety Analysis Report (UFSAR) as bounding values for all Loss Of Coolant Accident (LOCA) and non-LOCA design basis accidents. The proposed changes do not reduce the RWST or accumulators ability to meet their design bases, which will not result in a significant increase in the probability of an accident previously evaluated.

Increased boron concentration limits for the RWST, Accumulators, and RCS in Mode 6 will not increase the consequences of an accident previously analyzed as described in the UFSAR. The increased boron concentration limits reduce the time to switchover from cold leg to hot leg recirculation, which will prevent boron precipitation in the reactor vessel following a LOCA. The post-LOCA long term core cooling minimum boron requirements have been determined to continue to be adequate to ensure adequate post-LOCA shutdown margin. The post-LOCA containment sump and containment spray pH remain within the limits specified in the UFSAR. All other transients either were not impacted or were made less severe as a result of the increased boron concentrations.

Therefore, based upon the above, this change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Does the change create the possibility of a new or different kind of accident from any accident previously evaluated?

No. The proposed increase in boron concentration does not add new or different equipment to the facility. The proposed Technical Specification changes also do not alter the manner in which plant equipment is being operated. Although the increased boron concentration requires procedure changes to ensure that cold leg to hot leg recirculation after a LOCA occurs quicker, there are no changes to the methods utilized to respond to plant events. The proposed Technical Specification changes do not alter instrument or control setpoints that initiate protective or mitigative actions. These increased boron concentration limits are conservative and do not alter the RCS or Emergency Core Cooling Systems' ability to perform their design bases.

Therefore, these proposed changes do not create the possibility of a new or different kind of accident from any previously evaluated accident since the RCS will continue to operate in accordance with their design bases.

3. Does the change involve a significant reduction in a margin of safety?

No. The LOCA considerations, including Peak Cladding Temperature calculations, containment sump and spray pH requirements, boron solubility requirements, cold shutdown boration requirements, post-LOCA long term core cooling minimum boron requirements, hot leg recirculation switchover requirements, post-LOCA hydrogen generation requirements, and radiological requirements have been evaluated and determined to be acceptable. The acceptance criteria of all non-LOCA design basis accidents continue to be met.

The proposed amendment does not involve revisions to any safety limits or safety system setting that would adversely impact plant safety. The proposed amendment does not adversely affect the ability of systems, structures or components important to the mitigation and control of design bases accident conditions within the facility. In addition, the proposed amendment does not affect the ability of safety systems to ensure that the facility can be maintained in a shutdown or refueling condition for extended periods of time.

Based upon the above evaluations, [the proposed changes do not involve a significant reduction in a margin of safety.]

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: Mary O'Reilly, FirstEnergy Nuclear Operating Company, FirstEnergy Corporation, 76 South Main Street, Akron, OH 44308.

NRC Section Chief: Peter Tam, Acting.

Florida Power and Light Company, et al., Docket Nos. 50–335 and 50–389, St. Lucie Plant, Unit Nos. 1 and 2, St. Lucie County, Florida

Date of amendment request: August 22, 2001.

Description of amendment request: The proposed amendments revise Section 6.0, ''Administrative Controls,'' of the Technical Specifications (TS) to change the title of the corporate executive responsible for overall nuclear safety from ''President-Nuclear Division'' to ''Chief Nuclear Officer.'' The proposed changes eliminate the reference to a specific organizational title and replace it with a generic organizational position title. This conforms the TS to a recent organizational change and precludes the need for future amendments in response to future corporate title changes.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

(1) Operation of the facility in accordance with the proposed amendments would not involve a significant increase in the probability or consequences of an accident previously evaluated.

The proposed amendments are administrative in nature, changing the title of the corporate executive responsible for overall plant nuclear safety in St. Lucie Units 1 and 2 TS, and would not involve a significant increase in the probability or consequences of an accident previously evaluated. These amendments do not affect assumptions contained in plant safety analyses, the physical design and/or operation of the plant, nor do they affect TS that preserve safety analysis assumptions. Therefore, the proposed changes do not affect the probability or consequences of accidents previously analyzed.

(2) Operation of the facility in accordance with the proposed amendments would not create the possibility of a new or different kind of accident from any accident previously evaluated.

The proposed changes to the TS are administrative in nature, changing the title of the corporate executive responsible for overall plant nuclear safety in St. Lucie Units 1 and 2 TS, and would not create the possibility of a new or different kind of accident from any previously evaluated. The proposed amendments will not change the physical plant or the modes of plant operation defined in the facility operating license. No new failure mode is introduced due to the administrative changes since the proposed changes do not involve the addition or modification of equipment, nor do they alter the design or operation of affected plant systems, structures, or components. Therefore, the proposed changes do not create the possibility of a new or different kind of accident from any accident previously evaluated.

(3) Operation of the facility in accordance with the proposed amendments would not involve a significant reduction in a margin of safety.

The proposed changes are administrative in nature, changing the title of the corporate executive responsible for overall plant nuclear safety in the St. Lucie Units 1 and 2 TS, and would not reduce any of the margins of safety.The operating limits and functional capabilities of the affected systems, structures, and components remain unchanged by the proposed amendments. Therefore, the proposed changes do not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment requests involve no significant hazards consideration.

Attorney for licensee: M.S. Ross, Attorney, Florida Power & Light, P.O. Box 14000, Juno Beach, Florida 33408–0420.

NRC Section Chief: Richard P. Correia.

Nuclear Management Company, LLC, Docket No. 50–331, Duane Arnold Energy Center, Linn County, Iowa

Date of amendment request: August 15, 2001.

Description of amendment request: The proposed amendment would revise the Technical Specifications (TS) to extend the channel calibration surveillance frequency for the automatic depressurization system (ADS) timers from 18 months to 24 months. Specifically, SR 3.3.5.1.7 (18-month CHANNEL CALIBRATION) surveillance requirement listed in Table 3.3.5.1–1, functions 4.b. and 5.b. (ADS Timer), would be changed to SR 3.3.5.1.8 (24-month CHANNEL CALIBRATION.) This channel calibration surveillance would continue to be performed in the same manner but at a reduced frequency. No modifications to test methodologies or station equipment have been proposed in this request. This request is made to facilitate a change to the Duane Arnold Energy Center operating cycle from 18 months to 24 months. This request has been prepared following the guidance in Generic Letter 91–04, ''Changes in Technical Specification Surveillance Intervals to Accommodate a 24-Month Fuel Cycle.''

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. The proposed amendment will not involve a significant increase in the probability or consequences of an accident previously evaluated.

The proposed amendment extends the CHANNEL CALIBRATION surveillance frequency for the ADS timers from 18 months to 24 months to facilitate a change in the DAEC operating cycle from 18 months to 24 months. The proposed change does not physically impact the plant nor does it impact any design or functional requirements of the ADS. That is, the proposed change does not degrade the performance or increase the challenges of any safety systems assumed to function in the accident analysis. The proposed change alters the frequency but not the Surveillance Requirement itself nor the way in which the surveillance is performed. The proposed change does not affect the availability of equipment or systems required to mitigate the consequences of an accident because of the availability of redundant systems or equipment and because other tests performed more frequently will identify potential equipment problems. Furthermore, an evaluation of surveillance test results shows that the probability of exceeding the TS Allowable Value (AV) with the extended surveillance frequency is small and remains well within the setpoint methodology guideline. Therefore, the proposed amendment will not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. The proposed amendment will not create the possibility of a new or different kind of accident from any accident previously evaluated.

The proposed amendment extends the CHANNEL CALIBRATION surveillance frequency for the ADS timers from 18 months to 24 months to facilitate a change in the DAEC operating cycle from 18 months to 24 months. The proposed change does not introduce any failure mechanisms of a different type than those previously evaluated since there are no physical changes being made to the facility. In addition, only the frequency will change; the Surveillance Requirement itself and the way the surveillance is performed will remain unchanged. Furthermore, a review of the maintenance history of these timers indicated no evidence of any failures that would invalidate the above conclusions. Therefore, the proposed amendment will not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. The proposed amendment will not involve a significant reduction in a margin of safety.

The proposed amendment extends the CHANNEL CALIBRATION surveillance frequency for the ADS timers from 18 months to 24 months to facilitate a change in the DAEC operating cycle from 18 months to 24 months. Although the proposed change will result in an increase in the interval between surveillance tests, the impact on system availability is considered small based on other more frequent testing, the availability of redundant systems or equipment, and the fact that there is no evidence of any existing equipment failures that would impact the availability of the ADS. Furthermore, an evaluation of surveillance test results shows that the probability of exceeding the TS AV with the extended surveillance frequency is small and remains well within the setpoint methodology guideline. Therefore, the proposed amendment will not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: Al Gutterman, Morgan, Lewis & Bockius, 1800 M Street, NW., Washington, DC 20036–5869.

NRC Section Chief: Claudia M. Craig.

Nuclear Management Company, LLC, Docket No. 50–263, Monticello Nuclear Generating Plant, Wright County, Minnesota

Date of amendment request: August 30, 2001.

Description of amendment request: The proposed amendment would revise the Technical Specification (TS) safety limit minimum critical power ratio (MCPR) for two recirculation pump operation for Cycle 21.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. The proposed amendment will not involve a significant increase in the probability or consequences of an accident previously evaluated.

The proposed Safety Limit MCPR (SLMCPR), and its use to determine the Cycle 21 thermal limits, have been derived using NRC approved methods and uncertainties. These methods do not change operation of the plant, and have no effect on the probability of an accident initiating event or transient. The basis of the SLMCPR is to ensure no mechanistic fuel damage is calculated to occur if the limit is not violated. The new SLMCPR for Cycle 21 preserves the margin to transition boiling and the probability of fuel damage is not increased.

Therefore, the proposed TS change does not involve an increase in the probability or consequences of an accident previously evaluated.

2. The proposed amendment will not create the possibility of a new or different kind of accident from any accident previously evaluated.

The proposed change results only from different inputs, for the Cycle 21 core reload. These methods and uncertainties have been reviewed and approved by the NRC, and do not involve any new or unapproved methods for operating the facility. No new initiating events or transients result from these changes.

The SLMCPR remains high enough to ensure that greater than 99.9% of all fuel rods in the core will avoid transition boiling if the limit is not violated, thereby preserving the fuel cladding integrity. A change in SLMCPR cannot create the possibility of any new type of accident. SLMCPR values for the new fuel cycle are calculated using previously transmitted methodology.

Therefore, the proposed TS change does not create the possibility of a new or different kind of accident, from any accident previously evaluated.

3. The proposed amendment will not involve a significant reduction in the margin of safety.

The margin of safety as defined in the TS bases will remain the same. The new SLMCPR was derived using NRC approved methods and uncertainties which are in accordance with the current fuel design and licensing criteria. The SLMCPR remains high enough to ensure that greater than 99.9% of all fuel rods in the core will avoid transition boiling if the limit is not violated, thereby preserving the fuel cladding integrity.

Fuel licensing acceptance criteria for SLMCPR calculations apply to Monticello Cycle 21 in the same manner as previously applied. SLMCPRs prepared using methodology previously transmitted to the NRC ensure that greater than 99.9% of all fuel rods in the core will avoid transition boiling if the limit is not violated, thereby preserving fuel cladding integrity. The

operating MCPR limit is set appropriately above the safety limit value to ensure adequate margin when the cycle specific transients are evaluated.

Therefore, the proposed TS change does not involve a reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: Jay E. Silberg, Esq., Shaw, Pittman, Potts and Trowbridge, 2300 N Street, NW., Washington, DC 20037.

NRC Section Chief: Claudia M. Craig.

PPL Susquehanna, LLC, Docket Nos. 50–387 and 50–388, Susquehanna Steam Electric Station, Units 1 and 2, Luzerne County, Pennsylvania

Date of amendment request: June 8, 2001.

Description of amendment request: The proposed amendment would delete the ''High Pressure Coolant Injection (HPCI) System Suppression Pool Water Level—High'' function from Technical Specification (TS) 3.3.5.1, ''Emergency Core Cooling System (ECCS) Instrumentation.'' This change would eliminate automatic transfer of the HPCI pump suction source from the condensate storage tank (CST) to the suppression pool for a high suppression pool level. Elimination of this function is expected to increase the availability of the HPCI system during a postulated anticipated transient without scram (ATWS) with standby liquid control system (SLCS) failure and to reduce operator burden during a postulated station blackout (SBO) event.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Does the proposed change involve a significant increase in the probability of occurrence or consequences of an accident previously evaluated?

Deletion of the automatic HPCI suction transfer from the CST to the suppression pool for a high suppression pool level condition was analyzed for impacts against all previously evaluated accidents and transients. Eliminating the automatic transfer increases the availability of the HPCI system during an ATWS event and operator burden is reduced during a postulated Station Blackout (SBO). There are no adverse effects, consequences, or changes in the probability of an accident occurring as a result of this change. HPCI operation is improved and all other plant systems remain unaffected in their ability to perform their design basis functions as a result of this change.

2. Does the proposed change create the possibility of a new or different kind of accident from any previously analyzed?

Implementation of this change increases the availability of the HPCI system during a postulated ATWS with Standby Liquid Control System (SLCS) failure. The change only affects the HPCI suction source and whether the source is automatically transferred from the preferred CST to the suppression pool for a high suppression pool level. Continued HPCI operation utilizing the CST as a suction source does not create a new or different type of accident from those previously analyzed. The primary effect of this change is to the suppression pool level which has been evaluated and found to be acceptable for all relevant accidents and transients. Therefore a new or different accident is not created and all other accident analyses are unaffected by the change.

3. Does the proposed change involve a significant reduction in a margin of safety.

This change does not reduce any margin of safety. The increase in suppression pool water level does not cause containment hydrodynamic loads to exceed design limits under accident conditions. Overall, HPCI reliability is increased as it would remain operable during the ATWS with Loss of SLCS event. This increased availability of the HPCI system provides for additional defense in depth which reduces the probability of core damage.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: Bryan A. Snapp, Esquire, Assoc. General Counsel, PPL Services Corporation, 2 North Ninth St., GENTW3, Allentown, PA 18101–1179.

NRC Section Chief: Peter Tam, Acting.

PPL Susquehanna, LLC, Docket Nos. 50–387 and 50–388, Susquehanna Steam Electric Station, Units 1 and 2, Luzerne County, Pennsylvania

Date of amendment request: July 17, 2001.

Description of amendment request: The proposed amendment would revise the reactor pressure vessel (RPV) pressure-temperature (P–T) limits specified in the technical specifications (TSs). Editorial changes associated with the P–T limit revisions are also proposed. The proposed P–T limits rely on the methodology for determining allowable P–T limits specified in American Society of Mechanical Engineers (ASME) Code Case N–640. The revised P–T limits will allow required RPV hydrostatic and leak tests to be performed at a significantly lower temperature. This is expected to reduce challenges to plant operators associated with maintaining the reactor coolant system within a narrow temperature band during testing.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Does the change involve a significant increase in the probability of occurrence or consequences of an accident previously evaluated?

The changes to the calculational methodology for the pressure and temperature (P–T) limits based upon Code Case N–640 continue to provide adequate margin in the prevention of a brittle-type fracture of the reactor pressure vessel (RPV). The code case was developed based upon the knowledge gained through years of industry experience. P–T curves developed using the allowances of Code Case N–640 indeed yield more operating margin. However, the experience gained in the areas of fracture toughness of materials and pre-existing undetected defects show that some of the existing assumptions used for the calculation of P–T limits are unnecessarily conservative and unrealistic. Therefore, providing the allowances of the subject Code Case in developing the P–T limit curves will continue to provide adequate protection against nonductile-type fractures of the RPV.

The evaluation for the Unit 1 and Unit 2 P–T limit curves for 32 EFPYs was performed using the approved methodologies of 10 CFR 50, Appendix G. The curves generated from these methods ensure the P–T limits will not be exceeded during any phase of reactor operation. Resolution of the current industry issues related to fluence calculation methodology requires PPL to limit applicability of the curves to May 1, 2005 for Unit 2 and May 1, 2006 for Unit 1. Therefore, the probability of occurrence and the consequences of a previously analyzed event are not significantly increased. Finally, the proposed changes will not affect any other system or piece of equipment designed for the prevention or mitigation of previously analyzed events. Thus, the probability of occurrence and the consequences of any previously analyzed event are not significantly increased as the result of the proposed changes.

2. Does the proposed change create the possibility of a new or different kind of accident from any previously analyzed.

The proposed changes provide more operating margin in the P–T limit curves for inservice leakage and hydrostatic pressure testing, non-nuclear heatup and cooldown, and criticality, with the benefits being primarily realizable during the pressure tests. Operation in the ''new'' regions of the newly developed P–T curves has been analyzed in accordance with the provisions of ASME Code, Section XI, Appendix G; 10 CFR 50 Appendix G, and ASME Code Case N–640, thus providing adequate protection against a

nonductile-type fracture of the RPV. These proposed changes do not create the possibility of any new or different type of accident. Further, they do not result in any new or unanalyzed operation of any system or piece of equipment important to safety.

3. Does the proposed change involve a significant reduction in the margin of safety?

As mentioned previously, the revised P–T curves provide more operating margin and thus, more operational flexibility than the current P–T curves. However, the industry experience since the inception of the P–T limits in 1974 confirms that some of the existing methodologies used to develop P–T curves is unrealistic and unnecessarily conservative. Accordingly, ASME Code Case N–640 takes advantage of the acquired knowledge by establishing more realistic methodologies for the development of P–T curves.

Use of Code Case N–640 to develop the revised P–T curves utilized the K_{IC} fracture toughness curve in lieu of the K_{IA} curve as the lower bound for fracture toughness. Use of the K_{IC} curve to determine lower bound fracture toughness is more technically correct than using the K_{IA} curve. P–T curves based on the K_{IC} fracture toughness limits enhance overall plant safety by expanding the P–T window in the low-temperature operating region. The benefits which occur are a reduction in the duration of the pressure test and personnel safety while conducting inspections in primary containment with no decrease to the margin of safety.

Therefore, operational flexibility is gained without a reduction in the margin of safety to RPV brittle fracture.

The development of the P–T curves to 32 EFPYs was performed per the guidelines of 10 CFR [part] 50, and thus, the margin of safety is not reduced as the result of the proposed changes. Resolution of the current industry issues related to fluence calculation methodology requires PPL to limit applicability of the curves to May 1, 2005 for Unit 2 and May 1, 2006 for Unit 1.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: Bryan A. Snapp, Esquire, Assoc. General Counsel, PPL Services Corporation, Inc., 2 North Ninth St., GENTW3, Allentown, PA 18101–1179.

NRC Section Chief: Peter Tam, Acting.

Southern California Edison Company, et al., Docket Nos. 50–361 and 50–362, San Onofre Nuclear Generating Station, Units 2 and 3, San Diego County, California

Date of amendment requests: August 24, 2001.

Description of amendment requests: The licensee requests an amendment to the Technical Specifications for containment leakage rate testing as a result of recalculation of peak containment internal pressure following certain design-basis accidents. The purpose of the change is to make the Technical Specifications appropriately reflect up-to-date calculated peak containment pressure. The revised calculated peak containment pressure related to the design basis loss-of-coolant accident and the revised calculated peak containment pressure for the design basis Main Steam Line Break would be lower than the current Technical Specification values.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

(1) Does the proposed amendment involve a significant increase in the probability or consequences of an accident previously evaluated?

Response: No.

The proposed change would revise the Operating Licenses for San Onofre Nuclear Generating Station Units 2 and 3 to amend Technical Specification (TS) 5.5.2.15, ''Containment Leakage Rate Testing Program,'' by changing the stated calculated values for peak containment internal pressure for the design basis Loss Of Coolant Accident (LOCA) and Main Steam Line Break (MSLB) accident. The current LOCA value of 55.1 psig would be changed to 45.9 psig and the current MSLB value of 56.6 psig would be changed to 56.5 psig.

The proposed change does not affect the probability of occurrence of an accident previously evaluated because it relates solely to the consequences of hypothesized accidents given that the accident has already occurred.

The proposed change does not increase the calculated peak containment internal pressure for the LOCA and MSLB accidents, and thus does not increase their consequences.

Therefore, the proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

(2) Does the proposed change create the possibility of a new or different kind of accident from any accident previously evaluated?

Response: No.

The proposed change relates to two accidents, MSLB and LOCA, already evaluated in the Updated Final Safety Analysis Report. Therefore, the proposed change does not create the possibility of a new or different kind of accident from any previously evaluated.

(3) Does the proposed change involve a significant reduction in a margin of safety?

Response: No.

The recalculated peak containment internal pressures for the MSLB and LOCA accidents are less than the containment design pressure and less than the previously calculated pressures. Therefore, the proposed change does not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment requests involve no significant hazards consideration.

Attorney for licensee: Douglas K. Porter, Esquire, Southern California Edison Company, 2244 Walnut Grove Avenue, Rosemead, California 91770.

NRC Section Chief: Stephen Dembek.

Southern Nuclear Operating Company, Inc., et al., Docket Nos. 50–424 and 50–425, Vogtle Electric Generating Plant, Units 1 and 2, Burke County, Georgia

Date of amendment request: August 16, 2001.

Description of amendment request: The proposed amendments delete requirements from the Technical Specifications (TS) (and, as applicable, other elements of the licensing bases) to maintain a Post Accident Sampling System (PASS). Licensees were generally required to implement PASS upgrades as described in NUREG–0737, ''Clarification of TMI [Three Mile Island] Action Plan Requirements,'' and Regulatory Guide 1.97, ''Instrumentation for Light-Water-Cooled Nuclear Power Plants to Assess Plant and Environs Conditions During and Following an Accident.'' Implementation of these upgrades was an outcome of the lessons learned from the accident that occurred at TMI, Unit 2. Requirements related to PASS were imposed by Order for many facilities and were added to or included in the TS for nuclear power reactors currently licensed to operate. Lessons learned and improvements implemented over the last 20 years have shown that the information obtained from PASS can be readily obtained through other means or is of little use in the assessment and mitigation of accident conditions.

The NRC staff issued a notice of opportunity for comment in the **Federal Register** on August 11, 2000 (65 FR 49271) on possible amendments to eliminate PASS, including a model safety evaluation and model no significant hazards consideration (NSHC) determination, using the consolidated line item improvement process. The NRC staff subsequently issued a notice of availability of the models for referencing in license amendment applications in the **Federal Register** on October 31, 2000 (65 FR 65018). The licensee affirmed the

applicability of the following NSHC determination in its application dated August 16, 2001.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), an analysis of the issue of no significant hazards consideration is presented below:

Criterion 1—The Proposed Change Does Not Involve a Significant Increase in the Probability or Consequences of an Accident Previously Evaluated

The PASS was originally designed to perform many sampling and analysis functions. These functions were designed and intended to be used in post accident situations and were put into place as a result of the TMI–2 accident. The specific intent of the PASS was to provide a system that has the capability to obtain and analyze samples of plant fluids containing potentially high levels of radioactivity, without exceeding plant personnel radiation exposure limits. Analytical results of these samples would be used largely for verification purposes in aiding the plant staff in assessing the extent of core damage and subsequent offsite radiological dose projections. The system was not intended to and does not serve a function for preventing accidents and its elimination would not affect the probability of accidents previously evaluated.

In the 20 years since the TMI–2 accident and the consequential promulgation of post accident sampling requirements, operating experience has demonstrated that a PASS provides little actual benefit to post accident mitigation. Past experience has indicated that there exists in-plant instrumentation and methodologies available in lieu of a PASS for collecting and assimilating information needed to assess core damage following an accident. Furthermore, the implementation of Severe Accident Management Guidance (SAMG) emphasizes accident management strategies based on in-plant instruments. These strategies provide guidance to the plant staff for mitigation and recovery from a severe accident. Based on current severe accident management strategies and guidelines, it is determined that the PASS provides little benefit to the plant staff in coping with an accident.

The regulatory requirements for the PASS can be eliminated without degrading the plant emergency response. The emergency response, in this sense, refers to the methodologies used in ascertaining the condition of the reactor core, mitigating the consequences of an accident, assessing and projecting offsite releases of radioactivity, and establishing protective action recommendations to be communicated to offsite authorities. The elimination of the PASS will not prevent an accident management strategy that meets the initial intent of the post-TMI–2 accident guidance through the use of the SAMGs, the emergency plan (EP), the emergency operating procedures (EOP), and site survey monitoring that support modification of emergency plan protective action recommendations (PARs).

Therefore, the elimination of PASS requirements from Technical Specifications (TS) (and other elements of the licensing bases) does not involve a significant increase in the consequences of any accident previously evaluated.

Criterion 2—The Proposed Change Does Not Create the Possibility of a New or Different Kind of Accident From any Previously Evaluated

The elimination of PASS related requirements will not result in any failure mode not previously analyzed. The PASS was intended to allow for verification of the extent of reactor core damage and also to provide an input to offsite dose projection calculations. The PASS is not considered an accident precursor, nor does its existence or elimination have any adverse impact on the pre-accident state of the reactor core or post accident confinement of radionuclides within the containment building.

Therefore, this change does not create the possibility of a new or different kind of accident from any previously evaluated.

Criterion 3—The Proposed Change Does Not Involve a Significant Reduction in the Margin of Safety

The elimination of the PASS, in light of existing plant equipment, instrumentation, procedures, and programs that provide effective mitigation of and recovery from reactor accidents, results in a neutral impact to the margin of safety. Methodologies that are not reliant on PASS are designed to provide rapid assessment of current reactor core conditions and the direction of degradation while effectively responding to the event in order to mitigate the consequences of the accident. The use of a PASS is redundant and does not provide quick recognition of core events or rapid response to events in progress. The intent of the requirements established as a result of the TMI–2 accident can be adequately met without reliance on a PASS.

Therefore, this change does not involve a significant reduction in the margin of safety.

Based upon the reasoning presented above and the previous discussion of the amendment request, the requested changes do not involve a significant hazards consideration.

The NRC staff proposes to determine that the amendment requests involve no significant hazards consideration.

Attorney for licensee: Mr. Arthur H. Domby, Troutman Sanders, NationsBank Plaza, Suite 5200, 600 Peachtree Street, NE., Atlanta, Georgia 30308–2216.

NRC Section Chief: Richard L. Emch, Jr.

STP Nuclear Operating Company, Docket Nos. 50–498 and 50–499, South Texas Project, Units 1 and 2, Matagorda County, Texas

Date of amendment request: August 2, 2001.

Description of amendment request: The proposed amendments delete requirements from the Technical Specifications (TSs) (and, as applicable, other elements of the licensing bases) to maintain a Post Accident Sampling System (PASS). Licensees were generally required to implement PASS upgrades as described in NUREG–0737, ''Clarification of TMI [Three Mile Island] Action Plan Requirements,'' and Regulatory Guide 1.97, ''Instrumentation for Light-Water-Cooled Nuclear Power Plants to Assess Plant and Environs Conditions During and Following an Accident.'' Implementation of these upgrades was an outcome of the lessons learned from the accident that occurred at TMI, Unit 2. Requirements related to PASS were imposed by Order for many facilities and were added to or included in the TSs for nuclear power reactors currently licensed to operate. Lessons learned and improvements implemented over the last 20 years have shown that the information obtained from PASS can be readily obtained through other means or is of little use in the assessment and mitigation of accident conditions.

The NRC staff issued a notice of opportunity for comment in the **Federal Register** on August 11, 2000 (65 FR 49271) on possible amendments to eliminate PASS, including a model safety evaluation and model no significant hazards consideration (NSHC) determination, using the consolidated line item improvement process. The NRC staff subsequently issued a notice of availability of the models for referencing in license amendment applications in the **Federal Register** on October 31, 2000 (65 FR 65018). The licensee affirmed the applicability of the following NSHC determination in its application dated August 2, 2001.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), an analysis of the issue of no significant hazards consideration is presented below:

Criterion 1—The Proposed Change Does Not Involve a Significant Increase in the Probability or Consequences of an Accident Previously Evaluated

The PASS was originally designed to perform many sampling and analysis functions. These functions were designed and intended to be used in post accident situations and were put into place as a result of the TMI–2 accident. The specific intent of the PASS was to provide a system that has the capability to obtain and analyze samples of plant fluids containing potentially high levels of radioactivity, without exceeding plant personnel radiation exposure limits. Analytical results of these samples would be used largely for verification purposes in

aiding the plant staff in assessing the extent of core damage and subsequent offsite radiological dose projections. The system was not intended to and does not serve a function for preventing accidents and its elimination would not affect the probability of accidents previously evaluated.

In the 20 years since the TMI–2 accident and the consequential promulgation of post accident sampling requirements, operating experience has demonstrated that a PASS provides little actual benefit to post accident mitigation. Past experience has indicated that there exists in-plant instrumentation and methodologies available in lieu of a PASS for collecting and assimilating information needed to assess core damage following an accident. Furthermore, the implementation of Severe Accident Management Guidance (SAMG) emphasizes accident management strategies based on in-plant instruments. These strategies provide guidance to the plant staff for mitigation and recovery from a severe accident. Based on current severe accident management strategies and guidelines, it is determined that the PASS provides little benefit to the plant staff in coping with an accident.

The regulatory requirements for the PASS can be eliminated without degrading the plant emergency response. The emergency response, in this sense, refers to the methodologies used in ascertaining the condition of the reactor core, mitigating the consequences of an accident, assessing and projecting offsite releases of radioactivity, and establishing protective action recommendations to be communicated to offsite authorities. The elimination of the PASS will not prevent an accident management strategy that meets the initial intent of the post–TMI–2 accident guidance through the use of the SAMGs, the emergency plan (EP), the emergency operating procedures (EOP), and site survey monitoring that support modification of emergency plan protective action recommendations (PARs).

Therefore, the elimination of PASS requirements from Technical Specifications (TS) (and other elements of the licensing bases) does not involve a significant increase in the consequences of any accident previously evaluated.

Criterion 2—The Proposed Change Does Not Create the Possibility of a New or Different Kind of Accident From any Previously Evaluated

The elimination of PASS related requirements will not result in any failure mode not previously analyzed. The PASS was intended to allow for verification of the extent of reactor core damage and also to provide an input to offsite dose projection calculations. The PASS is not considered an accident precursor, nor does its existence or elimination have any adverse impact on the pre-accident state of the reactor core or post accident confinement of radionuclides within the containment building.

Therefore, this change does not create the possibility of a new or different kind of accident from any previously evaluated.

Criterion 3—The Proposed Change Does Not Involve a Significant Reduction in the Margin of Safety

The elimination of the PASS, in light of existing plant equipment, instrumentation, procedures, and programs that provide effective mitigation of and recovery from reactor accidents, results in a neutral impact to the margin of safety. Methodologies that are not reliant on PASS are designed to provide rapid assessment of current reactor core conditions and the direction of degradation while effectively responding to the event in order to mitigate the consequences of the accident. The use of a PASS is redundant and does not provide quick recognition of core events or rapid response to events in progress. The intent of the requirements established as a result of the TMI–2 accident can be adequately met without reliance on a PASS.

Therefore, this change does not involve a significant reduction in the margin of safety.

Based upon the reasoning presented above and the previous discussion of the amendment request, the requested changes do not involve a significant hazards consideration.

The NRC staff proposes to determine that the amendment requests involve no significant hazards consideration.

Attorney for licensee: Jack R. Newman, Esq., Morgan, Lewis & Bockius, 1800 M Street, NW., Washington, DC 20036–5869.

NRC Section Chief: Robert A. Gramm.

Previously Published Notices of Consideration of Issuance of Amendments to Facility Operating Licenses, Proposed No Significant Hazards Consideration Determination, and Opportunity for a Hearing

The following notices were previously published as separate individual notices. The notice content was the same as above. They were published as individual notices either because time did not allow the Commission to wait for this biweekly notice or because the action involved exigent circumstances. They are repeated here because the biweekly notice lists all amendments issued or proposed to be issued involving no significant hazards consideration.

For details, see the individual notice in the **Federal Register** on the day and page cited. This notice does not extend the notice period of the original notice.

FirstEnergy Nuclear Operating Company, et al., Docket Nos. 50–334 and 50–412, Beaver Valley Power Station, Unit Nos. 1 and 2 (BVPS–1 and 2), Beaver County, Pennsylvania

Date of amendment request: January 18, 2001, as supplemented by letter dated June 26, 2001.

Brief description of amendment request: The proposed amendment would revise the applicability of the current BVPS–1 heatup/cooldown curves from 15 effective full-power years (EFPY) to 14 EFPY. Proposed changes to Technical Specification (TS) 3.7.1.1, ''Main Steam Safety Valves (MSSVs),'' include revisions of the limiting condition for operation and to the title and content of Table 3.7–1 to provide consistency with the improved standard TSs, creation of new Actions to address inoperable MSSVs, reduction of the power range neutron flux-high reactor trip setpoint to be consistent with TS Traveler Form—235, Revision 1, and changes to the maximum power levels permissible with inoperable MSSVs. TS Bases changes are also proposed for consistency.

Date of publication of individual notice in **Federal Register:** July 27, 2001 (66 FR 39212).

Expiration date of individual notice: August 27, 2001.

Notice of Issuance of Amendments to Facility Operating Licenses

During the period since publication of the last biweekly notice, the Commission has issued the following amendments. The Commission has determined for each of these amendments that the application 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.

Notice of Consideration of Issuance of Amendment to Facility Operating License, Proposed No Significant Hazards Consideration Determination, and Opportunity for A Hearing in connection with these actions was published in the **Federal Register** as indicated.

Unless otherwise indicated, the Commission has determined that these amendments satisfy the criteria for categorical exclusion in accordance with 10 CFR 51.22. Therefore, pursuant to 10 CFR 51.22(b), no environmental impact statement or environmental assessment need be prepared for these amendments. If the Commission has prepared an environmental assessment under the special circumstances provision in 10 CFR 51.12(b) and has made a determination based on that assessment, it is so indicated.

For further details with respect to the action see (1) the applications for amendment, (2) the amendment, and (3) the Commission's related letter, Safety Evaluation and/or Environmental

Assessment as indicated. All of these items are available for public inspection at the Commission's Public Document Room, located at One White Flint North, 11555 Rockville Pike (first floor), Rockville, Maryland. Publicly available records will be accessible from the Agencywide Documents Access and Management Systems (ADAMS) Public Electronic Reading Room on the internet at the NRC Web site, *http://www.nrc.gov/NRC/ADAMS/index.html.* If you do not have access to ADAMS or if there are problems in accessing the documents located in ADAMS, contact the NRC Public Document Room (PDR) Reference staff at 1–800–397–4209, 301–415–4737 or by e-mail to *pdr@nrc.gov.*

Duke Energy Corporation, et al., Docket Nos. 50–413 and 50–414, Catawba Nuclear Station, Units 1 and 2, York County, South Carolina

Date of application for amendments: July 2, 2001.

Brief description of amendments: The amendments deleted Technical Specifications Section 5.5.4, ''Post Accident Sampling,'' for Catawba Nuclear Station, Units 1 and 2, and thereby eliminated the requirements to have and maintain the post-accident sampling systems.

Date of issuance: September 11, 2001.

Effective date: As of the date of issuance and shall be implemented within 180 days from the date of issuance.

Amendment Nos.: 193 and 185.

Facility Operating License Nos. NPF–35 and NPF–52: Amendments revised the Technical Specifications.

Date of initial notice in **Federal Register:** August 8, 2001 (66 FR 41615).

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated September 11, 2001.

No significant hazards consideration comments received: No.

Duke Energy Corporation, Docket Nos. 50–369 and 50–370, McGuire Nuclear Station, Units 1 and 2, Mecklenburg County, North Carolina

Date of application for amendments: July 2, 2001.

Brief description of amendments: The amendments deleted Technical Specifications (TS) Section 5.5.4, ''Post Accident Sampling,'' for McGuire Nuclear Station, Units 1 and 2, and thereby eliminated the requirements to have and maintain the post-accident sampling systems (PASS). The amendments also delete PASS-related License Conditions 2.C(11)c, ''Post Accident Sampling (II.B.3),'' for Unit 1 and 2.C(10)b, ''Postaccident Sampling (II.B.3),'' for Unit 2.

Date of issuance: September 17, 2001.

Effective date: As of the date of issuance and shall be implemented within 180 days from the date of issuance.

Amendment Nos.: 199 and 180.

Facility Operating License Nos. NPF–9 and NPF–17: Amendments revised the Facility Operating License and Technical Specifications.

Date of initial notice in **Federal Register:** August 8, 2001 (66 FR 41616).

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated September 17, 2001.

No significant hazards consideration comments received: No.

Duke Energy Corporation, Docket Nos. 50–269, 50–270, and 50–287, Oconee Nuclear Station, Units 1, 2, and 3, Oconee County, South Carolina

Date of application of amendments: February 28, 2001, supplemented June 27, 2001.

Brief description of amendments: The amendments add new Technical Specification 3.3.28 and Bases B 3.3.28 governing the addition of the low pressure service water standby pump automatic start circuitry.

Date of Issuance: September 6, 2001.

Effective date: As of the date of issuance and shall be implemented before the end of the Oconee Unit 3 End of Cycle 19 Refueling Outage.

Amendment Nos.: 319, 319, and 319.

Renewed Facility Operating License Nos. DPR–38, DPR–47, and DPR–55: Amendments revised the Technical Specifications.

Date of initial notice in **Federal Register:** March 21, 2001 (66 FR 1517).

The supplement dated June 27, 2001, provided clarifying information that did not change the scope of the February 28, 2001, application nor the initial proposed no significant hazards consideration determination.

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated September 6, 2001.

No significant hazards consideration comments received: No.

Entergy Gulf States, Inc., and Entergy Operations, Inc., Docket No. 50–458, River Bend Station, Unit 1, West Feliciana Parish, Louisiana

Date of amendment request: January 24, 2001, as supplemented by letter dated March 22, 2001.

Brief description of amendment: The amendment changes the limit on the Low Power Setpoint, from 20 percent to 10 percent power, as specified in Technical Specification (TS) 3.1.3, ''Control Rod OPERABILITY,'' TS 3.1.6 ''Control Rod Pattern,'' and TS 3.3.2.1, ''Control Rod Block Instrumentation.''

Date of issuance: September 7, 2001.

Effective date: As of the date of issuance and shall be implemented 60 days from the date of issuance.

Amendment No.: 118.

Facility Operating License No. NPF–47: The amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** March 21, 2001 (66 FR 15921).

The supplemental letter dated March 22, 2001, provided additional information that did not expand the scope of the application or change the staff's initial proposed no significant hazards consideration determination.

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated September 7, 2001.

No significant hazards consideration comments received: No.

Entergy Gulf States, Inc., and Entergy Operations, Inc., Docket No. 50–458, River Bend Station, Unit 1, West Feliciana Parish, Louisiana

Date of amendment request: January 24, 2001, as supplemented by letters dated July 20 and August 7, 2001.

Brief description of amendment: The amendment request proposes changes to the Technical Specifications (TSs) concerning certain operational conditions required when conducting core alterations or handling irradiated fuel in the primary containment. In addition, the licensee proposes to implement administrative controls in accordance with draft NUMARC 93–01, ''Industry Guidelines for Monitoring the Effectiveness of Maintenance at Nuclear Power Plants,'' Revision 3, Section 11.3.6.5, ''Containment—Primary (PWR [pressurized-water reactor])/ Secondary (BWR [boiling-water reactor]),'' Revision 3, Section 11.3.6, ''Assessment Methods for Shutdown Conditions,'' in lieu of License Condition 2.C.(17) and change terms to make them consistent with the terminology in other revised TSs.

Date of issuance: September 14, 2001.

Effective date: As of the date of issuance and shall be implemented 60 days from the date of issuance.

Amendment No.: 119.

Facility Operating License No. NPF–47: The amendment revised the Facility Operating License and Technical Specifications.

Date of initial notice in **Federal Register:** April 18, 2001 (66 FR 20001).

The supplemental letters dated July 20 and August 7, 2001, provided

additional information that did not expand the scope of the application or change the staff's initial proposed no significant hazards consideration determination.

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated September 14, 2001.

No significant hazards consideration comments received: No.

Entergy Gulf States, Inc., and Entergy Operations, Inc., Docket No. 50–458, River Bend Station, Unit 1, West Feliciana Parish, Louisiana

Date of amendment request: January 24, 2001, as supplemented by letters dated July 2, and August 6 and 20, 2001.

Brief description of amendment: The license amendment request consists of changes to the Technical Specifications (TSs) to revise the reactor vessel pressure/temperature (P/T or P–T) limits specified in TS 3.4.11, ''RCS [Reactor Coolant System] Pressure and Temperature (P/T) Limits,'' for reactor heat-up. The current RCS P/T Limits in TS Figure 3.4–11, ''Minimum Temperature Required Vs. RCS Pressure,'' would be replaced with recalculated RCS P/T limits based, in part, on an alternate methodology. The alternate methodology uses American Society of Mechanical Engineers (ASME) Boiler and Pressure Vessel (B&PV) Code (Code) Case N–640, ''Alternative Requirement Fracture Toughness for Development of P–T Limit Curves for ASME B&PV Code Section XI, Division 1,'' for alternate reference fracture toughness for reactor vessel materials in determining the P/T limits.

Date of issuance: September 14, 2001.

Effective date: As of the date of issuance and shall be implemented 30 days from the date of issuance.

Amendment No.: 120.

Facility Operating License No. NPF–47: The amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** March 21, 2001 (66 FR 15920).

The supplemental letters dated July 2, and August 6 and 20, 2001, provided additional information that clarified the application, did not expand the scope of the application as originally noticed, and did not change the staff's original proposed no significant hazards consideration determination.

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated September 14, 2001.

No significant hazards consideration comments received: No.

Exelon Generation Company, LLC, Docket Nos. STN 50–454 and STN 50–455, Byron Station, Unit Nos. 1 and 2, Ogle County, Illinois; Docket Nos. STN 50–456 and STN 50–457, Braidwood Station, Unit Nos. 1 and 2, Will County, Illinois

Date of application for amendments: April 27, 2001.

Brief description of amendments: The amendments revise Technical Specifications (TS) Section 5.5.7, to provide an exception to the recommendations of Regulatory Position C.4.b of Regulatory Guide 1.14, Revision 1, which would allow either a qualified in-place ultrasonic volumetric examination over the volume from the inner bore of the flywheel to the circle of one-half the outer radius or a surface examination (magnetic particle testing and/or liquid penetrant testing) of exposed surfaces of the removed flywheel to be conducted at approximately 10-year intervals. The proposed change is in accordance with the Nuclear Regulatory Commission (NRC) approved Improved Standard TS Generic Change Traveler TSTF–237, Revision 1.

Date of issuance: September 20, 2001.

Effective date: As of the date of issuance and shall be implemented within 30 days.

Amendment Nos.: 123, 123, 118, and 118.

Facility Operating License Nos. NPF–37, NPF–66, NPF–72 and NPF–77: The amendments revised the Technical Specifications.

Date of initial notice in **Federal Register:** The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated September 20, 2001.

Exelon Generation Company, LLC, Docket Nos. 50–237 and 50–249, Dresden Nuclear Power Station, Units 2 and 3, Grundy County, Illinois

Date of application for amendments: June 26, 2001.

Brief description of amendments: To extend the dates specified in Operating License Sections 2.C(8) and 3.P, ''Pressure—Temperature Limit Curves,'' for Dresden Nuclear Power Station, Units 2 and 3, respectively.

Date of issuance: September 10, 2001.

Effective date: As of the date of issuance and shall be implemented within 30 days.

Amendment Nos.: 187 and 182.

Facility Operating License Nos. DPR–19 and DPR–25: The amendments revised the Facility Operating License.

Date of initial notice in **Federal Register:** The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated September 10, 2001.

No significant hazards consideration comments received: No.

Florida Power Corporation, et al., Docket No. 50–302, Crystal River Unit No. 3 Nuclear Generating Plant, Citrus County, Florida

Date of application for amendment: March 21, 2001, as supplemented June 28, 2001.

Brief description of amendment: The amendment revised the Improved Technical Specifications (ITS) 5.6.2.10, ''OTSG [Once-Through Steam Generator] Tube Surveillance Program'' to implement a reroll process to repair degraded steam generator tubes and allow the reroll repairs to be used in both the upper and lower tubesheets.

Date of issuance: September 10, 2001.

Effective date: As of the date of issuance and shall be implemented within 30 days of issuance.

Amendment No.: 198.

Facility Operating License No. DPR–72: Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** April 18, 2001 (66 FR 20006). The supplemental letter provided clarifying information that did not change the initial proposed no significant hazards consideration determination.

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated September 10, 2001.

No significant hazards consideration comments received: No.

Florida Power Corporation, et al., Docket No. 50–302, Crystal River Unit No. 3 Nuclear Generating Plant, Citrus County, Florida

Date of application for amendment: October 3, 2000, as supplemented June 14, August 28, and September 7, 2001.

Brief description of amendment: The amendment revised the Improved Technical Specifications (ITS) 3.7.12, ''Control Room Emergency Ventilation System (CREVS)''; ITS 5.6.2.12, ''Ventilation Filter Testing Program (VFTP)''; ITS 3.3.16, ''Control Room Isolation—High Radiation''; and ITS 3.7.18, ''Control Complex Cooling System.'' The proposed ITS changes are based on the results of revised public and control room dose calculations for CR–3 design basis radiological accidents using an alternative source term and the adoption of Technical Task Force Traveler (TSTF) 287. A new Section 5.6.2.21, ''Control Complex Habitability Envelope Program,'' is added.

Date of issuance: September 17, 2001.

Effective date: As of the date of issuance and shall be implemented within 30 days of issuance.

Amendment No.: 199.

Facility Operating License No. DPR–72: Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** November 15, 2000 (65 FR 69060). The supplemental letters provided clarifying information that did not change the initial proposed no significant hazards consideration determination.

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated September 17, 2001.

No significant hazards consideration comments received: No.

Florida Power and Light Company, et al., Docket No. 50–389, St. Lucie Plant, Unit No. 2, St. Lucie County, Florida

Date of application for amendment: April 18, 2001, as supplemented August 24, 2001.

Brief description of amendment: This amendment revises Technical Specification (TS) 6.9.1.11, ''Core Operating Limits Report (COLR),'' to include the ABB-Combustion Engineering Topical Report CENPD–387–P–A, Rev 000, in the list of analytical methods. This allows use of an improved heat flux correlation (designated ABB–NV) previously approved by the NRC. Additionally, the Bases for TS 2.1.1, ''Reactor Core,'' are modified to reflect use of the improved heat flux correlation.

Date of Issuance: September 20, 2001.

Effective Date: As of the date of issuance and shall be implemented within 60 days of issuance.

Amendment No.: 118.

Facility Operating License No. NPF–16: Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** May 30, 2001 (66 FR 29358). The August 24, 2001, supplement did not affect the original proposed no significant hazards determination, or expand the scope of the request as noticed in the **Federal Register**.

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated September 20, 2001.

No significant hazards consideration comments received: No.

GPU Nuclear Inc., Docket No. 50–320, Three Mile Island Nuclear Generating Station, Unit 2, Dauphin County, Pennsylvania

Date of amendment request: July 25, 2000, as supplemented by letter dated June 21, 2001.

Brief description of amendment request: The amendment changes Three Mile Island Nuclear Generating Station, Unit 2 (TMI–2), Technical Specification (TS) 6.7.2 to eliminate a change associated with periodic reviews of procedures. Currently, TS 6.7.2 states that required procedures shall be reviewed periodically as required by American National Standards Institute (ANSI) Standard N18.7–1976 (a biennial review). This amendment revises the wording for TS 6.7.2 to state that required procedures shall be reviewed periodically. This amendment is also consistent with the TMI–2 Post-Defueling Monitored Storage Quality Assurance Plan, which states that ''Procedural documentation shall be periodically reviewed for adequacy as set forth in administrative procedures.''

Date of Issuance: September 7, 2001.

Effective Date: As of the date of issuance and shall be implemented within 30 days.

Amendment No.: 56.

Facility Operating License No. DPR–73: Amendment revises the Technical Specification.

Date of initial notice in **Federal Register:** December 13, 2000 (66 FR 77920).

The June 21, 2001, supplemental letter replaced in its entirety the original application dated July 25, 2000. The supplement did not expand the scope of the original request.

The Commission's related evaluation is contained in a safety evaluation dated September 7, 2001.

No significant hazards consideration comments received: No.

Niagara Mohawk Power Corporation, Docket No. 50–410, Nine Mile Point Nuclear Station, Unit 2, Oswego County, New York

Date of application for amendment: August 17, 2001.

Brief description of amendment: The amendment allowed a one-time exception to Technical Specification Surveillance Requirement (SR) 3.6.1.7.2 for suppression chamber-to-drywell vacuum breakers 2ISC*RV35A and 2ISC*RV35B. A note has been added to SR 3.6.1.7.2 stating that function testing of these vacuum breakers is not required to be met for the remainder of Cycle 8.

Date of issuance: September 7, 2001.

Effective date: As of the date of issuance and shall be implemented within 30 days.

Amendment No.: 98.

Facility Operating License No. NPF–69: Amendment revises the Technical Specifications.

Public Comments Requested as to Proposed No Significant Hazards Consideration: Yes (66 FR 44653) August 24, 2001. That notice provided an opportunity to submit comments on the Commission's proposed no significant hazards consideration determination. Comments were received from one person, and were addressed in the safety evaluation associated with the amendment. The notice also provided for an opportunity to request a hearing by September 24, 2001, but indicated that if the Commission makes a final no significant hazards consideration determination, any such hearing would take place after the issuance of the amendment.

The Commission's related evaluation of the amendment, finding of exigent circumstances, final determination of no significant hazards consideration determination, and state consultation, are contained in a safety evaluation dated September 7, 2001.

Attorney for the Licensee: Mark J. Wetterhahn, Esquire, Winston & Strawn, 1400 L Street, NW., Washington, DC 20005–3502.

NRC Section Chief: Peter S. Tam, Acting.

Nuclear Management Company, LLC, Docket No. 50–331, Duane Arnold Energy Center, Linn County, Iowa

Date of application for amendment: April 6, 2001.

Brief description of amendment: The amendment changes Technical Specifications Section 5.5.10, ''Technical Specifications (TS) Bases Control Program,'' in accordance with Nuclear Energy Institute TS Task Force Standard TS Change Traveler, TSTF–364, ''Revision to TS Bases Control Program to Incorporate Changes to 10 CFR 50.59,'' Revision 0.

Date of issuance: September 13, 2001.

Effective date: As of the date of issuance and shall be implemented within 30 days.

Amendment No.: 241.

Facility Operating License No. DPR–49: The amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** August 8, 2001 (66 FR 41623).

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated September 13, 2001.

No significant hazards consideration comments received: No.

Nuclear Management Company, LLC, Docket No. 50–305, Kewaunee Nuclear Power Plant, Kewaunee County, Wisconsin

Date of application for amendment: May 25, 2001, as supplemented August 17, 2001.

Brief description of amendment: The amendment to the Kewaunee Nuclear Power Plant Technical Specifications (TSs) 4.2 revises TS 4.2 to revise the surveillance requirements and bases for TS 4.2.b, ''Steam Generator Tubes,'' to account for changes associated with replacement of the original steam generators. Specifically, the changes delete inspection requirements associated with steam generator tube sleeving and repair limits and revise the phrasing of text within the TS to enhance clarity.

Date of issuance: September 20, 2001.

Effective date: As of the date of issuance and shall be implemented within 30 days.

Amendment No.: 158.

Facility Operating License No. DPR–43: Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** June 12, 2001 (66 FR 31711).

The supplemental information contained clarifying information and did not change the initial no significant hazards consideration determination and did not expand the scope of the original **Federal Register** notice. The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated September 20, 2001.

No significant hazards consideration comments received: No.

STP Nuclear Operating Company, Docket Nos. 50–498 and 50–499, South Texas Project, Units 1 and 2, Matagorda County, Texas

Date of amendment request: May 24, 2001.

Brief description of amendments: The amendments revise the Technical Specification definition of CORE ALTERATIONS.

Date of issuance: September 11, 2001.

Effective date: The amendments are effective as of the date of their issuance and shall be implemented within 30 days from the date of issuance.

Amendment Nos.: Unit 1—131; Unit 2—120.

Facility Operating License Nos. NPF–76 and NPF–80: The amendments revised the Technical Specifications.

Date of initial notice in **Federal Register:** July 11, 2001 (66 FR 36345)

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated September 11, 2001.

No significant hazards consideration comments received: No.

STP Nuclear Operating Company, Docket Nos. 50–498 and 50–499, South Texas Project, Units 1 and 2, Matagorda County, Texas

Date of amendments request: May 24, 2001.

Brief description of amendments: The amendments relocate Technical Specification 3/4.9.6, ''Refueling Machine'' and its associated Bases description to the Technical Requirements Manual.

Date of issuance: September 13, 2001.

Effective date: The amendments are effective as of the date of their issuance.

Amendment Nos.: Unit 1—132; Unit 2—121.

Facility Operating License Nos. NPF–76 and NPF–80: The amendments revised the Technical Specifications.

Date of initial notice in **Federal Register:** July 11, 2001 (66 FR 36344).

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated September 13, 2001.

No significant hazards consideration comments received: No.

Tennessee Valley Authority, Docket Nos. 50–296, Browns Ferry Nuclear Plant, Units 3 Limestone County, Alabama

Date of application for amendment: July 25, 2001.

Brief description of amendment: The proposed amendment deletes Technical Specification (TS)-required Action 3.3.1.1.I.2, which limits plant operation to 120 days in the event of the inoperability of the Oscillation Power Range Monitor trip system. For this situation, the proposed change would allow plant operation to continue if the existing TS Required Action 3.3.1.1.I.1, to implement an alternate means to detect and suppress thermal hydraulic instability oscillations, was taken.

Date of issuance: September 13, 2001.

Effective date: Date of issuance and shall be implemented within 30 days.

Amendment No.: 231.

Facility Operating License No. DPR–68: Amendment revises the TS.

Date of initial notice in **Federal Register:** August 8, 2001 (66 FR 41627).

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated September 13, 2001.

No significant hazards consideration comments received: No.

Virginia Electric and Power Company, et al., Docket Nos. 50–280 and 50–281, Surry Power Station, Units 1 and 2, Surry County, Virginia

Date of application for amendments: June 16, 2000, as supplemented September 27, 2000, and June 6, 2001.

Brief Description of amendments: These amendments change the reactor protection system and engineered safety features actuation system analog instrumentation surveillance frequency from monthly to quarterly.

Date of issuance: August 31, 2001.

Effective date: August 31, 2001.

Amendment Nos.: 228 and 228.

Facility Operating License Nos. DPR–32 and DPR–37: Amendments change the Technical Specifications.

Date of initial notice in **Federal Register:** November 15, 2000 (65 FR 69067). The September 27, 2000, and June 6, 2001, supplements contained clarifying information only, and did not change the initial no significant hazards consideration determination or expand the scope of the initial application.

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated August 31, 2001.

No significant hazards consideration comments received: No.

Notice of Issuance of Amendments to Facility Operating Licenses and Final Determination of No Significant Hazards Consideration and Opportunity for a Hearing (Exigent Public Announcement or Emergency Circumstances)

During the period since publication of the last biweekly notice, the Commission has issued the following amendments. The Commission has determined for each of these amendments that the application for the 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.

Because of exigent or emergency circumstances associated with the date the amendment was needed, there was not time for the Commission to publish, for public comment before issuance, its usual 30-day Notice of Consideration of Issuance of Amendment, Proposed No Significant Hazards Consideration Determination, and Opportunity for a Hearing.

For exigent circumstances, the Commission has either issued a **Federal**

Register notice providing opportunity for public comment or has used local media to provide notice to the public in the area surrounding a licensee's facility of the licensee's application and of the Commission's proposed determination of no significant hazards consideration. The Commission has provided a reasonable opportunity for the public to comment, using its best efforts to make available to the public means of communication for the public to respond quickly, and in the case of telephone comments, the comments have been recorded or transcribed as appropriate and the licensee has been informed of the public comments.

In circumstances where failure to act in a timely way would have resulted, for example, in derating or shutdown of a nuclear power plant or in prevention of either resumption of operation or of increase in power output up to the plant's licensed power level, the Commission may not have had an opportunity to provide for public comment on its no significant hazards consideration determination. In such case, the license amendment has been issued without opportunity for comment. If there has been some time for public comment but less than 30 days, the Commission may provide an opportunity for public comment. If comments have been requested, it is so stated. In either event, the State has been consulted by telephone whenever possible.

Under its regulations, the Commission may issue and make an amendment immediately effective, notwithstanding the pendency before it of a request for a hearing from any person, in advance of the holding and completion of any required hearing, where it has determined that no significant hazards consideration is involved.

The Commission has applied the standards of 10 CFR 50.92 and has made a final determination that the amendment involves no significant hazards consideration. The basis for this determination is contained in the documents related to this action. Accordingly, the amendments have been issued and made effective as indicated.

Unless otherwise indicated, the Commission has determined that these amendments satisfy the criteria for categorical exclusion in accordance with 10 CFR 51.22. Therefore, pursuant to 10 CFR 51.22(b), no environmental impact statement or environmental assessment need be prepared for these amendments. If the Commission has prepared an environmental assessment under the special circumstances provision in 10 CFR 51.12(b) and has made a determination based on that assessment, it is so indicated.

For further details with respect to the action see (1) the application for amendment, (2) the amendment to Facility Operating License, and (3) the Commission's related letter, Safety Evaluation and/or Environmental Assessment, as indicated. All of these items are available for public inspection at the Commission's Public Document Room, located at One White Flint North, 11555 Rockville Pike (first floor), Rockville, Maryland. Publicly available records will be accessible from the Agencywide Documents Assess and Management Systems (ADAMS) Public Electronic Reading Room on the internet at the NRC Web site, *http://www.nrc.gov/NRC/ADAMS/index.html.* If you do not have access to ADAMS or if there are problems in accessing the documents located in ADAMS, contact the NRC Public Document room (PDR) Reference staff at 1–800–397–4209, 304–415–4737 or by Email to *pdr@nrc.gov.*

The Commission is also offering an opportunity for a hearing with respect to the issuance of the amendment. By November 2, 2001, the licensee may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written request for a hearing and a petition for leave to intervene. Requests for a hearing and a petition for leave to intervene shall be filed in accordance with the Commission's ''Rules of Practice for Domestic Licensing Proceedings'' in 10 CFR part 2. Interested persons should consult a current copy of 10 CFR 2.714 which is available at the Commission's Public Document Room, located at One White Flint North, 11555 Rockville Pike (first floor), Rockville, Maryland 20852, and electronically from the ADAMS Public Library component on the NRC Web site, *http://www.nrc.gov* (the Electronic Reading Room). If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition; and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of a hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) The nature of the petitioner's right under the Act to be made a party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to 15 days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than 15 days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter. Each contention must consist of a specific statement of the issue of law or fact to be raised or controverted. In addition, the petitioner shall provide a brief explanation of the bases of the contention and a concise statement of the alleged facts or expert opinion which support the contention and on which the petitioner intends to rely in proving the contention at the hearing. The petitioner must also provide references to those specific sources and documents of which the petitioner is aware and on which the petitioner intends to rely to establish those facts or expert opinion. Petitioner must provide sufficient information to show that a genuine dispute exists with the applicant on a material issue of law or fact. Contentions shall be limited to matters within the scope of the amendment under consideration. The contention must be one which, if proven, would entitle the petitioner to relief. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses. Since the Commission has made a final determination that the

amendment involves no significant hazards consideration, if a hearing is requested, it will not stay the effectiveness of the amendment. Any hearing held would take place while the amendment is in effect.

A request for a hearing or a petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555–001, Attention: Rulemakings and Adjudications Staff, or may be delivered to the Commission's Public Document Room, located at One White Flint North, 11555 Rockville Pike (first floor), Rockville, Maryland 20852, by the above date. A copy of the petition should also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555–001, and to the attorney for the licensee.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for a hearing will not be entertained absent a determination by the Commission, the presiding officer or the Atomic Safety and Licensing Board that the petition and/or request should be granted based upon a balancing of the factors specified in 10 CFR 2.714(a)(1)(i)–(v) and 2.714(d).

Entergy Nuclear Operations, Inc., Docket No. 50–333, James A. FitzPatrick Nuclear Power Oswego County, New York

Date of amendment request: September 14, 2001.

Brief description of amendment: The amendment authorizes a one-time-only change to Technical Specifications Section 3.9.B.1 and associated Bases. Specifically, this change extends the Limiting Condition for Operation allowable out-of-service time for one incoming Reserve AC Power line (115KV line #3) and/or one reserve station transformer inoperable from 7 days to 14 days during the period commencing September 9, 2001 and extending through September 23, 2001.

Date of issuance: September 15, 2001.

Effective date: As of the date of issuance.

Amendment No.: 272.

Facility Operating License No. DPR–59: Amendment revises the Technical Specifications.

Public comments requested as to proposed no significant hazards consideration: No.

The Commission's related evaluation of the amendment, finding of emergency circumstances, and final determination of no significant hazards consideration, are contained in a Safety Evaluation dated September 14, 2001.

Attorney for licensee: Mr. David E. Blabey, 1633 Broadway, New York, New York 10019.

NRC Section Chief: Peter Tam (Acting)

Note: The publication date for this notice will change from every other Wednesday to every other Tuesday, effective January 8, 2002. The notice will contain the same information and will continue to be published biweekly.

Dated at Rockville, Maryland, this 25th day of September 2001.

For the Nuclear Regulatory Commission.

John A. Zwolinski,

Director, Division of Licensing Project Management, Office of Nuclear Reactor Regulation.

[FR Doc. 01–24580 Filed 10–2–01; 8:45 am]

BILLING CODE 7590–01–P

POSTAL RATE COMMISSION

[Order No. 1324; Docket No. R2001–1]

Postal Rate and Fee Changes

AGENCY: Postal Rate Commission.

ACTION: Notice and order in omnibus rate and classification case.

DATES: Notices of intervention, answers to motions, and comments on request for expedition due October 24, 2001; prehearing conference on October 25, 2001; comments regarding pending cases due October 29, 2001. See **SUPPLEMENTARY INFORMATION** section for other dates.

ADDRESSES: Send notices of intervention or comments to the Commission in care of the Acting Secretary, 1333 H Street NW., suite 300, Washington, DC 20268–0001.

SUMMARY: This document informs the public that the Postal Service has filed a request for an expedited decision on omnibus rate, fee and classification changes. It identifies overall percentage increases for various classes, encourages interested persons to review the filing to determine its impact for further details, and takes several preliminary procedural steps. It also states that a companion document will contain specific proposed rate and fee changes.

FOR FURTHER INFORMATION CONTACT: Stephen L. Sharfman, General Counsel, 202–789–6820.

SUPPLEMENTARY INFORMATION:

I. Introduction

This notice and order [no. 1323, issued September 26, 2001] informs the public that on September 24, 2001, the United States Postal Service filed a request with the Postal Rate Commission for an expedited recommended decision on proposed changes in essentially all domestic postage rates and fees, and in some mail classifications.[1] It summarizes basic features of the filing, including several contemporaneous notices and motions; institutes a formal proceeding for consideration of the Service's proposals; sets October 25, 2001 as the date for a prehearing conference; and takes several other initial procedural steps. A companion notice and order presents a complete schedule of the Service's proposed rate and fee changes.

Summary. The request affects virtually all of the Service's offerings, and is based on important assumptions regarding costs, volumes, pricing and, in some instances, classification changes. It includes a proposed 3-cent increase in the First-Class stamp, raising the price from 34 cents to 37 cents. The charge for each additional ounce of single-piece First-Class Mail would remain at 23 cents.

The Postal Service has indicated the proposed systemwide average increase for all classes of mail and services is 8.7 percent. Average increases, by individual class of mail, are 8.2 percent for First-Class Mail; 9.7 percent for Express Mail; 13.5 percent for Priority Mail; 10.0 percent for Periodicals; 7.3 percent Standard Mail; and 8.9 percent for Package Services. Proposed percentage changes for the Special Services vary considerably by individual service.

Rate changes for a specific piece of mail, bulk mailings, or a special service may differ significantly from the systemwide average change, as well as from the referenced change for an individual class of mail. Many subclasses and services include numerous individual rate cells, and the application of various discounts, surcharges, and annual mailing permit fees often determines effective percentage changes. Interested persons are urged to carefully review the Service's filing to determine the proposal's impact.

II. Establishment of Formal Docket

The Service's request was filed pursuant to sections 3622 and 3623 of the Postal Reorganization Act (39 U.S.C. 3622, 3623). The Commission hereby institutes a proceeding, designated as docket no. R2001–1, postal rate and fee changes, to consider the instant request. In the course of this proceeding, participants may propose alternatives to

[1] Request of the United States Postal Service for a recommended decision on changes in rates of postage and fees for postal services, September 24, 2001 (Service's request or request).

the Service's proposal, and the Service itself may revise, supplement, or amend its initial filing. The Commission's review of the Service's request, including any revisions, alternatives proposed by others, or options legally within the purview of the Service's request, may result in recommendations that differ from those proposed by the Postal Service in its initial filing.

III. Filing Contents; Availability, Including Commission Internet Posting

The Service's initial docket no. R2001–1 filing includes its formal request (including an explicit request for expedition); seven attachments; 44 pieces of testimony (along with related exhibits) presented by 40 witnesses; and numerous library references.[2] Several notices and motions accompanied the filing. The Commission has posted the request and most related material on its Web site at *www.prc.gov.* Subsequent filings in this case will also be posted on the Web site, if provided in electronic format or amenable to conversion, and not subject to a valid protective order. Information on how to use the Commission's Web site is available online or by contacting the Commission's Web master at 202–789–6873.

The entire filing and related documents are also available for public inspection in the Commission's docket section. The docket section's hours are 8 a.m. to 4:30 p.m., Monday through Friday, except on federal government holidays. The docket section telephone number is 202–789–6846.

Description of attachments. Attachment A to the request identifies requested changes in the domestic mail classification schedule (DMCS) in legislative format. Attachment B presents proposed rates and fees. The Commission is publishing attachment B in a companion notice and order. Attachment C, which addresses Commission rule 54(b)(2), designates the contents of the domestic mail manual (DMM) as the specification of the rules, regulations and practices establishing conditions of mailability and standards of service. It also provides a copy of the table of contents of the current DMM. The DMM is available for review on the Postal Service's Web site, *www.USPS.gov.*

Attachment D is the certification, required by rule 54(p), regarding the accuracy of cost statements and other documentation submitted with the request. Attachment E contains a report of the Service's independent auditors, which includes related audited financial statements. Attachment F is an index that identifies witnesses, the numerical designation of each piece of testimony, related exhibits and library references, and attorney contacts. Attachment G contains a compliance statement addressing pertinent provisions of rules 54 and 64, and refers to a separate notice and motion for waiver related to the alternate cost presentation required by these rules.

Expedition. The Service's request includes a request for maximum expedition. In particular, the Service suggests that consideration of the request could be completed in less than 10 months without interfering with the Commission's interests or compromising participants' due process rights. It maintains that several benefits (primarily associated with implementation) would flow from completing the case even one month earlier than the statutory maximum. United States Postal Service request for expedition, September 24, 2001.

IV. Notices

The Service filed two notices addressing administrative matters. One lists attorney/witness assignments; expresses the Service's intention to hold technical conferences; and states that further information on such conferences will be available shortly.[3] The other notice contains a master list of library references. This notice identifies the relevant category for each library reference; states that no category 4 or 6 library references have been filed; and notes that waivers have been requested, in separate motions, for library references in categories 1, 2, 3 and 5.[4] Further, the notice states that two library references (USPS–J–94 and USPS–J–99) have not been filed, pending a ruling on protective conditions.[5]

A third notice, filed in combination with a motion for waiver of the Commission's library reference rules, addresses the Service's filing of alternate cost information under Commission rule 54(a)(1). Notice of the United States Postal Service concerning provision of information pursuant to Commission rule 54(a)(1) and motion requesting waiver of the Commission rules with respect to category 5 library references, September 24, 2001 (Notice and waiver motion on rule 54(a)(1) requirements).

V. Motions for Waiver of Library Reference Rules

Four motions seek waiver, to the extent deemed necessary, of the Commission's rules on library references. Three deal exclusively with waiver.[6] One is combined with a notice regarding the Service's rule 54(a)(a) presentation. notice and waiver motion on rule 54(a)(1) requirements.

Deadline for answers to motions for waiver of rules on library references. Answers to each of the Service's motions for waiver of the library reference rules are due no later than October 24, 2001.

VI. Motion for Waiver of Rules 31(k) and 54 for Two Library References, and for Protective Conditions for These References

In a combined pleading, the Postal Service seeks waiver of Commission rules 31(k) and 54 for two library references—USPS–LR–J–94 and USPS–LR–J–99—and application of protective conditions. The affected library references relate to costs associated with the Postal Service's transportation agreement with FedEx. Motion of United States Postal Service for waiver and for protective conditions for library references [USPS–LR–J–94 and USPS–LR–J–99] concerning costs associated with the FedEx transportation agreement, September 24, 2001 (Motion on FedEx-related library references). In this pleading, the Service notes that it has filed a redacted version of the transportation agreement with the Commission as USPS–LR–J–97. It states that the two library references that are the subject of this pleading have been prepared but not filed with the Commission, pending a ruling on protective conditions.

[2] At the time the case was filed, 138 numerical designations were associated with Postal Service library references in this case. Of these, two numbers were reserved, 2 library references were withheld pending a ruling on protective conditions, and 134 were filed with the Commission's docket room.

[3] Notice of the United States Postal Service regarding attorney/witness assignments, September 24, 2001.

[4] Library reference categories are identified in Commission rule 31(b)(2).

[5] Notice of the United States Postal Service of filing of master list of library references, September 24, 2001.

[6] Motion of the United States Postal Service requesting waiver of the Commission rules with respect to category 1 libary references (noting that 26 of the 29 category 1 references include materials available in electronic format); motion of the United States Postal Service requesting waiver of the Commission rules with respect to category 2 libary references (noting that virtually all category 2 references include electronic versions); motion of the United States Postal Service requesting waiver of the Commission rules with respect to category 3 library references (noting that electronic versions of most category 3 references cannot be provided because the materials have been obtained from an external source only in hard-copy versions, or because of manual redactions. These motions were filed September 24, 2001.

The Service asks that the Commission adopt the protective conditions included in its motion so that the library references can be produced as soon as possible. Id. at 3. It also asks that the Commission issue an order strongly urging all who participate in this proceeding to limit their use of any information pertaining to the FedEx contract that may surface in this proceeding. Id. at 4.

Deadline for answers. Answers to the Service's motion on FedEx-related library references are to be filed no later than October 24, 2001.

VII. Summary of Impact of Proposed Rate, Fee and Classification Changes

In its request, the Service maintains that without rate and fee changes, it will incur a substantial revenue deficiency—of approximately $5.275 billion—in the proposed test year, in contravention of 39 U.S.C. 3621. (The test year is government fiscal year (GFY) 2003.) The Service is seeking a 3 percent allowance for contingencies.

The proposed changes, along with income from sources not subject to Commission jurisdiction, are expected to generate a revenue surplus of approximately $33.1 million. Request at 1–2. These estimates, as well as the proposals underlying them, entail important assumptions regarding costs, volumes, and pricing, and some of these assumptions differ from those that underlie current rates.

Classification changes range from minor clarifying revisions to the DMCS to more significant worksharing alternatives, such as a pallet discount in Periodicals. A variety of classification changes also affect Special Services.

VIII. Participation

The Commission invites participation in this case by interested persons. Commission rules provide that a participant may elect full, limited or commenter status. Persons electing full or limited status shall file notices of intervention conforming to Commission rules no later than October 24, 2001. Persons seeking to intervene on a full or limited basis after that date must file a motion for intervention. Commenters do not need to file intervention notices or motions; instead, they may simply direct their comments to the attention of Steven W. Williams, acting secretary of the Commission, 1333 H Street NW., suite 300, Washington, DC 20268–0001. Commenters may also e-mail their position on the Service's request to the Commission at *prc-admin@prc.gov.*

Persons unsure of their intervention status under the Commission's rules or seeking more information on how to participate in this case should contact Shelley S. Dreifuss, acting director of the Commission's office of the consumer advocate.

IX. Representation of Interests of the General Public

The Commission designates Shelley S. Dreifuss, acting director of the Commission's office of the consumer advocate, to represent the interests of the general public in this proceeding, pursuant to 39 U.S.C. 3624(a). Ms. Dreifuss shall direct the activities of Commission personnel assigned to assist her and, at an appropriate time, provide the names of these employees for the record. Neither Ms. Dreifuss nor the assigned personnel shall participate in or advise as to any Commission decision in this proceeding, other than in their designated capacity. Participants shall serve the OCA separately with three copies of all filings in addition to, and at the same time, as they effect service on the Commission.

X. Prehearing Conference Date; Other Scheduling Matters

The Commission will hold a prehearing conference on October 25, 2001, at 10 a.m. in the Commission's hearing room, 1333 H Street NW., suite 300, Washington, DC 20268–0001. Participants intending to raise topics for discussion at the prehearing conference, other than those mentioned in this notice and order, are requested to file a notice to that effect no later than October 24, 2001, providing sufficient detail to inform the Commission and others of the nature of the topic and its potential impact on the proceeding.

Effect of Service's Omnibus Request on Pending Matters

Several cases were pending at the time the Service filed this request. The Commission anticipates addressing the status of these cases and their impact on this case at the prehearing conference. Participants wishing to comment on the effect of the omnibus filing on procedural aspects of these cases also may file a written statement with the Commission no later than October 29, 2001.

It is ordered:

1. The Commission hereby institutes docket no. R2001–1 for consideration of the Service's request for omnibus rate, classification and fee changes.

2. The Commission will sit en banc in this proceeding.

3. Notices of intervention will be accepted through October 24, 2001.

4. Shelley S. Dreifuss, acting director of the Commission's office of the consumer advocate, is designated to represent the interests of the general public in this proceeding.

5. A prehearing conference will be held on Thursday, October 25, 2001 at 10 a.m. in the Commission's hearing room.

6. Participants wishing to comment on the effect of docket no. R2001–1 on pending cases shall file written comments no later than October 29, 2001.

7. Participants intending to raise topics for discussion at the prehearing conference, other than those identified in this notice and order, are requested to file written notice of such intention and a description of such topics no later than October 24, 2001.

8. Comments on the United States Postal Service request for expedition shall be filed no later than October 24, 2001.

9. Answers to the motion of the United States Postal Service requesting waiver of the Commission rules with respect to category 1 library references shall be filed no later than October 24, 2001.

10. Answers to the motion of the United States Postal Service requesting waiver of the Commission rules with respect to category 2 library references shall be filed no later than October 24, 2001.

11. Answers to the motion of the United States Postal Service requesting waiver of the Commission rules with respect to category 3 library references shall be filed no later than October 24, 2001.

12. Answers to the motion of United States Postal Service for waiver and for protective conditions for library references [USPS–LR–J–94 and USPS–LR–J–99] concerning costs associated with the FedEx transportation agreement shall be filed no later than October 24, 2001.

13. Answers to the Service's motion requesting waiver of the Commission rules with respect to category 5 library references (filed in combination with a notice of the United States Postal Service concerning provision of information pursuant to rule 54(a)(1), shall be filed no later than October 24, 2001.

14. The [Acting] Secretary shall cause this notice and order to be published in the **Federal Register**.

Dated: September 27, 2001.

Steven W. Williams,

Acting Secretary.

[FR Doc. 01–24654 Filed 10–2–01; 8:45 am]

BILLING CODE 7710–FW–P

POSTAL RATE COMMISSION

[Order No. 1323; Docket Nos. R2001–2 and MC2001–2]

Experimental Suspension of Manual Delivery Confirmation Fee

AGENCY: Postal Rate Commission.

ACTION: Notice and order on experimental filing.

SUMMARY: This document informs the public that the Postal Service has proposed temporary experimental suspension of the manual delivery confirmation fee used in conjunction with Priority Mail. It notes the Service's interest in settlement negotiations. It also establishes several procedural deadlines and sets dates for settlement and prehearing conferences.

DATES: October 10, 2001: Deadline for notices of intervention, answers to motion for waiver of filing requirements, and comments on rule 67–67d treatment. October 11, 2001: Deadline for issue statements and comments on evidentiary hearings. October 12, 2001: Prehearing conference (10 a.m.). See **SUPPLEMENTARY INFORMATION** section for information on other dates.

ADDRESSES: The prehearing conference will be held in the Commission's hearing room, 1333 H Street NW., suite 300, Washington, DC 20268–0001. Send comments to the attention of Steven W. Williams, acting secretary, 1333 H Street NW., suite 300, Washington, DC 20268–0001.

FOR FURTHER INFORMATION CONTACT: Stephen L. Sharfman, General Counsel, 202–789–6824.

SUPPLEMENTARY INFORMATION:

A. Authority To Consider the Service's Request

39 U.S.C. 3622 and 3623.

B. Background

On September 20, 2001, the United States Postal Service filed a request with the Postal Rate Commission for a recommended decision on a proposed temporary experimental suspension of the fee charged for the manual delivery confirmation special service when it is used in conjunction with Priority Mail. Request of the United States Postal Service for a recommended decision on experimental delivery confirmation special service category and fee (''request''). The Service's request was filed pursuant to chapter 36 of the Postal Reorganization Act, 39 U.S.C. 3601 *et seq.*

It was accompanied by contemporaneous motions seeking waiver of certain provisions of rules 54 and 64 of the Commission's rules of practice [1] and asking for establishment of procedural mechanisms to encourage parties to consider expeditious settlement of issues in this proceeding,[2] as well as by a notice of the Service's intention to convene an informal settlement conference on October 11, 2001.[3] All these documents are available for physical inspection in the Commission's docket section during regular business hours, and for internet access on the Commission's Web site at: *http://www.prc.gov* within the search field ''docket no. MC2001–2.''

Brief Description of Request and Its Rationale

The Service proposes to offer the manual version of delivery confirmation service to retail Priority Mail users without charge for a period beginning December 1 and ending December 16, 2001. Request, attachment B. The current fee for manual delivery confirmation service when used in conjunction with Priority Mail is 40 cents. An electronic, non-retail version of the service is currently available to Priority Mail users at no additional charge. Ibid.

The Postal Service anticipates two direct benefits from this proposal. First, it believes that the experiment would give postal customers an incentive to mail packages before the busiest week of the holiday mailing season, and thereby reduce demand on its resources during the peak period following December 16. Second, the Service expects that the proposal would introduce the retail delivery confirmation service to customers who otherwise would not be aware of it. Additionally, the Service anticipates that its experiment would provide valuable experience with more flexible approaches to pricing. Request at 2–3.

Significance of Experimental Designation

By designating its request as one that involves an experimental change, the Postal Service signals its intention that the Commission apply its expedited rules of practice and procedure for experimental changes in §§ 3001.67 through 3001.67d of title 39, CFR. Request at 1. In support of this treatment, the Service asserts that the filing is consistent with the logic of the experimental rules. Id. at 2. It also notes that a preliminary cost and revenue analysis has been prepared and included in the testimony supporting its request, and that more complete data will be gathered during the term of the experiment, with the potential for supporting a request to establish the change on a permanent basis. Ibid.

The proposed temporary suspension of a currently applicable rate represents a novel form of experiment under sections 67 through 67d of the Commission's rules. In determining whether these procedures are appropriate, the Commission will consider the proposed change's novelty, magnitude, the ease or difficulty of collecting data, and desired duration. 39 CFR 3001.67(b).

Participants are invited to comment on whether the Postal Service's request should be evaluated under rules 67–67d. Comments are due on or before October 10, 2001, and participants should be prepared to discuss any relevant issues at the prehearing conference.

Pending a determination on this issue, participants should recognize that the motion seeking application of the experimental rules may be granted. The Commission notes that its experimental rules provide that cases falling within this designation shall be treated as subject to the maximum expedition consistent with procedural fairness, and that participants will be expected to identify genuine issues of material fact at an early stage in this case. 39 CFR 3001.67d. This rule also prescribes adoption of a procedural schedule that will allow for issuance of a decision not more than 150 days following a determination regarding the appropriateness of applying the experimental rules or the filing of the request, whichever occurs later.

Under the terms of its request, the Postal Service asks that the Commission issue its recommended decision in sufficient time to enable it to implement the proposed experiment 72 days after the submission of its filing. Achieving the implementation date proposed by the Postal Service will require extraordinary expedition, but the Commission will endeavor to do so within the bounds of procedural fairness to all participants.

Motion for Waiver of Certain Commission Rules

As noted above, the Service seeks waiver of certain provisions of rule 64(h) and related rules that may be deemed applicable to the instant

[1] Motion of the United States Postal Service for waiver of certain provisions of rules 54 and 64, September 20, 2001.

[2] Motion of the United States Postal Service to establish procedural mechanisms concerning settlement, September 20, 2001.

[3] Notice of the United States Postal Service concerning settlement discussions, September 20, 2001.

request. Motion of the United States Postal Service for waiver of certain provisions of rules 54 and 64, September 20, 2001 (''motion for waiver''). As noted therein, rule 64 (h) provides that when requesting a change in the classification schedule, the Postal Service must provide certain rule 54 information if the proposed classification change results in the following: A change in the rates or fees for any existing class or subclass; the establishment of a new class or subclass for which rates are to be established; a change in the relationship of costs to revenues for any class or subclass; or a change in the relationship of total Postal Service costs to total revenues.

The Service submits that the changes proposed in its request do not significantly change any of the referenced rates or cost-revenue relationships, except in the delivery confirmation special service. Motion for waiver at 1–2. Further, even if the experiment is implemented, the Service states that it expects that delivery confirmation service will cover its volume-variable costs and make a contribution to institutional costs. Id. at 2.

The Service also presents reasons why certain criteria in rule 64(h) should not apply to this request, and further contends that none of the rule 54 requirements should be found to apply. Id. at 2–3. It asserts that all of the rule 54 requirements should therefore be waived, but also undertakes to provide certain responsive rule 54 information in an attempt to cooperate and assist with consideration of the request. Id. at 3. Interested parties are advised to review the Service's motion for waiver for additional information concerning the bases for its request.

Proposed Procedural Mechanisms and Limitation of Issues

In its motion to establish procedural mechanisms concerning settlement, the Service asks the Commission to adopt procedural mechanisms it suggests to encourage participants to reach an expeditious resolution of issues in this proceeding through a stipulation and agreement, which the Service proposes and appends to its motion. Motion of the United States Postal Service to establish procedural mechanisms concerning settlement, September 20, 2001. In a separate notice, the Service states its intention to convene an informal, off-the-record settlement conference among all participants of record in this proceeding on Thursday, October 11, 2001, at 2 p.m. Notice of the United States Postal Service concerning settlement discussion, September 20, 2001.

In its motion, the Service notes that its proposal is time-sensitive, and recognizes that the timing of its request ''puts a premium on the Commission's ability to expedite this proceeding in a manner that respects the due process rights of those who may intervene'' in the case. Motion to establish procedural mechanisms at 1–2. At the same time, the Service submits that the ''very limited scope and simplicity'' of its proposal offers an opportunity for the parties to proceed toward a resolution of any material issues by means of a stipulation and agreement. Id. at 2.

In order to proceed with maximum expedition to this resolution, the Service asks the Commission to issue an order at the outset of this case that would establish procedures to govern its conduct. The Service anticipates that any discovery regarding the proposed experiment might be relatively limited in duration and scope, and suggests that participants be allowed to begin their discovery immediately upon intervention. Ibid. This is a useful suggestion, and the Commission shall so order. Additionally, the Service proposes the adoption of special procedures that would:

(1) Enter the Postal Service's request (with associated attachments), the testimony and library reference filed with this request, and the stipulation and agreement into the record in this docket;

(2) Give parties until October 10, 2001, to intervene and October 17, 2001, to complete discovery;

(3) Require that objections to any discovery request be filed within 3 workdays days after whichever comes later, the date on which such a request is filed with the Commission or posted on the Commission web site;

(4) Require that all answers to discovery requests be filed no later than five workdays after such posting;

(5) Give notice of a formal prehearing conference to be convened on October 15, 2001, at 1:00 p.m.;

(6) Make the Commission hearing room available to the Postal Service and the participants on that date at 10:30 a.m. as the venue for an informal off-the-record meeting to discuss the proposed stipulation and agreement and related matters in advance of the pre-hearing conference;

(7) Provide notice to intervenors that, if they wish to contest the PostalService's request and the proposed stipulation and agreement, they must, by October 17, 2001, file a statement of their intention to do so. Any such statement should identify with specificity the issues contested, and state whether the intervenor intends to offer evidence on any such issues; and

(8) Establish subsequent procedures to resolve any genuine issues of material fact should a participant contest the Postal Service's request. Motion at 3–5.

The Commission will adopt some of the suggested procedural mechanisms in this order, but finds insufficient justification for others. For example, receiving the Postal Service's request and supporting documents into the record at this time, prior to any opportunity for exploration by potentially interested parties, would be premature. Additionally, more flexibility may be required in crafting procedures for resolving any factual issues that may be identified, and thereafter reaching an expeditious decision on the Service's request.

At this juncture, the Commission will undertake to maximize expedition consistent with procedural fairness by providing for prompt intervention, expedited discovery if participants so desire, and early identification of any legitimate issues of material fact that may require resolution, either through written discovery efforts or in hearings.

Intervention

Those wishing to be heard in this matter are directed to file a written notice of intervention with Steven W. Williams, acting secretary of the Commission, 1333 H Street NW., suite 300, Washington, DC 20268–0001, on or before October 10, 2001. Notices should indicate whether participation will be on a full or limited basis. *See* 39 CFR 3001.20 and 3001.20a.

Discovery and Limitation of Issues

In order to identify and address any factual issues in this case expeditiously, parties may initiate any desired discovery on their intervention. As the Postal Service requests, objections to any discovery request shall be filed within three workdays of its filing or posting on the PRC website, whichever occurs later. All answers to discovery requests shall be filed no later than 7 days following their posting on the Commission's web site.

Rule 67a provides a procedure for limiting issues in experimental cases. In this proceeding, the Postal Service's proposed experiment may involve issues arising under the criteria of 39 U.S.C. 3622(b), 3623(c), or other guiding provisions in the Postal Reorganization Act. To enable the Commission and participants to evaluate whether there are genuine issues of fact requiring resolution in this proceeding, parties

shall file statements of any such issues they believe to exist by October 11, 2001, and be prepared to discuss those statements in the prehearing conference to be held the following day.

Need for Hearing

A decision on whether there is a need for evidentiary hearings, and the scope of any such hearings, cannot be made at this time. Comments on this matter, and other procedural issues raised by the Service's request, should be filed no later than October 11, 2001, and participants should be prepared to discuss these matters at the prehearing conference.

Representation of the General Public

In conformance with § 3624(a) of title 39, the Commission designates Shelley S. Dreifuss, acting director of the Commission's office of the consumer advocate (OCA), to represent the interests of the general public in this proceeding. Pursuant to this designation, Ms. Dreifuss will direct the activities of Commission personnel assigned to assist her and, upon request, will supply their names for the record. Neither Ms. Dreifuss nor any of the assigned personnel will participate in or provide advice on any Commission decision in this proceeding. The OCA shall be separately served with three copies of all filings, in addition to and at the same time as, service on the Commission of the 24 copies required by Commission rule 10(d) [39 CFR 3001.10(d)].

Prehearing Conference

A prehearing conference will be held Friday, October 12, 2001, at 10 a.m. in the Commission's hearing room. At the conference, the Postal Service will be expected to report on the progress made in the off-the-record settlement conference it has announced for the preceding day. The Service and other participants should also be prepared to address the procedural matters discussed above.

Ordering Paragraphs

It is ordered:

1. The Commission establishes docket nos. R2001–2 and MC2001–2, preliminarily designated as experimental suspension of fee for manual delivery confirmation category, to consider the request referred to in the body of this order.

2. The Commission will sit en banc in this proceeding.

3. The deadline for filing notices of intervention is Wednesday, October 10, 2001.

4. Answers to the Service's motion for waiver of certain filing requirements and comments on the appropriateness of considering the request under sections 67 through 67d of the rules of practice are due no later than October 10, 2001.

5. Written discovery pursuant to rules 26–28 may be undertaken upon intervention.

6. Objections to written discovery requests shall be filed within 3 workdays, as specified in the body of this order.

7. The Service shall respond to discovery requests within 7 days, as specified in the body of this order.

8. Interested parties shall file statements of issues they perceive in the case, in accordance with 39 CFR 3001.67a(b), and comments on the need for evidentiary hearings, and the scope of any such hearings, by October 11, 2001.

9. A prehearing conference will be held Friday, October 12, 2001, at 10 a.m. in the Commission's hearing room.

10. Shelley S. Dreifuss, acting director of the Commission's office of the consumer advocate, is designated to represent the interests of the general public in this proceeding.

11. The acting secretary shall arrange for publication of this notice and order in the **Federal Register**.

Dated: September 27, 2001.

Steven W. Williams,

Acting Secretary.

[FR Doc. 01–24639 Filed 10–2–01; 8:45 am]

BILLING CODE 7710–FW–P

POSTAL RATE COMMISSION

Postal Facility Tour

AGENCY: Postal Rate Commission.

ACTION: Notice of commission visit.

SUMMARY: On September 26, 2001, the Commission issued a notice in Docket No. R2001–1 concerning a postal facility tour. It informs participants that members of the Commission accompanied by advisory staff will tour the Postal Service's Baltimore General Mail Facility on October 10, 2001, beginning at 7 p.m. Arrangements for this visit were initiated prior to the filing of the Postal Service request in this docket.

DATES: The tour is scheduled for October 10, 2001; this notice was issued September 26, 2001.

FOR FURTHER INFORMATION CONTACT: Stephen L. Sharfman, General Counsel, Postal Rate Commission, 202–789–6820.

Dated: September 27, 2001.

Steven W. Williams,

Acting Secretary.

[FR Doc. 01–24640 Filed 10–2–01; 8:45 am]

BILLING CODE 7710–FW–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–44857; File No. SR–NASD–2001–61]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the National Association of Securities Dealers, Inc. To Provide Nasdaq Issuers Temporary Relief From Listing Requirements Relating to the Bid Price for Continued Inclusion and the Market Value of the Public Float

September 27, 2001.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on September 26, 2001, the National Association of Securities Dealers, Inc. (''NASD''), through its subsidiary, The Nasdaq Stock Market, Inc. (''Nasdaq''), 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 Nasdaq. Nasdaq asserts that the proposed rule change meets the criteria set forth in Rule 19b–4(f)(6),[3] which renders this proposal effective upon receipt of this filing by the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule

Nasdaq has filed with the Commission a proposed rule change to temporarily suspend, through January 2, 2002, the application of the continued inclusion bid price and market value of public float requirements set forth in NASD Rules 4310(c)(4), 4310(c)(7), 4450(a)(2), 4450(a)(5), 4450(b)(3), and 4450(b)(4).

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, Nasdaq included statements concerning the purpose of and basis for the

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 17 CFR 240.19b–4(f)(6).

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. Nasdaq 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 provide issuers temporary relief from the continued inclusion bid price and market value of public float requirements. Nasdaq's continued inclusion bid price requirements are set forth in NASD Rules 4310(c)(4), 4450(a)(5), and 4450(b)(4), and its continued inclusion market value of public float requirements are set forth in NASD Rules 4310(c)(7), 4450(a)(2), and 4450(b)(3). NASD Rule 4310(c)(8)(B) provides that, if a company fails to meet the applicable bid price or market value of public float requirement for 30 consecutive business days, it will be notified and provided a 90-day grace period to regain compliance. Compliance is achieved by meeting the applicable standards for ten consecutive business days during the 90-day compliance period. If the company fails to comply with the applicable standards, delisting procedures are initiated under the NASD Rule 4800 series.

Nasdaq has stated that, given the extraordinary market conditions surrounding the September 11 tragedy, there has been a recent escalation in the number of companies falling short of the bid price and market value of public float requirements. Due to the dramatic increase in the number of companies potentially impacted, Nasdaq has determined that the bid price and market value of public float requirements should be suspended through January 2, 2002. Under this proposal, companies would not be cited for bid price or market value of public float deficiencies, and companies in the 90-day grace period or in the review process for bid price or market value of public float deficiencies would be taken out of the deficiency process with respect to those requirements. Nasdaq has stated that no deficiencies will accrue during the suspension period. During this time, Nasdaq staff will consider whether it is appropriate to recommend further, and more permanent, action.

2. Statutory Basis

Nasdaq believes that the proposed rule change is consistent with the provisions of Section 15A(b)(6) of the Act[4] in that it is designed to prevent fraudulent and manipulative acts and practices and to protect investors and the public interest. Nasdaq reiterates that the proposed rule change is designed to minimize impact on issuers in the marketplace, while providing greater transparency and consistency.

B. Self-Regulatory Organization's Statement on Burden on Competition

Nasdaq does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Nasdaq asserts that the proposed rule change is effective upon filing pursuant to Section 19(b)(3)(A) of the Act[5] and paragraph (f)(6) of Rule 19b–4 thereunder,[6] because the proposed rule change: (1) Does not significantly affect the protection of investors or the public interest; (2) does not impose any significant burden on competition; and (3) does not become operative for 30 days after the date of the filing, or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest. Nasdaq has requested that the Commission waive the 30 day preoperative period in order to provide companies immediate relief, given the current extraordinary market conditions. In addition, Rule 19b–4(f)(6) requires the self-regulatory organization to give the Commission written notice of its intent to file the proposed rule change at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. Nasdaq also requests that the Commission, for the same reasons, waive the five-day notice requirement.

The Commission finds that it is consistent with the protection of investors and the public interest to waive the 30-day pre-operative period.[7] The Commission believes that the potential benefits of the proposed rule change could be lost if the Commission does not accelerate the operative date of the rule, as Nasdaq might otherwise be required under NASD rules to commence delisting proceedings against certain issuers. Moreover, the Commission finds that waiving the 30-day pre-operative requirement will have no adverse impact on the public interest. The Commission believes that, notwithstanding the accelerated operative date, the public will have ample opportunity to learn about and analyze the consequences of the proposed rule change. The Commission also notes that the suspension of the Nasdaq listing requirements relating to the bid price for continued inclusion and the market value of the public float is temporary; any subsequent action taken by Nasdaq to suspend or alter its listing standards will also be subject to the rule filing process under Section 19(b) of the Act.[8] For these same reasons, the Commission also waives the five-day notice requirement.

At any time within 60 days of this filing, the Commission may summarily abrogate this proposal if it appears to the Commission that such action is necessary of appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW, Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be

[4] 15 U.S.C. 78o–3(b)(6).

[5] 15 U.S.C. 78s(b)(3)(A).

[6] 17 CFR 240.19(b)–4(f)(6).

[7] For purposes only of accelerating the operative date of this proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[8] 15 U.S.C. 78s(b).

available for inspection and copying at the principal office of the NASD. All submissions should refer to File No. SR–NASD–2001–61 and should be submitted by October 24, 2001.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[9]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 01–24702 Filed 10–2–01; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–44848; File No. SR–OCC–2001–02]

Self-Regulatory Organizations; The Options Clearing Corporation; Order Granting Approval of Proposed Rule Change Relating to Deposits of Nasdaq SmallCap Securities as Margin Collateral Pursuant to Rule 604(d)

September 25, 2001.

On April 11, 2001, The Options Clearing Corporation (''OCC'') filed with the Securities and Exchange Commission (''Commission'') a proposed rule change (File No. SR–OCC–2001–02) pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'').[1] Notice of the proposal was published in the **Federal Register** on August 3, 2001.[2] No comment letters were received. For the reasons discussed below, the Commission is granting approval of the proposed rule change.

I. Description

The primary purpose of the filing is to allow securities traded in the Nasdaq SmallCap market to be deposited as collateral pursuant to OCC Rule 604(d). The rule change also makes certain other technical changes to the rule.

In 1984, OCC received Commission approval to amend Rule 604(d) to allow the deposit of securities traded in the Nasdaq National Market System (''NMS'') as a form of margin collateral.[3] Nasdaq formed the NMS market in 1982 to distinguish NMS securities as those securities that met is highest listing standards and that were subject to real-time sale price and volume reporting. Securities that did not meet NMS standards were termed ''regular Nasdaq securities.'' While the eligibility criteria found in Rule 604(d) have remained relatively unchanged since 1984, the structure of the Nasdaq market has evolved substantially since then.

The Nasdaq market structure has had many notable changes. For example, in 1992, all Nasdaq securities became subject to real-time last sale price and volume reporting requirements, increasing the transparency for all Nasdaq issues (*i.e.,* NMS and regular Nasdaq securities).[4] Then, in 1994, the Nasdaq Stock Market was created with two distinct tiers: the Nasdaq National Market® (''NNM,'' formerly the NMS market) and the SmallCap market (formerly the regular Nasdaq securities).[5] Later, in 1997, the qualification standards of both the NNM and the SmallCap market tiers were substantially upgraded.[6]

The upgraded qualification standards applicable to Nasdaq SmallCap issuers set forth minimum and ongoing financial criteria (*e.g.,* assets, capitalization, and income), share float and price criteria, corporate governance (*e.g.,* independent directors, audit committee formation and activities, auditor peer review, and voting rights), and public disclosure (*e.g.,* timely filing and distribution of annual and interim financial reports and annual meeting of shareholders).[7] These qualification criteria exceed the standards that governed the Nasdaq NMS securities at the time those securities were approved for margin purposes in 1984. The Nasdaq SmallCap qualification standards approximate American Stock Exchange (''Amex'') listing criteria applicable to equity securities.[8] Such Amex listed equity securities are accepted by OCC for margin purposes. OCC therefore believes that the qualification standards that are applicable to SmallCap issues provide sufficient safeguards to address concerns about the quality of securities traded in that market tier.

The ten dollar minimum price per share requirement and concentration limit (*i.e.,* the securities of any one issuer cannot exceed 10% of the margin requirement for any one clearing member account) of Rule 604(d) also provide additional safeguards to minimize issuer quality concerns. OCC has analyzed the market and liquidity risks associated with accepting SmallCap securities for margin purposes by utilizing daily price movements and volume statistics for the last four years. Average daily price movements and standard deviation of average daily price movements for the entire population of SmallCap securities as well as subset of that population having a price of greater than ten dollars per share were computed. For comparison, a similar computation was performed for NNM securities. A summary of this analysis is outlined below:

Class	Average range minimum (in percent)	Average range maximum (in percent)	Average move [1] (in percent)	Average standard deviation (in percent)
NNM (All)	−24.5	+86.2	3.6	7.5
NNM (>$10)	−21.3	+29.9	3.2	4.8
SmallCap (All)	−33.9	+128.2	5.0	10.7
SmallCap (>$10)	−21.1	+51.4	2.6	5.3

[1] Computed on the basis of the absolute value daily price movements.

[9] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] Securities Exchange Act Release No. 44608 (July 27, 2001), 66 FR 40764.

[3] Securities Exchange Act Release No. 20558 (January 18, 1984), 49 FR 2183 [File No. SR–OCC–83–17] (order approving an OCC rule change allowing clearing members to deposit certain common stocks not underlying options to satisfy their margin obligations).

[4] Securities Exchange Act Release No. 30569 (April 16, 1992), 57 FR 13396 [File No. SR–NASD–91–50] (order approving a rule change requiring real-time trade reporting of transactions in Nasdaq securities, except convertible debt, and allowing the NASD to publicly disseminate the information).

[5] Securities Exchange Act Release No. 34928 (November 9, 1994), 59 FR 55906 [File No. SR–NASD–94–48] (order clarifying the two tiers of the Nasdaq Stock Market as the Nasdaq SmallCap Market and the Nasdaq National Market).

[6] Securities Exchange Act Release No. 38961 (August 29, 1997), 62 FR 45895 [File No. SR–NASD–97–16] (order revising the listing and maintenance standards to increase the quality of companies listed on Nasdaq and raising the level of investor protection).

[7] NASD Rules 4310 and 4350.

[8] American Stock Exchange Company Guide, Sections 101, 102, and 120–132.

Based on this analysis, OCC has concluded that the average SmallCap security presents market risks similar to that of NNM securities especially for those securities that trade at a price greater than ten dollars per share.[9] This analysis also confirms that the current 70% valuation rate provides a sufficient cushion to protect against adverse market moves in SmallCap securities.

Finally, OCC performed a volume analysis to assess the liquidity of SmallCap securities over the same four-year period which confirmed that SmallCap securities are not as liquid as NNM securities.[10] However, the analysis also showed that a material portion of this average share volume is concentrated in a relatively small number of NNM issuers. For example, 20% of the NNM average share volume is attributable to the shares of five issuers. However, there are over 2,150 additional NNM securities that may be deposited for margin purposes. In light of the concentration within the NNM, OCC believes that there is sufficient liquidity in SmallCap issues over ten dollars to support their acceptance for margin purposes.

The proposed rule change also makes certain changes to Rule 604(d) to conform it to recent changes made elsewhere in OCC's By-Laws and Rules. As it has already done in other of its rules, OCC is deleting the term ''primary market'' from Rule 604(d).[11] Removing the term ''primary market'' has been prompted by recognition that the equity markets are becoming increasingly fragmented. Rule 604(d) currently provides that no security that has been suspended from trading or is subject to special margin requirements by its ''primary market'' may be deposited as margin. OCC is amending Rule 604(d) so that no security that has been suspended from trading or is subject to special margin requirements by the market that listed or qualified the issue for trading may be deposited as margin.

Rule 604(d) also currently defines the current market value of a stock or bond to be its closing price on the ''primary market'' for such stock or bond. In order to avoid disputes over which market is a stock's primary market, OCC is amending the rule so that it has the discretion to designate the market whose closing price will serve as the benchmark.

Another conforming change concerns the time when a ''closing price'' is determined. To address any questions that may arise with the growth of after-hours trading, OCC is proposing to amend Rule 604(d) to provide that the closing price will be determined ''at the close of regular trading hours (as determined by the Corporation).* * *'' This change allows OCC to avoid potential disputes by (i) eliminating any basis for arguing that the closing price should be determined based on after-hours trading and (ii) giving OCC the discretion to determine when ''regular trading hours'' end.

Finally, OCC is eliminating those provisions of Rule 604(d) that require stocks that are deposited as margin to be subject to last sales reporting. It is OCC's understanding that all exchange traded and Nasdaq Stock Market securities are now subject to last sales reporting, making the requirement unnecessary.

II. Discussion

Section 17A(b)(3)(F) of the Act requires that the rules of a clearing agency be designed to assure the safeguarding of securities and funds which are in the clearing agency's custody or control or for which it is responsible. In connection with this rule change, which allows OCC clearing members to deposit Nasdaq SmallCap market securities as margin collateral, OCC has done extensive market and liquidity analysis and is subjecting any deposits of Nasdaq SmallCap market securities to its existing margin deposit requirements (*e.g.,* ten dollar per share minimum and ten percent issuer concentration prohibition). Therefore, the Commission finds that OCC's proposed rule change is consistent with Section 17A(b)(3)(F) of the Act and the rules and regulations thereunder.

III. Conclusion

On the basis of the foregoing, the Commission finds that the proposed rule change is consistent with the requirements of the Act and in particular Section 17A of the Act and the rules and regulations thereunder.

It Is Therefore Ordered, pursuant to Section 19(b)(2) of the Act, that the proposed rule change (File No. OCC–2001–02) be and hereby is approved.

For the Commission, by the Division of Market Regulation pursuant to delegated authority.[12]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 01–24657 Filed 10–2–01; 8:45 am]

BILLING CODE 8010–01–M

[9] Approximately 12% of SmallCap securities trade at over ten dollars per share.

[10] Average daily share volume of NNM securities trading over ten dollars per share was 594,632 while the average daily share volume of SmallCap securities trading above ten dollars was 15,005 shares.

[11] Securities Exchange Act Release Nos. 44652 (August 3, 2001), 66 FR 42580 [File No. SR–OCC–00–04] (order approving proposed rule change revising OCC's price determination rules); and 41089 (March 1, 1999), 64 FR 10051 [File No. SR–OCC–98–14] (order approving the revision of OCC Rules 805 with respect to closing prices in expiration processing).

[12] 17 CFR 200.30–3(a)(12).

SMALL BUSINESS ADMINISTRATION

National Women's Business Council; Notice of Meeting

In accordance with the Women's Business Ownership Act, Public Law 106–554 as amended, the National Women's Business Council (NWBC) announces as forthcoming Council meeting. The meeting will cover action items worked on by the National Women's Business Council included by not limited to procurement, access to capital and training. The meeting will be held on October 18, 2001 at the U.S. Small Business Administration 409 Third Street, SW., Washington, DC in the Eisenhower Conference Room—A, 2nd Floor at 9 am to 11:30 am est.

Anyone wishing to make an oral presentation to the Board must contact Ms. Gilda Pressley, in writing by letter or by fax no later than October 12, 2001, in order to be put on the agenda. Gilda Pressley, Administrative Officer, U.S. Small Business Administration, 409 Third Street, SW., Washington, DC 20416. Telephone (202) 205–3850 or Fax (202) 205–6825.

Steve Tupper,

Committee Management Officer.

[FR Doc. 01–24644 Filed 10–2–01; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

Region II Buffalo District Advisory Council; Public Meeting

The U.S. Small Business Administration Region II Advisory Council located in the geographical area of Buffalo, New York, will hold a public meeting at 10 a.m. eastern time on October 24, 2001, at the Erie County Industrial Development Agency, 275 Oak Street, Buffalo, New York to discuss such matters that may be presented by members, staff of the U.S. Small Business Administration, or others present.

Anyone wishing to make an oral presentation to the Board must contact Franklin J. Sciortino, District Director, in writing by letter or fax no later than October 15, 2001, In order to be put on

the agenda. Franklin J. Sciortino, District Director, U.S. Small Business Administration, 1311 Federal Building, 111 West Huron Street, Buffalo, NY 14202. Telephone (716) 551–4301 or Fax (716) 551–4418.

Steve Tupper,

Committee Management Officer.

[FR Doc. 01–24645 Filed 10–2–01; 8:45 am]

BILLING CODE 8025–01–P

DEPARTMENT OF STATE

[Public Notice 3745]

Advisory Committee on Historical Diplomatic Documentation; Notice of Meeting

The Advisory Committee on Historical Diplomatic Documentation will meet in the Department of State, 2201 ''C'' Street NW, Washington, DC, October 15–16, 2001 in Conference Room 1105. Prior notification and a valid photo are mandatory for entrance into the building. One week before the meeting, members of the public planning to attend must notify Gloria Walker, Office of Historian (202–663–1124) to provide relevant dates of birth, Social Security numbers, and telephone numbers.

The Committee will meet in open session from 1:30 p.m. through 4:30 p.m. on Monday, October 15, 2001, to discuss declassification and transfer of Department of State electronic records to the National Archives and Records Administration and the modernization of the Foreign Relations series. The remainder of the Committee's sessions from 9 a.m. until 1 p.m. on Tuesday, October 16, 2001, will be closed in accordance with Section 10(d) of the Federal Advisory Committee Act (Pub. L. 92–463). The agenda calls for discussions of agency declassification decisions concerning the Foreign Relations series. These are matters not subject to public disclosure under 5 U.S.C. 552b(c)(1) and the public interest requires that such activities be withheld from disclosure.

Questions concerning the meeting should be directed to Marc J. Susser, Executive Secretary, Advisory Committee on Historical Diplomatic Documentation, Department of State, Office of the Historian, Washington, DC, 20520, telephone (202) 663–1123, (e-mail *history@state.gov*).

Dated: September 26, 2001.

Marc J. Susser,

Executive Secretary, Advisory Committee on Historical Diplomatic Documentation, U.S. Department of State.

[FR Doc. 01–24745 Filed 10–2–01; 8:45 am]

BILLING CODE 4710–11–P

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

[Order 2001–9–20, Docket OST–2001–10711]

Reports on Significant Airline Service Reductions

Served: October 2, 2001.

Issued by the Department of Transportation on the 27th Day of September, 2001.

Order

The tragic events of September 11 and the resulting traffic declines have caused airlines to reduce or end service in a number of markets. We have the preexisting responsibility to administer the small community service program created by 49 U.S.C. 41731 *et seq.* In addition, we have an overall responsibility to monitor industry conditions, advise Congress on industry developments, and implement Congressional legislation, including the Air Transportation Safety and System Stabilization Act, Pub.L. 107–42.

In view of our responsibilities, we need to obtain advance information from the airlines on plans to substantially reduce or end a community's domestic scheduled passenger service. We will therefore require that all carriers, both certificated carriers and commuter carriers, give us fifteen days notice before any of the following: (1) A termination of all scheduled service by a U.S. airline at a U.S. community, (2) a termination of the last nonstop service in a domestic market, or (3) a reduction of service at a U.S. community if the total available seats or flights linking that community with FAA-designated hubs will be reduced by 33 percent or more during a 90-day period. The 90-day period will consist of the ninety days preceding the date when the airline will implement the schedule change and will require the airline to take account of changes already made or announced by other airlines that may trigger the notice requirement. We are also requiring airlines to give us notice of any such changes that have been announced or implemented since September 11.

We are adopting this order under 49 U.S.C. 41708 (formerly section 407(a) of the Federal Aviation Act, 49 U.S.C. 1377(a)). That section gives us the authority, among other things, to require information on conditions that may indicate a need for future action under the essential air service program. *Delta Air Lines* v. *CAB,* 674 F.2d 1 (D.C. Cir. 1982). We are establishing this reporting requirement only as a result of the current temporary emergency, and it will now terminate as of December 31, 2001. We may extend the requirement, however, if that appears necessary.

The notices shall be filed in this docket and identify the name of the airline, the community or market affected by the reduction or termination of service, the amount by which capacity or frequency will be reduced, and the date on which the reduction or termination will occur.

We have complied with the requirements of the Paperwork Reduction Act, 44 U.S.C. Chapter 35, for this information directive.

Accordingly, pursuant to 49 U.S.C. 40113 and 41708, the Department finds it necessary to compel the submission of certain reports and to take action, as follows:

1. Each airline providing scheduled passenger service under certificate authority granted under 49 U.S.C. 41102 or as a commuter air carrier under exemption authority issued under 14 CFR part 298 shall give the Department fifteen days advance notice of any of the following: (1) A termination of all scheduled service by that airline at a U.S. community, (2) a termination of the last nonstop service in a domestic market, or (3) a reduction of service at a U.S. community if the total available seats or flights linking that community with FAA-designated hubs will be reduced by 33 percent or more during a 90-day period; provided that each air carrier subject to this order shall provide notice as soon as possible of any such changes scheduled to take effect before the fifteenth day after the issuance of this order;

2. The notice requirement imposed by this order shall terminate on December 31, 2001.

Read Van De Water,

Assistant Secretary for Aviation and International Affairs.

[FR Doc. 01–24770 Filed 10–2–01; 8:45 am]

BILLING CODE 4910–62–P

DEPARTMENT OF TRANSPORTATION

Coast Guard

[USCG–2001–10706]

National Boating Safety Activities: Funding for National Nonprofit Public Service Organizations

AGENCY: Coast Guard, DOT.

ACTION: Notice of availability.

SUMMARY: The Coast Guard seeks applications for grants and cooperative agreements from national, nongovernmental, nonprofit, public service organizations. These grants and cooperative agreements would be used to fund projects on various subjects promoting boating safety on the national level. This notice provides information about the grant and cooperative agreement application process and some of the subjects of particular interest to the Coast Guard.

DATES: Application packages may be obtained on or after October 5, 2001. Proposals for the fiscal year 2002 grant cycle must be received before 4:30 p.m. eastern time, January 11, 2002.

ADDRESSES: Application packages may be obtained by calling the Coast Guard Infoline at 800–368–5647. Submit proposals to: Commandant (G–OPB–1), U.S. Coast Guard Headquarters, 2100 Second Street SW., Room 3100, Washington, DC 20593–0001. This notice is available from the Coast Guard Infoline and on the Internet at *http://dms.dot.gov* or at the Web Site for the Office of Boating Safety at *http://www.uscgboating.org.*

FOR FURTHER INFORMATION CONTACT: Mr. Albert Marmo or Ms. Vickie Hartberger, Office of Boating Safety, U.S. Coast Guard (G–OPB–1/room 3100), 2100 Second Street, SW., Washington, DC 20593–0001; 202–267–0950 or 202–267–0974.

SUPPLEMENTARY INFORMATION: Title 26, United States Code, section 9504, establishes the Boat Safety Account of the Aquatic Resources Trust Fund. From this trust fund, the majority of funds are allocated to the States, and up to 5% of these funds may be distributed by the Coast Guard for grants and cooperative agreements to national, nonprofit, public service organizations for national boating safety activities. It is anticipated that $2,950,000 will be available for fiscal year 2002. Twenty-six awards totaling $2,950,000 were made in fiscal year 2001 ranging from $6,000 to $436,200. Nothing in this announcement should be construed as committing the Coast Guard to dividing available funds among qualified applicants or awarding any specified amount.

It is anticipated that several awards will be made by the Director of Operations Policy, U.S. Coast Guard. Applicants must be national, nongovernmental, nonprofit, public service organizations and must establish that their activities are, in fact, national in scope. An application package may be obtained by writing or calling the point of contact listed in **ADDRESSES** on or after October 5, 2001. The application package contains all necessary forms, an explanation of how the grant program is administered, and a checklist for submitting a grant application. Specific information on organization eligibility, proposal requirements, award procedures, and financial administration procedures may be obtained by contacting the person listed in **FOR FURTHER INFORMATION CONTACT.**

Prospective grantees may propose up to a five-year grant with twelve-month (fiscal year) increments. In effect, an award would be made for the first year and thereafter renewal is optional. Each annual increment would not be guaranteed. Under a continuation (multi-year) grant type of award the Coast Guard agrees to support a grant project at a specific level of effort for a specified period of time, with a statement of intention to provide certain additional future support, provided funds become available, the achieved results warrant further support, and are in support of the needs of the government. Award of continuation grants will be made on a strict case-by-case basis to assist planning certain large scale projects and ensure continuity. Procedures also provide for awarding noncompetitive grants or cooperative agreements on a case-by-case basis. This authority is judiciously used to fund recurring annual projects or events which can only be carried out by one organization, and projects that present targets of opportunity for timely action on new or emerging program requirements or issues.

The following list includes items of specific interest to the Coast Guard, however, potential applicants should not be constrained by the list. We welcome any initiative that supports the organizational objectives of the Recreational Boating Safety Program to save lives, reduce the number of boating accidents, injuries and property damage, and lower associated health care costs. We have a high interest in initiatives that focus on recreational anglers, canoeists, kayakers, and/or personal watercraft operators. Some project areas of continuing and particular interest for grant funding include the following:

1. *Develop and Conduct a National Annual Safe Boating Campaign.* The Coast Guard seeks a grantee to develop and conduct the year 2003 National Annual Safe Boating Campaign that targets specific boater market segments and recreational boating safety topics. This year-round campaign must support the organizational objectives of the Recreational Boating Safety Program, as well as support the nationwide grassroots activity of the many volunteer groups who coordinate local media events, education programs, and public awareness activities. The major focus of the campaign will be to affect the behavior of all boaters with special emphasis on paddlers, hunters and anglers, and users of personal watercraft. Efforts will also be coordinated, year-round, with other national transportation safety activities and special media events. Point of Contact: Ms. Jo Calkin, 202–267–0994.

2. *Develop and Conduct a National Recreational Boating Safety Outreach and Awareness Conference.* The Coast Guard seeks a grantee to plan, implement, and conduct a National Recreational Boating Safety Outreach and Awareness Conference that supports the organizational objectives of the Recreational Boating Safety Program. The overall conference focus should have promotional strategies which address the following specific targeted audiences: paddlers, anglers and hunters, and personal watercraft users. Point of Contact: Ms. Jo Calkin, 202–267–0994.

3. *State/Federal/Boating Organizations Cooperative Partnering Efforts.* The Coast Guard seeks a grantee to provide programs to encourage greater participation and uniformity in boating safety efforts. Applicants would provide a forum to encourage greater uniformity of boating laws and regulations, reciprocity among jurisdictions, and closer cooperation and assistance in developing, administering, and enforcing Federal and State laws and regulations pertaining to boating safety. Point of Contact: Mr. John Malatak, 202–267–6286.

4. *Voluntary Standards Development Support.* The Coast Guard seeks a grantee to carry out a program to encourage active participation by members of the public and other qualified persons in the development of technically sound voluntary safety standards for boats and associated equipment. Point of Contact: Mr. Peter Eikenberry, 202–267–6984.

5. *Develop and Conduct Boating Accident Seminars.* The Coast Guard seeks a grantee to develop, provide

instructional material, and conduct training courses nationwide for boating accident investigators, including three courses at the U.S. Coast Guard Reserve Training Center in Yorktown, Virginia. Point of Contact: Mr. Rick Gipe, 202–267–0985.

6. *National Estimate of Personal Flotation Devices (PFDs) Wear Rate.* The Coast Guard seeks a grantee to develop a statistically valid national estimate and evaluation of wear rates of PFDs by recreational boaters. Wear rate should be determined by actual observation of boaters rather than other means such as surveys. Point of Contact: Mr. Peter Eikenberry, 202–267–6894.

7. *Uniform Implementation of National Boating Education Standards.* The Coast Guard seeks a grantee to develop and conduct seminars to train regional State personnel involved in review of education courses for approval in the accurate and effective use and interpretation of the National Boating Education Standards. The express purpose of the training is to enhance the process of review of courses submitted for approval to ensure the uniform and consistent implementation of the National Standards in the delivery of boating safety courses throughout the U.S. Point of Contact: Mr. Vann Burgess, 202–267–6717.

8. *Boating Accident Analysis.* The Coast Guard seeks a grantee to research and analyze drowning accidents attributable to electrical currents around docks, houseboats, and other boats in both freshwater and saltwater. The grantee would explain why, how, when, and where these drownings occurred and also, the age of the swimmer, the minimum current necessary to incapacitate, and the level of current necessary to electrocute. Point of Contact: Mr. Gary Larimer, 202–267–0986.

9. *Boating Risk Analysis Information System (BRAINS).* The Coast Guard seeks a grantee to enhance the functionality and update the accident report data used in the Boating Risk Analysis Information System (BRAINS) software application. BRAINS enables analysts to isolate the specific effect of one accident report variable or a group of variables (i.e., alcohol use, type of boat, PFD wear) on the outcome of an accident scenario. BRAINS serves as a decision support system using data captured by the BARD system and is a valuable tool to better target accident prevention efforts. A BRAINS Web site enables customers to use an Internet version or download a full-blown version of the software. In addition to updating the accident report data used in BRAINS, the grantee shall improve the functionality of the application in a Windows environment as well as the charting and reporting capabilities. Point of Contact: Mr. Bruce Schmidt, 202–267–0955.

Potential grantees should focus on partnership, i.e., exploring other sources, linkages, in-kind contributions, cost sharing, and partnering with other organizations or corporations. We encourage proposals addressing other boating safety concerns.

The Boating Safety Financial Assistance Program is listed in section 20.005 of the Catalog of Federal Domestic Assistance.

Dated: September 26, 2001.

Kenneth T. Venuto

Rear Admiral, U.S. Coast Guard, Director of Operations Policy.

[FR Doc. 01–24737 Filed 10–2–01; 8:45 am]

BILLING CODE 4910–15–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Advisory Circular (AC) 20–27E, Certification and Operation of Amateur-Built Aircraft

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of availability.

SUMMARY: This notice announces the availability of AC 20–27E, Certification and Operation of Amateur-Built Aircraft. AC 20–27E provides information and guidance concerning an acceptable means, but not the only means, of demonstrating compliance with the requirements of Title 14 Code of Federal Regulations, part 21, Certification Procedures for Products and Parts, regarding Certification and Operation of Amateur-Built Aircraft.

ADDRESSES: Copes of AC 20–27E can be obtained from the following: U.S. Department of Transportation, Subsequent Distribution Office, Ardmore East Business Center, 3341 Q 75th Ave, Landover, MD 20785.

Issued in Washington, DC, on September 27, 2001.

Frank P. Paskiewicz,

Manager, Production and Airworthiness Division, AIR–200.

[FR Doc. 01–24733 Filed 10–02–01; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Agency Information Collection Activity Under OMB Review

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), this notice announces that the Information Collection Request (ICR) abstracted below has been forwarded to the Office of Management and Budget (OMB) for extension of the currently approved collection. The ICR describes the nature of the information collection and the expected burden. The **Federal Register** notice with a 60-day comment period soliciting comments on the following collection of information was published on July 18, 2001, pages 37514–37515.

DATES: Comments must be submitted on or before November 2, 2001. A comment to OMB is most effective if OMB receives it within 30 days of publication.

FOR FURTHER INFORMATION CONTACT: Judy Street on (202) 267–9895.

SUPPLEMENTARY INFORMATION: Federal Aviation Administration (FAA).

Title: Medical Standards and Certification 14 CFR part 67 and 61.

Type of Request: Extension of a currently approved collection.

OMB Control Number: 2120–0034.

Forms(s): FAA Forms 8500–7, 8500–8, 8500–14, 8500–20.

Affected Public: 469,109 individuals.

Abstract: The airman certification program is implemented by Title 14 CFR parts 61 and 67. Part 67 prescribes minimum airman medical standards, and section 61.23 prescribes standards for the duration of a medical certificate. Information collected substantiates the applicant's eligibility.

Estimated Annual Burden Hours: 707,253 hours annually.

ADDRESSES: Send comments to the Office of Information and Regulatory Affairs, Office of Management and Budget, 725 17th Street, NW, Washington, DC 20503, Attention FAA Desk Officer.

Comments are invited on: Whether the proposed collection of information is necessary for the proper performance of the functions of the Department, including whether the information will have practical utility; the accuracy of the Department's estimates of the burden of the proposed information collection; ways to enhance the quality,

utility and clarity of the information to be collected; and ways to minimize the burden of the collection of information on respondents, including the use of automated collection techniques or other forms of information technology.

Issued in Washington, DC, on September 27, 2001.

Steve Hopkins,

Manager, Standards and Information Division, APF–100.

[FR Doc. 01–24731 Filed 10–2–01; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Agency Information Collection Activity Under OMB Review

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), this notice announces that the Information Collection Request (ICR) abstracted below has been forwarded to the Office of Management and Budget (OMB) for extension of the currently approved collection. The ICR describes the nature of the information collection and the expected burden. The **Federal Register** notice with a 60-day comment period soliciting comments on the following collection of information was published on April 26, 2001, pages 21037–21038.

DATES: Comments must be submitted on or before November 2, 2001. A comment to OMB is most effective if OMB receives it within 30 days of publication.

FOR FURTHER INFORMATION CONTACT: Judy Street on (202) 267–9895.

SUPPLEMENTARY INFORMATION: Federal Aviation Administration (FAA).

Title: Aviation Maintenance Technician Schools.

Type of Request: Extension of a currently approved collection.

OMB Control Number: 2120–0040.

Forms(s): FAA Form 8310–6.

Affected Public: 174 Aviation Maintenance Technician School owners.

Abstract: 14 CFR prescribes requirements for certification and operation of aviation mechanic schools. The information is necessary to ensure that aviation maintenance technician schools meet the minimum requirements for procedures and curriculum set forth by the FAA. In addition, it is necessary for the FAA to develop minimum standards for properly qualified persons who would enter the aviation industry.

Estimated Annual Burden Hours: 66,134 hours annually.

ADDRESSES: Send comments to the Office of Information and Regulatory Affairs, Office of Management and Budget, 725 17th Street, NW, Washington, DC 20503, Attention FAA Desk Officer.

Comments are invited on: Whether the proposed collection of information is necessary for the proper performance of the functions of the Department, including whether the information will have practical utility; the accuracy of the Department's estimates of the burden of the proposed information collection; ways to enhance the quality, utility and clarity of the information to be collected; and ways to minimize the burden of the collection of information on respondents, including the use of automated collection techniques or other forms of information technology.

Issued in Washington, DC, on September 27, 2001.

Steve Hopkins,

Manager, Standards and Information Division, APF–100.

[FR Doc. 01–24732 Filed 10–2–01; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[Summary Notice No. PE–2001–76]

Petitions for Exemption; Summary of Petitions 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 a petition seeking relief from a specified requirement 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 October 23, 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 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The Dockets Office (telephone 1–800–647–5527) is on the plaza level of the NASSIF Building at the Department of Transportation at the above address. Also, you may review public dockets on the Internet at *http://dms.dot.gov.*

FOR FURTHER INFORMATION CONTACT: Forest Rawls (202) 267–8033, 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 September 28, 2001.

Richard McCurdy,

Acting, Assistant Chief Counsel for Regulations.

Petitions for Exemption

Docket No.: FAA–2001–10223.

Petitioner: Kapowsin Air Sports, Ltd.

Section of 14 CFR Affected: 14 CFR 105.29.

Description of Relief Sought: To permit Kapowsin Air Sports, Ltd. to conduct parachute operations within a two mile radius of Kapowsin Field when published cloud clearances cannot be maintained.

[FR Doc. 01–24734 Filed 10–2–01; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Notice of Intent To Rule on Application (01–03–C–00–GTF) To Impose and Use the Revenue From a Passenger Facility Charge (PFC) at Great Falls International Airport, Submitted by the Great Falls International Airport Authority, Great Falls International Airport, Great Falls, MT

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of intent to rule on application.

SUMMARY: The FAA proposed to rule and invites public comment on the application to impose and use PFC revenue at Great Falls International Airport under the provisions of 49 U.S.C. 40117 and part 158 of the Federal Aviation Regulations (14 CFR 158).

DATES: Comments must be received on or before November 2, 2001.

ADDRESSES: Comments on this application may be mailed or delivered in triplicate to the FAA at the following address: David P. Gabbert, Manager; Helena Airports District Office, HLN–ADO; Federal Aviation Administration; 2725 Skyway Drive, Suite 2, Helena, MT 59602.

In addition, one copy of any comments submitted to the FAA must be mailed or delivered to Cynthia C. Schultz, Airport Director, at the following address: 2800 Terminal Drive, Great Falls, MT 59404–5599.

Air Carriers and foreign air carriers may submit copies of written comments previously provided to Great Falls International Airport, under section 158.23 of part 158.

FOR FURTHER INFORMATION CONTACT: David P. Gabbert, 406–449–5271, Airports District Office, 2725 Skyway Drive, Suite 2, Helena, MT 59602. The application may be reviewed in person at this same location.

SUPPLEMENTARY INFORMATION: The FAA proposes to rule and invites public comment on the application (01–03–C–00–GTF) to impose and use PFC revenue at Great Falls International Airport, under the provisions of 49 U.S.C. 40117 and part 158 of the Federal Aviation Regulations (14 CFR part 158).

On September 26, 2001, the FAA determined that the application to impose and use the revenue from a PFC, submitted by Great Falls International Airport, Great Falls, Montana, was substantially complete within the requirements of section 158.25 of Part 158. The FAA will approve or disapprove the application, in whole or in part, no later than December 25, 2001. The following is a brief overview of the application.

Level of the proposed PFC: $4.50.

Proposed charge effective date: July 1, 2002.

Proposed charge expiration date: September 1, 2018.

Total requested for use approval: $8,816,873.

Brief description of proposed projects: PCI Survey and Master Drainage Study; Design and Construct Cargo Apron; Acquire Snow Removal Equipment; Conduct Master Plan Update; Acquire Handicap Lift Device; Airport Drainage; and Rehabilitate Terminal Apron.

Class or classes of air carriers which the public agency has requested not be required to collect PFC's: Air Taxi/Commercial Operators (ATCO) filing FAA form 1800–31.

Any person may inspect the application in person at the FAA office listed above under **FOR FURTHER INFORMATION CONTACT** and at the FAA Regional Airports Office located at: Federal Aviation Administration, Northwest Mountain Region, Airports Division, ANM–600, 1601 Lind Avenue SW, Suite 540, Renton, WA 98055–4056.

In addition, any person may, upon request, inspect the application, notice and other documents germane to the application in person at the Great Falls International Airport.

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

David A. Field,

Manager, Planning, Programming, and Capacity Branch, Northwest Mountain Region.

[FR Doc. 01–24729 Filed 10–2–01; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Notice of Intent To Rule on Application (01–04–C–00–SLC) To Impose and Use the Revenue From a Passenger Facility Charge (PFC) at Salt Lake City International Airport, Submitted by the Salt Lake City Department of Airports, Salt Lake City, UT

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of intent to rule on application.

SUMMARY: The FAA proposes to rule and invites public comment on the application to impose and use PFC revenue at Salt Lake City International Airport under the provisions of 49 U.S.C. 40117 and part 158 of the Federal Aviation Regulations (14 CFR 158).

DATES: Comments must be received on or before November 2, 2001.

ADDRESSES: Comments on this application may be mailed or delivered in triplicate to the FAA at the following address: Mr. Alan E. Wiechmann, Manager; Denver Airports District Office, DEN–ADO, Federal Aviation Administration, 26805 East 68th Avenue, Suite 244, Denver, Colorado 80249.

In addition, one copy of any comments submitted to the FAA must be mailed or delivered to Mr. Timothy L. Campbell, Executive Director, at the following address: Salt Lake City Department of Airports, 776 N. Terminal Dr., TUI, Suite 250, Salt Lake City, Utah 84122.

Air Carriers and foreign air carriers may submit copies of written comments previously provided to Salt Lake City International Airport, under section 158.23 of part 158.

FOR FURTHER INFORMATION CONTACT: Mr. Christopher J. Schaffer, (303) 342–1258, 26805 East 68th Avenue, Suite 224, Denver, Colorado 80249. The application may be viewed in person at this same location.

SUPPLEMENTARY INFORMATION: The FAA proposes to rule and invites public comment on the application (01–04–C–00–SLC) to impose and use PFC revenue at Salt Lake City International Airport, under the provisions of 49 U.S.C. 40117 and part 158 of the Federal Aviation Regulations (14 CFR part 158).

On September 25, 2001, the FAA determined that the application to impose and use the revenue from a PFC submitted by the Salt Lake City Department of Airports, Salt Lake City, Utah, was substantially complete within the requirements of section 158.25 of Part 158. The FAA will approve or disapprove the application, in whole or in part, no later than December 25, 2001.

The following is a brief overview of the application.

Level of the proposed PFC: $4.50.

Proposed charge effective date: March 1, 2002.

Proposed charge expiration date: December 1, 2002.

Total requested for use approval: $29,323,000.

Brief description of proposed project: Computerized access security system (CASS) upgrade (Phases (I and II), Security enhancements, Security fence upgrade (Phase III), Airfield replacement equipment, Continuous pavement friction vehicle, Runway 16L/34R storm drainage improvements,

Emergency power to jet ways, Concourse A passenger boarding bridge modifications, CAT II and ALSF II Runway 16R, North cargo expansion (Phase II), Taxiway H reconstruction (Phase III), Deicing and anti-icing chemical storage facility, Security fence Airport II, Tooele Valley Airport water system, Tooele Valley Airport navigation upgrades, Tooele Valley Airport land acquisition, Schematic design study, Owner controlled insurance program (OCIP) professional liability coverage, Terminal 1 south expansion, Bus access plaza south of Terminal 1, Terminal roadway capacity improvements.

Class or classes of air carriers which the public agency has requested not be required to collect PFC's: All air taxi/commercial operators filing or required to file FAA Form 1800–31.

Any person may inspect the application in person at the FAA office listed above under **FOR FURTHER INFORMATION CONTACT** and at the FAA Regional Airports Office located at: Federal Aviation Administration, Northwest Mountain Region, Airports Division, ANM–600, 1601 Lind Avenue SW., Suite 315, Renton, WA 98055–4056.

In addition, any person may, upon request, inspect the application, notice and other documents germane to the application in person at the Salt Lake City International Airport.

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

David A. Field,

Manager, Planning, Programming, and Capacity Branch, Northwest Mountain Region.

[FR Doc. 01–24730 Filed 10–2–01; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

Environmental Impact Statement: Butler County, PA

AGENCY: Federal Highway Administration (FHWA) DOT.

ACTION: Notice of intent.

SUMMARY: The FHWA is issuing this notice to advise the public that an Environmental Impact Statement will be prepared for a proposed highway project in Butler County, Pennsylvania.

FOR FURTHER INFORMATION CONTACT: Mr. David W. Cough, P.E., Director of Operations, Federal Highway Administration, Pennsylvania Division Office, 228 Walnut Street, Room 536, Harrisburg, Pennsylvania 14101–1720 (717) 221–3411 or George Boros, Project Manager, Pennsylvania Department of Transportation, District 10–0, Route 286 South, P.O. Box 429, Indiana, Pennsylvania 15701, (724) 357–2842.

SUPPLEMENTARY INFORMATION: The FHWA, in cooperation with the Pennsylvania Department of Transportation (PENNDOT), will prepare an Environmental Impact Statement (EIS) for a transportation improvement within the 12-mile study area of State Route 0228 (SR 228). The western terminus of the study area encompasses U.S. Route 19 in Cranberry Township, and the eastern terminus is slightly east of SR 0008 (SR 8) in Middlesex Township. The northern and southern limits of the study area comprise an area between a half-mile to two-mile width on either side of the existing SR 228 corridor. A portion of the southern limit of the study area borders the Butler and Allegheny County line.

The project will include the development of a reasonable range of alternatives that meet the project need and the preparation of supporting environmental documentation and analysis to recommend a preferred alternative for implementation.

The primary purpose of this project is to relieve congestion along the existing SR 228 corridor. The proposed action will be consistent with the region's transportation goals and objectives as defined by the Southwestern Pennsylvania Commission (SPC) and the Butler County Planning Commission.

Alternatives that will be considered include new off-line roadway alignments, on-line upgrade of existing roadways, and a no-build alternative. Additionally, limited construction options including Transportation Systems Management (TSM) and Congestion Management System (CMS) strategies will be evaluated. These alternatives will be the basis for a recommendation of alternatives to be carried forward for detailed environmental and engineering studies. A preferred alternative will be identified which best meets the need of the traffic demand, and satisfies the environmental, socioeconomic and engineering needs and incorporates public input.

A full public involvement program will be incorporated into the project development process. A Community Advisory Committee (CAC) will be organized to provide an ongoing liaison between the local citizens and the project team. A newsletter mailing list has been developed. A Public Hearing will be held at the conclusion of the study to solicit comments from the public on the alternatives presented. The Draft EIS will be available for public and agency review and comment prior to the public hearing. The project website is active at the following address: *www.route228east.com.*

Periodic meetings are scheduled with state and federal environmental agencies through Agency Coordination Meetings (ACM) to present project information and to receive comments and input from the agencies on the development of the project.

Comments will be solicited from appropriate federal, state and local agencies, and from private organizations and citizens who have previously expressed, or are known to have an interest in this project. Public meetings will be held in the area throughout the study process. Public involvement and agency coordination will be maintained throughout the development of the EIS.

To ensure that a full range of issues related to this proposed action are addressed and all significant issues are identified, comments and suggestions are invited from all interested parties. Comments and questions concerning the proposed action and the EIS should be directed to the FHWA or PENNDOT at the address provided above.

(Catalog of Federal Domestic Assistance Number 20.205, Highway Planning and Construction. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities apply to this program.)

James A. Cheatham,

FHWA Division Administrator, Harrisburg, Pennsylvania.

[FR Doc. 01–24743 Filed 10–2–01; 8:45 am]

BILLING CODE 4910–22–M

DEPARTMENT OF TRANSPORTATION

Maritime Administration

Marine Transportation System National Advisory Council

ACTION: National Advisory Council public meeting.

SUMMARY: The Maritime Administration announces that the Marine Transportation System National Advisory Council (MTSNAC) will hold a meeting to discuss ongoing action items, MTS Team endeavors, MTS priorities and visions, and other issues. A public comment period is scheduled for 1 PM to 1:30 PM on Friday, October 19, 2001. To provide time for as many people to speak as possible, speaking

time for each individual will be limited to three minutes. Members of the public who would like to speak are asked to contact Raymond Barberesi by October 12, 2001. Commenters will be placed on the agenda in the order in which notifications are received. If time allows, additional comments will be permitted. Copies of oral comments must be submitted in writing at the meeting. Additional written comments are welcome and must be filed by October 26, 2001. Send comments to the attention of Mr. Raymond Barberesi, Director, Office of Ports and Domestic Shipping, U.S. Maritime Administration, 400 7th Street, SW, Room 7201, Washington, DC 20590.

DATES: The meeting will be held on Thursday, October 18, 2001, from 1:30 PM to 5 PM and Friday, October 19, 2001, from 9 AM to 3 PM.

ADDRESSES: The meeting will be held at the Maryland Port Administration, World Trade Center, 401 East Pratt Street, Baltimore, MD 21202.

FOR FURTHER INFORMATION CONTACT: Raymond Barberesi, (202) 366–4357; Maritime Administration, MAR–830, Room 7201, 400 7th Street, SW., Washington, DC 20590; Raymond.Barberesi@marad.dot.gov.

(Authority: 5 U.S.C. App 2, Sec. 9(a)(2); 41 CFR 101–6. 1005; DOT Order 1120.3B.)

Dated: September 28, 2001.

Murray A. Bloom,

Acting Secretary, Maritime Administration.

[FR Doc. 01–24735 Filed 10–2–01; 8:45 am]

BILLING CODE 4910–81–M

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[U.S. DOT Docket No. NHTSA–2001–10525]

Two State Surveys of Alcohol Targets of Opportunity

ACTION: Notice and request for public comment on proposed collection of information.

SUMMARY: The National Highway Traffic Safety Administration (NHTSA) has a central role in the national effort to reduce motor vehicle related traffic injuries and deaths. The Partners in Progress goal is to reduce the number of alcohol-related fatalities from 15,935, in 1998, to 11,000 by the year 2005. In support of this goal, in 1999, five states were awarded cooperative agreements by NHTSA to demonstrate and evaluate the effectiveness of traffic safety programs that combine increased law enforcement efforts with substantial publicity about these programs. These states were selected because of their potential for reducing the substantial number or percentage of alcohol related fatalities occurring each year within their state. Based on the successful implementation of these programs, an additional two states will be selected for data collection using essentially the same data collection instrument to determine the effects of these alcohol enforcement and publicity programs on drivers' attitudes and behavior regarding drinking and driving after drinking. Under procedures established by the Paperwork Reduction Act of 1995, NHTSA invites the general public and Federal Agencies to comment on the need for the proposed data collection, the types of questions respondents should be asked, ways to enhance the quality of the collection, and ways to minimize the burden on respondents.

DATES: Comments must be received on or before December 3, 2001.

ADDRESSES: Direct all written comments to US DOT, Docket Management Facility, Docket Operations, Room PL–401, 400 Seventh Street, SW., Washington, DC 20590, Docket Number NHTSA–2001–10525. It is requested but not required that 2 copies of the comment be provided. The Docket section is open weekdays from 10 a.m. to 5 p.m.

FOR FURTHER INFORMATION CONTACT: Marvin Levy, Ph.D., Contracting Officer's Technical Representative, Office of Research and Traffic Records (NTS–31), Washington, DC 20590, e-mail mlevy@nhtsa.dot.gov.

SUPPLEMENTARY INFORMATION: Under the Paperwork Reduction Act of 1995, before an agency submits a proposed collection of information to OMB for approval, it must publish a document in the **Federal Register** providing for a 60-day comment period and otherwise consult with affected agencies and members of the public concerning each proposed collection of information.

The OMB has promulgated regulations describing what must be included in such a document. Under OMB's regulations (at 5 CFR 1320.8(d)), an agency must ask for public comment on the following:

(i) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(ii) The accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methods and assumptions;

(iii) How to enhance the quality, utility, and clarity of the information to be collected; and

(iv) How 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, e.g., permitting electronic submission of responses.

In response to these requirements, NHTSA asks for public comment on the following collection of information:

Two State Surveys of Alcohol Targets of Opportunity

Type of Request: New information collection requirement.

OMB Clearance Number: None.

Form Number: This collection of information uses no standard forms.

Requested Expiration Date of Approval: February 28, 2005.

Summary of the Collection of Information

The Partners in Progress goal is to reduce the number of alcohol-related fatalities from 15,935, in 1998, to 11,000 by the year 2005. In support of this goal, in 1999, five states were awarded cooperative agreements by NHTSA to demonstrate and evaluate the effectiveness of traffic safety programs that combine increased law enforcement efforts with substantial publicity about these programs. These states were selected because of their potential for reducing the substantial number or percentage of alcohol-related fatalities occurring each year within their state. Based on the successful implementation of these programs, an additional two states will be selected for data collection using essentially the same data collection instrument to determine the effects of these alcohol enforcement and publicity programs on drivers' attitudes and behavior regarding drinking and driving after drinking.

The objective of this survey is to determine the extent to which these two programs impact the awareness, attitudes, and driving behavior of motorists. It is anticipated that changes in enforcement levels should be reflected by changes in driver awareness, attitudes and behavior. For example, a state that substantially increases their alcohol-enforcement activities and provides substantial publicity might expect that respondents report a greater degree of awareness of these efforts as compared to before the program began. It may be expected that respondents would report they came in contact with law enforcement more frequently and drive after drinking less

often once the program began. In addition, the survey will provide information on driver awareness and acceptability of specific enforcement techniques being used as well as data regarding the ongoing national alcohol media campaign called You drink and drive. You Lose. The information to be collected by this survey is not available to NHTSA through any other source.

Within each state, the survey will be administered in three waves (prior to the intervention effort, at the mid-point, and at the end the effort) by telephone to a probability sample of the driving age public (aged 16 years or older as of their last birthday). Participation by respondents is strictly voluntary. The interview is anticipated to average 8.5 minutes in length. Interviewers will use computer assisted telephone interviewing to reduce survey administration time and to minimize data collection errors. A Spanish-language questionnaire and bi-lingual interviewers will be used to reduce language barriers to participation. All respondents' results will remain anonymous and completely confidential. Participant names and telephone numbers used to reach the respondents are separated from the data records prior to its entry into the analytical database.

Description of the Need for and Proposed Use of the Information

More than 308,000 persons were reported injured and nearly 16,000 persons died in alcohol-related motor vehicle crashes during 1999 (Traffic Safety Facts: 1999, NHTSA–National Center for Statistics and Analysis). NHTSA is committed to the development of effective programs to reduce the incidence of these crashes. In 1999, NHTSA awarded cooperative agreements valued at approximately $1,000,000 each to five states—Pennsylvania, Georgia, Louisiana, Tennessee, and Texas. NHTSA is currently in the process of awarding cooperative agreements to two additional states. Each state is responsible for implementing an enforcement and publicity programs and conducting both process and impact evaluations. Data to be collected include number and types of police stops made, and changes in alcohol-related violations and crashes.

In order to reduce the work requirements for each state and to create sets of survey data that can be readily compared among the states, a separate award was made to a survey firm having expertise in conducting random telephone surveys. Thus, the survey data to be collected comprise only one part of the entire data set that will be assessed.

The entire data set will be used to properly plan and evaluate new enforcement programs directed at reducing alcohol-impaired driving. States found to have implemented effective programs to counter the driving after drinking problem will prepare a Best Practices Guide that highlights the major features of their programs. These Guides will be disseminated among states that want to implement an improved alcohol-enforcement program.

The findings from this proposed data collection will assist NHTSA in addressing the problem of alcohol-impaired driving and in formulating programs and recommendations to Congress. NHTSA will use the findings to help focus current programs and activities to achieve the greatest benefit, to develop new programs to decrease the likelihood of drinking and driving behaviors, and to provide informational support to states, localities, and law enforcement agencies that will aid them in their efforts to reduce drinking and driving crashes and injuries.

It should be noted that during the past decade NHTSA has conducted surveys on drinking and driving attitudes and behavior but these were from nationally represented samples and not related to specific statewide enforcement activities. Also, some survey data about an enforcement effort were collected years ago in one of the targeted states-Tennessee—but these data cannot be used within the context of the present study.

Description of the Likely Respondents (Including Estimated Number, and Proposed Frequency of Response to the Collection of Information)

Under this proposed collection, a telephone interview averaging approximately 8.5 minutes in length would be administered to each of 1,000 randomly selected members of the general public age 16 and older, in each of the two states in this study, at three different times over a 20-month period. A total of 6,000 individuals will be interviewed over the course of this study. Interview will be conducted with persons at residential phone numbers selected using random digit dialing. No more than one respondent per household will be selected, and each sample member will complete just one interview. Businesses are ineligible for the sample and would be not be interviewed. After each wave is completed and the data analyzed, the findings will be disseminated to each state for review.

Estimate of the Total Annual Reporting and Record Keeping Burden Resulting From the Collection of Information

NHTSA estimates that respondents in the sample would require an average of 8.5 minutes to complete the telephone interview. Thus, the number of estimated reporting burden on the general public would be a total of 850 hours for all three waves of the proposed survey. The respondents would not incur any reporting or record keeping cost from the information collection.

Rose A. McMurray,

Associate Administrator, Office of Traffic Safety Programs.

[FR Doc. 01–24666 Filed 10–2–01; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[Docket No. NHTSA 2000–7657, Notice 2]

General Motors North America; Denial of Application for Decision of Inconsequential Noncompliance

General Motors North America (GM) has determined that in some 1998–1999 model year GM and Isuzu light trucks, use of the hazard flasher switch may activate the retained accessory power (RAP) feature with no key in the ignition. This occurs, according to GM, because of ''sneak'' circuits created in the flasher switch. When the RAP is activated, power windows and sunroofs in the affected vehicles are operable. This condition fails to meet the requirements of S4 of FMVSS 118, ''Power-operated window, partition, and roof panel systems.'' General Motors filed an appropriate report pursuant to 49 CFR Part 573, ''Defect and Noncompliance Reports'' and subsequently petitioned for a determination that this noncompliance is inconsequential to motor vehicle safety pursuant to 49 U.S.C. 30118(d) and 30120(h).

Notice of receipt of the petition was published in the **Federal Register** (65 FR 48280) on August 7, 2000, and opportunity was afforded for public comment until September 6, 2000.

As many as 975,462 GM light trucks including Chevrolet and GMC pickups and sport utility vehicles, Oldsmobile and Cadillac sport utility vehicles, and Isuzu pickups are involved. According to GM's petition, the problem is due to manufacturing tolerances in the hazard flasher switch of those vehicles and does not affect all of the vehicles

equally. RAP activation is more difficult in some vehicles than in others. However, there is no way to identify which vehicles have problem flasher switches, so the entire vehicle population would be subject to recall.

For the reasons discussed in this notice, we believe that the noncompliance is not inconsequential to motor vehicle safety when evaluated by the criteria used by the agency in the past in making such decisions. Therefore, the agency denies the GM petition.

Note that NHTSA recently granted (66 FR 32871) a related but separate inconsequentiality petition from GM concerning noncomplying illumination of the center high-mounted stop lamp (CHMSL) caused by the same ''sneak'' circuit malfunction that caused the power window noncompliance that is the subject of this notice.

Background

The noncompliance involves the ''Retained Accessory Power'' (RAP) feature of the subject GM vehicles. RAP allows certain electrical accessories such as the radio and power windows to be used for a limited time interval after removal of a vehicle's ignition key. The presence of the RAP feature complies with the requirements of FMVSS No. 118 as long as RAP is active only during the time interval between turning off a vehicle's ignition with the ignition key and opening of either of the vehicle's front doors. This requirement, stated in S4(e) of FMVSS No. 118, permits manufacturers to equip vehicles with the RAP convenience feature while ensuring that a driver or other person will be present in the vehicle to supervise any children in the vehicle when the power windows are enabled by the RAP feature. Once RAP is activated, it remains active for no more than 20 minutes, and it is canceled immediately upon opening of one of the front doors of the vehicle.

On the noncomplying GM vehicles, the RAP can be activated without the ignition key by forcefully depressing the hazard flasher switch located on the steering column. The hazard flasher switch in the affected vehicles is a pushbutton that operates as a push-on/push-off switch. When the hazard flasher pushbutton is fully depressed, it reaches a stop approximately 6 mm below the fully extended ''on'' position. It is not necessary for the switch to reach the stop in order to go from the ''on'' position to the ''off'' position, or vice-versa. The pushbutton is spring-loaded and will not stay in the fully depressed position unless pressure is maintained on it.

Under certain conditions, unintended or so-called ''sneak'' circuits may be created in the switch if the pushbutton is depressed to its full extent of travel. The ''sneak'' circuits disappear when the switch is released. The presence of the ''sneak'' circuits causes activation of the RAP feature without the key in the ignition. The ''sneak'' circuits materialize more easily if the brake pedal is pressed in conjunction with use of the hazard flasher switch. Activation of the RAP feature in these modes fails to comply with S4(e) of FMVSS No. 118.

GM's Petition

GM's petition discussed in detail the nature of the circumstances under which RAP might be activated by use of the hazard flasher switch. An important GM rationale was that only some of the vehicles in the affected population had switches that were susceptible to RAP activation. The susceptibility depended on the force used to depress the switch pushbuttons. The necessary force for RAP activation varied from switch to switch because the root cause of the problem was manufacturing tolerances in the switches. The petition included data from a hands-on GM evaluation of 2,770 switches in which GM grouped the switches according to ease of RAP activation. In the evaluation, switches were operated repeatedly so as to intentionally activate RAP by forcefully pressing on the pushbutton, holding the pushbutton at the bottom limit of travel, and applying side force in all directions. Depending upon the amount of bottoming and side force applied before RAP was activated, GM categorized the switches as ''least difficult,'' ''moderately difficult,'' ''hard,'' and ''impossible.'' The data indicated only about 1 percent of the switches would cause RAP activation under normal use, i.e., with moderate bottoming force on the pushbutton. In almost 92 percent of switches, RAP activation was rated ''impossible.''

GM later revised this data significantly. In the revised data, the sample size dropped from 2,770 to 530 (apparently, many of the switches in the initial group were switches that had already been modified in production in an attempt to fix the problem.) In the revised data, the portion of sample switches that were ''least difficult'' was about 24 percent, and those categorized as ''impossible'' fell to about 57 percent.

According to GM, for RAP activation to occur unintentionally in the affected vehicles, two ''sneak'' circuits must be completed. Both circuits can be completed by depressing the hazard flasher button though, as discussed above, significant bottoming force on the button is often necessary and in some switches no amount of applied force caused RAP activation. However, one of the two ''sneak'' circuits is completed whenever the brake pedal is depressed enough to light the brake lamps. Thus, RAP activation is much easier when the brake pedal is depressed in conjunction with pressing on the hazard flasher switch. GM submitted data on ease of RAP activation with the brake pedal depressed for a sample of 234 hazard flasher switches from the affected vehicle population. This data indicated that RAP activation was ''least difficult'' in over half the switches in the sample, i.e., it could occur through normal use of the pushbutton with moderate bottoming force. Over 33 percent were ''moderately difficult'' and 14 percent were ''hard'' when the brake pedal was on. None of the switches in this sample were classified as ''impossible'' regarding RAP activation if the brake pedal was concurrently pressed.

GM's main rationale for inconsequentiality was that, for any harm to come to occupants of the affected vehicles as a result of the noncompliance, a chain of unlikely events would have to occur. GM stated that the following specific events, each of which it describes as having a low probability of occurring, all would have to occur before an opportunity would exist for a person to be injured by a power operated window or sunroof:

- A young child or children within a certain age range (not infants, not older children) would have to be left unattended and unrestrained inside the vehicle. Restrained children would not have access to the hazard flasher switch located on the steering column. GM submitted the results of a survey that it commissioned to estimate the frequency with which children are left unattended in vehicles. In the survey, vehicles entering the parking areas of selected store and shopping complex locations in Virginia and California in June 2000 were monitored. Of a total of 730 vehicles observed, the survey found 25 percent had children of any age as occupants and 1.5 percent had children left in them unattended. Most of the unattended children were older (approx. 10 years and over) and the average time unattended was about 7½ minutes.
- Unrestrained, unattended, young children would have to get access to and depress the hazard flasher switch to its limit of travel, and usually some force would be required for RAP activation to occur, or the child or children would have to press on the brake pedal while bottoming the switch. Even if these events occur, RAP probably would not

be activated since some switches are not prone or are less prone to ''sneak'' circuits, as described previously. In this regard, GM conducted a human factors test to determine how likely children are to play with the hazard flasher switch, or the switch and brake pedal concurrently, when left alone in vehicles. GM describes the test as maximizing the possibility of switch usage by the children to determine not only the likelihood of RAP activation but also what would occur after any such activation. Four vehicles were used in the study and were all equipped with switches categorized as ''Least Difficult'' for RAP activation, and 138 young children were observed either individually or in pairs inside the vehicles for 20 minutes. At the conclusion of each 20 minute period, before removing the child or children from the vehicle, evaluators directed the children to activate the hazard flasher switch if they had not already. Pursuant to the GM test protocol, the children pressed on the switches a total of 554 times (mostly by direction) resulting in one occurrence of RAP activation in the case of a pair of children, a nine-year-old boy and four-year-old girl. The RAP was de-activated in that instance by the four-year-old opening a door prior to any use of the power windows. In total, 96 observations of either one or two children in vehicles for no more than 20 minutes resulted in 25 occasions of hazard switch activation. In seven of these 25 instances, window switches were contacted after hazard switch use but, as mentioned window switches were not touched in the one instance where hazard switch use caused RAP activation.

• In the event unattended children activated the RAP feature, they would have to subsequently operate the power window or sunroof controls prior to RAP time-out or de-activation by a door being opened. Even then, power window use would be unlikely to actually lead to an injury. None of the affected vehicles has an ''express close'' feature so the windows only continue closing as long as the control is held.

GM believes that, because each of these events has a very low frequency or probability of occurrence, the likelihood of all of them occurring is negligible.

GM stated furthermore that it is not aware of any accidents, injuries, owner complaints, or field reports on the subject vehicles related to the noncompliance. GM commissioned an independent analysis of complaints in the NHTSA complaint database relating to power windows or sunroofs. That analysis found 30 complaints related in some way to entrapment out of 8,621 complaints involving power windows or sunroofs. Fourteen of those 30 involved an injury or near-injury to children. None of the 30 involved any of the subject GM vehicles.

Comments on the Petition

One comment was submitted regarding the subject GM inconsequentiality petition. The Center for Auto Safety (CAS) urged the agency to deny the GM petition. CAS stated, ''FMVSS 118 seeks to minimize child injury risks from the inadvertent operation of power accessory devices.'' However, CAS appears to have misunderstood the nature of the noncompliance and overstated the risk involved. It stated, ''If this petition is granted, a child could depress the hazard warning switch to its limit while another child remains in the path of a closing window or panel. Similarly, a driver could activate the hazard lights and exit the vehicle to check on a problem and leave the child inside free to operate the power windows.'' Neither of these scenarios accurately reflects the actual risk. In the first scenario described by CAS, the RAP may be activated by the child pressing the hazard flasher switch, but this would not cause the power windows to move. It would merely enable the power window buttons. In the second scenario, in which the driver activates the hazard flashers and then exits the vehicle, the RAP would be canceled when the driver opened the door to get out, and so the windows would not be operable by a child left behind in the vehicle, as CAS suggested.

CAS mentions the related problem of the potential for illumination of the CHMSL on the affected GM vehicles when the hazard flasher switch is used. CAS cites this as evidence that an effective remedy is required, not an exemption from remedy.

Petition Analysis

The subject GM petition is being denied because FMVSS No. 118 is very specific regarding the conditions under which power windows may be operable. A requirement in the Standard, stated in S4(e), seeks to prevent conditions like the one that exists in the noncomplying GM vehicles. GM contends that there is only a very small likelihood of an injury resulting from this noncompliance, considering all the unlikely events that must first take place. The GM human factors trial in which children were observed as occupants of affected GM vehicles was supposed to demonstrate that RAP activation is exceedingly unlikely. In our view, it showed that the behavior of children is unpredictable, and the possibility of RAP activation is not negligible. Therefore, existing safeguards in FMVSS No. 118 should be adhered to.

In determining inconsequentiality, the agency traditionally has considered whether a noncompliance is likely to increase the risk that occupants will experience the type of injury that the requirement is designed to protect against (*Cosco, Inc., Denial of Application for Decision of Inconsequential Noncompliance*, 64 FR 29408 (June 1, 1999) (NHTSA–98–4033–2)). The main purpose of requiring power windows to be inoperative without the ignition key is to eliminate the possibility of unsupervised children operating them. The subject noncompliance makes RAP activation possible by means other than those allowed for in Standard No. 118, and it therefore increases the risk to occupants, particularly children, of an event that the standard is designed to protect against.

In addition, NHTSA denied a somewhat similar 1996 Ford Motor Company petition (62 FR 51500) in part because the involved vehicles were minivans which are considered family vehicles in which the presence of children is more likely than in other types of vehicles. The same argument applies to many of the subject GM vehicle models. According to GM, 569,163 of the affected vehicles, or more than 58 percent, are sport utility vehicles with passenger and cargo capacity that makes them suitable as family vehicles.

We also note that the NHTSA grant of the related petition involving CHMSL illumination by the same ''sneak'' circuit mechanism which can cause RAP activation does not influence our decision. In the case of the CHMSL problem, the lamp could be inadvertently illuminated by use of the hazard flasher switch, but the illumination was only momentary. That is, it only occurred while the switch was being held in the bottomed-out position. Release of the switch always turned the lamp off. In contrast, RAP activation caused by the ''sneak'' circuit condition results in a timed interval of 20 minutes in which the power windows can be used. This condition can result even if only momentary bottoming of the switch occurs. Once activated, the RAP is set to an ''on'' status and, unlike the CHMSL, releasing the hazard flasher pushbutton as occurs in normal use does not deactivate the RAP feature.

For the reasons expressed above, it is hereby decided that GM has not met its burden of persuasion that the subject noncompliance is inconsequential to

motor vehicle safety, and its petition is denied.

(Authority: 49 U.S.C. 301118, 301120; delegations of authority at 49 CFR 1.50 and 501.8)

Issued on: September 27, 2001.

Stephen R. Kratzke,

Associate Administrator for Safety Performance Standards.

[FR Doc. 01–24724 Filed 10–2–01; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[Docket No. NHTSA 2001–9036; Notice 2]

Mazda Motors Corporation; Grant of Application for Decision That Noncompliance Is Inconsequential to Motor Vehicle Safety

Mazda Motors Corporation (Mazda) has determined that certain 1994 model Mazda Navajos and 1994 through 2000 model Mazda B-Series trucks do not meet the rim marking requirements of paragraphs S5.2(a) and S5.2(c) of Federal Motor Vehicle Safety Standard (FMVSS) No. 120, ''Tire Selection and Rims for Motor Vehicles Other Than Passenger Cars.'' Pursuant to 49 U.S.C. 30118(d) and 30120(h), Mazda petitioned for a determination that these noncompliance are inconsequential to motor vehicle safety and filed an appropriate report pursuant to 49 CFR Part 573, ''Defect and Noncompliance Reports.''

Notice of receipt of the application was published on May 1, 2001, with a 30-day comment period (66 FR 21820). NHTSA received no comments on this application.

Mazda stated that approximately 218,000 vehicles were manufactured with rims that are not marked with the letter ''T'', identifying The Tire and Rim Association as the source of the rims' nominal dimensions. Paragraph S5.2(a) requires that rims be marked with a designation indicating a publication in which the rims' dimension specifications are available.

Also, the rims on these vehicles are not marked with the ''DOT'' symbol, indicating certification of compliance with all applicable motor vehicle safety standards, as required by paragraph 5.2(c).

According to Mazda, the marking required in paragraph S5.2(a) to identify the source of the rim dimension specifications has no effect on the tire/rim performance. The tires and rims on the noncompliant vehicles are properly matched and are appropriate for the load carrying characteristics of these vehicles. Paragraph S5.2(a) lists several publications in which vehicle rim dimension specifications may be published, including ''The Tire and Rim Association,'' ''Japanese Automobile Tire Manufacturers' Association, Inc.,'' and the ''European Tyre and Rim Technical Organization.'' According to Mazda, a comparison of the dimension specifications for rims of the appropriate size and type indicated that the dimensions listed in these publications are essentially identical. Therefore, rims of the correct size, with dimension specifications listed in several of the sources designated in paragraph S5.2(a), would be appropriate for these vehicles. The rims in question are 14X6.0J and 15X7.0J, which Mazda stated are commonly available in the U.S. With respect to the DOT symbol marking, Mazda stated that the rims comply with all federal requirements that may have an impact on motor vehicle safety and, therefore, it does not believe this noncompliance with paragraph S5.2(c) would result in safety related problems.

The agency believes the true measure of inconsequentiality with respect to the noncompliance with paragraph S5.2(a) is the likelihood that inappropriate rims may be installed on these vehicles, since the rims are not market to indicate the source of the rims' dimension specifications. Based on the information provided by Mazda, the omission of the symbol designating the publication in which the rim dimension specifications will not likely result in the use of rims with dimensions that are not appropriate for the vehicle. The rim size is properly labeled on these rims and the dimension specifications for these rims are essentially identical in several of the publications listed in the standard. Since it is highly unlikely that a replacement rim of the proper size and type would have dimensions that are unsuitable for the Mazda vehicles, and the recommended tire size(s) and associated rim size(s) are stated on the certification and/or tire information labels, the agency believes the noncompliance is inconsequential to motor vehicle safety.

The ''DOT'' symbol is marked on tires, tire rims, motor vehicle equipment items, and motor vehicles to certify compliance with various safety standards. The agency regards the noncompliance with paragraph S5.2(c) as a failure to comply with the certification requirements of 49 U.S.C. 30115, and not a compliance failure requiring notification and remedy.

In consideration of the foregoing, NHTSA has decided that the applicant has met the burden of persuasion that noncompliance with FMVSS No. 120, paragraph S5.2(a) is inconsequential to motor vehicle safety. Additionally, the noncompliance with paragraph S5.2(c) is inconsequential to motor vehicle safety and a failure to comply with certification requirements. Accordingly, Mazda's application is granted and the company is exempted from providing the notification of the noncompliance that would be required by 49 U.S.C. 30118, and from remedying the noncompliance, as would be required by 49 U.S.C. 30120.

(49 U.S.C. 301118, 301120; delegations of authority at 49 CFR 1.50 and 501.8)

Issued on: September 27, 2001.

Stephen R. Kratzke,

Associate Administrator for Safety Performance Standards.

[FR Doc. 01–24726 Filed 10–2–01; 8:45 am]

BILLING CODE 4910–59–M

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[Docket No. NHTSA 2001–10696; Notice 1]

Volkswagen of America, Inc.; Receipt of Application for Decision of Inconsequential Noncompliance

Volkswagen of America, Inc. (Volkswagen), has determined that approximately 225,000 vehicles produced from 1977 to August 6, 2001, do not meet the labeling requirements of paragraph S5.3(b) of Federal Motor Vehicle Safety Standard (FMVSS) No. 120 ''Tire Selection and Rims for Motor Vehicles Other than Passenger Cars''. Pursuant to 49 U.S.C. 30118(d) and 30120(h), Volkswagen has petitioned for a determination that this noncompliance is inconsequential to motor vehicle safety and has filed an appropriate report pursuant to 49 CFR 573, ''Defect and Noncompliance Reports.''

This notice of receipt of an application is published under 49 U.S.C. 30118 and 30120 and does not represent any agency decision or other exercise of judgment concerning the merits of the application.

The noncompliant vehicles were produced by Volkswagen AG and were imported by Volkswagen. The noncompliance relates to multipurpose passenger vehicles produced and imported under the Vanagon and Eurovan model designations. In these vehicles, Volkswagen did not include

tire size, rim designation and recommended cold inflation pressure on the certification label specified by 49 CFR Section 567.4, but rather utilized the option in S5.3(b) of FMVSS 120 and provided a separate label attached to the driver side B-pillar. The separate tire information label did not list the gross vehicle weight rating (GVWR) and gross axle weight rating (GAWR) of the vehicle because those weights were identified on the Section 567.4 certification label which is also affixed to the driver side B-pillar.

Volkswagen believes that the failure of the tire information label on the driver's side B-pillar to include the vehicle weight values is at a minimum inconsequential for motor vehicle safety because the weights are included on the certification label which is also mounted on the driver side B-pillar of the vehicle. Any consumer who is interested in the vehicle weights would be able to find those values on the certification label where they are included pursuant to the requirements of Section 567.4.

Interested persons are invited to submit written data, views and arguments on the application described above. Comments should refer to the docket number and be submitted to: U.S. Department of Transportation, Docket Management, Room PL–401, 400 Seventh Street, SW, Washington, DC 20590. It is requested that two copies be submitted.

All comments received before the close of business on the closing date indicated below will be considered. The application and supporting materials, and all comments received after the closing date, will also be filed and will be considered to the extent possible. When the application is granted or denied, the notice will be published in the **Federal Register** pursuant to the authority indicated below.

Comment closing date: November 2, 2001.

(49 U.S.C. 301118, 301120; delegations of authority at 49 CFR 1.50 and 501.8)

Issued on: September 27, 2001.

Stephen R. Kratzke,

Associate Administrator for Safety Performance Standards.

[FR Doc. 01–24725 Filed 10–2–01; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[Docket No. NHTSA 2001–10695; Notice 1]

Volkswagen of America, Inc.; Receipt of Application for Decision of Inconsequential Noncompliance

Volkswagen of America, Inc. (Volkswagen), has determined that approximately 5,772 vehicles produced between July 2000 and June 22, 2001, do not meet the labeling requirements of paragraph S5.3(b) of Federal Motor Vehicle Safety Standard (FMVSS) No. 120 ''Tire Selection and Rims for Motor Vehicles Other than Passenger Cars''. Pursuant to 49 U.S.C. 30118(d) and 30120(h), Volkswagen has petitioned for a determination that this noncompliance is inconsequential to motor vehicle safety and has filed an appropriate report pursuant to 49 CFR Section 573, ''Defect and Noncompliance Reports.''

This notice of receipt of an application is published under 49 U.S.C. 30118 and 30120 and does not represent any agency decision or other exercise of judgment concerning the merits of the application.

The noncompliant vehicles were produced by Audi AG and were imported by Volkswagen. The noncompliance relates to MPV vehicles produced and imported under the Audi Allroad Quattro model designation. In these vehicles, the manufacturer did not include tire size, rim designation and recommended cold inflation pressure on the certification label specified by 49 CFR Section 567, but rather utilized the option in S5.3(b) of FMVSS 120 and provided a separate label attached to the driver side B-pillar. The separate tire information label did not list the gross vehicle weight rating (GVWR) and gross axle weight rating (GAWR) of the vehicle because those weights were identified on the Section 567.4 certification label which is also affixed to the driver side B-pillar.

Volkswagen believes that the failure of the tire information label on the driver's side B-pillar to include the vehicle weight values is at a minimum inconsequential for motor vehicle safety because the weights are included on the certification label which is also mounted on the driver side B-pillar of the vehicle. Any consumer who is interested in the vehicle weights would be able to find those values on the certification label where they are included pursuant to the requirements of Section 567.4 are visible when the door is open.

Interested persons are invited to submit written data, views and arguments on the application described above. Comments should refer to the docket number and be submitted to: U.S. Department to Transportation, Docket Management, Room PL–401, 400 Seventh Street, SW., Washington, DC 20590. It is requested that two copies be submitted.

All comments received before the close of business on the closing date indicated below will be considered. The application and supporting materials, and all comments received after the closing date, will also be filed and will be considered to the extent possible. When the application is granted or denied, the notice will be published in the **Federal Register** pursuant to the authority indicated below.

Comment closing date: November 2, 2001.

(49 U.S.C. 301118, 301120; delegations of authority at 49 CFR 1.50 and 501.8)

Issued on: September 27, 2001.

Stephen R. Kratzke,

Associate Administrator for Safety Performance Standards.

[FR Doc. 01–24727 Filed 10–2–01; 8:45 am]

BILLING CODE 4910–59–P

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 or 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 September 28, 2001.

J. Suzanne Hedgepeth,

Director, Office of Hazardous Materials, Exemptions and Approvals.

Application No.	Applicant	Reason for delay	Estimated date of completion
	New Exemption Applications		
11862–N	The BOC Group, Murray Hill, NJ	4	10/31/2001
11927–N	Alaska Marine Lines, Inc., Seattle, WA	4	10/31/2001
12248–N	Ciba Speciality Chemicals Corp., High Point, NC	1, 4	10/31/2001
12290–N	Savage Industries, Inc., Pottstown, PA	4	10/31/2001
12353–N	Monson Companies, South Portland, ME	4	10/31/2001
12355–N	Union Tank Car Company, East Chicago, IN	4	10/31/2001
12381–N	Ideal Chemical & Supply Co., Memphis, TN	4	10/31/2001
12406–N	Occidental Chemical Corporation, Dallas, TX	4	10/31/2001
12412–N	Great Western Chemical Company, Portland, OR	4	10/31/2001
12434–N	Salmon Air, Salmon, ID	4	10/31/2001
12440–N	Luxfer Inc., Riverside, CA	4	10/31/2001
12456–N	Baker Hughes, Houston, TX	4	10/31/2001
12497–N	Henderson International Technologies, Inc., Richardson, TX	4	10/31/2001
12571–N	Air Products & Chemicals, Inc., Allentown, PA	4	10/31/2001
12574–N	Weldship Corporation, Bethlehem, PA	4	10/31/2001
12586–N	Wilsonart International Inc., Temple, TX	4	10/31/2001
12587–N	Georgia-Pacific Corp., Crossett, AR	4	10/31/2001
12588–N	El Dorado Chemical Co., Creve Ceour, MO	4	10/31/2001
12591–N	SGL Carbon, LLC, Morgantown, NC	1	10/31/2001
12623–N	General Chemical Corporation, Parsippany, NJ	4	10/31/2001
12629–N	Western Sales & Testing of Amarillo, Inc., Amarillo, TX	4	11/30/2001
12630–N	Chemetall GmbH Gesellschaft, Langelseium, DE	4	11/30/2001
12634–N	Norman International, Los Angeles, CA	4	11/30/2001
12644–N	Global Composites International, Inc., San Dimas, CA	4	11/30/2001
12648–N	Stress Engineering Services, Inc., Houston, TX	4	12/01/2001
12650–N	Coleman Powermate, Inc., Kearney, NE	4	12/31/2001
12658–N	Montgomery Manufacturing Company, Kennedale, TX	4	12/31/2001
12670–N	Taylor-Wharton, Theodore, AL	4	12/31/2001
12674–N	G&S Aviation, Donnelly, ID	4	12/31/2001
12677–N	Austin Powder Co., Cleveland, OH	4	12/31/2001
12679–N	Applied Companies, Santa Clarita, CA	4	12/31/2001
12694–N	Illbruck Sealant Systems, Inc., Minneapolis, MN	4	12/31/2001
12695–N	Global Composites International, Inc., San Dimas, CA	4	11/30/2001
12702–N	Los Crespos Cylinders, Anasco, PR	4	11/30/2001
12728–N	Eagle-Picher Technologies, LLC, Joplin, MO	4	11/30/2001
12819–N	BBI–Biotech Research Laboratories, Inc., Gaithersburg, MD	4	12/31/2001
7060–M	Federal Express, Memphis, TN	4	10/31/2001
8086–M	The Boeing Co. (Mil Aircraft & Missiles Sys Group), Seattle, WA	4	10/31/2001
8308–M	Tradewind Enterprise, Inc., Hillsboro, OR	4	10/31/2001
8308–M	American Courier Express Corporation, Miramar, FL	4	11/30/2001
8554–M	Orica USA Inc., Englewood, CO	4	10/31/2001
10695–M	3M Company, St. Paul, MN	4	10/31/2001
11202–M	Newport News Shipbuilding & Dry Dock Co., Newport News, VA	4	10/31/2001
11244–M	Aerospace Design & Development, Inc., Longmont, CO	4	10/31/2001
11316–M	TRW Automotive, Queen Creek, AZ	4	10/31/2001
11537–M	JCI Jones Chemicals, Inc., Milford, VA	4	10/31/2001
11769–M	Great Western Chemical Company, Portland, OR	4	10/31/2001
11769–M	Great Western Chemical Company, Portland, OR	4	11/30/2001
11769–M	Hydrite Chemical Company, Brookfield, WI	4	11/30/2001
11798–M	Anderson Development Company, Adrian, MI	4	10/31/2001
11911–M	Transfer Flow, Inc., Chico, CA	4	10/31/2001
12084–M	Honeywell International, Inc., Morristown, NJ	4	12/31/2001
12184–M	Weldship Corporation, Bethlehem, PA	4	11/30/2001
12581–M	Nat'l Aero & Space Admn (NASA), Goddard Space Ctr, Greenbelt, MD.	4	10/31/2001
12633–M	Isolair Helicopter Systems, Troutdale, OR	4	11/30/2001

[FR Doc. 01–24736 Filed 10–2–01; 8:45 am]

BILLING CODE 4910–60–M

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0139]

Proposed Information Collection Activity: Proposed Collection; Comment Request

AGENCY: Veterans Benefits Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: The Veterans Benefits Administration (VBA), Department of Veterans Affairs (VA), is announcing an opportunity for public comment on the proposed collection of certain information by the agency. Under the Paperwork Reduction Act (PRA) of 1995, Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of a currently approved collection, and allow 60 days for public comment in response to the notice. This notice solicits comments for information needed to determine eligibility to reinstate government life insurance.

DATES: Written comments and recommendations on the proposed collection of information should be received on or before December 3, 2001.

ADDRESSES: Submit written comments on the collection of information to Nancy J. Kessinger, Veterans Benefits Administration (20S52), Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420 or e-mail: *irmnkess@vba.va.gov.* Please refer to ''OMB Control No. 2900–0139'' in any correspondence.

FOR FURTHER INFORMATION CONTACT: Nancy J. Kessinger at (202) 273–7079 or FAX (202) 275–5947.

SUPPLEMENTARY INFORMATION: Under the PRA of 1995 (Public Law 104–13; 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. This request for comment is being made pursuant to Section 3506(c)(2)(A) of the PRA.

With respect to the following collection of information, VBA invites comments on: (1) Whether the proposed collection of information is necessary for the proper performance of VBA's functions, including whether the information will have practical utility; (2) the accuracy of VBA's estimate of the burden of the proposed collection of information; (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 or the use of other forms of information technology.

Title: Notice—Payment Not Applied (Government Life Insurance), VA Form 29–4499A.

OMB Control Number: 2900–0139.

Type of Review: Extension of a currently approved collection.

Abstract: This notice solicits comments for information needed to determine eligibility to reinstate government life insurance.

Affected Public: Individuals or households.

Estimated Annual Burden: 300 hours.

Estimated Average Burden Per Respondent: 15 minutes.

Frequency of Response: On occasion.

Estimated Number of Respondents: 1,200.

Dated: September 24, 2001.

By direction of the Secretary.

Donald L. Neilson,

Director, Information Management Service.

[FR Doc. 01–24763 Filed 10–2–01; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0149]

Proposed Information Collection Activity: Proposed Collection; Comment Request

AGENCY: Veterans Benefits Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: The Veterans Benefits Administration (VBA), Department of Veterans Affairs (VA), is announcing an opportunity for public comment on the proposed collection of certain information by the agency. Under the Paperwork Reduction Act (PRA) of 1995, Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of a currently approved collection, and allow 60 days for public comment in response to the notice. This notice solicits comments for information needed to convert to a permanent plan of insurance.

DATES: Written comments and recommendations on the proposed collection of information should be received on or before December 3, 2001.

ADDRESSES: Submit written comments on the collection of information to Nancy J. Kessinger, Veterans Benefits Administration (20S52), Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420 or e-mail: *irmnkess@vba.va.gov.* Please refer to ''OMB Control No. 2900–0149'' in any correspondence.

FOR FURTHER INFORMATION CONTACT: Nancy J. Kessinger at (202) 273–7079 or FAX (202) 275–5947.

SUPPLEMENTARY INFORMATION: Under the PRA of 1995 (Public Law 104–13; 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. This request for comment is being made pursuant to Section 3506(c)(2)(A) of the PRA.

With respect to the following collection of information, VBA invites comments on: (1) Whether the proposed collection of information is necessary for the proper performance of VBA's functions, including whether the information will have practical utility; (2) the accuracy of VBA's estimate of the burden of the proposed collection of information; (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 or the use of other forms of information technology.

Title: Application for Conversion (Government Life Insurance), VA Form 29–0152.

OMB Control Number: 2900–0149.

Type of Review: Extension of a currently approved collection.

Abstract: The form is used by the insured to convert to a permanent plan of insurance. VA uses the information to initiate the processing of the insured's request to convert his/her term insurance.

Affected Public: Individuals or households.

Estimated Annual Burden: 1,125 hours.

Estimated Average Burden Per Respondent: 15 minutes.

Frequency of Response: One time.

Estimated Number of Respondents: 4,500.

Dated: September 25, 2001.

By direction of the Secretary.

Donald L. Neilson,

Director, Information Management Service.

[FR Doc. 01–24764 Filed 10–2–01; 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.

DATE: Comments must be submitted on or before November 2, 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 validOMB 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 andHousing 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: September 26, 2001.

By direction of the Secretary.

Donald L. Neilson,

Director, Information Management Service.

[FR Doc. 01–24765 Filed 10–2–01; 8:45 am]

BILLING CODE 8320–01–P

Corrections

Federal Register

Vol. 66, No. 192

Wednesday, October 3, 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 DEFENSE

48 CFR Parts 226 and 252

[DFARS Case 2000-0024]

Defense Federal Acquisition Regulation Supplement; Utilization of Indian Organizations and Indian-Owned Economic Enterprises

Correction

In rule document 01–22424 beginning on page 47110 in the issue of Tuesday, September 11, 2001, make the following corrections:

1. On page 47110, in the third column, under the heading **ADDRESSES** in the second paragraph, ''Case 2000-024 '' should read ''Case 2000-D024 ''.

226.104 [Corrected]

2. On page 47111, in the second column, section 226.104, in the amendatory text ''225.104'' should read ''226.104''.

252.226-7001 [Corrected]

3. On the same page, in the third column, in section 252.226-7001, in paragraph (b), in the first line ''Contract '' should read ''Contractor ''.

4. On the same page, in the same column, in the same section, in paragraph (c), in the fifth line, ''and '' should read ''an ''.

5. On the same page, in the same column, in the same section, in paragraph (d)(1), in the first line ''59 '' should read ''50 ''

6. On the same page, in the same column, in the same section, in paragraph (e)(1)(i), in the first line, ''cost-type '' should read''a cost-type ''.

[FR Doc. C1–22424 Filed 10–2–01; 8:45 am]

BILLING CODE 1505–01–D

DEPARTMENT OF DEFENSE

48 CFR Part 252

[DFARS Case 2000-0302]

Defense Federal Acquisition Regulation Supplement; Caribbean Basin Country End Products

Correction

In rule document 01–22425 beginning on page 47112 in the issue of Tuesday, September 11, 2001, make the following corrections:

1. On page 47112, in the third column, under the heading **ADDRESSES** , in the second paragraph, in the eighth line, '' (703) 602-0950 '' should read '' (703) 602-0350 ''.

252.225-7007 [Corrected]

2. On page 47113, in the second column, in section 252.225-7007, in the first line, paragraph ''(A) '' should read paragraph ''(a) ''. ,

252.225-7021 [Corrected]

3. On the same page, in the third column, in section 252.225-7021, in paragraph (e) (4), in the first line, ''Chapter 98, Subchapter 98 '' should read ''Chapter 98, ''.

[FR Doc. C1–22425 Filed 10–2–01; 8:45 am]

BILLING CODE 1505–01–D

DEPARTMENT OF DEFENSE

48 CFR Part 253

[DFARS Case 2001-0004]

Defense Federal Acquisition Regulation Supplement; Reporting Requirements Update

Correction

In rule document 01–22420 beginning on page 47096 in the issue of Tuesday, September 11, 2001, make the following correction:

253.204-70 [Corrected]

On page 47103, in the third column, in section 253.204-70, in paragraph (B)*(5)* ''Code E'' should read ''Code E— ''.

[FR Doc. C1–22420 Filed 10–2–01; 8:45 am]

BILLING CODE 1505–01–D

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 63

[FRL-7039-4]

RIN 2060-AG27

National Emission Standards for Hazardous Air Pollutants for Boat Manufacturing

Correction

In rule document 01–20895 beginning on page 44218 in the issue of Wednesday, August 22, 2001, make the following corrections:

§63. 5710 [Corrected]

1. On page 44235, in the second column, in §63.5710 (c), in the sixth line from the bottom, '' PV_{OP}=weighted-average MACT model point value for each open molding operation (PV_R, PV_{PG}, PV_{CG}, $PVPV_{TR}$, and $PVPV_{TG}$) included in the average, kilograms of HAP per megagram of material applied'' should read ''PV_{OP}=weighted-average MACT model point value for each open molding operation (PV_R, PV_{PG}, PV_{CG}, PV_{TR}, and PV_{TG}) included in the average, kilograms of HAP per megagram of material applied ''.

§63.5779 [Corrected]

2. On page 44246, in Table 3 to Subpart VVV, in the second column, in §63.5779, ''b. Atomized plus vacumm '' should read ''b. Atomized plus vacuum''.

[FR Doc. C1–20895 Filed 10–2–01; 8:45 am]

BILLING CODE 1505–01–D

Federal Register

Wednesday,
October 3, 2001

Part II

Department of the Treasury

Office of Foreign Assets Control

31 CFR Parts 586 and 587

Federal Republic of Yugoslavia (Serbia and Montenegro) Kosovo Sanctions Regulations; Federal Republic of Yugolsavia (Serbia and Montenegro) Milosevic Regulations; Final Rule

DEPARTMENT OF THE TREASURY

Office of Foreign Assets Control

31 CFR Parts 586 and 587

Federal Republic of Yugoslavia (Serbia and Montenegro) Kosovo Sanctions Regulations; Federal Republic of Yugoslavia (Serbia and Montenegro) Milosevic Regulations

AGENCY: Office of Foreign Assets Control, Treasury.

ACTION: Amendments; Interim Final rule.

SUMMARY: The Office of Foreign Assets Control of the U.S. Department of the Treasury is amending existing regulations and adding new regulations consistent with Executive Order 13192 of January 17, 2001, which lifts certain economic sanctions imposed with respect to the Federal Republic of Yugoslavia (Serbia and Montenegro) pursuant to Executive Orders 13088 of June 9, 1998, and 13121 of April 30, 1999, while maintaining and modifying sanctions targeted against members and supporters of the regime of former President Slobodan Milosevic and certain persons under open indictment by the International Criminal Tribunal for the former Yugoslavia.

DATES: *Effective Date:* October 3, 2001.

Comments: Written comments must be received no later than December 3, 2001. Comments may be sent either via regular mail to David W. Mills, Chief, Policy Planning and Program Management Division, Office of Foreign Assets Control, Department of the Treasury, 1500 Pennsylvania Ave. NW, Annex—2d Floor, Washington, DC 20220, or via OFAC's Web site (*http://www.treas.gov/ofac*).

FOR FURTHER INFORMATION CONTACT: Steven I. Pinter, Acting Chief of Licensing, tel.: 202/622–2480, or Barbara C. Hammerle, Chief Counsel, tel.: 202/622–2410, Office of Foreign Assets Control, Department of the Treasury, Washington, DC 20220.

SUPPLEMENTARY INFORMATION:

Electronic Availability

This document is available as an electronic file on The Federal Bulletin Board the day of publication in the **Federal Register**. By modem, dial 202/512–1387 and type ''/GO FAC,'' or call 202/512–1530 for disk or paper copies. This file is available for downloading without charge in ASCII and Adobe Acrobat7 readable (*.PDF) formats. For Internet access, the address for use with the World Wide Web (Home Page), Telnet, or FTP protocol is: fedbbs.access.gpo.gov. This document and additional information concerning the programs of the Office of Foreign Assets Control are available for downloading from the Office's Internet homepage: *http://www.treas.gov/ofac,* or in fax form through the Office's 24-hour fax-on-demand service: call 202/622–0077 using a fax machine, fax modem, or (within the United States) a touch-tone telephone.

Background

In Executive Order 13088 of June 9, 1998 (63 FR 32109, June 12, 1998), President Clinton declared a national emergency with respect to the actions and policies of the Governments of the Federal Republic of Yugoslavia (Serbia and Montenegro) (the ''FRY(S&M)'') and the Republic of Serbia regarding Kosovo and imposed sanctions with respect to those governments, invoking the authority, *inter alia,* of the International Emergency Economic Powers Act (50 U.S.C. 1701–1706) (''IEEPA''). Executive Order 13088, which was effective at 12:01 a.m. eastern daylight time on June 10, 1998, blocked, with certain exceptions, all property and interests in property of the Governments of the FRY(S&M), the Republic of Serbia, and the Republic of Montenegro within the United States or within the possession or control of U.S. persons (including foreign branches). It also prohibited all new investment by U.S. persons in the territory of the Republic of Serbia and the approval or other facilitation by U.S. persons of other persons' new investment in the territory of Serbia. In implementation of Executive Order 13088, the Office of Foreign Assets Control (''OFAC'') issued the Federal Republic of Yugoslavia (Serbia and Montenegro) Kosovo Sanctions Regulations, 31 CFR part 586 (63 FR 54576, October 13, 1998).

In Executive Order 13121 of April 30, 1999 (64 FR 24021, May 5, 1999), the President responded to the continuing human rights and humanitarian crises in Kosovo by amending Executive Order 13088 to broaden the scope and nature of the sanctions previously imposed on the FRY(S&M). Executive Order 13121 expanded the blocking regime imposed on the assets of the Governments of the FRY(S&M), the Republic of Serbia, and the Republic of Montenegro by revoking an exemption for certain financial transactions provided in Executive Order 13088 (as previously implemented in § 586.201(c)); banned all U.S. exports and reexports to and imports from the FRY(S&M) or the Governments of the FRY(S&M), the Republic of Serbia, or the Republic of Montenegro; and prohibited any transaction or dealing by a U.S. person related to trade with or to the FRY(S&M) or the Governments of the FRY(S&M), the Republic of Serbia, or the Republic of Montenegro.

On January 17, 2001, in light of the peaceful democratic transition begun by the newly elected leaders in the FRY(S&M), the President issued Executive Order 13192, which took effect on January 19, 2001. Executive Order 13192 further amended Executive Order 13088, as revised by Executive Order 13121, to lift with, respect to future transactions, remaining sanctions imposed on the Governments of the FRY (S&M) and the Republic of Serbia. (Sanctions imposed on the Government of the Republic of Montenegro under Executive Order 13088 previously had been suspended by OFAC general licenses.) Consistent with the lifting of the remaining sanctions on a prospective basis, OFAC is taking separate steps to remove all entries for individuals or entities identified by the term ''[FRYK]'' from appendix A to 31 CFR chapter V. Executive Order 13192 also further amended Executive Order 13088 to impose sanctions on designated family members, supporters, and members of the regime of former FRY(S&M) President Slobodan Milosevic, as well as on individuals under open indictment by the International Criminal Tribunal for the former Yugoslavia (the ''ICTY''), and other specified parties.

OFAC is amending part 586 to chapter V of 31 CFR to reflect the lifting of certain economic sanctions relating to the FRY(S&M) and to make appropriate conforming and technical changes to the regulations. A new part 587 is being added to chapter V of 31 CFR to maintain and modify sanctions targeted against designated family members, supporters, and members of the regime of former President Slobodan Milosevic as well as certain persons under open indictment by the ICTY, and other specified parties.

Amendments to Part 586

Lifting of Certain Sanctions. Explanatory notes are added to paragraphs (a), (b), and (d) of § 586.201, and the existing note to § 586.201 is revised, to reflect the prospective elimination by Section 1(a) of Executive Order 13192 of the prohibition on transactions involving property and interests in property of the Governments of the FRY(S&M), the Republic of Serbia, and the Republic of Montenegro. Executive Order 13192 also prospectively lifts the ban imposed pursuant to Executive Order 13088, as revised by Executive Order 13121, on

U.S. exports and reexports to and imports from the FRY(S&M), as well as the prohibition on transactions or dealings by U.S. persons relating to trade with or to the FRY(S&M). Consequently, with the exception of transactions involving property or interests in property of designated family members, supporters, and members of the regime of former President Slobodan Milosevic, as well as certain persons under open indictment by the ICTY, and other specified parties (as discussed below with respect to 31 CFR § 587.201(a)), transactions on or after January 19, 2001, by U.S. persons involving the FRY(S&M) will no longer fall under the scope of the prohibitions outlined in part 586.

An explanatory note is added to § 586.204 to reflect the prospective elimination by section 1(b) of Executive Order 13192 of the prohibition on all new investment by United States persons in the territory of the Republic of Serbia and the approval and other facilitation by United States persons of other persons' new investment in the territory of the Republic of Serbia. Consequently, with the exception of transactions involving property or interests in property of persons designated in or pursuant to 31 CFR § 587.201(a), the new investment activities of United States persons in the territory of the Republic of Serbia on or after January 19, 2001, are no longer prohibited by § 586.204.

Previously Blocked Property. Revised § 586.201(c) implements Section 1(a) of Executive Order 13192 by continuing the blocking of any property and interests in property blocked pursuant to Executive Order 13088 before January 19, 2001. The continued blocking of previously blocked property is necessary until provision is made to address claims or encumbrances with respect to such property. Because Executive Order 13192 requires all property blocked before January 19, 2001, to remain blocked, a separate comprehensive list of the ''[FRYK]'' entries being removed from appendix A to 31 CFR chapter V is available to the public upon request from OFAC's Compliance Programs Division at (202) 622–2490. Similar lists are available with respect to persons whose property and interests in property continue to be blocked pursuant to part 585 of 31 CFR chapter V. *See* 61 FR 12 (Jan. 19, 1996); 61 FR 24696 (May 16, 1996).

Unblocking of Certain Debt. Notwithstanding the generally continued blocking of previously blocked property, new § 586.517(a) authorizes by general license the unblocking of debt obligations included within the rescheduling of Yugoslav debt pursuant to the New Financing Agreement of September 20, 1988, negotiated between the Socialist Federal Republic of Yugoslavia and the London Club of commercial banks. Section 586.517(b) provides for case-by-case review of requests to unblock all other previously blocked debt. Section 586.517(c) excludes from the general license transactions with any person designated in or pursuant to 31 CFR § 587.201(a).

Release of Certain Blocked Transfers. Notwithstanding the generally continued blocking of previously blocked property, new § 586.518 authorizes by general license U.S. financial institutions to unblock and return to the remitting party certain funds that came into the U.S. financial institution's possession or control through wire transfers or check remittances. Funds may not be unblocked and returned if they were originally destined for an account established on the books of a U.S. financial institution by a person whose property or interests in property were blocked immediately prior to January 19, 2001, or if they were remitted by or destined for any person designated in or pursuant to 31 CFR § 587.201(a). Under this authorization, funds may generally be returned to, among others, the Government of the FRY(S&M), the Government of the Republic of Serbia, the Government of the Republic of Montenegro, or any persons purporting to act for or on their behalf.

Funds Held at Overseas Branches of U.S. Financial Institutions. New § 586.519 provides that OFAC will review on a case-by-case basis requests to unblock deposit accounts established outside the United States at overseas branches of U.S. institutions.

Revision of Penalties Provisions. Subpart G of part 586 is revised in certain respects to describe more fully OFAC's procedures in order to enhance transparency of the penalty process.

New Part 587—Sanctions Relating to Members and Supporters of the Milosevic Regime

In addition to lifting certain of the sanctions on the Governments of the FRY(S&M) and the Republic of Serbia, Executive Order 13192 imposes sanctions on designated family members, supporters and members of the regime of former President Slobodan Milosevic, as well as certain persons under open indictment by the ICTY, and other specified parties. A new part 587 is added to chapter V of 31 CFR to implement these ongoing sanctions.

Subpart B of part 587 implements the prohibitions set forth in Executive Order 13192. Section 587.201(a) implements Section 1(a) of the order by blocking the property or interests in property of persons identified by the President in the Annex to the order, to the extent the property or property interests are in the United States, hereafter come within the United States, or are or hereafter come within the possession or control of U.S. persons, including their overseas branches. Section 587.201(a) also implements Section 1(a) by blocking the property or interests in property of individuals and entities determined by the Secretary of the Treasury, in consultation with the Secretary of State, either (i) to be under open indictment by the ICTY; (ii) to have sought or to be seeking through illegitimate means or otherwise to maintain or re-establish illegitimate control over the political processes or institutions or the economic resources or enterprises of the FRY(S&M), the Republic of Serbia, the Republic of Montenegro or the territory of Kosovo; (iii) to have provided material support or resources to any person designated in or pursuant to § 587.201(a); or (iv) to be owned or controlled by or acting or purporting to act directly or indirectly for or on behalf of any person designated in or pursuant to § 587.201(a). The names of persons identified by the President or designated by the Secretary of the Treasury will be incorporated into appendix A to 31 CFR chapter V. These persons are referred to throughout the regulations as ''persons designated in or pursuant to § 587.201(a).''

Section 587.201(b) implements section 1(b) of Executive Order 13192 by prohibiting any transaction or dealing within the United States or by a United States person, wherever located, in property or interests in property of any person designated in or pursuant to § 587.201(a).

Sections 587.202 and 587.203 detail the effect of transfers of blocked property in violation of the regulations and the required holding of blocked property in interest-bearing blocked accounts. Section 587.204 implements section 1(d) of the Executive Order by prohibiting any transaction that evades or avoids, or has the purpose of evading or avoiding, or attempts to violate, any of the prohibitions set forth in this part. Conspiracies formed for the purpose of engaging in a prohibited transaction are also prohibited.

Section 587.205 provides that all expenses incident to the maintenance of blocked physical property shall be the responsibility of the owners and operators of such property, and that

such expenses shall not be met from blocked funds. The section further provides that blocked property may, in the discretion of the Director of OFAC, be sold or liquidated and the net proceeds placed in a blocked interest-bearing account in the name of the owner of the property.

Section 587.206 details exempt transactions. The exemptions derive from the exemptions set out in section 203(b) of IEEPA (50 U.S.C. 1702(b)) and relate to personal communications, donations of articles to relieve human suffering, the importation and exportation of information or informational materials, and travel.

Subpart C of part 587 defines key terms used throughout the regulations and subpart D sets forth interpretive sections regarding the general prohibitions of subpart B. Section 587.403 of subpart D describes the termination and acquisition of an interest in blocked property and § 587.404 explains that, subject to certain exceptions, transactions incidental and necessary to the effectuation of a licensed transaction are authorized.

Section 587.405 provides that the prohibitions of § 587.201 apply to the provision of services, such as financial or transportation services, performed by U.S. persons, wherever located. Section 587.406 makes clear that even while outside the United States, U.S. persons are prohibited from dealing in property in which a person designated in or pursuant to § 587.201(a) has an interest. Sections 587.407, 587.408, and 587.409 explain that debits generally may not be made to a blocked account to pay obligations to any person, U.S. financial institutions may not perform under existing credit agreements with a person designated in or pursuant to § 587.201(a), including charge or debit cards issued to such a person, and no U.S. person may effect a setoff against blocked property.

Transactions otherwise prohibited under part 587 but found to be consistent with U.S. policy may be authorized by one of the general licenses contained in subpart E or by a specific license issued pursuant to the procedures described in subpart D of part 501 of 31 CFR chapter V. Sections 587.504, 587.505, and 587.506 authorize U.S. financial institutions to make certain transfers of funds or credit between blocked accounts, to debit blocked accounts for normal service charges, and, subject to certain conditions, to invest and reinvest blocked assets. Sections 587.507 and 587.508 authorize the provision of certain legal and medical services, but require that receipt of payment for such services must be specifically licensed.

Subpart F of part 587 refers, for the recordkeeping and reporting requirements of this part, to the Reporting and Procedures Regulations in subpart C of 31 CFR part 501. Subpart G of the regulations describes the civil and criminal penalties applicable to violations of the regulations, as well as the procedures governing the potential imposition of a civil monetary penalty.

Subpart H of part 587 provides certain administrative procedures applicable to this part by reference to the Reporting and Procedures Regulations in subpart D of 31 CFR part 501, which contain provisions relating to administrative procedures. Subpart I of the regulations sets forth a Paperwork Reduction Act notice.

Request for Comments

Because the amendment of 31 CFR part 586 and the addition of 31 CFR Part 587 pursuant to Executive Order 13192 involve a foreign affairs function, the provisions of Executive Order 12866 and the Administrative Procedure Act (5 U.S.C. 553) requiring notice of proposed rulemaking, opportunity for public participation, and delay in effective date, are inapplicable. However, because of the importance of the issues addressed in the amendments to part 586 and the introduction of part 587, comments will be considered in the development of final rules. Accordingly, the Department encourages interested persons who wish to comment to do so at the earliest possible time to permit the fullest consideration of their views. Comments may address the impact of the regulations on the submitter's activities, whether of a commercial, non-commercial or humanitarian nature, as well as changes that would improve the clarity and organization of the regulations.

The period for submission of comments will close December 3, 2001. The Department will consider all comments received before the close of the comment period in developing final regulations. Comments received after the end of the comment period will be considered if possible, but their consideration cannot be assured. The Department will not accept public comments accompanied by a request that a part or all of the submission be treated confidentially because of its business proprietary nature or for any other reason. The Department will return such comments and materials when submitted by regular mail to the person submitting the comments and will not consider them in the development of final regulations. In the interest of accuracy and completeness, the Department requires comments in written form.

All public comments on these regulations will be a matter of public record. Copies of the public record concerning these regulations will be made available, not sooner than January 2, 2002 and will be obtainable from OFAC's Web site (*http://www.treas.gov/ofac*). If that service is unavailable, written requests for copies may be sent to: Office of Foreign Assets Control, U.S. Department of the Treasury, 1500 Pennsylvania Ave., Annex —2d Floor, N.W. Washington, DC 20220, Attn: Merete Evans.

Because no notice of proposed rulemaking is required for this rule, the Regulatory Flexibility Act (5 U.S.C. 601–612) does not apply.

Paperwork Reduction Act

The collections of information related to 31 CFR parts 586 and 587 are contained in 31 CFR part 501 (the ''Reporting and Procedures Regulations''). Pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3507), those collections of information have been approved by the Office of Management and Budget under control number 1505–0164. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid control number.

List of Subjects

31 CFR Part 586

Administrative practice and procedure, Banks, Banking, Blocking of assets, Federal Republic of Yugoslavia (Serbia & Montenegro), Investments, Kosovo, Montenegro, New investment, Penalties, Reporting and recordkeeping requirements, Serbia.

31 CFR Part 587

Administrative practice and procedure, Banks, Banking, Blocking of assets, Credit, Federal Republic of Yugoslavia (Serbia & Montenegro), Investments, Milosevic, Penalties, Reporting and recordkeeping requirements, Securities, Services.

For the reasons set forth in the preamble, 31 CFR part 586 is amended and part 587 is added to read as follows:

PART 586—FEDERAL REPUBLIC OF YUGOSLAVIA (SERBIA & MONTENEGRO) KOSOVO SANCTIONS REGULATIONS

1. The authority citation for part 586 is revised to read as follows:

Authority: 3 U.S.C. 301; 31 U.S.C. 321(b); 50 U.S.C. 1601–1651, 1701–1706; E.O. 13088, 63 FR 32109, 3 CFR, 98 Comp., p. 191; E.O. 13121, 64 FR 24021, 3 CFR, 99 Comp. p. 176; E.O. 13192, 66 FR 7379, January 23, 2001.

Subpart B—Prohibitions

2. Section 586.201 is amended by adding a note to paragraphs (a), (b), and (d); revising paragraph (c) and the accompanying note; and revising the note at the end of the section to read as follows:

§ 586.201 Prohibited transactions involving blocked property.

(a) * * *

Note to paragraph (a) of § 586.201: *See* note at end of this section with regard to the lifting of certain sanctions effective January 19, 2001.

(b) * * *

Note to paragraph (b) of § 586.201: *See* note at end of this section with regard to the lifting of certain sanctions effective January 19, 2001.

(c) Property or interests in property blocked pursuant to Executive Order 13088 of June 9, 1998, as amended by Executive Order 13121 of April 30, 1999, and this part prior to 12:01 a.m. eastern standard time, January 19, 2001, are blocked, and may not be transferred, paid, exported or otherwise dealt in except as otherwise authorized by the Secretary of the Treasury.

Note to paragraph (c) of § 586.201: See note at end of this section with regard to the lifting of certain sanctions effective January 19, 2001.

(d) * * *

Note to paragraph (d) of § 586.201: *See* note at end of this section with regard to the lifting of certain sanctions effective January 19, 2001.

(e) * * *

Note to § 586.201: Section 1(a) of Executive Order 13192 of January 17, 2001 (66 FR 7379, January 23, 2001), amended Executive Order 13088 of June 9, 1998 (63 FR 32109, June 12, 1998), to remove prospectively the prohibition on transactions that involve blocked property and interests in property of the Governments of the FRY(S&M), the Republic of Serbia, and the Republic of Montenegro. Consequently, with the exception of transactions involving property or interests in property of persons designated in or pursuant to 31 CFR § 587.201(a), transactions or transfers by U.S. persons that involve the property or interests in property of the FRY(S&M) and that occur on or after January 19, 2001, are not prohibited by §§ 586.201(a), (b), or (d). Executive Order 13088, as amended by Executive Order 13192, however, also requires that all property or interests in property blocked pursuant to Executive Order 13088 prior to January 19, 2001, shall remain blocked, except as otherwise authorized by the Secretary of the Treasury. See § 586.201(c). The continued blocking of previously blocked property is necessary until provision is made to address claims or encumbrances with respect to such property.

3. Section 586.204 is amended by adding a note to read as follows:

§ 586.204 Prohibited new investment within Serbia.

* * * * *

Note to § 586.204: Section 1(b) of Executive Order 13192 of January 17, 2001 (66 FR 7379, January 23, 2001), revoked section 3 of Executive Order 13088 of June 9, 1998 (63 FR 32109, June 12, 1998), which prohibited all new investment by United States persons in the territory of the Republic of Serbia and the approval and other facilitation by United States persons of other persons' new investment in the territory of the Republic of Serbia. Consequently, with the exception of transactions involving property or interests in property of persons designated in or pursuant to 31 CFR § 587.201(a), the new investment activities of United States persons in the territory of the Republic of Serbia on or after January 19, 2001, are not prohibited by § 586.204.

Subpart C—General Definitions

4. Section 586.302 is revised to read as follows:

§ 586.302 Effective date.

The term *effective date* refers to the effective date of the applicable prohibitions and directives contained in this part which is 12:01 a.m. eastern daylight time, June 10, 1998, except, with respect to § 586.201(c), 12:01 a.m. eastern standard time, January 19, 2001, shall apply.

5. Section 586.319 is revised to read as follows:

§ 586.319. United States Person; U.S. person.

The term *United States person* or *U.S. person* means any United States citizen, permanent resident alien, entity organized under the laws of the United States or any jurisdiction within the United States (including foreign branches), or any person in the United States.

Subpart D—Interpretations

6. Section 586.405 is revised to read as follows:

§ 586.405 Transactions incidental to a licensed transaction.

Any transaction ordinarily incident to a licensed transaction and necessary to give effect thereto is also authorized, except:

(a) An incidental transaction, not explicitly authorized within the terms of the license, by or with a person whose property or interests in property are blocked pursuant to § 586.201; or

(b) An incidental transaction, not explicitly authorized within the terms of the license, involving a debit or credit to a blocked account or a transfer of blocked property.

§ 586.406 Provision of services. [Amended]

7. Section 586.406 is amended by removing the phrase ''as provided in § 586.201(c) or'' in the first sentence of paragraph (a).

Subpart E—Licenses, Authorizations, and Statements of Licensing Policy

§ 586.501 General and specific licensing procedures. [Amended]

8. Section 586.501 is amended by removing the phrase ''subpart C'' and adding in its place the phrase ''subpart D''.

9. Section 586.517 is added to subpart E to read as follows:

§ 586.517 Unblocking of certain debt.

(a) Subject to the limitations in paragraph (c) below, debt obligations in the possession or control of U.S. persons for which the National Bank of Yugoslavia has joint or several liability and that were rescheduled pursuant to the ''New Financing Agreement'' of September 20, 1988, are unblocked.

(b) Specific licenses may be issued on a case-by-case basis to permit the unblocking of debt obligations not otherwise authorized under either paragraph (a) of this section or 31 CFR 585.509.

(c) Nothing in this section authorizes transactions with any person designated in or pursuant to 31 CFR 587.201(a).

10. Section 586.518 is added to subpart E to read as follows:

§ 586.518 Authorization of release of certain blocked transfers by U.S. financial institutions.

(a) Subject to the limitation set forth in this paragraph, U.S. financial institutions are authorized to unblock and return to the remitting party funds blocked pursuant to this part that came into their possession or control through wire transfer instructions or check remittances, provided those funds were not destined for an account established on the books of a U.S. financial institution by a person whose property or interests in property were blocked immediately prior to January 19, 2001. Funds otherwise eligible for release under this general license, however, may not be unblocked and returned if

they were remitted by or destined for a person designated in or pursuant to 31 CFR 587.201(a).

(b) Funds blocked pursuant to this part that were destined through wire transfer instructions or check remittances for an account established on the books of a U.S. financial institution by a person whose property or interests in property were blocked immediately prior to January 19, 2001, remain blocked. If such funds are not already held in the account for which they were destined, they must be transferred to such an account by October 15, 2001, and maintained in blocked status pursuant to § 586.201(c).

11. Section 586.519 is added to subpart E to read as follows:

§ 586.519 Release of certain funds held at overseas branches of U.S. financial institutions.

Specific licenses may be issued on a case-by-case basis to permit the overseas branches of U.S. financial institutions to unblock deposit accounts that were blocked pursuant to this part prior to January 19, 2001, and that were established outside of the United States in situations in which such accounts are not owned or controlled, directly or indirectly, by any person designated in or pursuant to 31 CFR § 587.201(a).

Subpart G—Penalties

12. Section 586.701 is revised to read as follows:

§ 586.701 Penalties.

(a) Attention is directed to section 206 of the International Emergency Economic Powers Act (the ''Act'') (50 U.S.C. 1705), which is applicable to violations of the provisions of any license, ruling, regulation, order, direction, or instruction issued by or pursuant to the direction or authorization of the Secretary of the Treasury pursuant to this part or otherwise under the Act. Section 206 of the Act, as adjusted by the Federal Civil Penalties Inflation Adjustment Act of 1990 (Public Law 101–410, as amended, 28 U.S.C. 2461 note), provides that:

(1) A civil penalty not to exceed $11,000 per violation may be imposed on any person who violates, or attempts to violate, any license, order, or regulation issued under the Act;

(2) Whoever willfully violates, or willfully attempts to violate, any license, order, or regulation issued under the Act, upon conviction, shall be fined not more than $50,000, and, if a natural person, may also be imprisoned for not more than 10 years; and any officer, director, or agent of any corporation who knowingly participates in such violation may be punished by a like fine, imprisonment, or both.

(b) The criminal penalties provided in the Act are subject to increase pursuant to 18 U.S.C. 3571.

(c) Attention is also directed to 18 U.S.C. 1001, which provides that whoever, in any matter within the jurisdiction of the executive, legislative, or judicial branch of the Government of the United States, knowingly and willfully falsifies, conceals, or covers up by any trick, scheme, or device a material fact, or makes any materially false, fictitious, or fraudulent statement or representation, or makes or uses any false writing or document knowing the same to contain any materially false, fictitious, or fraudulent statement or entry shall be fined under title 18, United States Code, or imprisoned not more than five years, or both.

(d) Violations of this part may also be subject to relevant provisions of other applicable laws.

13. Section 586.702 is revised to read as follows:

§ 586.702 Prepenalty notice.

(a) *When required.* If the Director of the Office of Foreign Assets Control has reasonable cause to believe that there has occurred a violation of any provision of this part or a violation of the provisions of any license, ruling, regulation, order, direction, or instruction issued by or pursuant to the direction or authorization of the Secretary of the Treasury pursuant to this part or otherwise under the International Emergency Economic Powers Act, and the Director determines that further proceedings are warranted, the Director shall notify the alleged violator of the agency's intent to impose a monetary penalty by issuing a prepenalty notice. The prepenalty notice shall be in writing. The prepenalty notice may be issued whether or not another agency has taken any action with respect to the matter.

(b) *Contents of notice*—(1) *Facts of violation.* The prepenalty notice shall describe the violation, specify the laws and regulations allegedly violated, and state the amount of the proposed monetary penalty.

(2) *Right to respond.* The prepenalty notice also shall inform the respondent of respondent's right to make a written presentation within the applicable 30-day period set forth in § 586.703 as to why a monetary penalty should not be imposed or why, if imposed, the monetary penalty should be in a lesser amount than proposed.

(c) *Informal settlement prior to issuance of prepenalty notice.* At any time prior to the issuance of a prepenalty notice, an alleged violator may request in writing that, for a period not to exceed sixty (60) days, the agency withhold issuance of the prepenalty notice for the exclusive purpose of effecting settlement of the agency's potential civil monetary penalty claims. In the event the Director grants the request, under terms and conditions within his discretion, the Office of Foreign Assets Control will agree to withhold issuance of the prepenalty notice for a period not to exceed 60 days and will enter into settlement negotiations of the potential civil monetary penalty claim.

14. Section 586.703 is revised to read as follows:

§ 586.703 Response to prepenalty notice; informal settlement.

(a) *Deadline for response.* The respondent may submit a response to the prepenalty notice within the applicable 30-day period set forth in this paragraph. The Director may grant, at his discretion, an extension of time in which to submit a response to the prepenalty notice. The failure to submit a response within the applicable time period set forth in this paragraph shall be deemed to be a waiver of the right to respond.

(1) *Computation of time for response.* A response to the prepenalty notice must be postmarked or date-stamped by the U.S. Postal Service (or foreign postal service, if mailed abroad) or courier service provider (if transmitted to OFAC by courier) on or before the 30th day after the postmark date on the envelope in which the prepenalty notice was mailed. If the respondent refused delivery or otherwise avoided receipt of the prepenalty notice, a response must be postmarked or date-stamped on or before the 30th day after the date on the stamped postal receipt maintained at the Office of Foreign Assets Control. If the prepenalty notice was personally delivered to the respondent by a non-U.S. Postal Service agent authorized by the Director, a response must be postmarked or date-stamped on or before the 30th day after the date of delivery.

(2) *Extensions of time for response.* If a due date falls on a federal holiday or weekend, that due date is extended to include the following business day. Any other extensions of time will be granted, at the Director's discretion, only upon the respondent's specific request to the Office of Foreign Assets Control.

(b) *Form and method of response.* The response must be submitted in writing and may be handwritten or typed. The response need not be in any particular form. A copy of the written response

may be sent by facsimile, but the original must also be sent to the Office of Foreign Assets Control Civil Penalties Division by mail or courier and must be postmarked or date-stamped, in accordance with paragraph (a) of this section.

(c) *Contents of response.* A written response must contain information sufficient to indicate that it is in response to the prepenalty notice.

(1) A written response must include the respondent's full name, address, telephone number, and facsimile number, if available, or those of the representative of the respondent.

(2) A written response should either admit or deny each specific violation alleged in the prepenalty notice and also state if the respondent has no knowledge of a particular violation. If the written response fails to address any specific violation alleged in the prepenalty notice, that alleged violation shall be deemed to be admitted.

(3) A written response should include any information in defense, evidence in support of an asserted defense, or other factors that the respondent requests the Office of Foreign Assets Control to consider. Any defense or explanation previously made to the Office of Foreign Assets Control or any other agency must be repeated in the written response. Any defense not raised in the written response will be considered waived. The written response should also set forth the reasons why the respondent believes the penalty should not be imposed or why, if imposed, it should be in a lesser amount than proposed.

(d) *Default.* If the respondent elects not to submit a written response within the time limit set forth in paragraph (a) of this section, the Office of Foreign Assets Control will conclude that the respondent has decided not to respond to the prepenalty notice. The agency generally will then issue a written penalty notice imposing the penalty proposed in the prepenalty notice.

(e) *Informal settlement.* In addition to or as an alternative to a written response to a prepenalty notice, the respondent or respondent's representative may contact the Office of Foreign Assets Control as advised in the prepenalty notice to propose the settlement of allegations contained in the prepenalty notice and related matters. However, the requirements set forth in paragraph (f) of this section as to oral communication by the representative must first be fulfilled. In the event of settlement at the prepenalty stage, the claim proposed in the prepenalty notice will be withdrawn, the respondent will not be required to take a written position on allegations contained in the prepenalty notice, and the Office of Foreign Assets Control will make no final determination as to whether a violation occurred. The amount accepted in settlement of allegations in a prepenalty notice may vary from the civil penalty that might finally be imposed in the event of a formal determination of violation. In the event no settlement is reached, the time limit specified in paragraph (a) of this section for written response to the prepenalty notice will remain in effect unless additional time is granted by the Office of Foreign Assets Control.

(f) *Representation.* A representative of the respondent may act on behalf of the respondent, but any oral communication with the Office of Foreign Assets Control prior to a written submission regarding the specific allegations contained in the prepenalty notice must be preceded by a written letter of representation, unless the prepenalty notice was served upon the respondent in care of the representative.

15. Section 586.704 is revised to read as follows:

§ 586.704 Penalty imposition or withdrawal.

(a) *No violation.* If, after considering any response to the prepenalty notice and any relevant facts, the Director of the Office of Foreign Assets Control determines that there was no violation by the respondent named in the prepenalty notice, the Director shall notify the respondent in writing of that determination and the cancellation of the proposed monetary penalty.

(b) *Violation.* (1) If, after considering any written response to the prepenalty notice, or default in the submission of a written response, and any relevant facts, the Director of the Office of Foreign Assets Control determines that there was a violation by the respondent named in the prepenalty notice, the Director is authorized to issue a written penalty notice to the respondent of the determination of violation and the imposition of the monetary penalty.

(2) The penalty notice shall inform the respondent that payment or arrangement for installment payment of the assessed penalty must be made within 30 days of the date of mailing of the penalty notice by the Office of Foreign Assets Control.

(3) The penalty notice shall inform the respondent of the requirement to furnish the respondent's taxpayer identification number pursuant to 31 U.S.C. 7701 and that such number will be used for purposes of collecting and reporting on any delinquent penalty amount.

(4) The issuance of the penalty notice finding a violation and imposing a monetary penalty shall constitute final agency action. The respondent has the right to seek judicial review of that final agency action in federal district court.

16. Section 586.705 is revised to read as follows:

§ 586.705 Administrative collection; referral to United States Department of Justice.

In the event that the respondent does not pay the penalty imposed pursuant to this part or make payment arrangements acceptable to the Director of the Office of Foreign Assets Control within 30 days of the date of mailing of the penalty notice, the matter may be referred for administrative collection measures by the Department of the Treasury or to the United States Department of Justice for appropriate action to recover the penalty in a civil suit in federal district court.

17. Part 587 is added to 31 CFR Chapter V to read as follows:

PART 587—FEDERAL REPUBLIC OF YUGOSLAVIA (SERBIA AND MONTENEGRO) MILOSEVIC SANCTIONS REGULATIONS

Subpart A—Relation of This Part to Other Laws and Regulations

Sec.

587.101 Relation of this part to other laws and regulations.

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587.504 Payments and transfers to blocked accounts in U.S. financial institutions.
587.505 Entries in certain accounts for normal service charges authorized.
587.506 Investment and reinvestment of certain funds.
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Subpart G—Penalties

587.701 Penalties.
587.702 Prepenalty notice.
587.703 Response to prepenalty notice; informal settlement.
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587.801 Procedures.
587.802 Delegation by the Secretary of the Treasury.

Subpart I—Paperwork Reduction Act

587.901 Paperwork Reduction Act notice.

Authority: 3 U.S.C. 301; 22 U.S.C. 287c, 31 U.S.C. 321(b); 50 U.S.C. 1601–1651, 1701–1706; E.O. 13088, 63 FR 32109, 3 CFR, 98 Comp, p. 191; E.O. 13121, 64 FR 24021, 3 CFR, 99 Comp. p. 176; E.O. 13192, 65 FR 7379, January 23, 2001.

Subpart A—Relation of This Part to Other Laws and Regulations

§ 587.101 Relation of this part to other laws and regulations.

This part is separate from, and independent of, the other parts of this chapter, with the exception of part 501 of this chapter, the recordkeeping and reporting requirements and license application and other procedures of which apply to this part. Actions taken pursuant to part 501 of this chapter with respect to the prohibitions contained in this part are considered actions taken pursuant to this part. Differing foreign policy and national security circumstances may result in differing interpretations of similar language among the parts of this chapter. No license or authorization contained in or issued pursuant to those other parts authorizes any transaction prohibited by this part. No license or authorization contained in or issued pursuant to any other provision of law or regulation authorizes any transaction prohibited by this part. No license contained in or issued pursuant to this part relieves the involved parties from complying with any other applicable laws or regulations.

Subpart B—Prohibitions

§ 587.201 Prohibited transactions involving blocked property.

(a) Except as authorized by regulations, orders, directives, rulings, instructions, licenses or otherwise, and notwithstanding any contracts entered into or any license or permit granted prior to the effective date, property or interests in property of any person designated below that are in the United States, that hereafter come within the United States, or that are or hereafter come within the possession or control of U.S. persons, including their overseas branches, are blocked and may not be transferred, paid, exported, withdrawn or otherwise dealt in:

(1) Any person listed in the Annex to Executive Order 13192 of January 17, 2001 (66 FR 7379, January 23, 2001); and

(2) Any person determined by the Secretary of the Treasury, in consultation with the Secretary of State:

(i) To be under open indictment by the International Criminal Tribunal for the former Yugoslavia, subject to applicable laws and procedures;

(ii) To have sought, or to be seeking, through repressive measures or otherwise, to maintain or reestablish illegitimate control over the political processes or institutions or the economic resources or enterprises of the Federal Republic of Yugoslavia, the Republic of Serbia, the Republic of Montenegro or the territory of Kosovo;

(iii) To have provided material support or resources to any person designated in the Annex to Executive Order 13192 or any person otherwise designated by the Secretary of the Treasury pursuant to this section; or

(iv) To be owned or controlled by or acting or purporting to act directly or indirectly for or on behalf of any person designated in the Annex to Executive Order 13192 or any person otherwise designated by the Secretary of the Treasury pursuant to this section.

Note to paragraph (a) of § 587.201: Persons designated pursuant to § 587.201(a)(1) or (2) are listed with the acronym [FRYM] in appendix A to 31 CFR chapter V. Section 501.807 of this chapter V sets forth the procedures to be followed by persons seeking administrative reconsideration of their designation or who wish to assert that the circumstances resulting in designation no longer apply. Similarly, when a transaction results in the blocking of funds at a financial institution pursuant to this section and a party to the transaction believes the funds to have been blocked due to mistaken identity, that party may seek to have such funds unblocked pursuant to the administrative procedures set forth in § 501.806 of this chapter.

(b) Except as authorized by regulations, orders, directives, rulings, instructions, licenses or otherwise, and notwithstanding any contracts entered into or any license or permit granted prior to the effective date, any transaction or dealing by U.S. persons, wherever located, or within the United States in property or interests in property of any person designated in or pursuant to § 587.201(a) are prohibited.

(c) Unless otherwise authorized by this part or by a specific license expressly referring to this section, any dealing in any security (or evidence thereof) held within the possession or control of a U.S. person and either registered or inscribed in the name of or known to be held for the benefit of any person designated in or pursuant to § 587.201(a) is prohibited. This prohibition includes but is not limited to the transfer (including the transfer on the books of any issuer or agent thereof), disposition, transportation, importation, exportation, or withdrawal of any such security or the endorsement or guaranty of signatures on any such security. This prohibition applies irrespective of the fact that at any time (whether prior to, on, or subsequent to the effective date) the registered or inscribed owner of any such security may have or might appear to have assigned, transferred, or otherwise disposed of the security.

§ 587.202 Effect of transfers violating the provisions of this part.

(a) Any transfer after the effective date that is in violation of any provision of this part or of any regulation, order, directive, ruling, instruction, or license issued pursuant to this part, and that involves any property or interest in property blocked pursuant to § 587.201(a), is null and void and shall not be the basis for the assertion or recognition of any interest in or right, remedy, power, or privilege with respect to such property or property interests.

(b) No transfer before the effective date shall be the basis for the assertion or recognition of any right, remedy, power, or privilege with respect to, or any interest in, any property or interest in property blocked pursuant to § 587.201(a), unless the person with whom such property is held or

maintained, prior to that date, had written notice of the transfer or by any written evidence had recognized such transfer.

(c) Unless otherwise provided, an appropriate license or other authorization issued by or pursuant to the direction or authorization of the Director of the Office of Foreign Assets Control before, during, or after a transfer shall validate such transfer or make it enforceable to the same extent that it would be valid or enforceable but for the provisions of the International Emergency Economic Powers Act, this part, and any regulation, order, directive, ruling, instruction, or license issued pursuant to this part.

(d) Transfers of property that otherwise would be null and void or unenforceable by virtue of the provisions of this section shall not be deemed to be null and void or unenforceable as to any person with whom such property was held or maintained (and as to such person only) in cases in which such person is able to establish to the satisfaction of the Director of the Office of Foreign Assets Control each of the following:

(1) Such transfer did not represent a willful violation of the provisions of this part by the person with whom such property was held or maintained;

(2) The person with whom such property was held or maintained did not have reasonable cause to know or suspect, in view of all the facts and circumstances known or available to such person, that such transfer required a license or authorization issued pursuant to this part and was not so licensed or authorized, or, if a license or authorization did purport to cover the transfer, that such license or authorization had been obtained by misrepresentation of a third party or withholding of material facts or was otherwise fraudulently obtained; and

(3) The person with whom such property was held or maintained filed with the Office of Foreign Assets Control a report setting forth in full the circumstances relating to such transfer promptly upon discovery that:

(i) Such transfer was in violation of the provisions of this part or any regulation, ruling, instruction, license, or other direction or authorization issued pursuant to this part;

(ii) Such transfer was not licensed or authorized by the Director of the Office of Foreign Assets Control; or

(iii) If a license did purport to cover the transfer, such license had been obtained by misrepresentation of a third party or withholding of material facts or was otherwise fraudulently obtained.

Note to paragraph (d) of § 587.202: The filing of a report in accordance with the provisions of paragraph (d)(3) of this section shall not be deemed evidence that the terms of paragraphs (d)(1) and (d)(2) of this section have been satisfied.

(e) Unless licensed pursuant to this part, any attachment, judgment, decree, lien, execution, garnishment, or other judicial process is null and void with respect to any property in which on or since the effective date of § 587.201 there existed an interest of a person designated in or pursuant to § 587.201(a).

§ 587.203 Holding of funds in interest-bearing accounts; investment and reinvestment.

(a) Except as provided in paragraph (c) or (d) of this section, or as otherwise directed by the Office of Foreign Assets Control, any U.S. person holding funds, such as currency, bank deposits, or liquidated financial obligations subject to § 587.201(a) shall hold or place such funds in a blocked interest-bearing account located in the United States.

(b)(1) For purposes of this section, the term *blocked interest-bearing account* means a blocked account:

(i) In a federally-insured U.S. bank, thrift institution, or credit union, provided the funds are earning interest at rates that are commercially reasonable; or

(ii) With a broker or dealer registered with the Securities and Exchange Commission under the Securities Exchange Act of 1934, provided the funds are invested in a money market fund or in U.S. Treasury bills.

(2) For purposes of this section, a rate is commercially reasonable if it is the rate currently offered to other depositors on deposits or instruments of comparable size and maturity.

(3) Funds held or placed in a blocked account pursuant to this paragraph (b) may not be invested in instruments the maturity of which exceeds 180 days. If interest is credited to a separate blocked account or subaccount, the name of the account party on each account must be the same.

(c) Blocked funds held in instruments the maturity of which exceeds 180 days at the time the funds become subject to § 587.201(a) may continue to be held until maturity in the original instrument, provided any interest, earnings, or other proceeds derived therefrom are paid into a blocked interest-bearing account in accordance with paragraph (b) or (d) of this section.

(d) Blocked funds held in accounts or instruments outside the United States at the time the funds become subject to § 587.201(a) may continue to be held in the same type of accounts or instruments, provided the funds earn interest at rates that are commercially reasonable.

(e) This section does not create an affirmative obligation for the holder of blocked tangible property, such as chattels or real estate, or of other blocked property, such as debt or equity securities, to sell or liquidate such property at the time the property becomes subject to § 587.201(a). However, the Office of Foreign Assets Control may issue licenses permitting or directing such sales in appropriate cases.

(f) Funds subject to this section may not be held, invested, or reinvested in a manner that provides immediate financial or economic benefit or access to any person designated in or pursuant to § 587.201(a), nor may their holder cooperate in or facilitate the pledging or other attempted use as collateral of blocked funds or other assets.

§ 587.204 Evasions; attempts; conspiracies.

(a) Except as otherwise authorized, and notwithstanding any contract entered into or any license or permit granted prior to the effective date, any transaction by any U.S. person or within the United States on or after the effective date that evades or avoids, has the purpose of evading or avoiding, or attempts to violate any of the prohibitions set forth in this part is prohibited.

(b) Except as otherwise authorized, and notwithstanding any contract entered into or any license or permit granted prior to the effective date, any conspiracy formed for the purpose of engaging in a transaction prohibited by this part is prohibited.

§ 587.205 Expenses of maintaining blocked property; liquidation of blocked account.

(a) Except as otherwise authorized, and notwithstanding the existence of any rights or obligations conferred or imposed by any international agreement or contract entered into or any license or permit granted before 12:01 a.m., eastern standard time, January 19, 2001, all expenses incident to the maintenance of physical property blocked pursuant to § 587.201(a) shall be the responsibility of the owners or operators of such property, which expenses shall not be met from blocked funds.

(b) Property blocked pursuant to § 587.201(a) may, in the discretion of the Director, Office of Foreign Assets Control, be sold or liquidated and the net proceeds placed in a blocked

interest-bearing account in the name of the owner of the property.

§ 587.206 Exempt transactions.

(a) *Personal communications.* The prohibitions contained in this part do not apply to any postal, telegraphic, telephonic, or other personal communication that does not involve the transfer of anything of value.

(b) *Humanitarian donations.* The prohibitions contained in this part do not apply to donations by U.S. persons of articles, such as food, clothing, and medicine, intended to be used to relieve human suffering.

(c) *Information or informational materials.* (1) The importation from any country and the exportation to any country of information or informational materials, as defined in § 587.304, whether commercial or otherwise, regardless of format or medium of transmission, are exempt from the prohibitions of this part.

(2) This section does not exempt from regulation or authorize transactions related to information or informational materials not fully created and in existence at the date of the transactions, or to the substantive or artistic alteration or enhancement of informational materials, or to the provision of marketing and business consulting services. Such prohibited transactions include, but are not limited to, payment of advances for information or informational materials not yet created and completed (with the exception of prepaid subscriptions for widely-circulated magazines and other periodical publications); provision of services to market, produce or co-produce, create, or assist in the creation of information or informational materials; and, with respect to information or informational materials imported from persons designated in or pursuant to § 587.201(a), payment of royalties with respect to income received for enhancements or alterations made by U.S. persons to such information or informational materials.

(3) This section does not exempt or authorize transactions incident to the exportation of software subject to the Export Administration Regulations, 15 CFR parts 730 through 774, or to the exportation of goods, technology or software, or to the provision, sale, or leasing of capacity on telecommunications transmission facilities (such as satellite or terrestrial network connectivity) for use in the transmission of any data. The exportation of such items or services and the provision, sale, or leasing of such capacity or facilities to a person designated in or pursuant to § 587.201(a) are prohibited.

(d) *Travel.* The prohibitions contained in this part do not apply to transactions ordinarily incident to travel to or from any country, including exportation or importation of accompanied baggage for personal use, maintenance within any country including payment of living expenses and acquisition of goods or services for personal use, and arrangement or facilitation of such travel including nonscheduled air, sea, or land voyages.

Subpart C—General Definitions

§ 587.301 Blocked account; blocked property.

The terms *blocked account* and *blocked property* shall mean any account or property subject to the prohibitions in § 587.201 held in the name of a person designated in or pursuant to § 587.201(a), or in which a person designated in or pursuant to § 587.201(a) has an interest, and with respect to which payments, transfers, exportations, withdrawals, or other dealings may not be made or effected except pursuant to an authorization or license from the Office of Foreign Assets Control expressly authorizing such action.

§ 587.302 Effective date.

The term *effective date* refers to the effective date of the applicable prohibitions and directives contained in this part, which is 12:01 a.m. eastern standard time, January 19, 2001, or, in the case of any person designated pursuant to § 587.201(a)(2), the earlier of the date on which a person receives actual or constructive notice of such designation.

§ 587.303 Entity.

The term *entity* means a partnership, association, trust, joint venture, corporation, group, subgroup, or other organization.

§ 587.304 Information or informational materials.

(a) For purposes of this part, the term *information or informational materials* includes, but is not limited to publications, films, posters, phonograph records, photographs, microfilms, microfiche, tapes, compact disks, CD ROMs, artworks, and news wire feeds.

Note to paragraph (a) of § 587.304. To be considered information or informational materials, artworks must be classified under chapter heading 9701, 9702, or 9703 of the Harmonized Tariff Schedule of the United States.

(b) The term *information or informational materials* with respect to United States exports does not include items:

(1) That were, as of April 30, 1994, or that thereafter become, controlled for export pursuant to section 5 of the Export Administration Act of 1979, 50 U.S.C. App. 2401–2420 (1979) (the ''EAA''), or section 6 of the EAA to the extent that such controls promote the nonproliferation or antiterrorism policies of the United States; or

(2) With respect to which acts are prohibited by 18 U.S.C. chapter 37.

§ 587.305 Interest.

Except as otherwise provided in this part, the term *interest* when used with respect to property (e.g., ''an *interest* in property'') means an interest of any nature whatsoever, direct or indirect.

§ 587.306 Licenses; general and specific.

(a) Except as otherwise specified, the term *license* means any license or authorization contained in or issued pursuant to this part.

(b) The term *general license* means any license or authorization the terms of which are set forth in subpart E of this part.

(c) The term *specific license* means any license or authorization not set forth in subpart E of this part but issued pursuant to this part.

Note to § 587.306: See § 501.801 of this chapter on licensing procedures.

§ 587.307 Person.

The term *person* means an individual or entity.

§ 587.308 Property; property interest.

The terms *property* and *property interest* include, but are not limited to, money, checks, drafts, bullion, bank deposits, savings accounts, debts, indebtedness, obligations, notes, guarantees, debentures, stocks, bonds, coupons, any other financial instruments, bankers acceptances, mortgages, pledges, liens or other rights in the nature of security, warehouse receipts, bills of lading, trust receipts, bills of sale, any other evidences of title, ownership or indebtedness, letters of credit and any documents relating to any rights or obligations thereunder, powers of attorney, goods, wares, merchandise, chattels, stocks on hand, ships, goods on ships, real estate mortgages, deeds of trust, vendors' sales agreements, land contracts, leaseholds, ground rents, real estate and any other interest therein, options, negotiable instruments, trade acceptances, royalties, book accounts, accounts payable, judgments, patents, trademarks or copyrights, insurance policies, safe deposit boxes and their contents, annuities, pooling agreements, services

of any nature whatsoever, contracts of any nature whatsoever, and any other property, real, personal, or mixed, tangible or intangible, or interest or interests therein, present, future or contingent.

§ 587.309 Transfer.

The term *transfer* means any actual or purported act or transaction, whether or not evidenced by writing, and whether or not done or performed within the United States, the purpose, intent, or effect of which is to create, surrender, release, convey, transfer, or alter, directly or indirectly, any right, remedy, power, privilege, or interest with respect to any property and, without limitation upon the foregoing, shall include the making, execution, or delivery of any assignment, power, conveyance, check, declaration, deed, deed of trust, power of attorney, power of appointment, bill of sale, mortgage, receipt, agreement, contract, certificate, gift, sale, affidavit, or statement; the making of any payment; the setting off of any obligation or credit; the appointment of any agent, trustee, or fiduciary; the creation or transfer of any lien; the issuance, docketing, filing, or levy of or under any judgment, decree, attachment, injunction, execution, or other judicial or administrative process or order, or the service of any garnishment; the acquisition of any interest of any nature whatsoever by reason of a judgment or decree of any foreign country; the fulfillment of any condition; the exercise of any power of appointment, power of attorney, or other power; or the acquisition, disposition, transportation, importation, exportation, or withdrawal of any security.

§ 587.310 United States.

The term *United States* means the United States, its territories and possessions, and all areas under the jurisdiction or authority thereof.

§ 587.311 U.S. financial institution.

The term *U.S. financial institution* means any U.S. entity (including its foreign branches) that is engaged in the business of accepting deposits, making, granting, transferring, holding, or brokering loans or credits, or purchasing or selling foreign exchange, securities, commodity futures or options, or procuring purchasers and sellers thereof, as principal or agent; including but not limited to, depository institutions, banks, savings banks, trust companies, securities brokers and dealers, commodity futures and options brokers and dealers, forward contract and foreign exchange merchants, securities and commodities exchanges, clearing corporations, investment companies, employee benefit plans, and U.S. holding companies, U.S. affiliates, or U.S. subsidiaries of any of the foregoing. This terms includes those branches, offices and agencies of foreign financial institutions that are located in the United States, but not such institutions' foreign branches, offices, or agencies.

§ 587.312 United States person; U.S. person.

The term *United States person* or *U.S. person* means any United States citizen, permanent resident alien, entity organized under the laws of the United States or any jurisdiction within the United States (including foreign branches), or any person in the United States.

Subpart D—Interpretations

§ 587.401 Reference to amended sections.

Except as otherwise specified, reference to any provision in or appendix to this part or chapter or to any regulation, ruling, order, instruction, direction, or license issued pursuant to this part refers to the same as currently amended.

§ 587.402 Effect of amendment.

Unless otherwise specifically provided, any amendment, modification, or revocation of any provision in or appendix to this part or chapter or of any order, regulation, ruling, instruction, or license issued by or under the direction of the Director of the Office of Foreign Assets Control does not affect any act done or omitted, or any civil or criminal suit or proceeding commenced or pending prior to such amendment, modification, or revocation. All penalties, forfeitures, and liabilities under any such order, regulation, ruling, instruction, or license continue and may be enforced as if such amendment, modification, or revocation had not been made.

§ 587.403 Termination and acquisition of an interest in blocked property.

(a) Whenever a transaction licensed or authorized by or pursuant to this part results in the transfer of property (including any property interest) away from a person, such property shall no longer be deemed to be property blocked pursuant to § 587.201(a), unless there exists in the property another interest that is blocked pursuant to § 587.201(a) or any other part of this chapter, the transfer of which has not been effected pursuant to license or other authorization.

(b) Unless otherwise specifically provided in a license or authorization issued pursuant to this part, if property (including any property interest) is transferred or attempted to be transferred to a person designated in or pursuant to § 587.201(a), such property shall be deemed to be property in which that person has an interest and therefore blocked.

§ 587.404 Transactions incidental to a licensed transaction.

Any transaction ordinarily incident to a licensed transaction and necessary to give effect thereto is also authorized, except:

(a) An incidental transaction, not explicitly authorized within the terms of the license, by or with a person whose property or interests in property are blocked pursuant to § 587.201(a); or

(b) An incidental transaction, not explicitly authorized within the terms of the license, involving a debit or credit to a blocked account or a transfer of blocked property.

§ 587.405 Provision of services.

(a) Except as provided in § 587.206, the prohibitions contained in § 587.201 apply to services performed by U.S. persons, wherever located:

(1) On behalf of or for the benefit of a person designated in or pursuant to § 587.201(a); or

(2) With respect to property interests of a person designated in or pursuant to § 587.201(a).

(b) *Example:* U.S. persons may not, except as authorized by or pursuant to this part, provide legal, accounting, financial, brokering, freight forwarding, transportation, public relations, or other services to a person designated in or pursuant to § 587.201(a). See §§ 587.507 and 587.508, respectively, on licensing policy with regard to the provision of certain legal or medical services.

§ 587.406 Offshore transactions.

The prohibitions in § 587.201 apply to transactions by any U.S. person in a location outside the United States with respect to property that the U.S. person knows, or has reason to know, is held in the name of a person designated in or pursuant to § 587.201(a) or in which the U.S. person knows, or has reason to know, a person designated in or pursuant to § 587.201(a) has or has had an interest since the effective date.

§ 587.407 Payments from blocked accounts to satisfy obligations prohibited.

Pursuant to § 587.201, no debits may be made to a blocked account to pay obligations to U.S. persons or other persons, except as authorized pursuant to this part.

§ 587.408 Credit extended and cards issued by U.S. financial institutions.

Section 587.201 on dealing in property in which a person designated in or pursuant to § 587.201(a) has an interest prohibits U.S. financial institutions from performing under any existing credit agreements, including, but not limited to, charge cards, debit cards, or other credit facilities issued by a U.S. financial institution to a person designated in or pursuant to § 587.201(a).

§ 587.409 Setoffs prohibited.

A setoff against blocked property (including a blocked account), whether by a U.S. bank or other U.S. person, is a prohibited transfer under § 587.201 if effected after the effective date.

Subpart E—Licenses, Authorizations and Statements of Licensing Policy

§ 587.501 General and specific licensing procedures.

For provisions relating to licensing procedures, see part 501, subpart D of this chapter. Licensing actions taken pursuant to part 501 of this chapter with respect to the prohibitions contained in this part are considered actions taken pursuant to this part.

§ 587.502 Effect of license or authorization.

(a) No license or other authorization contained in this part, or otherwise issued by or under the direction of the Director of the Office of Foreign Assets Control, authorizes or validates any transaction effected prior to the issuance of the license, unless specifically provided in such licenses or authorization.

(b) No regulation, ruling, instruction, or license authorizes any transaction prohibited under this part unless the regulation, ruling, instruction or license is issued by the Office of Foreign Assets Control and specifically refers to this part. No regulation, ruling, instruction, or license referring to this part shall be deemed to authorize any transaction prohibited by any provision of this chapter unless the regulation, ruling, instruction, or license specifically refers to such provision.

(c) Any regulation, ruling, instruction, or license authorizing any transaction otherwise prohibited under this part has the effect of removing a prohibition contained in this part from the transaction, but only to the extent specifically stated by its terms. Unless the regulation, ruling, instruction, or license otherwise specifies, such an authorization does not create any right, duty, obligation, claim, or interest in, or with respect to, any property which would not otherwise exist under ordinary principles of law.

§ 587.503 Exclusion from licenses.

The Director of the Office of Foreign Assets Control reserves the right to exclude any person, property, or transaction from the operation of any license or from the privileges conferred by any license. The Director of the Office of Foreign Assets Control also reserves the right to restrict the applicability of any license to particular persons, property, transactions, or classes thereof. Such actions are binding upon all persons receiving actual or constructive notice of the exclusions or restrictions.

§ 587.504 Payments and transfers to blocked accounts in U.S. financial institutions.

Any payment of funds or transfer of credit in which a person designated in or pursuant to § 587.201(a) has any interest, that comes within the possession or control of a U.S. financial institution, must be blocked in an account on the books of that financial institution. A transfer of funds or credit by a U.S. financial institution between blocked accounts in its branches or offices is authorized, provided that no transfer is made from an account within the United States to an account held outside the United States, and further provided that a transfer from a blocked account may only be made to another blocked account held in the same name.

Note to § 587.504. Please refer to § 501.603 of this chapter for mandatory reporting requirements regarding financial transfers. See also § 587.203 concerning the obligation to hold blocked funds in interest-bearing accounts.

§ 587.505 Entries in certain accounts for normal service charges authorized.

(a) A U.S. financial institution is authorized to debit any blocked account held at that financial institution in payment or reimbursement for normal service charges owed it by the owner of that blocked account.

(b) As used in this section, the term normal service charge shall include charges in payment or reimbursement for interest due; cable, telegraph, internet, or telephone charges; postage costs; custody fees; small adjustment charges to correct bookkeeping errors; and, but not by way of limitation, minimum balance charges, notary and protest fees, and charges for reference books, photocopies, credit reports, transcripts of statements, registered mail, insurance, stationery and supplies, and other similar items.

§ 587.506 Investment and reinvestment of certain funds.

Subject to the requirements of § 587.201, U.S. financial institutions are authorized to invest and reinvest assets blocked pursuant to § 587.201, subject to the following conditions:

(a) The assets representing such investments and reinvestments are credited to a blocked account or subaccount which is held in the same name at the same U.S. financial institution, or within the possession or control of a U.S. person, but funds shall not be transferred outside the United States for this purpose;

(b) The proceeds of such investments and reinvestments shall not be credited to a blocked account or subaccount under any name or designation that differs from the name or designation of the specific blocked account or subaccount in which such funds or securities were held; and

(c) No immediate financial or economic benefit accrues (e.g., through pledging or other use) to persons designated in or pursuant to § 587.201(a).

§ 587.507 Provision of certain legal services authorized.

(a) Provision of the legal services set forth in paragraph (b) of this section to or on behalf of persons designated in or pursuant to § 587.201(a) is authorized, provided that all receipts of payment of professional fees and reimbursement of incurred expenses must be specifically licensed.

(b) Specific licenses may be issued on a case-by-case basis authorizing receipt from unblocked sources of payment of professional fees and reimbursement of incurred expenses for the following legal services by U.S. persons to persons specified in paragraph (a) of this section:

(1) Provision of legal advice and counseling on the requirements of and compliance with the laws of any jurisdiction within the United States, provided that such advice and counseling is not provided to facilitate transactions in violation of this part;

(2) Representation of persons when named as defendants in or otherwise made parties to domestic U.S. legal, arbitration, or administrative proceedings;

(3) Initiation and conduct of domestic U.S. legal, arbitration, or administrative proceedings in defense of property interests subject to U.S. jurisdiction;

(4) Representation of persons before any federal or state agency with respect to the imposition, administration, or enforcement of U.S. sanctions against such persons; and

(5) Provision of legal services in any other context in which prevailing U.S. law requires access to legal counsel at public expense.

(c) Provision of any other legal services to persons designated in or pursuant to § 587.201(a), not otherwise authorized in this part, requires the issuance of a specific license.

(d) Entry into a settlement agreement affecting property or interests in property or the enforcement of any lien, judgment, arbitral award, decree, or other order through execution, garnishment, or other judicial process purporting to transfer or otherwise alter or affect property or interests in property blocked pursuant to § 587.201 is prohibited unless specifically licensed in accordance with § 587.202(e).

§ 587.508 Authorization of emergency medical services.

The provision of nonscheduled emergency medical services in the United States to persons designated in or pursuant to § 587.201(a) is authorized, provided that all receipt of payment for such services must be specifically licensed.

Subpart F—Reports

§ 587.601 Records and reports.

For provisions relating to required records and reports, see part 501, subpart C, of this chapter. Recordkeeping and reporting requirements imposed by part 501 of this chapter with respect to the prohibitions contained in this part are considered requirements arising pursuant to this part.

Subpart G—Penalties

§ 587.701 Penalties.

(a) Attention is directed to section 206 of the International Emergency Economic Powers Act (the ''Act'') (50 U.S.C. 1705), which is applicable to violations of the provisions of any license, ruling, regulation, order, direction, or instruction issued by or pursuant to the direction or authorization of the Secretary of the Treasury pursuant to this part or otherwise under the Act. Section 206 of the Act, as adjusted by the Federal Civil Penalties Inflation Adjustment Act of 1990 (Public Law 101–410, as amended, 28 U.S.C. 2461 note), provides that:

(1) A civil penalty not to exceed $11,000 per violation may be imposed on any person who violates or attempts to violate any license, order, or regulation issued under the Act;

(2) Whoever willfully violates or willfully attempts to violate any license, order, or regulation issued under the Act, upon conviction, shall be fined not more than $50,000 and, if a natural person, may also be imprisoned for not more than 10 years; and any officer, director, or agent of any corporation who knowingly participates in such violation may be punished by a like fine, imprisonment, or both.

(b) The criminal penalties provided in the Act are subject to increase pursuant to 18 U.S.C. 3571.

(c) Attention is directed to section 5 of the United Nations Participation Act (22 U.S.C. 287c(b)), which provides that any person who willfully violates or evades or attempts to violate or evade any order, rule, or regulation issued by the President pursuant to the authority granted in that section, upon conviction, shall be fined not more than $10,000 and, if a natural person, may also be imprisoned for not more than 10 years; and the officer, director, or agent of any corporation who knowingly participates in such violation or evasion shall be punished by a like fine, imprisonment, or both, and any property, funds, securities, papers, or other articles or documents, or any vessel, together with her tackles, apparel, furniture, and equipment, or vehicle, or aircraft, concerned in such violation shall be forfeited to the United States. The criminal penalties provided in the United Nations Participation Act are subject to increase pursuant to 18 U.S.C. 3571.

(d) Attention is also directed to 18 U.S.C. 1001, which provides that whoever, in any matter within the jurisdiction of the executive, legislative, or judicial branch of the Government of the United States, knowingly and willfully falsifies, conceals, or covers up by any trick, scheme, or device, a material fact, or makes any materially false, fictitious, or fraudulent statement or representation, or makes or uses any false writing or document knowing the same to contain any materially false, fictitious, or fraudulent statement or entry shall be fined under title 18, United States Code, or imprisoned not more than five years, or both.

(e) Violations of this part may also be subject to relevant provisions of other applicable laws.

§ 587.702 Prepenalty notice.

(a) *When required.* If the Director of the Office of Foreign Assets Control has reasonable cause to believe that there has occurred a violation of any provision of this part or a violation of the provisions of any license, ruling, regulation, order, direction, or instruction issued by or pursuant to the direction or authorization of the Secretary of the Treasury pursuant to this part or otherwise under the International Emergency Economic Powers Act, and the Director determines that further proceedings are warranted, the Director shall notify the alleged violator of the agency's intent to impose a monetary penalty by issuing a prepenalty notice. The prepenalty notice shall be in writing. The prepenalty notice may be issued whether or not another agency has taken any action with respect to the matter.

(b) *Contents of notice*—(1) *Facts of violation.* The prepenalty notice shall describe the violation, specify the laws and regulations allegedly violated, and state the amount of the proposed monetary penalty.

(2) *Right to respond.* The prepenalty notice also shall inform the respondent of respondent's right to make a written presentation within the applicable 30 day period set forth in § 587.703 as to why a monetary penalty should not be imposed or why, if imposed, the monetary penalty should be in a lesser amount than proposed.

(c) *Informal settlement prior to issuance of prepenalty notice.* At any time prior to the issuance of a prepenalty notice, an alleged violator may request in writing that, for a period not to exceed sixty (60) days, the agency withhold issuance of the prepenalty notice for the exclusive purpose of effecting settlement of the agency's potential civil monetary penalty claims. In the event the Director grants the request, under terms and conditions within his discretion, the Office of Foreign Assets Control will agree to withhold issuance of the prepenalty notice for a period not to exceed 60 days and will enter into settlement negotiations of the potential civil monetary penalty claim.

§ 587.703 Response to prepenalty notice; informal settlement.

(a) *Deadline for response.* The respondent may submit a response to the prepenalty notice within the applicable 30 day period set forth in this paragraph. The Director may grant, at his discretion, an extension of time in which to submit a response to the prepenalty notice. The failure to submit a response within the applicable time period set forth in this paragraph shall be deemed to be a waiver of the right to respond.

(1) *Computation of time for response.* A response to the prepenalty notice must be postmarked or date-stamped by the U.S. Postal Service (or foreign postal service, if mailed abroad) or courier service provider (if transmitted to OFAC by courier) on or before the 30th day

after the postmark date on the envelope in which the prepenalty notice was mailed. If the respondent refused delivery or otherwise avoided receipt of the prepenalty notice, a response must be postmarked or date-stamped on or before the 30th day after the date on the stamped postal receipt maintained at the Office of Foreign Assets Control. If the prepenalty notice was personally delivered to the respondent by a non-U.S. Postal Service agent authorized by the Director, a response must be postmarked or date-stamped on or before the 30th day after the date of delivery.

(2) *Extensions of time for response.* If a due date falls on a federal holiday or weekend, that due date is extended to include the following business day. Any other extensions of time will be granted, at the Director's discretion, only upon the respondent's specific request to the Office of Foreign Assets Control.

(b) *Form and method of response.* The response must be submitted in writing and may be handwritten or typed. The response need not be in any particular form. A copy of the written response may be sent by facsimile, but the original also must be sent to the Office of Foreign Assets Control Civil Penalties Division by mail or courier and must be postmarked or date-stamped, in accordance with paragraph (a) of this section.

(c) *Contents of response.* A written response must contain information sufficient to indicate that it is in response to the prepenalty notice.

(1) A written response must include the respondent's full name, address, telephone number, and facsimile number, if available, or those of the representative of the respondent.

(2) A written response should either admit or deny each specific violation alleged in the prepenalty notice and also state if the respondent has no knowledge of a particular violation. If the written response fails to address any specific violation alleged in the prepenalty notice, that alleged violation shall be deemed to be admitted.

(3) A written response should include any information in defense, evidence in support of an asserted defense, or other factors that the respondent requests the Office of Foreign Assets Control to consider. Any defense or explanation previously made to the Office of Foreign Assets Control or any other agency must be repeated in the written response. Any defense not raised in the written response will be considered waived. The written response also should set forth the reasons why the respondent believes the penalty should not be imposed or why, if imposed, it should be in a lesser amount than proposed.

(d) *Default.* If the respondent elects not to submit a written response within the time limit set forth in paragraph (a) of this section, the Office of Foreign Assets Control will conclude that the respondent has decided not to respond to the prepenalty notice. The agency generally will then issue a written penalty notice imposing the penalty proposed in the prepenalty notice.

(e) *Informal settlement.* In addition to or as an alternative to a written response to a prepenalty notice, the respondent or respondent's representative may contact the Office of Foreign Assets Control as advised in the prepenalty notice to propose the settlement of allegations contained in the prepenalty notice and related matters. However, the requirements set forth in paragraph (f) of this section as to oral communication by the representative must first be fulfilled. In the event of settlement at the prepenalty stage, the claim proposed in the prepenalty notice will be withdrawn, the respondent will not be required to take a written position on allegations contained in the prepenalty notice, and the Office of Foreign Assets Control will make no final determination as to whether a violation occurred. The amount accepted in settlement of allegations in a prepenalty notice may vary from the civil penalty that might finally be imposed in the event of a formal determination of violation. In the event no settlement is reached, the time limit specified in paragraph (a) of this section for written response to the prepenalty notice will remain in effect unless additional time is granted by the Office of Foreign Assets Control.

(f) *Representation.* A representative of the respondent may act on behalf of the respondent, but any oral communication with the Office of Foreign Assets Control prior to a written submission regarding the specific allegations contained in the prepenalty notice must be preceded by a written letter of representation, unless the prepenalty notice was served upon the respondent in care of the representative.

§ 587.704 Penalty imposition or withdrawal.

(a) *No violation.* If, after considering any response to the prepenalty notice and any relevant facts, the Director of the Office of Foreign Assets Control determines that there was no violation by the respondent named in the prepenalty notice, the Director shall notify the respondent in writing of that determination and of the cancellation of the proposed monetary penalty.

(b) *Violation.* (1) If, after considering any written response to the prepenalty notice, or default in the submission of a written response, and any relevant facts, the Director of the Office of Foreign Assets Control determines that there was a violation by the respondent named in the prepenalty notice, the Director is authorized to issue a written penalty notice to the respondent of the determination of violation and the imposition of the monetary penalty.

(2) The penalty notice shall inform the respondent that payment or arrangement for installment payment of the assessed penalty must be made within 30 days of the date of mailing of the penalty notice by the Office of Foreign Assets Control.

(3) The penalty notice shall inform the respondent of the requirement to furnish the respondent's taxpayer identification number pursuant to 31 U.S.C. 7701 and that such number will be used for purposes of collecting and reporting on any delinquent penalty amount.

(4) The issuance of the penalty notice finding a violation and imposing a monetary penalty shall constitute final agency action. The respondent has the right to seek judicial review of that final agency action in federal district court.

§ 587.705 Administrative collection; referral to United States Department of Justice.

In the event that the respondent does not pay the penalty imposed pursuant to this part or make payment arrangements acceptable to the Director of the Office of Foreign Assets Control within 30 days of the date of mailing of the penalty notice, the matter may be referred for administrative collection measures by the Department of the Treasury or to the United States Department of Justice for appropriate action to recover the penalty in a civil suit in a federal district court.

Subpart H—Procedures

§ 587.801 Procedures.

For license application procedures and procedures relating to amendments, modifications, or revocations of licenses; administrative decisions; rulemaking; and requests for documents pursuant to the Freedom of Information and Privacy Acts (5 U.S.C. §§ 552 and 552a), see part 501, subpart D, of this chapter.

§ 587.802 Delegation by the Secretary of the Treasury.

Any action that the Secretary of the Treasury is authorized to take pursuant to Executive Order 13192 of January 17, 2001 (66 FR 7379, January 23, 2001) and

any further Executive orders relating to the national emergency declared in Executive Order 13088 of June 9, 1988 (63 FR 32109, June 12, 1998) may be taken by the Director of the Office of Foreign Assets Control or by any other person to whom the Secretary of the Treasury has delegated authority so to act.

Subpart I—Paperwork Reduction Act

§ 587.901 Paperwork Reduction Act notice.

For approval by the Office of Management and Budget (''OMB'') under the Paperwork Reduction Act of 1995 (44 U.S.C. 3507) of information collections relating to recordkeeping and reporting requirements, licensing procedures (including those pursuant to statements of licensing policy), and other procedures, see § 501.901 of this chapter. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a valid control number assigned by OMB.

Dated: September 4, 2001.

R. Richard Newcomb,

Director, Office of Foreign Assets Control.

Approved: September 6, 2001.

Jimmy Gurulé,

Under Secretary (Enforcement), Department of the Treasury.

[FR Doc. 01–24685 Filed 10–1–01; 9:42 am]

BILLING CODE 4810–25–P

Federal Register

Wednesday,
October 3, 2001

Part III

The President

Executive Order 13226—President's Council of Advisors on Science and Technology

Federal Register
Vol. 66, No. 192
Wednesday, October 3, 2001

Presidential Documents

Title 3—

The President

Executive Order 13226 of September 30, 2001

President's Council of Advisors on Science and Technology

By the authority vested in me as President by the Constitution and the laws of the United States of America, including the Federal Advisory Committee Act, as amended (5 U.S.C. App.), and in order to establish an advisory committee on science and technology, it is hereby ordered as follows:

Section 1. *Establishment.* There is established the President's Council of Advisors on Science and Technology (PCAST). The PCAST shall be composed of not more than 25 members, one of whom shall be a Federal Government official designated by the President (the ''Official''), and 24 of whom shall be nonfederal members appointed by the President and have diverse perspectives and expertise in science, technology, and the impact of science and technology on the Nation. The Official shall co-chair PCAST with a nonfederal member designated by the President.

Sec. 2. *Functions.* (a) The PCAST shall advise the President, through the Official, on matters involving science and technology policy.

(b) In performance of its advisory duties, the PCAST shall assist the National Science and Technology Council (NSTC) in securing private sector involvement in its activities.

Sec. 3. *Administration.* (a) The heads of the executive departments and agencies shall, to the extent permitted by law, provide the PCAST with information concerning scientific and technological matters when requested by the PCAST co-chairs.

(b) In consultation with the Official, the PCAST is authorized to convene ad hoc working groups to provide preliminary nonbinding information and advice directly to the PCAST.

(c) Members shall serve without compensation for their work on the PCAST. However, members may be allowed travel expenses, including per diem in lieu of subsistence, as authorized by law for persons serving intermittently in the government service (5 U.S.C. 5701–5707).

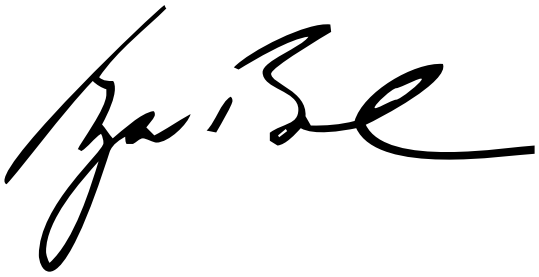
(d) Any expenses of the PCAST shall be paid from the funds available for the expenses of the Office of Science and Technology Policy.

(e) The Office of Science and Technology Policy shall provide such administrative services as the PCAST may require, with the approval of the Official.

Sec. 4. *General.* (a) Notwithstanding any other Executive Order, the functions of the President with respect to the PCAST under the Federal Advisory Committee Act, as amended, except that of reporting to the Congress, shall be performed by the Office of Science and Technology Policy in accordance with the guidelines and procedures established by the Administrator of General Services.

(b) The PCAST shall terminate 2 years from the date of this order unless extended by the President prior to that date.

(c) Executive Order 12882 of November 23, 1993; Executive Order 12907 of April 14, 1994; and section 1(h) of Executive Order 13138 of September 30, 1999, are hereby revoked.



THE WHITE HOUSE,
September 30, 2001.

[FR Doc. 01–24983
Filed 10–2–01; 8:58 am]
Billing code 3195–01–P

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S. 1424/P.L. 107–45
To amend the Immigration and Nationality Act to provide permanent authority for the admission of ''S'' visa nonimmigrants. (Oct. 1, 2001; 115 Stat. 258)
Last List October 2, 2001

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