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DEPARTMENT OF AGRICULTURE

Food and Nutrition Service

7 CFR Parts 210 and 226

RIN 0584–AB81

Child and Adult Care Food Program and Infant Meal Patterns; Correction

AGENCY: Food and Nutrition Service, USDA.

ACTION: Correcting amendments.

SUMMARY: This document contains a correction to the infant meal pattern tables that appear in the current edition of the Code of Federal Regulations that appear under 7 CFR parts 210 and 226. This error first appeared in an interim rule published in the **Federal Register** on November 15, 1999 (64 FR 61770). This document also contains corrections to the meal pattern tables for suppers and supplemental foods that appear in 7 CFR part 226. The errors first appeared in a final rule published in the **Federal Register** on March 9, 2000 (65 FR 12429).

EFFECTIVE DATE: December 20, 2001.

FOR FURTHER INFORMATION CONTACT: Ms. Melissa Rothstein, 3101 Park Center Drive, Room 640, Alexandria, Virginia 22302; or (703) 305–2590; or *CNDINTERNET@fns.usda.gov.*

SUPPLEMENTARY INFORMATION:

Need for Correction

The regulatory text in §§ 210.10(o)(2)(iii)(B) and 226.20(b)(4) indicates that servings of cottage cheese, cheese food, and cheese spread in the lunch pattern for infants are measured in ounces. In an interim rule published in the **Federal Register** on November 15, 1999 (64 FR 61770), the infant meal pattern tables that appear in §§ 210.10(o)(2) and 226.20(b)(4) incorrectly refer to tablespoons instead of ounces. This document corrects the tables to indicate that a serving of cottage cheese, cheese food, or cheese spread is to be measured in ounces.

In a final rule published in the **Federal Register** on March 9, 2000 (65 FR 12429), the meal pattern table in § 226.20(c)(3) contained incorrect information for the fluid milk requirement for adult participants receiving suppers under the Child and Adult Care Food Program. The meal pattern table in § 226.20(c)(4) contained incorrect amounts of meat and meat alternates that may be offered as part of a reimbursable snack. This document corrects these errors.

List of Subjects

7 CFR Part 210

Children, Commodity School Program, Food assistance programs, Grants programs-social programs, National School Lunch Program, Nutrition, Reporting and recordkeeping requirements, Surplus agricultural commodities.

7 CFR Part 226

Accounting, Aged, Day care, Food assistance programs, Grant programs, Grant programs-health, Indians, Individuals with disabilities, Infants and children, Intergovernmental relations, Loan programs, Reporting and recordkeeping requirements, Surplus agricultural commodities.

Accordingly, 7 CFR parts 210 and 226 are corrected by the following amendments:

PART 210—NATIONAL SCHOOL LUNCH PROGRAM

1. The authority citation for 7 CFR part 210 continues to read as follows:

Authority: 42 U.S.C. 1751–1760, 1779.

2. In § 210.10, amend the Lunch Pattern for Infants table in paragraph (o)(2) by removing the word ''tablespoons'' before the words ''of cottage cheese'' in column 4 and adding the word ''ounces'' in its place.

PART 226—CHILD AND ADULT CARE FOOD PROGRAM

1. The authority citation for 7 CFR part 226 continues to read as follows:

Authority: Sections 9, 11, 14, 16 and 17, National School Lunch Act, as amended (42 U.S.C. 1758, 1759a, 1762a, 1765 and 1766).

2. In § 226.20:

a. Amend the Child Care Infant Meal Pattern table in paragraph (b)(4) by removing the word ''Tbsp.'' before the words ''Cottage cheese'' in column 4 and adding the word ''ounces'' in its place;

b. Amend the table in paragraph (c)(3) by removing the words ''1 cup.'' from the first line of column 5 and adding the word ''None.'' in its place;

c. Amend the table in paragraph (c)(4) by revising the entries for ''Lean meat or poultry or fish[6] or'', ''Alternate protein products[7] or'', and ''Cheese or'' under the ''Meat and Meat Alternates'' heading to read as follows:

§ 226.20 Requirements for meals.

* * * * *

(c) * * *

(4) * * *

Food components [1]	Age 1 and 2	Age 3 through 5	Age 6 through 12 [2]	Adult participants
* * *	*	*	*	*
Meat and Meat Alternates:				
Lean meat or poultry or fish [6] or	½ ounce	½ ounce	1 ounce	1 ounce
Alternate protein products [7] or	½ ounce	½ ounce	1 ounce	1 ounce
Cheese or	½ ounce	½ ounce	1 ounce	1 ounce
* * *	*	*	*	*

[1] For purposes of the requirements outlined in this subsection, a cup means a standard measuring cup.

[2] Children age 12 and up may be served adult size portions based on the greater food needs of older boys and girls, but shall be served not less than the minimum quantities specified in this section for children age 6 up to 12.

* * * * *

[6] Edible portions must be served.

[7] Must meet the requirements in Appendix A of this part.

* * * * *

Dated: December 7, 2001.

George A. Braley,

Acting Administrator, Food and Nutrition Service.

[FR Doc. 01–31161 Filed 12–19–01; 8:45 am]

BILLING CODE 3410–30–U

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

9 CFR Parts 71 and 85

[Docket No. 98–023–2]

RIN 0579–AB28

Interstate Movement of Swine Within a Production System

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Final rule.

SUMMARY: We are amending the regulations to establish an alternative to the current requirements for moving swine interstate. Under this alternative, persons may move swine interstate without meeting individual swine identification and certain other requirements if they move the swine within a single swine production system, and if each swine production system signs an agreement with the Animal and Plant Health Inspection Service and involved State governments to monitor the health of animals moving within the swine production system and to facilitate traceback of these animals if necessary. This action will facilitate the interstate movement of swine while continuing to provide protection against the interstate spread of swine diseases. This action will affect persons engaged in swine production who regularly move swine interstate in their business operations.

EFFECTIVE DATE: January 22, 2002.

FOR FURTHER INFORMATION CONTACT: Dr. Arnold Taft, Senior Staff Veterinarian, National Animal Health Programs, VS, APHIS, 4700 River Road Unit 43, Riverdale, MD 20737–1231; (301) 734–4916.

SUPPLEMENTARY INFORMATION:

Background

The regulations in subchapter C of chapter I, title 9, Code of Federal Regulations, govern the interstate movement of animals to prevent the dissemination of livestock and poultry diseases in the United States. Parts 71 and 85 (referred to below as the regulations) are included in subchapter C. Part 71 relates to the interstate movement of animals, poultry, and animal products, and includes animal identification requirements for swine moving interstate. Part 85 imposes requirements to control the spread of pseudorabies and includes certificate and other requirements for the interstate movement of swine.

On September 21, 2000, we published in the **Federal Register** (65 FR 57106–57113, Docket No. 98–023–1) a proposal to amend the regulations by establishing an alternative to the current requirements for moving swine interstate.

With some exceptions, parts 71 and 85 require swine moving interstate to be individually identified. As we explained in our September 2000 proposed rule, these regulations were written when swine (other than valued breeding stock) were generally moved interstate only when a change in ownership occurred, usually when they were shipped to slaughter. However, today swine move interstate while they are raised for slaughter or breeding under a swine production system, and while they remain under the control of a single owner or group of contractually related owners.

In order to better accommodate this new model of swine production, we proposed alternative requirements. As proposed, producers could move swine interstate under our alternative procedures if they meet the following requirements:

- The producers have a written swine production health plan (SPHP) signed by the producer(s), the accredited veterinarian(s) for the premises, the Animal and Plant Health Inspection Service (APHIS), and the States in which the producers in the swine production system have premises.
- One or more accredited veterinarians identified in the SPHP will regularly visit each premises in the swine production system to inspect and test swine and will continually monitor the health of the swine in the swine production system. Swine may only be moved interstate if they have been found free from signs of any communicable disease during the most recent inspection of the premises by the swine production system accredited veterinarian(s).
- The SPHP describes a records system maintained by the producers to document the health status of the swine.
- Prior to each interstate movement of swine between premises within a swine production system, an interstate swine movement report must be sent to APHIS, the accredited veterinarian for the premises, and the sending and receiving States. That report must document the number, type, and health status of the swine being moved. Each of these requirements was discussed in detail in our proposal.

We solicited comments concerning our proposal for 60 days ending November 20, 2000. We received nine comments by that date. They were from representatives of State governments, veterinarians, and pork producers and pork producer organizations. They are discussed below by topic.

Contractual Versus Ownership Relationships in Swine Production Systems

One commenter addressed proposed § 71.19(h)(1), which states that ''swine may be moved interstate only to another premises owned and operated by the same swine production system.'' This commenter stated that this language should be broad enough to allow movements where one producer does not necessarily own and operate both sites, but there is a contractual relationship between two producers, which could include a change in ownership of the animals.

We agree, and have changed the language in § 71.19(h)(1) to read ''swine may be moved interstate only to another premises identified in a valid swine production health plan for the swine production system.'' This language is also more consistent with the definition of *swine production system*, which reads ''A swine production enterprise that consists of multiple sites of production, *e.g.,* sow herds, nursery herds, and growing or finishing herds, that are connected by ownership or contractual relationships, between which swine move while remaining under the control of a single owner or a group of contractually connected owners.''

Certificates

One commenter noted that the preamble of the proposed rule referred to a ''health certificate,'' and stated that ''a more accurate term is 'certificate of veterinary inspection' because the Federal or accredited veterinarian is not certifying the health status of the animals, but instead is certifying that animals were inspected and found to comply with the statements contained in the certificate.''

We are not making any change to the regulatory text of the rule in response to this comment, although we have changed the preamble of this final rule so that it no longer refers to ''health certificates.'' We agree that the preamble of the proposed rule incorrectly referred to certificates as ''health certificates,'' a term that is not used anywhere in the regulations we are amending. Part 85 defines the term ''certificate,'' and we believe this definition is consistent with the concerns of the commenter. We are not changing the defined term from ''certificate'' to ''certificate of veterinary inspection'' because that could cause even more confusion. Statements in certificates are not limited to facts that could be disclosed directly by veterinary inspection, but also include such items as the identities of the consignor and consignee, the purpose of the movement, and the points of origin and destination.

APHIS Participation

Several commenters stated that APHIS need not sign SPHP's or be notified if an SPHP is cancelled, and should not be empowered to cancel an SPHP. We are not making any changes based on these comments.

APHIS is ultimately responsible for ensuring that swine diseases are not spread interstate. We need to ensure that individual SPHP's meet our requirements. We also need to be aware of possible and actual interstate movements. With this information, we can monitor the effectiveness of the program and be prepared to take action if it appears there is a disease risk. Requiring that we sign each SPHP and be notified if an SPHP is cancelled is minimally burdensome and effectively and unobtrusively keeps us informed.

We also believe it is necessary that we have the authority to cancel an SPHP to respond to changing circumstances. For example, as explained in our proposal, we would cancel an SPHP if participants persistently violated the terms of the agreement or our regulations.

Who Must Sign an SPHP and Be Inspected?

Some commenters stated that not all participants in a swine production system are involved in sending or receiving swine interstate, yet the proposed rule would require all participants to sign the SPHP. In addition, the proposed rule would require all participating premises and swine to be inspected by an accredited veterinarian. They suggested that only participants who are actually involved in moving swine interstate be required to sign the SPHP, and that only premises and swine that participate in interstate movement should be subject to veterinary inspection under the SPHP. We agree and have made those changes in this final rule. Specifically, the definition of *swine production health plan* in § 71.1 would now state that the SPHP must be signed by ''an official of each swine production system identified in the plan,'' and that the plan must provide for inspection of ''all premises that are part of the swine production system and that receive or send swine in interstate commerce.'' Note that while these changes narrow the coverage of the SPHP, they do not reduce our overall authority to inspect any swine moving in interstate commerce at any time, or to take enforcement action against any person who moves swine interstate in violation of our regulations, whether or not that person is a signatory to an SPHP.

Regular and Routine Shipments

Some commenters suggested that we change the proposed definition of *swine production system* to add a requirement that this term include only businesses that regularly and routinely move swine between their premises. We are not making any changes based on this comment for several reasons. First, the commenters did not indicate what they meant by ''regularly and routinely.'' Second, although we understand that producers might not want to take advantage of our proposed alternative identification system if they participate in few or infrequent interstate swine shipments, we believe that is a decision best made by producers. The number and regularity of shipments is irrelevant to the purpose of our proposed program, which is to offer producers an alternative identification system that is less burdensome.

Recordkeeping and Access to Records

Several commenters addressed our proposed recordkeeping requirements or requirements concerning access to records.

Some commenters objected to our proposed requirement in the definition of *swine production health plan* in § 71.1 that the SPHP ''describe the recordkeeping system of the swine production system.'' We are not making any changes based on this comment. We believe this is a reasonable requirement. If a description is included in the SPHP, we can tell at the time we review the SPHP whether the recordkeeping system is adequate to allow us to trace the movements of animals.

Commenters also objected to our proposed requirement in § 71.19(h)(6) that participants maintain records adequate to ''trace any animal on the premises back to its earlier premises and its herd of origin.'' We agree that such extensive records are unnecessary and are removing the phrase ''and its herd of origin'' from § 71.19(h)(6). Records that identify the earlier premises are adequate, because if we need to trace an animal farther back, we can use records maintained by previous owners.

Commenters also stated that APHIS and State representatives should have access to records only ''for cause.'' ''For cause'' implies that there has been a violation of the regulations.

However, in most cases, we need to examine records simply to ensure that the program is working properly. Under § 71.19(h)(7), participants must allow access to records ''upon request.'' In

most cases this means participants will receive advance notice. We believe this is fair to participants, while giving APHIS and State officials adequate access.

Preemption

In accordance with Executive Order 12988, we included a statement in our proposed rule giving notice that any State and local laws and regulations in conflict with the proposed provisions would be preempted if the proposal is adopted. A number of commenters stated that including such a statement in the rulemaking was harmful to State-Federal cooperative efforts. Other commenters expressed concern that the statement meant that a State could not require any conditions for movement of animals into the State over and above the Federal requirements. Two comments from States specifically questioned whether Federal preemption would preclude States from requiring that persons moving swine into their States must first obtain an ''import permit'' from the State, authorizing movement of the animals and documenting that Federal and State movement requirements are met prior to movement of the animals.

Under Executive Order 12988, a Federal agency that proposes a regulation is required, among other things, to specify in clear language the preemptive effect it believes will be given to its regulations. The presence or absence of the statement does not change the legal effect of the regulation, and, therefore, should not be harmful to State-Federal cooperation. The actual effect of the regulation on the specific questions presented would have to be determined in an appropriate legal proceeding.

In the case of State-issued ''import permits,'' commenters stated that they are needed for several reasons:

- To assign a permit number that is associated with each movement of animals and that can be tracked in State records systems;
- To document that movements comply with State as well as Federal requirements;
- To give States a means to respond quickly to new or reemerging animal health concerns by denying a permit to stop movement of problematic animals; and
- To ensure that receiving States have timely notice of animals moving into their State.

We believe that the procedures in this rule, especially use of the swine production health plan, allow States to retain all these capabilities without issuing separate permits for each movement of animals. It is already common State practice to issue long-term permits for swine movements within a State, and to allow multiple groups of animals to move at different times under the same permit. In this regard, the SPHP serves the same function for interstates movements as such a State permit.

States currently can respond to animal health concerns by denying or canceling a permit to stop intrastate movements of animals. Under this rule, States may achieve the same effect by withdrawing from a SPHP. However, animals already in transit are a special problem even under systems where States issue individual permits.

With regard to ensuring that States have timely notice of animal movements, we do not believe that the individual permit system accomplishes this any better than the interstate swine movement report employed by this rule.

Interstate Swine Movement Report (ISMR)

Commenters raised two issues concerning the proposed ISMR. One was whether the form and transmissions could be electronic; the other was whether the forms could be transmitted less frequently than proposed. In § 71.19(h)(4), our proposal stated that both we and State authorities must be notified prior to each interstate movement of swine.

We have no objections to SPHP participants using electronic forms and transmitting them electronically. In fact, we encourage this. If SPHP participants want to communicate electronically, they should provide for that in their agreement. This will ensure that all participants are prepared to send and receive ISMR's electronically. We have amended the definition of *interstate swine movement report* in § 71.1 in this final rule to clarify that electronic forms and transmission are acceptable for notification prior to each interstate movement of swine.

As noted above, our proposal stated that APHIS must receive an ISMR prior to each interstate movement of swine. Commenters are correct that this could result in many notices on a daily basis for large production systems. We agree that this many notices is unnecessary, especially as many States routinely forward this information to us. Therefore, in this final rule we have removed the requirement for an ISMR prior to each interstate movement from § 71.19(h)(4). However, it is necessary for us to be generally informed of the number and locations of animals moving interstate. We need this information so we can monitor the success of the program and compliance with our regulations. Therefore, we have added to § 71.19(h)(8) of this final rule a requirement that swine production systems send us a written, monthly summary of interstate swine movements under the SPHP.

Pseudorabies Status of Swine

Commenters suggested that it is unnecessary that each ISMR specifically include the pseudorabies status of swine moving interstate under an SPHP because pseudorabies will be eradicated from the U.S. swine population in the next few months. Commenters suggested that the ISMR instead include the health status of the swine for diseases of regulatory importance. These diseases, which would include pseudorabies until that disease is eradicated, would have to be specified in the SPHP. We agree with this suggestion and have made this change in the definition of *interstate swine movement report* in § 71.1 of this final rule.

Inspections

The definition of *swine production health plan* in § 71.1 of our proposal provided that swine premises be inspected by an accredited veterinarian at least once every 30 days. Some commenters requested that we reduce the frequency. We are not making any change based on these comments. Reducing the frequency would put accredited veterinarians in violation of our accreditation standards in 9 CFR 161.3(a). Under these standards, accredited veterinarians must complete certificates of inspection based on veterinary inspection. An accredited veterinarian may not issue any certificate or other document ''which reflects the results of any inspection, test, [etc.]'' unless he or she has personally inspected the animal not more than 10 days prior to issuing the certificate or other document. Following the initial and subsequent inspections of a herd or flock that is in a regular health maintenance program, an accredited veterinarian may issue any certificate or other document if not more than 30 days have passed since he or she personally inspected the animal.

Commingling Swine

Commenters objected to the proposed requirement in § 71.19 that ''receiving premises must not commingle swine received from different premises in a manner that prevents identification of the premises that sent the swine or groups of swine.'' The commenters interpreted this to mean that we proposed to prohibit all commingling.

This is incorrect. We are only prohibiting commingling if it is done in a way that makes it impossible for us to identify the source of individual swine. We believe the proposed regulations are clear, and we are not making any changes based on this comment.

Size of Participating Swine Production Systems

One commenter noted that while the proposal provided that swine producers of any size could use the proposed alternative procedures, the bulk of the proposal's discussion emphasized benefits for the largest producers. This commenter stated that it is important to point out that the usefulness of the proposed system for identification and movement is not related to the size of the operation, rather it is related to the producer's production scheme. We agree, and have revised the economic analysis in this proposed rule to point out that the new procedures can benefit any producer who uses a multi-State approach to swine production.

Complexity of the Proposed System

One commenter stated that the proposed system has grown too complex, and involves more persons in swine movement than is necessary.

We have made no change based on this comment. The changes are all based on the need to ensure that the system operates effectively and contains sufficient safeguards to prevent the spread of communicable diseases. We believe that the detailed requirements for agreements and recordkeeping will enhance enforcement and monitoring of the system.

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

Executive Order 12866 and Regulatory Flexibility Act

This rule has been reviewed under Executive Order 12866. The rule has been determined to be significant for the purposes of Executive Order 12866 and, therefore, has been reviewed by the Office of Management and Budget. The economic analysis prepared for this rule is set out below. It includes both a cost-benefit analysis as required by Executive Order 12866 and an analysis of the economic effects on small entities as required by the Regulatory Flexibility Act.

This rule will offer an alternative to the current requirements for moving certain swine interstate.[1] Under the rule, producers within a single production system (e.g., owners of sow farms, nurseries, and growing or finishing operations) could move swine interstate without meeting the current identification and certification requirements if an official of the swine production system signs a swine health production plan with APHIS and the sending and receiving States, and if each premises: (1) Has an accredited veterinarian visit the individual premises at least once every 30 days to assess and document the general health of the animals; (2) maintains a recordkeeping system adequate to enable APHIS or State inspectors to trace an animal back to its earlier premises; and (3) notifies the accredited veterinarian and State regulatory officials in the States of origin and destination when swine are ready to be moved interstate. The rule will not mandate a specific type of recordkeeping system; those in the production system will be free to choose their own system of records, as long as APHIS determines that the system meets the requirements of § 71.19(h)(6) and effectively documents animal health and allows for animal traceback. The formal written agreement will have to be approved and signed by the producers moving swine interstate under the system, APHIS, and the relevant States.

The primary economic benefits to producers will be that they avoid the costs of individually identifying animals and obtaining a certificate for each shipment. Recordkeeping costs under the current requirements and under this alternative should be comparable, although some different records (copies of SPHP's and ISMR's) would be maintained under this final rule.

The rule will benefit U.S. swine producers who move their animals interstate within a single production system. Currently, such systems are used by most of the largest producers, although many medium and small producers also employ multi-State production. Producers who already move their animals interstate during production will be able to realize the benefits of this rule with little or no additional cost, since many have most of the major elements of the new recordkeeping system (i.e., records indicating the source and disposition of swine and identifying which swine are grouped together) already in place.

As an example of the potential cost savings for producers from not having to individually identify animals, we estimate that the material cost for each identification eartag is about 5 cents and that it takes 1 person 1 hour to attach about 250 eartags. For a large producer who moves 1 million swine interstate each year with an eartag, the annual savings if the producer no longer uses eartags would be about $50,000 in materials and about $40,000 in labor (assuming a labor rate of $10/hr.). Certificates are typically issued on a per-shipment basis, with one certificate issued for all swine in a truckload. For a producer who moves 1 million swine interstate each year, the annual cost of obtaining certificates is about $140,000 (assuming 250 swine per shipment and a veterinarian fee of $35 per shipment).[2] Under the rule, individual identification and certificates will be replaced by the records kept in accordance with the regulations and the ISMR's issued for interstate movements attesting that the swine were found healthy by an accredited veterinarian within the 30 days preceding the interstate movement.

The requirement in the regulations that an accredited veterinarian must visit the premises at least once every 30 days to assess the general health of the animals should not constitute an additional burden for producers, since most are already visited by a veterinarian on that basis as part of a regular health maintenance program.

As indicated above, this rule will eliminate the need for producers to obtain certificates from accredited veterinarians on an individual shipment basis. This is not expected to have a negative impact on the accredited veterinarian's income because most accredited veterinarians generate little or no income from issuing certificates, charging either a nominal fee or no fee at all, especially when they are dealing with producers for whom they provide services on a regular, routine basis. This change should allow them to make more productive use of their time by allowing them to schedule regular health maintenance visits to a facility, rather than visiting when called, possibly at inconvenient times, to issue certificates just prior to movement. This change should also give producers more

[1] The rule will not apply to swine moving in slaughter channels; those animals will have to continue to meet the current requirements for individual identification and certification, as applicable.

[2] Producers, especially the larger ones, typically obtain certificates from accredited veterinarians who are unaffiliated with APHIS or the State agricultural agencies. The veterinarian fee of $35 is an estimate based on telephone consultation with several accredited veterinarians; such fees can vary depending on individual circumstances. In some cases, veterinarians charge no fee for issuing a certificate, especially when they are dealing with producers for whom they provide services on a regular, routine basis.

flexibility in scheduling movements of swine.

Effects on Small Entities

The rule will primarily benefit U.S. swine producers who move their animals interstate within a single production system. Currently, such systems are used primarily by the producers who do not appear to be small in size by U.S. Small Business Administration (SBA) criteria. The SBA considers a hog farm or feedlot small if its annual receipts are $0.5 million or less. We estimate that, of the 114,380 hog and pig operations in the United States, no more than about 4 percent (or 4,575) currently participate in multi-State production systems and, of those that do participate, most rank among the industry's largest producers.[3] Census data from the National Agricultural Statistics Service (NASS) indicate that, in 1997, the per-farm average value of pigs and hogs sold for the top 4 percent of U.S. farms was in excess of $0.5 million.[4] NASS' data suggest, therefore, that many of the producers that currently participate in interstate production systems are not small by SBA standards.

The rule may encourage more small producer participation in the future, since it will provide them with an economic incentive to network together into one production system. For some small producers, especially those operating on thin profit margins, this opportunity to reduce costs via production networks could make the difference between economic viability and insolvency. At this time, however, there is no basis to conclude that the number of small producers who might form networks in the future will be substantial.

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

Executive Order 12372

This program/activity is listed in the Catalog of Federal Domestic Assistance under No. 10.025 and is subject to Executive Order 12372, which requires intergovernmental consultation with State and local officials. (See 7 CFR part 3015, subpart V.)

[3] Source: *Agricultural Statistics*, 1999. The hog and pig operation count is as of December 1, 1998.

[4] See *1997 Census of Agriculture*, vol. 1, Part 51, United States. As used here, the word ''top'' refers to those farms with the highest number of animals sold.

Executive Order 12988

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

Executive Order 13132

Executive Order 13132, ''Federalism,'' requires that Agencies assess the federalism implications of their policies that have federalism implications, i.e., agency statements and actions 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 substantial direct effects in these areas, and therefore does not require assessment of federalism implications under Executive Order 13132.

Paperwork Reduction Act

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the information collection or recordkeeping requirements included in this rule have been approved by the Office of Management and Budget (OMB) under OMB control number 0579–0161.

In this final rule we have reduced the information collection and recordkeeping requirements contained in the proposed rule. We have added provisions to allow participants to maintain and submit Interstate Swine Movement Reports electronically, rather than by paper copy. We have also removed the requirement that producers submit an ISMR prior to each interstate movement, and have substituted a less burdensome requirement that swine production systems send us a written, monthly summary of interstate swine movements under the SPHP.

List of Subjects

9 CFR Part 71

Animal diseases, Livestock, Poultry and poultry products, Quarantine, Reporting and recordkeeping requirements, Transportation.

9 CFR Part 85

Animal diseases, Livestock, Quarantine, Reporting and recordkeeping requirements, Transportation.

Accordingly, we are amending 9 CFR parts 71 and 85 as follows:

PART 71—GENERAL PROVISIONS

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

Authority: 21 U.S.C. 111–113, 114a, 114a–1, 115–117, 120–126, 134b, and 134f; 7 CFR 2.22, 2.80, and 371.4.

2. In § 71.1, definitions of *interstate swine movement report, swine production health plan, swine production system, swine production system accredited veterinarian* are added in alphabetical order to read as follows:

§ 71.1 Definitions.

* * * * *

Interstate swine movement report. A paper or electronic document signed by a producer moving swine giving notice that a group of animals is being moved across State lines in a swine production system. This document must contain the name of the swine production system; the name, location, and premises identification number of the premises from which the swine are to be moved; the name, location, and premises identification number of the premises to which the swine are to be moved; the date of movement; and the number, age, and type of swine to be moved. This document must also contain a description of any individual or group identification associated with the swine, the name of the swine production system accredited veterinarian(s), the health status of the herd from which the swine are to be moved, including any disease of regulatory concern to APHIS or to the States involved, and an accurate statement that swine on the premises from which the swine are to be moved have been inspected by the swine production system accredited veterinarian(s) within 30 days prior to the interstate movement and consistent with the dates specified by the premises' swine production health plan and found free from signs of communicable disease.

* * * * *

Swine production health plan. A written agreement developed for a swine production system designed to maintain the health of the swine and detect signs of communicable disease.

The plan must identify all premises that are part of the swine production system and that receive or send swine in interstate commerce and must provide for regular inspections of all identified premises and swine on the premises, at intervals no greater than 30 days, by the swine production system accredited veterinarian(s). The plan must also describe the recordkeeping system of the swine production system.

The plan will not be valid unless it is signed by an official of each swine production system identified in the plan, the swine production system accredited veterinarian(s), an APHIS representative, and the State animal health official from each State in which the swine production system has premises. In the plan, the swine production system must acknowledge that it has been informed of and has notified the managers of all its premises listed in the plan that any failure of the participants in the swine production system to abide by the provisions of the plan and the applicable provisions of this part and part 85 of this chapter constitutes a basis for the cancellation of the swine production health plan, as well as other administrative or criminal sanctions, as appropriate.

Swine production system. A swine production enterprise that consists of multiple sites of production; i.e., sow herds, nursery herds, and growing or finishing herds, but not including slaughter plants or livestock markets, that are connected by ownership or contractual relationships, between which swine move while remaining under the control of a single owner or a group of contractually connected owners.

Swine production system accredited veterinarian. An accredited veterinarian who is named in a swine production health plan for a premises within a swine production system and who performs inspection of such premises and animals and other duties related to the movement of swine in a swine production system.

* * * * *

3. Section 71.19 is amended as follows:

a. In paragraph (a)(1), introductory text, by removing the words ''paragraph (c)'' and adding in their place the words ''paragraphs (c) and (h)''.

b. By adding new paragraphs (h) and (i).

§ 71.19 Identification of swine in interstate commerce.

* * * * *

(h) *Swine moving interstate within a swine production system.* Swine moving within a swine production system to other than slaughter or a livestock market are not required to be individually identified when moved in interstate commerce under the following conditions:

(1) The swine may be moved interstate only to another premises identified in a valid swine production health plan for that swine production system.

(2) The swine production system must operate under a valid swine production health plan, in which both the sending and receiving States have agreed to allow the movement.

(3) The swine must have been found free from signs of any communicable disease during the most recent inspection of the premises by the swine production system accredited veterinarian(s) within 30 days prior to movement.

(4) Prior to the movement of any swine, the producer(s) moving swine must deliver the required interstate swine movement report to the following individuals identified in the swine production health plan:

(i) The swine production system accredited veterinarian for the premises from which the swine are to be moved, and

(ii) The State animal health officials for the sending and receiving States, and any other State employees designated by the State animal health officials.

(5) The receiving premises must not commingle swine received from different premises in a manner that prevents identification of the premises that sent the swine or groups of swine. This may be achieved by use of permanent premises or individual identification marks on animals, by keeping groups of animals received from one premises physically separate from animals received from other premises, or by any other effective means.

(6) Each premises must maintain, for 3 years after their date of creation, records that will allow an APHIS representative or State animal health official to trace any animal on the premises back to its previous premises, and must maintain copies of each swine production health plan signed by the producer, all interstate swine movement reports issued by the producer, and all reports the swine production system accredited veterinarian(s) issue documenting the health status of the swine on the premises.

(7) Each premises must allow APHIS representatives and State animal health officials access to the premises upon request to inspect animals and review records.

(8) Once a month, each swine production system must send APHIS a written summary based on the interstate swine movement report data that shows how many animals were moved in the past month, the premises from which they were moved, and the premises to which they were moved.

(i) *Cancellation of and withdrawal from a swine production health plan.* The following procedures apply to cancellation of, or withdrawal from, a swine production health plan:

(1) A State animal health official may cancel his or her State's participation in a swine production health plan by giving written notice to all swine producers, APHIS representatives, accredited veterinarians, and other State animal health officials listed in the plan. Withdrawal shall be effective upon the date specified by the State animal health official in the notice, but for shipments in transit, withdrawal shall become effective 7 days after the date of such notice. Upon withdrawal of a State, the swine production health plan may continue to operate among the other States and parties signatory to the plan.

(2) A swine production system may withdraw one or more of its premises from participation in the plan upon giving written notice to the Administrator, the accredited veterinarian(s), all swine producers listed in the plan, and State animal health officials listed in the plan. Withdrawal shall be effective upon the date specified by the swine production system in the written notice, but for shipments in transit, withdrawal shall become effective 7 days after the date of such notice.

(3) The Administrator may cancel a swine production health plan by giving written notice to all swine producers, accredited veterinarians, and State animal health officials listed in the plan. The Administrator shall cancel a swine production health plan after determining that swine movements within the swine production system have occurred that were not in compliance with the swine production health plan or with other requirements of this chapter. Before a swine health production plan is canceled, an APHIS representative will inform a representative of the swine production system of the reasons for the proposed cancellation. The swine production system may appeal the proposed cancellation in writing to the Administrator within 10 days after being informed of the reasons for the proposed cancellation. The appeal must include all of the facts and reasons upon which the swine production system relies to show that the reasons for the proposed cancellation are incorrect or do not support the cancellation. The Administrator will grant or deny the appeal in writing as promptly as circumstances permit, stating the reason for his or her decision. If there is a conflict as to any material fact, a hearing will be held to resolve the conflict. Rules of practice concerning the hearing will be adopted by the Administrator. However, cancellation of the disputed

swine production health plan shall become effective pending final determination in the proceeding if the Administrator determines that such action is necessary to protect the public's health, interest, or safety. Such cancellation shall become effective upon oral or written notification, whichever is earlier, to the swine production system representative. In the event of oral notification, written confirmation shall be given as promptly as circumstances allow. This cancellation shall continue in effect pending the completion of the proceeding, and any judicial review thereof, unless otherwise ordered by the Administrator.

PART 85—PSEUDORABIES

4. The authority citation for part 85 continues to read as follows:

Authority: 21 U.S.C. 111–113, 115, 117, 120, 121, 123–126, 134b, and 134f; 7 CFR 2.22, 2.80, and 371.4.

§ 85.7 [Amended]

5. Section 85.7 is amended as follows:

a. In paragraph (b)(3)(i), by removing the phrase ''The swine'' and adding in its place the phrase ''Unless the swine are moving interstate in a swine production system in compliance with § 71.19(h) of this chapter, the swine''.

b. In paragraph (b)(3)(ii), by removing the phrase ''The swine are accompanied by a certificate'' and adding in its place the phrase ''Unless the swine are moving interstate in a swine production system in compliance with § 71.19(h) of this chapter, the swine are accompanied by a certificate''.

c. In paragraph (c)(1), by removing the phrase ''The swine are accompanied by a certificate'' and adding in its place the phrase ''Unless the swine are moving interstate in a swine production system in compliance with § 71.19(h) of this chapter, the swine are accompanied by a certificate''.

6. Section 85.8 is amended by removing the period at the end of paragraph (a)(3) and adding in its place ''; or''; and by adding a new paragraph (a)(4) to read as follows:

§ 85.8 Interstate movement of swine from a qualified negative gene-altered vaccinated herd.

(a) * * *

(4) The swine are moved interstate in a swine production system in compliance with § 71.19(h) of this chapter.

* * * * *

Done in Washington, DC, this 14th day of December 2001.

Bill Hawks,

Under Secretary for Marketing and Regulatory Programs.

[FR Doc. 01–31355 Filed 12–19–01; 8:45 am]

BILLING CODE 3410–34–U

FEDERAL RESERVE SYSTEM

12 CFR Part 226

[Regulation Z; Docket No. R–1090]

Truth in Lending

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Final rule.

SUMMARY: The Board is adopting amendments to the provisions of Regulation Z (Truth in Lending) that implement the Home Ownership and Equity Protection Act (HOEPA). HOEPA was enacted in 1994, in response to evidence of abusive lending practices in the home-equity lending market. HOEPA imposes additional disclosure requirements and substantive limitations (for example, restricting short-term balloon notes) on home-equity loans bearing rates or fees above a certain percentage or amount. The Board's amendments to Regulation Z broaden the scope of mortgage loans subject to HOEPA by adjusting the price triggers used to determine coverage under the act. The rate-based trigger is lowered by two percentage points for first-lien mortgage loans, with no change for subordinate-lien loans. The fee-based trigger is revised to include the cost of optional credit insurance and similar debt protection products paid at closing. The amendments restrict certain acts and practices in connection with home-secured loans. For example, creditors may not engage in repeated refinancings of their HOEPA loans over a short time period when the transactions are not in the borrower's interest. The amendments also strengthen HOEPA's prohibition against extending credit without regard to consumers' repayment ability, and enhance disclosures received by consumers before closing for HOEPA-covered loans.

DATES: The rule is effective December 20, 2001; compliance is mandatory as of October 1, 2002.

FOR FURTHER INFORMATION CONTACT: Minh-Duc T. Le, Attorney, Daniel G. Lonergan, Counsel, or Jane E. Ahrens, Senior Counsel, Division of Consumer and Community Affairs, at (202) 452–3667 or 452–2412; for users of Telecommunications Device for the Deaf (''TDD'') only, contact (202) 263–4869.

SUPPLEMENTARY INFORMATION:

I. Background

Since the mid-1990s, the subprime mortgage market has grown substantially, providing access to credit to borrowers with less-than-perfect credit histories and to other borrowers who are not served by prime lenders. With this increase in subprime lending there has also been an increase in reports of ''predatory lending.'' The term ''predatory lending'' encompasses a variety of practices. In general, the term is used to refer to abusive lending practices involving fraud, deception, or unfairness. Some abusive practices are clearly unlawful, but others involve loan terms that are legitimate in many instances and abusive in others, and thus are difficult to regulate. Loan terms that may benefit some borrowers, such as balloon payments, may harm other borrowers, particularly if they are not fully aware of the consequences. The reports of predatory lending have generally included one or more of the following: (1) Making unaffordable loans based on the borrower's home equity without regard to the borrower's ability to repay the obligation; (2) inducing a borrower to refinance a loan repeatedly, even though the refinancing may not be in the borrower's interest, and charging high points and fees each time the loan is refinanced, which decreases the consumer's equity in the home; and (3) engaging in fraud or deception to conceal the true nature of the loan obligation from an unsuspecting or unsophisticated borrower—for example, ''packing'' loans with credit insurance without a consumer's consent.

A. The Home Ownership and Equity Protection Act

In response to anecdotal evidence about abusive practices involving home-secured loans with high rates or high fees, in 1994 the Congress enacted the Home Ownership and Equity Protection Act (HOEPA), Pub. L. 103–325, 108 Stat. 2160, as an amendment to the Truth in Lending Act (TILA), 15 U.S.C. 1601 *et seq.* TILA is intended to promote the informed use of consumer credit by requiring disclosures about its terms and cost. TILA requires creditors to disclose the cost of credit as a dollar amount (the ''finance charge'') and as an annual percentage rate (the ''APR''). Uniformity in creditors' disclosures is intended to assist consumers in comparison shopping. TILA requires additional disclosures for loans secured by a consumer's home and permits

consumers to rescind certain transactions that involve their principal dwelling. TILA is implemented by the Board's Regulation Z, 12 CFR part 226.

HOEPA identifies a class of high-cost mortgage loans through rate and fee triggers, and it provides consumers entering into these transactions with special protections. HOEPA applies to closed-end home-equity loans (excluding home-purchase loans) bearing rates or fees above a specified percentage or amount. A loan is covered by HOEPA if (1) the APR exceeds the rate for Treasury securities with a comparable maturity by more than 10 percentage points, or (2) the points and fees paid by the consumer exceed the greater of 8 percent of the loan amount or $400. The $400 figure set in 1994 is adjusted annually based on the Consumer Price Index. The dollar figure for 2001 is $465 and for 2002 is $480. 66 FR 57849, November 19, 2001.

HOEPA is implemented in § 226.32 of the Board's Regulation Z. HOEPA also amended TILA to require additional disclosures for reverse mortgages that are contained in § 226.33 of Regulation Z. For purposes of this notice of rulemaking, however, the term ''HOEPA-covered loan'' or ''HOEPA loan'' refers only to mortgages covered by § 226.32 that meet HOEPA's rate or fee-based triggers.

Creditors offering HOEPA-covered loans must give consumers an abbreviated disclosure statement at least three business days before the loan is closed, in addition to the disclosures generally required by TILA before or at closing. The HOEPA disclosure informs consumers that they are not obligated to complete the transaction and could lose their home if they take the loan and fail to make payments. It includes a few key items of cost information, including the APR. In loans where consumers have three business days after closing to rescind the loan, the HOEPA disclosure thus affords consumers a minimum of six business days to consider accepting key loan terms before receiving the loan proceeds.

HOEPA restricts certain loan terms for high-cost loans because they are associated with abusive lending practices. These terms include short-term balloon notes, prepayment penalties, non-amortizing payment schedules, and higher interest rates upon default. Creditors are prohibited from engaging in a pattern or practice of making HOEPA loans based on the homeowner's equity without regard to the borrower's ability to repay the loan. Under HOEPA, assignees are generally subject to all claims and defenses with respect to a HOEPA loan that a consumer could assert against the creditor. HOEPA also authorizes the Board to prohibit acts or practices in connection with mortgage lending under defined criteria.

B. Continued Concerns About Predatory Lending Practices

Since the enactment of HOEPA in 1994, the volume of home-equity lending has increased significantly in the subprime mortgage market. Based on data reported under the Home Mortgage Disclosure Act (HMDA), 12 U.S.C. 2801 *et seq.*, the number of nonpurchase-money loans made by lenders that are identified as engaging in subprime lending increased about five-fold—from 138,000 in 1994 to roughly 658,000 in 2000. While such lending benefits consumers by making credit available, it also raises concerns that the increase in the number of subprime loans brings a corresponding increase in the number of predatory loans.

In the past two years, various initiatives to address predatory lending have been undertaken. The Senate Banking Committee held hearings in July 2001 at which consumers and representatives of industry and consumer groups testified; the House Banking Committee held hearings in May 2000 at which the banking regulators and others testified; and bills have been introduced to address predatory lending. Several states and municipalities have enacted or are considering legislation or regulations. The Department of Housing and Urban Development and the Department of Treasury held a number of public forums on predatory lending and issued a report in June 2000. The report makes recommendations to the Congress regarding legislative action and to the Board urging the use of its regulatory authority to address predatory lending practices. Fannie Mae and Freddie Mac published guidelines last year to avoid purchasing loans that are potentially predatory; they are also making efforts to develop consumers' awareness of their credit options.

The Board has conferred with its Consumer Advisory Council and Board staff have met with other industry representatives and consumer advocates on the issue of predatory lending. In 2000, the Board held hearings in Charlotte, Boston, Chicago, and San Francisco, to consider approaches the Board might take in exercising its regulatory authority under HOEPA. The Board's hearings focused on expanding the scope of mortgage loans covered by HOEPA, prohibiting specific acts or practices, improving consumer disclosures, and educating consumers. Transcripts of the hearings can be accessed on the Board's Internet web site at *http://www.federalreserve.gov/community.htm*. In the notices announcing the hearings, the Board also solicited written comment on possible revisions to Regulation Z's HOEPA rules. 65 FR 45547, July 24, 2000. The Board received approximately 450 comment letters in response to the notices, two-thirds of which were from consumers generally encouraging Board action to curb predatory lending.

C. The Board's Proposed Rule to Amend Regulation Z

The Board published a proposed rule to amend Regulation Z in December 2000. 65 FR 81438, December 26, 2000. The Board proposed to broaden the scope of mortgage loans subject to HOEPA by adjusting the price triggers used to determine coverage under the act; to prohibit certain acts and practices in connection with home-secured loans covered by HOEPA; to require increased scrutiny on creditors' practices to document and verify income; and to enhance disclosures received by consumers before closing for HOEPA-covered loans.

The Board received approximately 200 letters that specifically addressed the proposed revisions and represented the views of the mortgage lending industry, credit insurance industry, consumer and community development groups, and government agencies. In addition, the Board received approximately 1,100 identical e-mail comment letters from consumers generally encouraging the Board to curb predatory lending.

Most of the creditors and other commenters involved in mortgage lending opposed making more loans subject to HOEPA. They believe that the coverage of more loans would reduce competition and the availability of credit in the range of rates affected because some lenders, as a matter of policy, will not make HOEPA loans. With regard to the new rules that would apply to HOEPA loans, creditors wanted more flexibility and compliance guidance. Consumer representatives and community development organizations generally supported the proposal as a step forward in addressing the problem of predatory lending but believed additional steps are needed to ensure consumers are protected.

II. Summary of Final Rule

With some exceptions, the Board is adopting the revisions substantially as proposed to address predatory lending and unfair practices in the home-equity market. The revisions are adopted

pursuant to the Board's authority to adjust the APR trigger and add additional charges to the points and fees trigger. *See* 15 U.S.C. 1602(aa). Revisions are also issued pursuant to the Board's authority under HOEPA to prohibit certain acts or practices (1) affecting mortgage loans if the Board finds the act or practice to be unfair, deceptive, or designed to evade HOEPA, or (2) affecting refinancings if the Board finds the act or practice to be associated with abusive lending or otherwise not in the interest of the borrower. 15 U.S.C. 1639(l)(2). Revisions are also adopted pursuant to section 105(a) of TILA to effectuate the purposes of TILA, to prevent circumvention or evasion, or to facilitate compliance. 15 U.S.C. 1604(a).

The amendments (1) extend the scope of mortgage loans subject to HOEPA's protections, (2) restrict certain acts or practices, (3) strengthen HOEPA's prohibition on loans based on homeowners' equity without regard to repayment ability, and (4) enhance HOEPA disclosures received by consumers before closing, as follows.

The final rule adjusts the APR trigger for first-lien mortgage loans, from 10 percentage points to 8 percentage points above the rate for Treasury securities having a comparable maturity, the maximum amount that the Board may lower the trigger. The APR trigger for subordinate-lien loans remains at 10 percentage points. The fee-based trigger is adjusted to include amounts paid at closing for optional credit life, accident, health, or loss-of-income insurance, and other debt-protection products written in connection with the credit transaction.

The final rule also addresses some ''loan flipping'' within the first year of a HOEPA loan. Except in limited circumstances, a creditor that has made a HOEPA loan to a borrower is generally prohibited for twelve months from refinancing any HOEPA loan made to that borrower into another HOEPA loan. Assignees holding or servicing a HOEPA loan are subject to similar restrictions.

To prevent the evasion of HOEPA, which only covers closed-end loans, the final rule prohibits a creditor from wrongfully documenting such loans as open-end credit. For example, a high-cost mortgage may not be structured as a home-secured line of credit if there is no reasonable expectation that repeat transactions will occur under a reusable line of credit. To ensure that lenders do not accelerate the payment of HOEPA loans without cause, the final rule prohibits a creditor from exercising ''due-on-demand'' or call provisions in a HOEPA loan, unless the clause is exercised in connection with a consumer's default. A similar rule applies to home-secured lines of credit under Regulation Z.

The final rule seeks to strengthen HOEPA's prohibition on making loans based on homeowners' equity without regard to repayment ability. It creates a presumption that a creditor has violated the statutory prohibition on engaging in a pattern or practice of making HOEPA loans without regard to repayment ability if the creditor generally does not verify and document consumers' repayment ability.

The final rule revises the HOEPA disclosures (given three days before loan closing) for refinancings, to alert consumers to the total amount borrowed, which may be substantially higher than the loan amount requested due to the financing of credit insurance, points, and fees. To enhance consumer awareness, and deter insurance packing, the HOEPA disclosure must specify whether the total amount borrowed includes the cost of optional insurance.

The staff commentary to Regulation Z has also been revised to provide guidance on the new rules and to clarify existing requirements. Revisions to the regulation and the staff commentary are discussed in detail below in the section-by-section analysis.

III. Section-by-Section Analysis of Final Rule

Subpart A—General

Section 226.1—Authority, Purpose, Coverage, Organization, Enforcement and Liability

Section 226.1(b) on the purpose of the regulation is revised as proposed to reflect the addition of prohibited acts and practices in connection with credit secured by a consumer's dwelling. Section 226.1(d) on the organization of the regulation is revised to reflect the restructuring of Subpart E (rules for certain home mortgage transactions).

Subpart C—Closed-end Credit

Section 226.23—Right of Rescission

23(a) Consumer's Right to Rescind

The proposed amendment to footnote 48 to § 226.23(a)(3) is unnecessary given the organization of the final rule, and thus has not been adopted.

Subpart E—Special Rules for Certain Home Mortgage Transactions

Section 226.31—General Rules

31(c) Timing of Disclosure

31(c)(1)(i) Change in Terms

Section 226.31(c)(1) requires a three-day waiting period between the time the consumer is furnished with disclosures required under § 226.32 and the time the consumer becomes obligated under the loan. If the creditor changes any terms that make the disclosures inaccurate, new disclosures must be given and another three-day waiting period is triggered.

Comment § 226.31(c)(1)(i)–2 is added, as proposed, to clarify redisclosure requirements when, after a consumer receives a HOEPA disclosure and before consummation, loan terms change that make the disclosure inaccurate. The Board's 2000 hearings revealed that some creditors offer credit insurance and other optional products at loan closing. If the consumer finances the purchase of such products and as a result the monthly payment differs from what was previously disclosed under § 226.32, the terms of the extension of credit have changed; redisclosure is required and a new three-day waiting period applies. *See* discussion below concerning § 226.32(c)(3) on when optional items may be included in the regular payment disclosure.

Section 226.32—Requirements for Certain Closed-end Home Mortgages

32(a) Coverage

HOEPA disclosures and restrictions cover home-equity loans that meet one of the act s two high-cost triggers a rate trigger and a points and fees trigger. Under the final rule, both triggers are revised to cover more loans.

APR trigger—Currently, a loan is covered by HOEPA if the APR exceeds by more than 10 percentage points the rate for Treasury securities with a comparable maturity. Section 103(aa) of TILA authorizes the Board to adjust the APR trigger by 2 percentage points from the current standard of 10 percentage points upon a determination that the increase or decrease is consistent with the consumer protections against abusive lending contained in HOEPA and is warranted by the need for credit.

The Board had proposed to reduce the rate trigger from 10 to 8 percentage points above the rate for Treasury securities with a comparable term for all loans, the maximum adjustment that the Board can make. With this change, based on recent rates for Treasury securities, home-equity loans with a term of 10 years would be subject to HOEPA if they have an APR of approximately 13 percent or higher.

The Board solicited comment on an alternative approach that would differentiate between first- and subordinate-lien loans in the application of the APR trigger. Under the two-tiered alternative, the APR trigger for first-lien mortgages would be

reduced to 8 percentage points; the APR trigger for subordinate-lien loans would remain at 10 percentage points. The final rule adopts the two-tiered alternative approach.

HOEPA provides that the Board may adjust the APR trigger after consulting with representatives of consumers and lenders and determining that the increase or decrease is consistent with the purpose of consumer protection in HOEPA and is warranted by the need for credit. (The Board may not adjust the trigger more frequently than once every two years.) Consistent with this mandate, the Board has held public hearings, considered the testimony at other hearings held by government agencies and the Congress, analyzed comment letters, held discussions with community groups and lenders, consulted its Consumer Advisory Council, and reviewed data from various studies and reports on the home-equity lending market.

Most of the information the Board received about predatory lending is anecdotal, as it was when Congress passed HOEPA in 1994. The reports of actual cases (including additional Congressional testimony by consumers) are, however, widespread enough to indicate that the problem warrants addressing. Homeowners in certain communities—frequently the elderly, minorities, and women—continue to be targeted with offers of high-cost, home-secured credit with onerous loan terms. The loans, which are typically offered by nondepository institutions, carry high up-front fees and may be based solely on the equity in the consumers' homes without regard to their ability to make the scheduled payments. When homeowners have trouble repaying the debt, they are often pressured into refinancing their loans into new unaffordable, high-fee loans that rarely provide economic benefit to the consumers. These refinancings may occur frequently. The loan balances increase primarily due to fees that are financed resulting in reductions in the consumers' equity in their homes and, in some cases, foreclosure may occur. The loan transactions also may involve fraud and other deceptive practices.

Creditors have expressed concern that lowering the HOEPA rate trigger would adversely affect credit availability for loans in the range of rates that would be covered by the lowered trigger. Many creditors, ranging from community banks to national lenders, have stated that they do not offer HOEPA loans due to their concerns about compliance burdens, potential liability, reputational risk, and difficulty in selling these loans to the secondary market. Some creditors believe there are insufficient data about the incidence of predatory lending occurring in loans immediately below the existing HOEPA triggers to support lowering the trigger.

Anecdotal evidence suggests that subprime borrowers with rates below the current HOEPA triggers also have been subject to abusive lending practices. There are no precise data, however, on the number of subprime loans in the market as a whole that would be affected by lowering the HOEPA rate trigger. The precise effect that lowering the APR trigger will have on creditors' business strategies is difficult to predict. It seems likely that lenders that already make HOEPA loans and have compliance systems in place would continue making them under a revised APR trigger. Some creditors that choose not to make HOEPA loans may refrain from making loans in the range of rates that would be covered by the lowered threshold. But other creditors may fill any void left by creditors that do not make HOEPA loans, either because they already make HOEPA loans or because they are willing to do so in the future. And others may have the flexibility to avoid HOEPA's coverage by lowering rates or fees for some loans at the margins, consistent with the risk involved. Data submitted by a trade association representing nondepository institution lenders suggest that there is an active market for HOEPA loans under the current APR trigger. There is no evidence that the impact on credit availability will be significant if the trigger is lowered. Accordingly, the Board believes that lowering the APR trigger to expand HOEPA's protections to more loans is consistent with consumers' need for credit, and therefore, warranted.

Moreover, lowering the rate trigger seeks to ensure that the need for credit by subprime borrowers will be fulfilled more often by loans that are subject to HOEPA's protections. Borrowers who have less-than-perfect credit histories and those who might not be served by prime lenders have benefited from the substantial growth in the subprime market. But a borrower does not benefit from expanded access to credit if the credit is offered on unfair terms, the repayment costs are unaffordable, or the loan involves predatory practices. Because consumers who obtain subprime mortgage loans have, or perceive they have, fewer options than other borrowers, they may be more vulnerable to unscrupulous lenders or brokers.

The Board has also determined that lowering the rate trigger is consistent with the consumer protections against abusive lending provided by HOEPA. The Act's purpose is to protect the most vulnerable consumers, based on the cost of the loans, from abusive lending practices. As noted above, anecdotal evidence suggests that subprime borrowers with loans priced below HOEPA's current APR trigger have been subject to predatory practices, such as unaffordable lending, loan flipping and insurance packing. These are the very types of abuses that HOEPA was intended to prevent. With a lowered trigger, more consumers with high-cost loans will receive cost disclosures three days before closing (instead of at closing) and will be protected by HOEPA's prohibitions against onerous loan terms, such as non-amortizing payment schedules, balloon payments on short-term loans, or interest rates that increase upon default. A wider range of high-cost loans will also be subject to HOEPA's rule against unaffordable lending, and to HOEPA's restrictions on prepayment penalties. The rules being adopted by the Board to address loan flipping will also apply to more loans. Lastly, more high-cost loans will be subject to the HOEPA rule that holds loan purchasers and other assignees liable for any violation of law by the original creditor with respect to the mortgage.

Two-tiered approach—Of the 200 commenters on the proposal, about 40 discussed the two-tiered trigger approach and were about evenly divided. Creditors and some consumer groups favored the two-tiered trigger approach. Those opposed included community groups, some creditors, and others that generally believe that there should be no distinction drawn between first-lien and subordinate-lien loans. Community groups believe that the maximum number of subprime mortgage loans should be subject to HOEPA's protections. Many suggested that the two-tiered approach could be helpful if both triggers were substantially lower than what the Board is authorized to adopt. Some creditors that opposed the tiered-approach believe that the Board should not issue a rule that might encourage the making of loans that would place creditors in a subordinate lien position. One institution noted that a subordinate-lien loan may not be more favorable to a consumer if it results in a combined monthly payment on the first and second mortgages that is higher than the monthly payment on a consolidated first-lien mortgage loan. Some commenters believe that borrowers with subordinate-lien loans face similar risks of abusive practices as with first-lien

loans. A few stated that the tiered approach would add unnecessary complexity to both compliance and enforcement efforts.

Data are not available on the number of home-equity loans currently subject to HOEPA, or the number of loans that would be covered if the APR trigger were lowered. At the time of the proposal, data from the Mortgage Information Corporation (MIC) compiled by the Office of Thrift Supervision suggested that lowering the APR trigger by 2 percentage points could expand HOEPA's coverage from approximately 1 percent to 5 percent of subprime mortgage loans. Further analysis of additional MIC data suggests that these percentages of coverage may be typical of longer-term, first-lien mortgages, and that the coverage percentages are higher for shorter-term and subordinate-lien loans.

In response to the Board's request in the proposal, a few commenters provided data on the number of loans they offered in recent years that would have been affected by a rate trigger of 8 percentage points above a comparable Treasury security. The most extensive data were submitted by a trade association representing nondepository institution lenders. The association collected data from the subprime lending divisions of nine member institutions. The number of loans surveyed is about 36 percent of the number of loans of subprime lenders recorded under HMDA during the survey period (mid-year 1995 through mid-year 2000). The dollar volume for the loans surveyed is about 20 percent of the dollar volume of loans reported by subprime lenders under HMDA. Overall, the trade association data show that for these loans, HOEPA's existing APR trigger would have covered about 9 percent of the first-lien loans, and that lowering the APR trigger by 2 percentage points would have resulted in coverage of nearly 26 percent of the first-lien loans surveyed. For subordinate-lien loans, about 47 percent of the surveyed loans would have been covered by HOEPA's APR trigger, and the data suggest that lowering the APR trigger by 2 percentage points would have resulted in coverage of about 75 percent of the subordinate-lien loans.

Most of the evidence of predatory lending brought to the Board's attention to date has involved abuses in connection with first-lien mortgage loans. When a consumer seeks a loan to consolidate debts or finance home repairs, some creditors require consumers to borrow additional funds to pay off the existing first mortgage as a condition of providing the loan, even though the existing first mortgage may have been at a lower rate. This ensures that the creditor will be the senior lien-holder, but it also results in an increase, perhaps significant, in the points and fees paid for the new loan (since the latter are calculated on a much larger loan amount).

The Board's final rule lowers the APR trigger for first lien-mortgages only. Subordinate-lien loans are already covered more frequently by HOEPA because the rates on these loans are higher than first-lien loans. The data suggests that coverage under the current triggers could be significant for subordinate-lien loans. Moreover, the evidence of abusive practices has pertained primarily to first lien mortgages. Based on these factors, the Board is adjusting the APR trigger only for first-lien loans, but retains the ability to lower the trigger for subordinate-lien loans at a future date.

32(b) Definition

Points and fees trigger—Currently, home-equity loans are subject to HOEPA if the points and fees payable by the consumer at or before loan closing exceed the greater of 8 percent of the total loan amount or $465. (The dollar trigger is $480 for 2002; 66 FR 57849, November 19, 2001.) ''Points and fees'' include all finance charges except for interest. The trigger also includes some fees that are not finance charges, such as closing costs paid to the lender or an affiliated third party. HOEPA authorizes the Board to add ''such other charges'' to the points and fees trigger as the Board deems appropriate.

The comment letters and testimony at the hearings raised a number of concerns about single-premium credit insurance, such as excessive costs, high-pressure sales tactics, consumers' confusion as to the voluntariness of the product, and ''insurance packing.'' The term ''packing'' in this case refers to the practice of automatically including *optional* insurance in the loan amount without the consumer's request; as a result, some consumers may perceive that the insurance is a required part of the loan, and others may not be aware that insurance has been included.

In response to the reported abuses, the Board proposed to include in the fee trigger premiums paid at closing for optional credit life, accident, health, or loss-of-income insurance and other debt-protection products; such premiums are typically financed. Premiums paid for *required* credit insurance policies are considered finance charges and are already included in the points and fees trigger.

Many commenters expressed views on this issue. The views were sharply divided. In general, consumer representatives, some federal agencies, state law enforcement officials, and some others supported the inclusion of optional credit insurance premiums in HOEPA's points and fees trigger, although they would have preferred an outright ban on the purchase or financing of single-premium products. Consumer representatives were generally concerned about the cost of the insurance, its voluntariness, and its contribution to equity stripping. They believe that borrowers are often unaware that insurance has been included in their loan balance or that borrowers perceive that the insurance is required. They also note that these problems exist notwithstanding the fact that TILA currently requires creditors to disclose before consummation that the insurance is optional in order to exclude it from the HOEPA fee trigger. (If creditors fail to disclose that the insurance is optional, TILA requires that the cost be treated as a finance charge, and all finance charges other than interest are in the current HOEPA fee trigger.) They state that excessively high premiums contribute to the problem of equity stripping. They also note that consumers pay interest on the financed premium for the entire loan term even though insurance coverage typically expires much earlier.

Most creditors and commenters representing the credit insurance industry strongly opposed the inclusion of optional insurance premiums paid at closing in the points and fees trigger. Some creditors questioned the Board's use of its authority under HOEPA to mandate inclusion; they pointed to legislative history that discusses the potential inclusion of credit insurance premiums if there is evidence that credit insurance premiums are being used to evade HOEPA. These commenters believe that a finding of evasion is a prerequisite to inclusion; they do not believe the standard has been met because the proposal merely noted that the change might prevent such evasions in the future. They also cited an exchange in the Congressional Record between two Senators, when the Congress was considering HOEPA legislation, about credit insurance being treated consistently with other provisions of TILA. Because premiums for optional credit insurance are not automatically included in the calculation of TILA's finance charge and APR, these commenters believe such premiums should not be included in HOEPA's points and fees calculation.

The commenters' suggestion that credit insurance premiums can only be included in the HOEPA trigger if the Board finds that creditors are using the premiums to evade HOEPA is directly contradicted by the express language of the statute, which states that the Board need only make a finding that this action is ''appropriate.'' In construing a statute, the plain meaning of the statutory text generally governs. When the plain meaning of the statutory language is clear, there is no reason to resort to legislative history. In this case, if the Congress had intended to make ''evasions'' the sole standard of ''appropriateness'' for including additional charges in the fee trigger, it would have done so expressly. For example, such language was used in section 129(l)(2)(A), which authorizes the Board to prohibit acts and practices that the Board finds to be ''unfair, deceptive, or *designed to evade*'' the provisions of HOEPA.

In light of the unambiguous statutory text, the Board believes that the legislative history cited by the commenters is not dispositive, and that evasion is merely one example of when the Board might find that inclusion of additional charges is ''appropriate.'' The Senate floor colloquy, which refers to HOEPA as being consistent with TILA's treatment of insurance premiums, should not be construed as guidance on how the Board might, in the future, adjust HOEPA's points and fees trigger. It merely clarified that optional credit insurance premiums were not automatically included in the statutory points and fees trigger, as would have been the case under an earlier version of the legislation.

Industry commenters opposed including optional credit insurance premiums in HOEPA's points and fees trigger when, for purposes of TILA disclosures generally, the premiums are not included in the cost of the credit. The Board believes that HOEPA's points and fees trigger is not intended to be the equivalent of the ''cost of credit,'' as measured by TILA's finance charge and APR. Indeed, HOEPA expressly includes certain charges in the points and fees trigger that are not included in the finance charge, and authorizes the Board to include others. The HOEPA points and fees trigger is intended to be used to identify transactions with high costs where consumers may be vulnerable and thus need the benefit of HOEPA's special protections.

Creditors also asserted that, based on typical premium rates, most mortgage loans that include single-premium credit insurance would be considered high-cost and thus would be covered under HOEPA's fee-based trigger. As a result, they caution that lenders choosing not to make HOEPA loans would be foreclosed from offering single-premium credit insurance products to their loan customers. They asserted that the financing of single-premium insurance provides protection to cash-poor consumers who are underinsured, and in some cases offers less costly coverage compared with other forms of insurance. In short, these commenters generally support the current rule that does not include insurance premiums for optional credit insurance in the points and fees trigger. Alternatively, they recommend a rule that allows the insurance premiums to be excluded based on the consumers' ability to cancel the coverage and obtain a full refund, where consumers are also provided with adequate information about their rights to do so after the loan closing.

The Board believes that it is appropriate and consistent with the purposes of HOEPA to include premiums paid by consumers at or before closing for credit insurance (and other debt-protection products) in HOEPA's points and fees trigger. The coverage is purchased by the consumer in connection with the mortgage transaction, and the creditor or the credit account is the beneficiary. In addition, creditors receive commissions which may be significant for selling credit insurance (and retain the fee assessed for debt-cancellation coverage). This oftentimes represents a significant addition to the cost of the transaction to the borrower and an increase in benefit to the creditor. Moreover, when financed in connection with a subprime mortgage loan, as is typically the case, these charges can represent a significant addition to the loan balance, and thus, to the cost of the transaction and the size of the lien on the borrower's home. For example, according to insurance industry commenters, the typical cost of single-premium credit life insurance for an individual borrower could amount to the equivalent of several points. The total cost of credit insurance in a particular mortgage transaction, however, also depends on the number of borrowers covered, and the types of coverage purchased. HOEPA is specifically designed to help borrowers in high-cost mortgage transactions to understand the costs of the transaction and the risk that they may lose their homes if they do not meet the full amount of their obligation under the loan.

Importantly, anecdotal evidence has revealed that there are sometimes abuses associated with the sale and financing of single-premium credit insurance, which typically occurs in subprime loans. Some consumers are not aware that they are purchasing the insurance, some may believe the insurance is required, and some may not understand that the term of insurance coverage may be shorter than the term of the loan. These abuses and misunderstandings can be addressed somewhat by applying HOEPA's protections and remedies, to the extent that including insurance in the points and fees test brings these loans under HOEPA. Moreover, including credit insurance premiums in HOEPA's fee-based trigger prevents unscrupulous creditors from evading HOEPA by packing a loan with such products in lieu of charging other fees that already are included under the current HOEPA trigger.

One likely effect of this adjustment to the trigger is that significantly more of the loans that include single-premium insurance will be covered by HOEPA's protections. Data from a trade association of nondepository lenders indicate that lowering the APR trigger for first-lien loans by 2 percentage points and including optional credit insurance premiums in the points and fees tests would increase the percentage of first-lien mortgage loans covered by HOEPA, from 26 to 38 percent, for the firms surveyed. With a lowered APR trigger, coverage of subordinate-lien mortgage loans would increase from 47 to 61 percent for the firms surveyed.

When there are abuses such as coercive or deceptive sales practices, borrowers will benefit from HOEPA's rule requiring disclosures three days before closing. With the enhanced HOEPA disclosure of the amount borrowed, these consumers will receive advance notice about the additional amount they must borrow beyond their original loan request if they purchase the insurance. As part of that new disclosure, under the final rule, creditors must specify whether the amount borrowed includes the cost of optional insurance. Moreover, creditors and assignees will be subject to HOEPA's strict liability and remedies when there are violations of law concerning the mortgage. See § 226.32(c)(5).

As commenters noted, some creditors choose not to make loans covered by HOEPA, and if these creditors have been offering single-premium insurance, they may decide to cease doing so in order to remain outside of HOEPA's coverage. To the extent that some creditors choose not to offer single-premium policies, they can make credit insurance available through other vehicles such as

policies that assess and bill monthly premiums on the outstanding loan balance.

Industry commenters assert that single-premium policies are less costly than monthly premium insurance and provide greater continuity of coverage because a borrower's missed payments on the monthly-pay product might result in cancellation of insurance. Single-premium and monthly-premium policies have relative advantages and disadvantages. For example, a five-year policy with a financed single-premium may result in smaller monthly payments because the cost is spread over the full loan term, which may be ten or twenty years. But the consumer will also pay ''points'' (and interest over the life of the loan) on the additional amount financed for the coverage. Premiums assessed monthly, based on the outstanding loan balance, may result in a higher monthly expense, but they are not financed and would only be payable during the five years that coverage was in force, so the overall cost to the consumer could be lower. Regardless of the relative merits, under the final rule creditors will continue to have the ability to decide what types of insurance products they will make available to borrowers.

The final rule also provides guidance in calculating the HOEPA fees trigger. A mortgage loan is covered by HOEPA if the ''points and fees'' exceed 8 percent of the ''total loan amount.'' The total loan amount is based on the ''amount financed'' as provided in § 226.18(b). Comment 32(a)(1)(ii)–1 of the staff commentary to Regulation Z discusses the calculation of the total loan amount. The comment is revised, as proposed, to illustrate that premiums or other charges for credit life, accident, health, loss-of-income, or debt-cancellation coverage that are financed by the creditor must be deducted from the amount financed in calculating the total loan amount.

Disclosure alternatives—The Board solicited comment on whether optional credit insurance premiums should be excluded from the trigger when consumers have a right to cancel the policy and when disclosures about that right are provided after closing. Consumer representatives were opposed to the approach, expressing doubt that disclosures would be effective. Industry commenters supported the exclusion as a reasonable approach to address concerns about insurance packing. Upon further analysis, the Board believes that post-closing disclosures would be less effective than the HOEPA disclosures and remedies in deterring abusive sales practices in connection with insurance. Moreover, reliance on the consumer's exercise of their right to cancel the insurance would not prevent abuses but would unfairly require borrowers to take the initiative in remedying them.

32(c) Disclosures

Section 129(a) of TILA requires creditors offering HOEPA loans to provide abbreviated disclosures to consumers at least three days before the loan is closed, in addition to the disclosures generally required by TILA at or before closing. The HOEPA disclosures inform consumers that they are not obligated to complete the transaction and could lose their home if they take the loan and fail to make payments. The HOEPA disclosures also include a few key cost disclosures, such as the APR and the monthly payment (including the maximum payment for variable-rate loans and any balloon payment). Under the final rule these disclosures have been enhanced somewhat to further benefit borrowers. Section 226.32(c) is revised to provide, in accordance with TILA section 129(a), that the disclosures must be in a conspicuous type size.

32(c)(3) Regular Payment; Balloon Payment

Section 226.32(c)(3) requires creditors to disclose to consumers the amount of the regular monthly (or other periodic) payment, including any balloon payment. The regulation is revised to move the disclosure requirement for the amount of the balloon payment from the commentary to the regulation, to aid in compliance. Model Sample H–16, which illustrates the disclosures required under § 226.32(c), is revised to include a model clause on balloon payments.

Under comment 32(c)(3)–1 of the staff commentary, creditors are allowed to include voluntary items in the regular payment disclosed under § 226.32 only if the consumer has previously agreed to such items. The comment is revised for clarity as proposed.

Testimony at the Board's 2000 public hearings and other comments received suggest that some HOEPA disclosures provided in advance of closing include insurance premiums in the monthly payment, even though consumers may not agree to purchase optional insurance until closing. Consequently, the Board solicited comment on whether consumers should be required to request or affirmatively agree to purchase optional items in writing, to aid in enforcing the rule.

Some commenters supported having a rule where consumers would separately agree to purchase optional products. These commenters thought the rule would be useful in preventing ''packing.'' Other commenters, representing both consumer and industry interests, opposed such an approach. The consumer representatives preferred creditors to have the duty to ensure ''voluntariness.'' Industry representatives expressed a variety of concerns. Some believed that such a rule would be burdensome to creditors and borrowers alike, necessitating additional visits to sign the document at least three days before closing. They believed a separate affirmation to be duplicative and unnecessary. Others believed the rule would have the unintended effect of making consumers feel obligated, and ultimately less likely to reverse an earlier decision prior to or at closing.

Having carefully considered commenters' concerns regarding burden, and the effectiveness of a separate written agreement to purchase optional products to reduce ''packing,'' the Board is not taking further action to require a separate written agreement at this time. To address insurance ''packing,'' pursuant to its authority under section 129(l)(2)(B) of TILA, the Board has instead enhanced the final rule to require that the disclosure of the amount borrowed in mortgage refinancings expressly state whether optional credit insurance or debt-cancellation coverage is included in the amount financed, as discussed below.

The final rule for disclosing the ''amount borrowed'' includes a $100 tolerance for minor errors. As discussed below, if the amount borrowed is inaccurate by any amount, the regular payment disclosure will be inaccurate also. To be meaningful to creditors, any tolerance for the amount borrowed must ''pass through'' to the regular payment. Such an approach is consistent with TILA's rule in closed-end transactions secured by real property or a dwelling, where the finance charge as well as other disclosures affected by the finance charge are considered accurate within prescribed limits. Pursuant to its authority under section 129(l)(2)(B) of TILA, the Board is providing a tolerance to the regular payment disclosure required under § 226.32(c)(3), if the payment disclosed is based on an amount borrowed that is deemed accurate and disclosed under § 226.32(c)(5).

32(c)(5) Amount Borrowed

Section 226.32(c)(5) is added to require disclosure of the total amount the consumer will borrow, as reflected by the face amount of the note, pursuant

to the Board's authority under Section 129(l)(2)(B) of TILA. This disclosure responds to concerns by consumers and consumer representatives that consumers sometimes seek a modest loan amount such as for medical or home improvement costs, only to discover at closing (or after) that the note amount is substantially higher due to fees and insurance premiums that are financed along with the requested loan amount. The amount borrowed disclosure is enhanced in the final rule; when the loan amount includes premiums or other charges for optional credit insurance or debt-cancellation coverage, the disclosure must so specify, to address insurance ''packing'' where consumers may not be aware that insurance coverage has been added to the loan balance. Comment 32(c)(5)–1 to the staff commentary provides guidance regarding terminology for debt-cancellation coverage.

Consumer representatives and some industry representatives supported the proposal as aiding consumers' understanding that additional fees might be financed. Other industry representatives opposed the proposal. Some of these commenters believed consumers would be confused by an ''amount borrowed'' in addition to TILA's ''amount financed,'' which does not include amounts borrowed to cover loan fees.

Creditors must provide updated HOEPA disclosures if, after giving the disclosures required by § 226.32(c) to the consumer and before consummation, the creditor changes any terms that make the disclosure inaccurate. § 226.31(c)(1). The Board requested comment on whether it would be appropriate to provide for a tolerance for insignificant changes to the amount borrowed, and if so, what would be a suitable margin.

Commenters had mixed views on the desirability for a tolerance. Consumer groups supported either no tolerance or a very small tolerance such as $100, consistent with the existing tolerance for understated finance charges in closed-end transactions secured by real property or a dwelling. § 226.18(d)(1). Industry commenters wanted a much larger tolerance such as 1 percent of the loan amount or 10 percent of the regular payment.

Pursuant to its authority under section 129(l)(2)(B) of TILA, the Board is providing a tolerance for the disclosure of the amount borrowed. Under the final rule, the amount borrowed is accurate if it is not more than $100 above or below the amount required to be disclosed.

Counseling

The Board requested comment on whether a generic disclosure advising consumers to seek independent advice might encourage borrowers to seek credit counseling. Consistent with views expressed in connection with the Board's 2000 hearings, both consumer and creditor commenters acknowledged the benefits of pre-loan counseling as a means to counteract predatory lending. There was uniform concern, however, about requiring a referral to counseling for HOEPA loans because the actual availability of local counselors may be uncertain. Based on the comments received and further analysis, the Board is not adopting a generic counseling disclosure at this time.

32(d) Limitations

32(d)(8) Due-on-demand Clause

As proposed, § 226.32(d)(8) is added to restrict the use of ''due-on-demand'' clauses or ''call'' provisions for HOEPA loans, unless the clause is exercised in connection with a consumer's default. The limitation on the use of these provisions in HOEPA loans is added pursuant to the Board's authority under section 129(l)(2)(A) to prohibit acts that are unfair or are designed to evade HOEPA. The staff commentary to § 226.32(d)(8) provides guidance concerning the exercise of ''due-on-demand'' clauses when a consumer fails to meet repayment terms or impairs the creditor's security for the loan.

Commenters generally supported the proposal. A few commenters suggested that the rule was not needed because they believe that due-on-demand clauses were generally not being used by mortgage lenders. Some industry commenters asked the Board to limit the rule's applicability to the first five years of a HOEPA loan, to coincide with HOEPA's ban on balloon payments. One commenter sought clarification that the rule limiting ''due-on demand'' clauses would not affect ''due-on-sale'' clauses.

The final rule is adopted as proposed. To prevent creditors from forcing consumers to pay additional points and fees to refinance their loans or face possible foreclosure, section 129(e) of TILA prohibits the use of balloon payments for HOEPA loans with terms of less than five years. Although ''due-on-demand'' and ''call'' provisions currently do not appear to be widely used in HOEPA loans, a creditor could potentially force the consumer to refinance by exercising the right to call the loan and demanding payment of the entire outstanding balance. Restricting call provisions in HOEPA loans is intended to ensure that lenders do not accelerate the payment of these loans, without cause, at any time during the loan term, in order to force consumers to refinance. When a creditor can unilaterally terminate the loan without cause, the consumer may be subject to unnecessary refinancings, excessive loan fees, higher interest rates, or possible foreclosure. Consequently, this rule prevents creditors from using call provisions in a manner that would cause substantial harm to HOEPA borrowers.

Loans covered by HOEPA are more likely to involve borrowers who have less-than-perfect credit histories, or who might not be served by prime lenders. As noted earlier, because these consumers either have or perceive they have fewer options than other borrowers, they may be more vulnerable to unscrupulous lenders or brokers. Accordingly, HOEPA includes limitations on certain loan provisions to protect these borrowers from onerous loan terms. The Board finds that it is also appropriate to protect HOEPA borrowers from the potentially harsh effects of allowing a creditor to exercise a ''due-on-demand'' clause at any time, unless there is legitimate cause.

The hearing testimony and comments received by the Board failed to identify any benefits to using ''due-on-demand'' clauses in HOEPA loans, other than in the legitimate cases that are permitted under the Board's rule. The rule allows creditors to exercise such clauses when the creditor is faced with borrower misrepresentations or fraud, the borrower fails to meet repayment terms, or a borrower's action (or failure to act) affects the creditor's security for the loan. The rule does not affect creditors' use of ''due-on-sale'' clauses.

The limitations on ''due-on-demand'' clauses adopted by the Board for HOEPA loans are similar to TILA's existing limits on the use of such clauses for home-equity lines of credit (HELOCs). See TILA, Section 127A; 12 CFR § 226.5b(f)(2). The rule for HELOCs is contained in the Home Equity Loan Consumer Protection Act of 1988 (Pub. Law No. 100–709, 102 Stat. 4725). The 1988 act recognized that allowing creditors to unilaterally terminate a home-equity line (or significantly change loan terms) is fundamentally unfair when the consumer's home is at stake. Allowing creditors' unlimited discretion to call the loan and require immediate repayment is similarly unfair with HOEPA loans.

Section 226.34—Prohibited Acts or Practices in Connection with Credit Secured by a Consumer's Dwelling

Section 129(l) of TILA authorizes the Board to prohibit acts or practices to curb abusive lending practices. The act provides that the Board shall prohibit practices: (1) In connection with *all mortgage loans* if the Board finds the practice to be unfair, deceptive, or designed to evade HOEPA; and (2) in connection with *refinancings of mortgage loans* if the Board finds that the practice is associated with abusive lending practices or otherwise not in the interest of the borrower. The Board is exercising this authority to prohibit certain acts or practices, as discussed below. The final rule is intended to curb unfair or abusive lending practices without unduly interfering with the flow of credit, creating unnecessary creditor burden, or narrowing consumers' options in legitimate transactions. The rule prohibiting ''loan flipping'' has been modified to expand its scope. The rule protecting low-rate loans has not been adopted due to concerns about the compliance burden on the home-equity lending market generally. Other provisions have been adopted as proposed.

The final rule creates a new § 226.34, which contains prohibitions against certain acts or practices in connection with credit secured by a consumer's dwelling. This section includes the rules currently contained in § 226.32(e).

34(a) Prohibited Acts or Practices for Loans Subject to § 226.32

34(a)(1) Home Improvement Contracts

Section 226.32(e)(2) regarding home-improvement contracts is renumbered as § 226.34(a)(1) without substantive change. Comment 32(e)(2)(i)–1 of the staff commentary is now comment 34(a)(1)(i)–1.

34(a)(2) Notice to Assignee

Section 226.32 (e)(3) regarding assignee liability for claims and defenses that consumers may have in connection with HOEPA loans is renumbered as § 226.34(a)(2) without substantive change. Comments 32(e)(3)–1 and –2 are now comments 34(a)(2)–1 and –2 respectively.

Comment 34(a)(2)–3 is added to clarify the statutory provision on the liability of purchasers or other assignees of HOEPA loans, as proposed. Section 131 of TILA provides that, with limited exceptions, purchasers or other assignees of HOEPA loans are subject to all claims and defenses with respect to a mortgage that the consumer could assert against the creditor. The comment clarifies that the phrase ''all claims and defenses'' is not limited to violations of TILA as amended by HOEPA. This interpretation is based on the statutory text and is supported by the legislative history. *See* Conference Report, Joint Statement of Conference Committee, H. Rep. No. 103–652, at 22 (Aug. 2, 1994).

34(a)(3) Refinancings Within One-year Period

''Loan flipping'' generally refers to the practice by brokers and creditors of frequently refinancing home-secured loans to generate additional fee income even though the refinancing is not in the borrower's interest. Loan flipping is among the more flagrant of lending abuses. Victims tend to be borrowers who are having difficulty repaying a high-cost loan; they are targeted with promises to refinance the loan on more affordable terms. The refinancing typically provides little benefit to the borrower, as the loan amount increases mostly to cover fees. Often, there is minimal or no reduction in the interest rate. The monthly payment may increase, making the loan even more unaffordable. Sometimes the loan is amortized so that the monthly payment is reduced, but the loan may still be unaffordable. As long as there is sufficient equity to support the financing of additional fees, the consumer may be targeted repeatedly, resulting in equity stripping.

The proposed rule prohibited an originating creditor (or assignee) holding a HOEPA loan from refinancing that loan into another HOEPA loan within the first twelve months following origination, unless the new loan was ''in the borrower's interest.'' Pursuant to its authority under Section 129(l)(2)(A) of TILA, the Board is adopting a final rule to address ''loan flipping,'' as discussed below.

Consumer representatives generally supported the proposal, but they believed the rule was too narrow and that all creditors and brokers should be covered. Federal agencies, community groups, and consumers and their representatives believe that the prohibition should be lengthened; suggestions ranged from 18 months to as long as four years.

Creditors' comments mainly focused on the ''interest of the borrower'' test. oth creditors and consumer representatives sought additional guidance in this area. Consumer representatives viewed the standard as too lenient, while creditors believed that the standard's lack of certainty would subject them to litigation risk. Creditors also expressed concerns about the proposal's coverage of affiliates and sought clarification about whether an assignee merely servicing HOEPA loans is covered by the rule.

The Board is adopting a final rule that broadens the proposal's coverage somewhat. Under the final rule, within the first twelve months of originating a HOEPA loan to a borrower, the creditor is prohibited from refinancing that loan (whether or not the creditor still holds the loan) or another HOEPA loan held by that borrower.

The proposal was narrowly tailored to curb the more egregious cases of loan flipping: repeated refinancing by creditors that hold HOEPA loans in portfolio. Once a creditor assigned the loan, the assignee would have been covered, but the originating creditor could then have refinanced the HOEPA loan. Thus, the proposed rule did not cover loan originators that close loans in their own name and immediately assign them to a funding party or sell them in the secondary market. The hearing testimony and comments suggest that some of these originators are the source of unaffordable loans because they do not have a vested interest in the borrower's ability to repay the loan. Once they are no longer holding a loan, they can target the same borrower with an offer to refinance the loan. The final rule has been expanded to cover creditors (including brokers) that originate HOEPA loans, whether or not they continue to hold the loan. The loan flipping rule may deter some unaffordable lending if the parties making, holding, or servicing the loan are not permitted to refinance the loan within the first year.

Assignees are covered by the rule because in some instances they are the ''true creditor'' funding the loan. Even when they are not acting as the true creditors, assignees of HOEPA loans are subject to the refinancing restrictions to ensure that loans are not transferred for the purpose of evading the prohibition and that borrowers are not pressured into frequent refinancings by the party holding or servicing their loans. Thus, the rule has been revised to clarify that it applies to assignees that are servicing a HOEPA loan, whether or not they own the obligation. Assignees will be under the same restrictions as the original creditor while holding or servicing the loan. Comment 34(a)(3)–2 of the staff commentary is added to provide examples of how the rule is applied in specific cases.

Under the proposal, the regulatory prohibition applicable to creditors would have applied to their affiliates in all cases. Industry commenters were concerned about the compliance burden—particularly for creditors with

broad geographic and corporate structures. The final rule has been narrowed and would not apply in routine cases where consumers seek a refinancing from an affiliate. Under the final rule, loans made by an affiliate are prohibited only if the creditor engages in a pattern or practice of arranging loans with an affiliate to evade the flipping prohibition, or engages in other acts or practices designed to evade the rule. The final rule also prohibits creditors from arranging refinancings of their own loans with unaffiliated creditors to evade the flipping prohibition.

As noted above, some commenters believe that the prohibition should be lengthened. Although a longer period might further limit the opportunity for loan flipping, one year provides an appropriate balance between the need to address the clearest cases of abusive refinancings and the need not to restrict the free flow of credit in legitimate transactions. Thus, the final rule retains the one-year limitation, as proposed.

Borrower's interest—Under the proposal, creditors are permitted to refinance a HOEPA loan within the one-year period when ''in the borrower's interest.'' The determination of whether or not a benefit exists would be based on the totality of the circumstances. Consumer representatives viewed the standard as too lenient. They asserted that the lack of specificity or examples under the proposal would lead creditors to liberally construe the ''borrower's interest'' standard to permit any borrower predicament or any arguable ''improvement'' in term, payment, or rate, as sufficient justification for refinancing within the first year. Creditors, conversely, believed that the standard's lack of certainty would lead to litigation, inconsistent application, and borrower and judicial second-guessing of creditors. This, creditors argued, could ultimately result in a hesitancy by creditors to extend refinance credit at all in the first year of origination of a HOEPA loan.

Commenters offered many suggestions for more specific guidance, asking the Board to provide that lowering the interest rate or the monthly payment, or eliminating a balloon payment or variable rate feature, was per se, ''in the borrower's interest.'' Although a list of acceptable loan purposes would provide more certainty, it is difficult to identify circumstances that would be unequivocally in the borrower's interest in all or even most cases. A good reason in one context may be abusive in other circumstances. For example, a homeowner's equity could still be stripped through repeated refinancings that carry high up-front fees even if they result in incrementally lower APRs.

The Board believes that precisely defining circumstances that are ''in the borrower's interest'' is not necessary, given the nature of the loan flipping prohibition. The prohibition applies for a relatively short period, and is intended as a strong deterrent for the more egregious cases. The ''borrower's interest'' exception must be narrowly construed to preserve the effectiveness of the overall prohibition. Moreover, the probability that a legitimate creditor would refinance its own HOEPA loans within twelve months is typically low.

The Board recognizes that this approach places the primary burden on the creditor, in light of the totality of the circumstances, to weigh whether the loan is in the borrower's interest. The standard is intended to give legitimate creditors some flexibility for extenuating circumstances, while creditors that rely on the exception routinely to ''flip'' HOEPA loans bear the risk that a court will find that they violated HOEPA.

Comment 34(a)(3)–1 of the staff commentary has been expanded to provide additional guidance on lenders' ability to make loans that are in the borrower's interest notwithstanding the loan-flipping prohibition. A mere statement by the borrower that ''this loan is in my interest'' would not meet the standard. In connection with a refinancing that provides additional funds to the borrower, in determining whether a refinancing is in the borrower's interest, consideration should be given to whether the loan fees and charges are commensurate with the amount of new funds advanced, and whether the real estate-related charges are bona fide and reasonable in amount (see generally § 226.4(c)(7)). A refinancing would be in the borrower's interest if needed for a ''bona fide personal financial emergency''; this is the current standard for certain consumer waivers under TILA. TILA authorizes the Board to permit consumers to waive the three-day rescission period for certain home equity loans or the three-day waiting period before closing a HOEPA loan, if necessary for homeowners to meet a bona fide personal financial emergency. See § 226.23(e) and § 226.31(c)(1)(iii). Comment 31(c)(1)(iii)–1 of the staff commentary provides that the imminent sale of the consumer's home at foreclosure during the three-day HOEPA waiting period is an example of a bona fide personal financial emergency.

Limitations on refinancing low-rate loans—The December proposal addressed abuses involving the refinancing of low-rate loans originated through mortgage assistance programs designed to give low-or moderate-income borrowers the opportunity for homeownership. Some of these homeowners who have unsecured debts have been targeted by unscrupulous lenders who consolidate the debts and replace the low-cost, first-lien mortgage with a substantially higher cost loan. The replacement loans are often unaffordable, many involve ''loan flipping,'' and as a result, homeowners have lost their homes. In some cases, the low-rate loan is replaced even though the first-lien holder may be willing to subordinate its security interest.

Under the proposal creditors would have been prohibited, in the first five years of a zero interest rate or other low-rate loan, from replacing that loan with any higher-rate loan unless the refinancing was in the interest of the borrower. Based on the comments received and after consultation with the Consumer Advisory Council and further analysis, the Board is withdrawing the proposed provision addressing low-rate loans.

Unlike the prohibition against loan flipping, which applies only to HOEPA creditors, the prohibition against refinancing low-rate loans, as proposed, would have applied to all mortgage refinancing transactions. While borrowers with low-rate mortgage loans could benefit from the rule, the benefits appear to be far outweighed by the potential compliance burden for all home-equity lenders. Therefore, the proposed rule is being withdrawn at this time for reconsideration. The Board will consider other approaches that appropriately protect borrowers with low-rate loans in order to deter harmful refinancings and provide adequate remedies where they occur without imposing unnecessary documentation requirements on the market as a whole.

34(a)(4) Repayment Ability

Under section 129(h) of TILA, a creditor may not engage in a pattern or practice of making HOEPA loans based on the equity in the borrower's home without regard to the consumer's repayment ability, taking into account the consumer's current and expected income, current obligations, and employment status. As proposed, the final rule, formerly in § 226.32(e)(1), has been moved to § 226.34(a)(4) and revised to parallel the statutory language. The revision is a clarification of existing law and is not a new rule.

Currently, compliance with the prohibition against unaffordable lending is difficult to enforce because creditors are not required to document that they

considered the consumer's ability to repay. In addition, there have been reports of creditors relying on inaccurate information provided by unscrupulous loan brokers. To aid in solving these problems, the Board proposed under § 226.34(a)(4)(ii) to require that creditors generally verify and document consumers' current or expected income, current obligations, and employment to the extent applicable. If a creditor engages in a pattern or practice of making loans without verifying and documenting consumers' repayment ability, there would be a presumption that the creditor has violated the rule. The Board adopts the rule as § 226.34(a)(4) with minor modifications.

Determining repayment ability—Comment 34(a)(4)–1 of the staff commentary, formerly comment 32(e)(1)–1, has been modified in light of the new verification and documentation requirements discussed below. The comment has also been modified to more closely track the statute.

The reference to § 226.32(d)(7) has been deleted as unnecessary; the sources of information listed in § 226.32(d)(7) with one exception are listed in comment 34(a)(4)–2 on verifying and documenting repayment ability.

Verification and documentation—The verification and documentation rule requires creditors to use independent sources to ascertain borrowers' ability to repay loans that are secured by their homes, and to memorialize and retain this information. Proposed comment 34(a)(4)(ii)–1 provided examples of ways to verify and document the income and obligations of consumers who are employed, including those who are self-employed. The final comment, renumbered 34(a)(4)–4, adopts the proposed comment with modifications to accommodate creditworthy borrowers not employed or without traditional financial documents.

Most of the commenters supported the rule and comment. Some commenters from industry pointed out that verification and documentation is basic to the underwriting process and already required for safety and soundness purposes. Government entities at both the federal and state levels noted that verification and documentation is necessary for enforcement of the prohibition against unaffordable mortgage lending. A few commenters were concerned that the rule was not sufficiently flexible in allowing creditors to make loans to creditworthy borrowers whose repayment ability may not be based on regular employment wages. The final comment clarifies that creditors can rely on any reliable source that provides a reasonable basis for believing there are sufficient funds to support repayment of the loan.

Pattern or practice—Section 129(h) of TILA does not define ''pattern or practice,'' nor does the legislative history provide guidance as to how the phrase should be applied. The Board proposed interpretive guidance on the ''pattern or practice'' requirement. The proposed comment provided that determining whether a pattern or practice exists depends on the totality of the circumstances. The proposal referenced statutes relevant to a pattern or practice determination, specifically, the Truth in Lending Act, the Equal Credit Opportunity Act, the Fair Housing Act, and Title VII of the Civil Rights Act of 1964 (equal employment opportunity).

Those that commented on this aspect of the proposal generally requested more guidance on what would constitute a ''pattern or practice.'' Several requested that the Board set a specific standard. Industry commenters generally preferred a narrow standard, while representatives of consumer and community groups sought a broader standard that would be less onerous for consumers. Comment 34(a)(1)–2 as adopted provides additional guidance on the ''pattern or practice'' requirement, but retains the totality of the circumstances test. The comment provides that while a ''pattern or practice'' of violations is not established by isolated, random, or accidental acts, it can be established without the use of a statistical process. The comment also notes that a creditor might act under a lending policy (whether written or unwritten) and that action alone could establish that there is a pattern or practice of violating the prohibition against unaffordable lending.

Discounted introductory rates—Concern was raised about creditors determining a consumer's repayment ability based on low introductory rates offered under some programs. Proposed comment 34(a)(4)(i)–3 provided that in considering consumers repayment ability in transactions where the creditor sets a temporary introductory interest rate and the rate is later adjusted (whether fixed or later determined by an index or formula) the creditor must consider increases in the consumer's payments assuming the maximum possible increases in rates in the shortest possible time frame. The comment was not intended to impose a standard for evaluating a borrower's repayment ability that is more stringent than current industry practice. While creditors typically do not evaluate a borrower's ability to repay a loan based on a temporary discounted rate, they also do not evaluate repayment ability based on the maximum interest rate that may be charged as a result of rate adjustments on the loan. Based on the comments and further analysis, the final comment treats all discounted and variable-rate loans the same. Comment 34(a)(4)–3, as adopted, requires creditors to consider the consumer's ability to repay the loan assuming the non-discounted rate for fixed-rate loans, or the fully-indexed rate for variable rate loans, is in effect at consummation.

34(b) Prohibited Acts or Practices for Dwelling-Secured Loans; Open-end Credit

HOEPA covers only closed-end mortgage loans. In the December notice, the Board proposed a prohibition against structuring a home-secured loan as a line of credit to evade HOEPA's requirements, if the credit does not meet the definition of open-end credit in § 226.2(a)(20).

Although consumer representatives supported the Board's proposal, they generally believe that HOEPA should cover open-end credit carrying rates or fees above HOEPA's price triggers. Industry commenters believe there is little evidence that creditors are using open-end credit to evade HOEPA. Moreover, they oppose the rule as unnecessary because it is already a violation of TILA to provide disclosures for an open-end credit plan if the legal obligation does not meet the criteria for open-end credit.

Pursuant to the Board's authority under section 129(l)(2)(A), as proposed, § 226.34(b) explicitly prohibits structuring a mortgage loan as an open-end credit line to evade HOEPA's requirements, if the loan does not meet the TILA definition of open-end credit. This prohibition responds to cases reported by consumer advocates at the Board's hearings and to enforcement actions brought by the Federal Trade Commission, where creditors have documented loans as open-end ''revolving'' credit, even if there was no real expectation of repeat transactions under a reusable line of credit. Although the practice would currently violate TILA, the new rule will subject creditors and assignees to HOEPA's stricter liability rule and remedies if the credit carries rates and fees that exceed HOEPA's price triggers for closed-end loans.

Where a loan is documented as open-end credit but the features and terms or other circumstances demonstrate that it does not meet the definition of open-

end credit, the loan is subject to the rules for closed-end credit, including HOEPA if the rate or fee trigger is met. In response to comments, comment 34(b)–1 provides guidance on how to apply HOEPA s triggers to transactions structured as open-end credit in violation of § 226.34(b).

Appendix H to Part 226—Closed-End Model Forms and Clauses

Model Form H–16—Mortgage Sample illustrates the disclosures required by § 226.32(c), which must be provided to consumers at least three days before becoming obligated on a mortgage transaction subject to § 226.32. Model Form H–16 is amended to illustrate the additional disclosures required for refinancings under § 226.32(c)(5). A new comment App. H–20 clarifies that although the additional disclosures are required for refinancings that are subject to § 226.32, creditors may, at their option, include these disclosures for any loan subject to that section. The Sample also includes an illustration for loans with balloon payments. Former comments H–20 through H–23 have been renumbered H–21 through H–24, respectively.

IV. Regulatory Flexibility Analysis

The Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) requires federal agencies either to provide a Final Regulatory Flexibility Analysis with a final rule or to certify that the final rule will not have a significant economic impact on a substantial number of small entities. Based on available data, the Board is unable to determine at this time whether the final rule would have a significant impact on a substantial number of small entities. For this reason, the Board has prepared the following Final Regulatory Flexibility Analysis.

(1) *Statement of the need for and objectives of the final rule*—The final rule is adopted to address predatory lending and unfair practices in home-equity lending. As stated more fully above, the existing regulations are amended to broaden the scope of mortgage loans subject to HOEPA by adjusting the price triggers used to determine coverage under the act (both the interest rate trigger and points and fees trigger). Certain acts and practices in connection with home-secured loans are restricted. For example, creditors may not engage in repeated refinancings of HOEPA loans over a short time period when the transactions are not in the borrower's interest. HOEPA's prohibition against extending credit without regard to consumers' repayment ability is strengthened, and disclosures received by consumers before closing for HOEPA-covered loans are also enhanced.

(2) *Summary of public comment and statement of changes*—Significant issues raised by the public comments in response to the Board s proposal and Initial Regulatory Flexibility Analysis are described more fully in the supplementary material provided above.

Section 103(f) of TILA provides that a person becomes a creditor under TILA if, during any twelve-month period, the person originates more than one HOEPA-covered loan, or one or more HOEPA-covered loans through a mortgage broker. In providing protections to consumers whose principal dwellings secure high-cost mortgage loans, HOEPA did not create different rules for large and small creditors. Moreover, HOEPA sets forth specific limitations on the Board's authority to exempt mortgage products or categories of products from certain of HOEPA's requirements. *See* Section 129(l)(1) of TILA. Nevertheless, the Board has analyzed comments and has sought to minimize compliance burden for all creditors by making modifications to the proposal in the following ways.

• *Tiered APR trigger*—The final rule retains the current APR trigger for subordinate-lien loans at 10 percentage points above the rate for Treasury securities having a comparable maturity. The proposed across-the-board reduction of the APR trigger to 8 percentage points for all loans encompassed subordinate-lien loans that fall between the 8 and 10 percentage point triggers. The final revision to the APR trigger reduces the impact of the rule on creditors that choose not to extend HOEPA-covered credit generally, and on those that make small, short-term home-equity loans in particular, where fixed origination costs may significantly impact the APR.

• *Safe-harbor for refinancings in the ''borrower's interest''*—The final rule provides additional guidance on creditors ability to refinance a HOEPA loan into another HOEPA loan that is in the borrower's interest notwithstanding the one-year general prohibition on such refinancings. Creditors expressed concern that the proposed determination for meeting the standard—the totality of the circumstances—was too subjective, and that as a result creditors would refrain from making refinancings during the one-year period to avoid litigation risk. In addition to providing additional guidance on refinancings that would be in the borrower s interest, the final rule permits creditors to make an additional subordinate-lien HOEPA loan that is not a refinancing to the same borrower.

• *Low-cost loan refinancing*—The proposed prohibition against refinancing certain low-cost loans is withdrawn. The relatively low number of borrowers with low-cost mortgage loans that would benefit from the rule appeared to be far outweighed by the compliance burden for all home-equity lenders.

• *Tolerance for amount borrowed*—The final rule, as proposed, requires creditors making HOEPA-covered refinancings to include the face amount of the note (''amount borrowed'') in the HOEPA disclosures provided at least three days before closing. If any term is changed between the time the early HOEPA disclosure is provided to the consumer and consummation, and the change makes the disclosure inaccurate, new disclosures must be provided and another three-day waiting period begins. The final rule contains a small tolerance for changes in the amount actually borrowed of $100 above or below the amount disclosed, and to the disclosed regular payment as it is affected by the disclosed amount borrowed. This reduces redisclosure duties for creditors making insignificant errors and mitigates the economic impact of the rule's overall compliance burdens and costs.

(3) *Description of the small entities to which the final rule would apply*—The number of lenders, large or small, likely to be affected by the proposal is unknown. In the June 2001 Call Report, 4,547 small banks (assets less than $100 million) had first-lien mortgage credit outstanding, and 3,477 small banks had junior-lien mortgage loans outstanding. At the same time there were 228 small thrifts that report to the Office of Thrift Supervision which had closed-end first mortgage credit and/or junior-lien loans outstanding. The number of banks or thrifts active in subprime lending or HOEPA loans cannot be determined from information in the Call Report.

There is no comprehensive listing of consumer finance companies, but informal industry contacts indicate that there may be about 2,000 such institutions nationwide. Most of these companies are small entities, but apparently many, perhaps most, of the small institutions do not engage in mortgage lending, preferring to concentrate on unsecured lending and sales finance. An unknown number of small institutions do engage in mortgage lending, but there is no comprehensive listing of these institutions or estimate of their number.

There also is no comprehensive listing of mortgage banks or mortgage

brokers, but informal discussions with industry sources indicate that there are more than 1,200 mortgage banking firms with annual mortgage originations of less than $100 million that are members of a national trade association. Some of these companies are primarily mortgage servicing companies and generate few or no new mortgages, but there is also an unknown number of other mortgage banks that do not belong to the association.

The effect of expanding HOEPA coverage on small entities is unknown. The precise effect that adjusting the triggers will have on creditors' business strategies is difficult to predict. As discussed in the supplementary information provided above, there is an active market for HOEPA loans under the current triggers. Some creditors that choose not to make HOEPA loans may withdraw from making loans in the range of rates that would be covered by the lowered threshold. Others creditors may fill any void left by creditors that choose not to make HOEPA loans. And others may have the flexibility to avoid HOEPA s coverage by lowering rates or fees for some loans at the margins, consistent with the risk involved.

(4) *Reporting, recordkeeping, and compliance requirements*—The final amendments: (1) Extend the protections of HOEPA to more loans; (2) strengthen HOEPA's prohibition on loans based on homeowners' equity without regard to repayment ability; (3) improve disclosures received by consumers before closing; and (4) prohibit certain acts or practices, to address some ''loan flipping'' within the first twelve months of a HOEPA loan by prohibiting a refinancing into another HOEPA loan to the same borrower unless the refinancing is in the borrower's interest. HOEPA applies to creditors that make more than one HOEPA loan in a twelve-month period. For firms engaged in subprime lending, HOEPA's existing scope of coverage, its prohibition on loans made without regard to consumers' repayment ability, and its mandatory pre-closing disclosures already require the professional skills needed to comply with HOEPA. For some creditors (or holders or servicers of HOEPA loans) that seek to refinance a HOEPA loan with the same borrower into another HOEPA loan during a one-year period after origination, some recordkeeping adjustments may be necessary. However, the Board believes the burden will not be significant, since each of these parties has records that associate the borrower and the loan date for purposes of the one-year prohibition. Also, while the final rule imposes a new requirement to document and verify consumers' repayment ability for HOEPA loans, the Board believes that creditors' existing consideration of safety and soundness issues and risk assessment will result in little additional burden to comply with the new requirements.

Institutions that originate subprime mortgages, including small entities, will have to become aware of new definitions that expand HOEPA coverage, and as needed, will have to comply with the additional disclosures and other consumer protection provisions that apply to HOEPA loans. To comply with the final rule, then, creditors will need, among other things, to prepare disclosure forms, make various operational changes, and train staff. Professional skills needed to comply with the final rule may include clerical, computer systems, personnel training, as well as legal advice, which will require internal review and other actions by programmers and systems specialists, employee trainers, attorneys, and senior managers. Significantly, however, these skills are currently required to comply with HOEPA's existing rules and are not new to creditors both large and small. Creditors can reasonably be expected to be able to rely on current personnel for these specialized skills and thus not experience undue compliance burden.

(5) *Significant alternatives to the final rule*—As explained above, the final rule is adopted substantially as proposed to address predatory lending and unfair practices in the home-equity market, and contains several revisions to reflect suggestions or alternatives recommended by commenters. Specifically, the adoption of a ''tiered'' APR trigger, the inclusion of a tolerance for insignificant errors in disclosing the amount borrowed, the additional guidance for meeting the ''borrower's interest'' standard under the refinancing restriction, and the withdrawal of the ''low-cost loan'' refinancing prohibition, all reflect an effort to incorporate practical measures to reduce compliance burdens for creditors. The supplementary information provided above discusses other alternatives suggested by commenters. The rule's amendments are issued pursuant to the Board's authority under TILA to adjust the scope of mortgage loans covered by HOEPA, to prohibit certain acts or practices affecting mortgage loans or refinancings, to effectuate the purposes of TILA, to prevent circumvention or evasion, or to facilitate compliance. The amendments are intended to target unfair or abusive lending practices without unduly interfering with the flow of credit, creating unnecessary credit burden, or narrowing consumers' options in legitimate credit transactions. The final rule contains specific modifications to the proposed rule that reduce regulatory burden.

V. Paperwork Reduction Act

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3506; 5 CFR 1320 Appendix A.1), the Board reviewed the rule under the authority delegated to the Board by the Office of Management and Budget. The Federal Reserve may not conduct or sponsor, and an organization is not required to respond to, this information collection unless it displays a currently valid OMB control number. The OMB control number is 7100–0199.

The collection of information that is revised by this rulemaking is found in 12 CFR part 226 and in Appendices F, G, H, J, K, and L. This information is mandatory (15 U.S.C. 1601 *et seq.*) to evidence compliance with the requirements of Regulation Z and the Truth in Lending Act (TILA). The respondents/recordkeepers are all types of creditors, among which are small businesses. Under the Paperwork Reduction Act, the Federal Reserve accounts for the paperwork burden associated with Regulation Z only for state member banks, their subsidiaries, and subsidiaries of bank holding companies (not otherwise regulated). Other agencies account for the paperwork burden on their respective constituencies under this regulation. Institutions are required to retain records for twenty-four months.

The final rule broadens HOEPA's coverage (by lowering the APR trigger for first-lien loans by 2 percentage points and adding certain costs to the fee-based trigger) and revises a disclosure currently required by § 226.32 of Regulation Z. The revised disclosure covers refinancings subject to HOEPA and states the total amount of the borrower's obligation and whether optional credit insurance or debt-cancellation coverage is included in the amount borrowed (§ 226.32(c)(5)). Model Form H–16 illustrates this revised disclosure. The burden of revising the disclosure should be minimal because most institutions use software that automatically generates model forms such as Model Form H–16. The changes to the triggers also should impose minimal burden because the changes generally will require only a one-time reprogramming of systems.

With respect to state member banks, it is estimated that there are 976 respondent/recordkeepers and an average frequency of 136,294 responses per respondent each year for Regulation

Z. Therefore, the total annual burden under the regulation for all state member banks is estimated to be 1,841,118 hours. In the Federal Reserve's April 2001 Paperwork Reduction Act submission to OMB addressing the electronic disclosures interim rule, the Federal Reserve stated its belief that state member banks do not typically offer the type of loans that would require HOEPA disclosures and that these disclosures had a negligible effect on the paperwork burden for state member banks. Lowering the APR trigger by 2 percentage points could, however, result in higher burden for the few state member banks that choose to make these loans. Because little information is available about the actual number of loans that will be affected by the coverage change the Federal Reserve is not changing its current burden estimates cited above. The Federal Reserve will, however, solicit more burden comments and re-estimate the burden associated with the HOEPA requirements in Regulation Z in the next triennial PRA review (during the fourth quarter 2002). The Federal Reserve also estimates the one-time cost burden for programming systems with the revised disclosures and updating systems with the new triggers to be $135,000 per bank, on average.

Because the records are maintained at state member banks and the notices are not provided to the Federal Reserve, no issue of confidentiality under the Freedom of Information Act arises; however, any information obtained by the Federal Reserve may be protected from disclosure under exemptions (b)(4), (6), and (8) of the Freedom of Information Act (5 U.S.C. 522 (b)(4), (6) and (8)). The disclosures and information about error allegations are confidential between creditors and the customer.

The Federal Reserve has a continuing interest in the public's opinions of our collections of information. At any time, comments regarding the burden estimate, or any other aspect of this collection of information, including suggestions for reducing the burden, may be sent to: Secretary, Board of Governors of the Federal Reserve System, 20th and C Streets, NW., Washington, DC 20551; and to the Office of Management and Budget, Paperwork Reduction.

List of Subjects in 12 CFR Part 226

Advertising, Federal Reserve System, Mortgages, Reporting and recordkeeping requirements, Truth in lending.

For the reasons set forth in the preamble, the Board amends Regulation Z, 12 CFR part 226, as set forth below:

PART 226—TRUTH IN LENDING (REGULATION Z)

1. The authority citation for part 226 continues to read as follows:

Authority: 12 U.S.C. 3806; 15 U.S.C. 1604 and 1637(c)(5).

Subpart A—General

2. Section 226.1 is amended by:
a. Revising paragraph (b); and
b. Revising paragraph (d)(5).

§ 226.1 Authority, purpose, coverage, organization, enforcement and liability.

* * * * *

(b) *Purpose.* The purpose of this regulation is to promote the informed use of consumer credit by requiring disclosures about its terms and cost. The regulation also gives consumers the right to cancel certain credit transactions that involve a lien on a consumer's principal dwelling, regulates certain credit card practices, and provides a means for fair and timely resolution of credit billing disputes. The regulation does not govern charges for consumer credit. The regulation requires a maximum interest rate to be stated in variable-rate contracts secured by the consumer's dwelling. It also imposes limitations on home equity plans that are subject to the requirements of § 226.5b and mortgages that are subject to the requirements of § 226.32. The regulation prohibits certain acts or practices in connection with credit secured by a consumer's principal dwelling.

* * * * *

(d) *Organization.* * * *

(5) Subpart E contains special rules for mortgage transactions. Section 226.32 requires certain disclosures and provides limitations for loans that have rates and fees above specified amounts. Section 226.33 requires disclosures, including the total annual loan cost rate, for reverse mortgage transactions. Section 226.34 prohibits specific acts and practices in connection with mortgage transactions.

* * * * *

Subpart E—Special Rules for Certain Home Mortgage Transactions

3. Section 226.32 is amended by:
a. Republishing paragraph (a)(1) introductory text and revising paragraph (a)(1)(i);
b. Republishing paragraph (b) introductory text and revising paragraph (b)(1);
c. Revising paragraph (c) introductory text, revising paragraph (c)(3), and adding paragraph (c)(5);
d. Revising paragraph (d) introductory text and adding paragraph (d)(8); and
e. Removing paragraph (e).

§ 226.32 Requirements for certain closed-end home mortgages.

(a) *Coverage.* (1) Except as provided in paragraph (a)(2) of this section, the requirements of this section apply to a consumer credit transaction that is secured by the consumer's principal dwelling, and in which either:

(i) The annual percentage rate at consummation will exceed by more than 8 percentage points for first-lien loans, or by more than 10 percentage points for subordinate-lien loans, the yield on Treasury securities having comparable periods of maturity to the loan maturity as of the fifteenth day of the month immediately preceding the month in which the application for the extension of credit is received by the creditor; or

* * * * *

(b) *Definitions.* For purposes of this subpart, the following definitions apply:

(1) For purposes of paragraph (a)(1)(ii) of this section, *points and fees* means:

(i) All items required to be disclosed under § 226.4(a) and 226.4(b), except interest or the time-price differential;

(ii) All compensation paid to mortgage brokers;

(iii) All items listed in § 226.4(c)(7) (other than amounts held for future payment of taxes) unless the charge is reasonable, the creditor receives no direct or indirect compensation in connection with the charge, and the charge is not paid to an affiliate of the creditor; and

(iv) Premiums or other charges for credit life, accident, health, or loss-of-income insurance, or debt-cancellation coverage (whether or not the debt-cancellation coverage is insurance under applicable law) that provides for cancellation of all or part of the consumer's liability in the event of the loss of life, health, or income or in the case of accident, written in connection with the credit transaction.

* * * * *

(c) *Disclosures.* In addition to other disclosures required by this part, in a mortgage subject to this section, the creditor shall disclose the following in conspicuous type size:

* * * * *

(3) *Regular payment; balloon payment.* The amount of the regular monthly (or other periodic) payment and the amount of any balloon payment. The regular payment disclosed under this paragraph shall be treated as accurate if it is based on an amount borrowed that is deemed accurate and is

disclosed under paragraph (c)(5) of this section.

* * * * *

(5) *Amount borrowed.* For a mortgage refinancing, the total amount the consumer will borrow, as reflected by the face amount of the note; and where the amount borrowed includes premiums or other charges for optional credit insurance or debt-cancellation coverage, that fact shall be stated, grouped together with the disclosure of the amount borrowed. The disclosure of the amount borrowed shall be treated as accurate if it is not more than $100 above or below the amount required to be disclosed.

(d) *Limitations.* A mortgage transaction subject to this section shall not include the following terms:

* * * * *

(8) *Due-on-demand clause.* A demand feature that permits the creditor to terminate the loan in advance of the original maturity date and to demand repayment of the entire outstanding balance, except in the following circumstances:

(i) There is fraud or material misrepresentation by the consumer in connection with the loan;

(ii) The consumer fails to meet the repayment terms of the agreement for any outstanding balance; or

(iii) There is any action or inaction by the consumer that adversely affects the creditor's security for the loan, or any right of the creditor in such security.

* * * * *

4. A new § 226.34 is added to subpart E to read as follows:

§ 226.34 Prohibited acts or practices in connection with credit secured by a consumer's dwelling.

(a) *Prohibited acts or practices for loans subject to § 226.32.* A creditor extending mortgage credit subject to § 226.32 shall not—

(1) *Home improvement contracts.* Pay a contractor under a home improvement contract from the proceeds of a mortgage covered by § 226.32, other than:

(i) By an instrument payable to the consumer or jointly to the consumer and the contractor; or

(ii) At the election of the consumer, through a third-party escrow agent in accordance with terms established in a written agreement signed by the consumer, the creditor, and the contractor prior to the disbursement.

(2) *Notice to assignee.* Sell or otherwise assign a mortgage subject to § 226.32 without furnishing the following statement to the purchaser or assignee: ''Notice: This is a mortgage subject to special rules under the federal Truth in Lending Act. Purchasers or assignees of this mortgage could be liable for all claims and defenses with respect to the mortgage that the borrower could assert against the creditor.''

(3) *Refinancings within one-year period.* Within one year of having extended credit subject to § 226.32, refinance any loan subject to § 226.32 to the same borrower into another loan subject to § 226.32, unless the refinancing is in the borrower's interest. An assignee holding or servicing an extension of mortgage credit subject to § 226.32, shall not, for the remainder of the one-year period following the date of origination of the credit, refinance any loan subject to § 226.32 to the same borrower into another loan subject to § 226.32, unless the refinancing is in the borrower's interest. A creditor (or assignee) is prohibited from engaging in acts or practices to evade this provision, including a pattern or practice of arranging for the refinancing of its own loans by affiliated or unaffiliated creditors, or modifying a loan agreement (whether or not the existing loan is satisfied and replaced by the new loan) and charging a fee.

(4) *Repayment ability.* Engage in a pattern or practice of extending credit subject to § 226.32 to a consumer based on the consumer's collateral without regard to the consumer's repayment ability, including the consumer's current and expected income, current obligations, and employment. There is a presumption that a creditor has violated this paragraph (a)(4) if the creditor engages in a pattern or practice of making loans subject to § 226.32 without verifying and documenting consumers' repayment ability.

(b) *Prohibited acts or practices for dwelling-secured loans; open-end credit.* In connection with credit secured by the consumer's dwelling that does not meet the definition in § 226.2(a)(20), a creditor shall not structure a home-secured loan as an open-end plan to evade the requirements of § 226.32.

5. Appendix H to Part 226 is amended by revising Model Form H–16 to read as follows:

Appendix H to Part 226X—Closed-End Model Forms and Clauses

* * * * *

BILLING CODE 6210–01–P

H-16—Mortgage Sample

You are not required to complete this agreement merely because you have received these disclosures or have signed a loan application.

If you obtain this loan, the lender will have a mortgage on your home.

YOU COULD LOSE YOUR HOME, AND ANY MONEY YOU HAVE PUT INTO IT, IF YOU DO NOT MEET YOUR OBLIGATIONS UNDER THE LOAN.

You are borrowing $_____ (optional credit insurance is ☐ is not ☐ included in this amount).

The annual percentage rate on your loan will be: _____%.

Your regular _[frequency]_ payment will be: $_____.
[At the end of your loan, you will still owe us: $ [balloon amount].]

[Your interest rate may increase. Increases in the interest rate could increase your payment. The highest amount your payment could increase is to $_____.]

BILLING CODE 6210–01–C

6. In Supplement I to Part 226, the following amendments are made:

a. Under *Section 226.31—General Rules,* under *Paragraph 31(c)(1)(i),* paragraph 2. is added;

b. Under *Section 226.32—Requirements for Certain Closed-End Home Mortgages,* under *Paragraph 32(a)(1)(ii)*, paragraph 1. introductory text is revised and 1.iv. is added;

c. Under *Section 226.32—Requirements for Certain Closed-End Home Mortgages,* a new heading *Paragraph 32(b)(1)(iv)* is added and a new paragraph 1. is added;

d. Under *Section 226.32—Requirements for Certain Closed-End Home Mortgages,* under *Paragraph 32(c)(3),* the heading is revised, paragraph 1. is revised and paragraph 2. is removed; and a new heading *Paragraph 32(c)(5)* is added and a new paragraph 1. is added.

e. Under *Section 226.32—Requirements for Certain Closed-End Home Mortgages,* a new heading *Paragraph 32(d)(8)* is added; a new heading *Paragraph 32(d)(8)(ii)* is added and a new paragraph 1. is added; and a new heading *Paragraph 32(d)(8)(iii)* is added and new paragraphs 1. and 2. are added.

f. Under *Section 226.32—Requirements for Certain Closed-End Home Mortgages, 32(e) Prohibited Acts and Practices* is removed;

g. Under subpart E, a new *Section 226.34—Prohibited Acts or Practices in Connection with Credit Secured by a Consumer's Dwelling; Open-end Credit* is added; and

h. Under *Appendix H—Closed-End Model Forms and Clauses,* paragraphs 20. through 23. are redesignated as paragraphs 21. through 24., and new paragraph 20. is added.

The additions and revisions read as follows:

Supplement I to Part 226 Official Staff Interpretations

* * * * *

Subpart E—Special Rules for Certain Home Mortgage Transactions

Section 226.31—General Rules

* * * * *

31(c) Timing of disclosure.

* * * * *

Paragraph 31(c)(1)(i) Change in terms.

* * * * *

2. *Sale of optional products at consummation.* If the consumer finances the purchase of optional products such as credit insurance and as a result the monthly payment differs from what was previously disclosed under § 226.32, redisclosure is required and a new three-day waiting period applies. (See comment 32(c)(3)–1 on when optional items may be included in the regular payment disclosure.)

* * * * *

Section 226.32—Requirements for Certain Closed-End Home Mortgages

32(a) Coverage.

* * * * *

Paragraph 32(a)(1)(ii).

1. *Total loan amount.* For purposes of the ''points and fees'' test, the total loan amount is calculated by taking the amount financed, as determined according to § 226.18(b), and deducting any cost listed in § 226.32(b)(1)(iii) and § 226.32(b)(1)(iv) that is both included as points and fees under § 226.32(b)(1) and financed by the creditor. Some examples follow, each using a $10,000 amount borrowed, a $300 appraisal fee, and $400 in points. A $500 premium for optional credit life insurance is used in one example.

* * * * *

iv. If the consumer finances a $300 fee for a creditor-conducted appraisal and a $500 single premium for optional credit life insurance, and pays $400 in points at closing, the amount financed under § 226.18(b) is $10,400 ($10,000, plus the $300 appraisal fee that is paid to and financed by the creditor, plus the $500 insurance premium that is financed by the creditor, less $400 in prepaid finance charges). The $300 appraisal fee paid to the creditor is added to other points and fees under § 226.32(b)(1)(iii), and the $500 insurance premium is added under 226.32(b)(1)(iv). The $300 and $500 costs are deducted from the amount financed ($10,400) to derive a total loan amount of $9,600.

* * * * *

32(b) Definitions.

* * * * *

Paragraph 32(b)(1)(iv).

1. *Premium amount.* In determining ''points and fees'' for purposes of this section, premiums paid at or before closing for credit insurance are included whether they are paid in cash or financed, and whether the amount represents the entire premium for the coverage or an initial payment.

* * * * *

32(c) Disclosures.

* * * * *

Paragraph 32(c)(3) Regular payment; balloon payment.

1. *General.* The regular payment is the amount due from the borrower at regular intervals, such as monthly, bimonthly, quarterly, or annually. There must be at least two payments, and the payments must be in an amount and at such intervals that they fully amortize the amount owed. In disclosing the regular payment, creditors may rely on the rules set forth in § 226.18(g); however, the amounts for voluntary items, such as credit life insurance, may be included in the regular payment disclosure only if the consumer has previously agreed to the amounts.

* * * * *

Paragraph 32(c)(5) Amount borrowed.

1. *Optional insurance; debt-cancellation coverage.* This disclosure is required when the amount borrowed in a refinancing includes premiums or other charges for credit life, accident, health, or loss-of-income insurance, or debt-cancellation coverage (whether or not the debt-cancellation coverage is insurance under applicable law) that provides for cancellation of all or part of the consumer's liability in the event of the loss of life, health, or income or in the case of accident. See comment 4(d)(3)–2 and comment app. G and H–2 regarding terminology for debt-cancellation coverage.

32(d) Limitations.

* * * * *

32(d)(8) Due-on-demand clause.

Paragraph 32(d)(8)(ii).

1. *Failure to meet repayment terms.* A creditor may terminate a loan and accelerate the balance when the consumer fails to meet the repayment terms provided for in the agreement; a creditor may do so, however, only if the consumer actually fails to make payments. For example, a creditor may not terminate and accelerate if the consumer, in error, sends a payment to the wrong location, such as a branch rather than the main office of the creditor. If a consumer files for or is placed in bankruptcy, the creditor may terminate and accelerate under this provision if the consumer fails to meet the repayment terms of the agreement. Section 226.32(d)(8)(ii) does not override any state or other law that requires a creditor to notify a borrower of a right to cure, or otherwise places a duty on the creditor before it can terminate a loan and accelerate the balance.

Paragraph 32(d)(8)(iii).

1. *Impairment of security.* A creditor may terminate a loan and accelerate the balance if the consumer's action or inaction adversely affects the creditor's security for the loan, or any right of the creditor in that security. Action or inaction by third parties does not, in itself, permit the creditor to terminate and accelerate.

2. *Examples.* i. A creditor may terminate and accelerate, for example, if:

A. The consumer transfers title to the property or sells the property without the permission of the creditor.

B. The consumer fails to maintain required insurance on the dwelling.

C. The consumer fails to pay taxes on the property.

D. The consumer permits the filing of a lien senior to that held by the creditor.

E. The sole consumer obligated on the credit dies.

F. The property is taken through eminent domain.

G. A prior lienholder forecloses.

ii. By contrast, the filing of a judgment against the consumer would permit termination and acceleration only if the amount of the judgment and collateral subject to the judgment is such that the creditor's security is adversely affected. If the consumer commits waste or otherwise destructively uses or fails to maintain the property such that the action adversely affects the security, the loan may be terminated and the balance accelerated. Illegal use of the property by the consumer would permit termination and acceleration if it subjects the property to seizure. If one of two consumers obligated on a loan dies, the creditor may terminate the loan and accelerate the balance if the security is adversely affected. If the consumer moves out of the dwelling that secures the loan and that action adversely affects the security, the creditor may terminate a loan and accelerate the balance.

* * * * *

Section 226.34—Prohibited Acts or Practices in Connection with Credit Secured by a Consumer s Dwelling; Open-end Credit

34(a) Prohibited acts or practices for loans subject to § 226.32.

Paragraph 34(a)(1) Home-improvement contracts.

Paragraph 34(a)(1)(i).

1. *Joint payees.* If a creditor pays a contractor with an instrument jointly payable to the contractor and the consumer, the instrument must name as payee each consumer who is primarily obligated on the note.

Paragraph 34(a)(2) Notice to Assignee.

1. *Subsequent sellers or assignors.* Any person, whether or not the original creditor, that sells or assigns a mortgage subject to § 226.32 must furnish the notice of potential liability to the purchaser or assignee.

2. *Format.* While the notice of potential liability need not be in any particular format, the notice must be prominent. Placing it on the face of the note, such as with a stamp, is one means of satisfying the prominence requirement.

3. *Assignee liability.* Pursuant to section 131(d) of the act, the act's general holder-in-due course protections do not apply to purchasers and assignees of loans covered by § 226.32. For such loans, a purchaser's or other assignee's liability for all claims and defenses that the consumer could assert against the creditor is not limited to violations of the act.

Paragraph 34(a)(3) Refinancings within one-year period.

1. *In the borrower's interest.* The determination of whether or not a refinancing covered by § 226.34(a)(3) is in the borrower's interest is based on the totality of the circumstances, at the time the credit is extended. A written statement by the borrower that ''this loan is in my interest'' alone does not meet this standard.

i. A refinancing would be in the borrower's interest if needed to meet the borrower's ''bona fide personal financial emergency'' (see generally § 226.23(e) and § 226.31(c)(1)(iii)).

ii. In connection with a refinancing that provides additional funds to the borrower, in determining whether a loan is in the borrower's interest consideration should be given to whether the loan fees and charges are commensurate with the amount of new funds advanced, and whether the real estate-related charges are bona fide and reasonable in amount (see generally § 226.4(c)(7)).

2. *Application of the one-year refinancing prohibition to creditors and assignees.* The prohibition in § 226.34(a)(3) applies where an extension of credit subject to § 226.32 is refinanced into another loan subject to § 226.32. The prohibition is illustrated by the following examples. Assume that Creditor A makes a loan subject to § 226.32 on January 15, 2003, secured by a first lien; this loan is assigned to Creditor B on February 15, 2003:

i. Creditor A is prohibited from refinancing the January 2003 loan (or any other loan subject to § 226.32 to the same borrower) into a loan subject to § 226.32, until January 15, 2004. Creditor B is restricted until January 15, 2004, or such date prior to January 15, 2004 that Creditor B ceases to hold or service the loan. During the prohibition period, Creditors A and B may make a subordinate lien loan that does not refinance a loan subject to § 226.32. Assume that on April 1, 2003, Creditor A makes but does not assign a second-lien loan subject to § 226.32. In that case, Creditor A would be prohibited from refinancing either the first-lien or second-lien loans (or any other loans to that borrower subject to § 226.32) into another loan subject to § 226.32 until April 1, 2004.

ii. The loan made by Creditor A on January 15, 2003 (and assigned to Creditor B) may be refinanced by Creditor C at any time. If Creditor C refinances this loan on March 1, 2003 into a new loan subject to § 226.32, Creditor A is prohibited from refinancing the loan made by Creditor C (or any other loan subject to § 226.32 to the same borrower) into another loan subject to § 226.32 until January 15, 2004. Creditor C is similarly prohibited from refinancing any loan subject to § 226.32 to that borrower into another until March 1, 2004. (The limitations of § 226.34(a)(3) no longer apply to Creditor B after Creditor C refinanced the January 2003 loan and Creditor B ceased to hold or service the loan.)

Paragraph 34(a)(4) Repayment ability.

1. *Income.* Any expected income can be considered by the creditor, except equity income that would be realized from collateral. For example, a creditor may use information about income other than regular salary or wages such as gifts, expected retirement payments, or income from self-employment, such as housecleaning or childcare.

2. *Pattern or practice of extending credit—repayment ability.* Whether a creditor is engaging or has engaged in a pattern or practice of violations of this section depends on the totality of the circumstances in the particular case. While a pattern or practice is not established by isolated, random, or accidental acts, it can be established without the use of a statistical process. In addition, a creditor might act under a lending policy (whether written or unwritten) and that action alone could establish a pattern or practice of making loans in violation of this section.

3. *Discounted introductory rates.* In transactions where the creditor sets an initial interest rate to be adjusted later (whether fixed or to be determined by an index or formula), in determining repayment ability the creditor must consider the consumer's ability to make loan payments based on the non-discounted or fully-indexed rate at the time of consummation.

4. *Verifying and documenting income and obligations.* Creditors may verify and document a consumer's repayment ability in various ways. A creditor may verify and document a consumer's income and current obligations through any reliable source that provides the creditor with a reasonable basis for believing that there are sufficient funds to support the loan. Reliable sources include, but are not limited to, a credit report, tax returns, pension statements,

and payment records for employment income.

Paragraph 34(b) Prohibited acts or practices for dwelling-secured loans; open-end credit.

1. *Amount of credit extended.* Where a loan is documented as open-end credit but the features and terms or other circumstances demonstrate that it does not meet the definition of open-end credit, the loan is subject to the rules for closed-end credit, including § 226.32 if the rate or fee trigger is met. In applying the triggers under § 226.32, the ''amount financed,'' including the ''principal loan amount'' must be determined. In making the determination, the amount of credit that would have been extended if the loan had been documented as a closed-end loan is a factual determination to be made in each case. Factors to be considered include the amount of money the consumer originally requested, the amount of the first advance or the highest outstanding balance, or the amount of the credit line. The full amount of the credit line is considered only to the extent that it is reasonable to expect that the consumer might use the full amount of credit.

* * * * *

Appendix H—Closed-End Model Forms and Clauses

* * * * *

20. *Sample H–16.* This sample illustrates the disclosures required under § 226.32(c). The sample illustrates the amount borrowed and the disclosures about optional insurance that are required for mortgage refinancings under § 226.32(c)(5). Creditors may, at their option, include these disclosures for all loans subject to § 226.32. The sample also includes disclosures required under § 226.32(c)(3) when the legal obligation includes a balloon payment.

* * * * *

By order of the Board of Governors of the Federal Reserve System, December 14, 2001.

Jennifer J. Johnson,

Secretary of the Board.

[FR Doc. 01–31264 Filed 12–19–01; 8:45 am]

BILLING CODE 6210–01–P

NATIONAL CREDIT UNION ADMINISTRATION

12 CFR Parts 700, 701, 712, 715, 723, 725, and 790

Definitions; Organization and Operation of Federal Credit Unions; Credit Union Service Corporations; Supervisory Committee Audits and Verifications; Member Business Loans; Central Liquidity Facility; Description of NCUA

AGENCY: National Credit Union Administration (NCUA).

ACTION: Final rule.

SUMMARY: NCUA is issuing a final rule to amend various rules to make technical corrections and add and revise certain definitions. The Board is adding a scope section and definitions of ''paid-in and unimpaired capital and surplus'' and ''unimpaired capital and surplus'' to its rule containing definitions. The Board also is removing obsolete references from this rule and updating the rule concerning changes in officials of newly chartered or troubled credit unions. The Board is correcting a citation in the supervisory committee rule and making clarifications to the credit union service organization (CUSO) rule and the member business loan rule. In addition, the Board is updating and clarifying the definition for ''paid-in and unimpaired capital and surplus'' in the Central Liquidity Facility (CLF) rule. Finally, the Board is changing a reference in Part 790 from the ''Office of Community Development Credit Unions'' to the ''Office of Credit Union Development.''

DATES: This rule is effective January 22, 2002.

FOR FURTHER INFORMATION CONTACT: Regina Metz, Staff Attorney, Division of Operations, Office of General Counsel, at the National Credit Union Administration, 1775 Duke Street, Alexandria, Virginia 22314–3428, or telephone: (703) 518–6561; or Herbert S. Yolles, Deputy Director, Office of Examination and Insurance, at the same address or telephone: (703) 518–6360.

SUPPLEMENTARY INFORMATION:

Background

On June 21, 2001, NCUA issued a proposed rule on definitions and technical corrections. 66 FR 33211, June 21, 2001. The proposed rule resulted from NCUA's policy of continually reviewing its regulations to ''update, clarify and simplify existing regulations and eliminate redundant and unnecessary provisions.'' Interpretive Rulings and Policy Statement (IRPS) 87–2, Developing and Reviewing Government Regulations. The NCUA Board is issuing the final rule unchanged from the proposed rule.

The proposed rule replaced obsolete references in two parts of NCUA's regulations related with new references to prompt corrective action, section 216 of the Federal Credit Union Act. 12 CFR 700.1, 701.14. In the definitions part of the regulations, the proposed rule added a scope section and definitions for ''paid-in and unimpaired capital and surplus'' and ''unimpaired capital and surplus.'' 12 CFR part 700. The proposed rule conformed definitions of paid-in and unimpaired capital and surplus in the CUSO and CLF rules to the proposed definitions in the definitions part. 12 CFR 712.2(d); 12 CFR 725.2(o). The proposed rule also corrected a citation in the supervisory committee audit rule and clarified the member business loan rule by changing a reference from ''federally insured credit unions'' to ''federally insured state-chartered credit unions.'' 12 CFR 715.2(l), 723.4. The proposed rule also updated NCUA's regulations by changing a reference in Part 790 from the ''Office of Community Development Credit Unions'' to the office's new name, the ''Office of Credit Union Development.'' The NCUA Board is adopting all the proposed changes in the final rule.

Summary of Comments

The NCUA Board requested comment on all aspects of the proposed rule and received three comment letters: One from a national trade association, one from a state trade association, and one from a federal credit union (FCU). The two trade associations supported the proposal without qualification. The FCU offered a substantive comment regarding the definition of ''paid-in and unimpaired capital and surplus,'' discussed below. NCUA received no comment on the other provisions in the proposed rule. This preamble does not repeat discussions from the proposal for those provisions and the NCUA Board has adopted them as proposed.

''Paid-in and Unimpaired Capital and Surplus'' and ''Unimpaired Capital and Surplus''

To improve the clarity of NCUA's regulations, the Board proposed to include definitions for ''paid-in and unimpaired capital and surplus'' and ''unimpaired capital and surplus'' in the general definitions part of the regulations. The proposed rule defined ''unimpaired capital and surplus'' as meaning the same as ''paid-in and unimpaired capital and surplus'' and

cross-referenced its definition. The proposed definition for ''paid-in and unimpaired capital and surplus'' was a refined statement of the definitions currently in the FCU Bylaws, but did not change the meaning of those definitions or the agency's long-standing interpretation.

The proposed definition for paid-in and unimpaired capital and surplus was shares plus post-closing, undivided earnings. The preamble to the proposed rule stated that the term ''post-closing'' was simpler terminology that a credit union person, an examiner, and an accounting professional would understand to encompass the closing of the books and posting of all relevant and required period losses to undivided earnings. Post-closing undivided earnings incorporates and means the same as the language in the Bylaw provisions that define surplus (''after all losses have been provided for and net earnings or net losses have been added thereto or deducted therefrom'') and define unimpaired capital (''less any losses that may have been incurred for which there is no reserve or which have not been charged against undivided earnings''). The proposed definition further clarified the meaning of paid-in and unimpaired capital and surplus by including the statement that: ''This does not include regular reserves or special reserves required by law, regulation or special agreement between the credit union and its regulator or share insurer.''

Amendment to Definition of ''Paid-in and Unimpaired Capital and Surplus'' in the CLF Rule

As stated in the proposed rule, the CLF is a mixed-ownership government corporation created to improve the general financial stability of credit unions by meeting their liquidity needs. 12 CFR 725.1. Both state-chartered and federally-chartered credit unions may become members. 12 CFR 725.3. The Board proposed to revise the current definition in the CLF rule for paid-in and unimpaired capital and surplus. The current CLF rule combines the definition for paid-in and unimpaired capital in the FCU Bylaws with the definition of surplus in the FCU Bylaws and is substantively identical to those provisions. 12 CFR 725.2(o). The current definition includes deposits because some state-chartered credit unions are authorized to accept deposits.

The proposed rule defined paid-in and unimpaired capital and surplus in the CLF rule as shares and deposits plus post-closing, undivided earnings. The proposed definition further stated that the term does not include regular reserves or special reserves required by law, regulation or special agreement between the credit union and its regulator or share insurer.

Comments on the Definitions of ''Paid-in and Unimpaired Capital and Surplus''

One commenter expressed the view that the NCUA should simplify the general definition of ''paid-in and unimpaired capital and surplus'' to ''shares and deposits plus unappropriated earnings,'' in order to include the concept of ''unrealized gains or losses on investments'' as part of ''unappropriated earnings.'' The Board disagrees. The Board's view is that ''unappropriated earnings'' are equivalent to ''undivided earnings,'' and neither term includes unrealized gains or losses on investments, since these amounts are not yet earned or realized. Thus, the final rule uses the term ''undivided earnings.''

Regarding the commenter's suggestion that the general definition include deposits, for the reasons stated in the proposed rule, only the CLF definition of ''paid-in and unimpaired capital and surplus'' includes deposits. The general definition does not include them in the final rule.

Regulatory Procedures

Regulatory Flexibility Act

The Regulatory Flexibility Act requires NCUA to prepare an analysis to describe any significant economic impact a rule may have on a substantial number of small entities (primarily those under one million dollars in assets). The final rule will not have a significant economic impact on a substantial number of small credit unions, and therefore, a regulatory flexibility analysis is not required.

Paperwork Reduction Act

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

Executive Order 13132

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

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

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

Small Business Regulatory Enforcement Fairness Act

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

Agency Regulatory Goal

NCUA's goal is to promulgate clear and understandable regulations that impose minimal regulatory burden. NCUA requested comments on whether its proposed rule was understandable and minimally intrusive, but received no comments in response to this request.

List of Subjects

12 CFR Part 700

Credit unions, Definitions.

12 CFR Part 701

Credit unions.

12 CFR Part 712

Credit unions, Credit union service organizations.

12 CFR Part 715

Audits, Credit unions, Supervisory committees.

12 CFR Part 723

Credit, Credit unions.

12 CFR Part 725

Credit unions, Liquidity.

12 CFR Part 790

Credit unions.

By the National Credit Union Administration Board on December 13, 2001.

Becky Baker,

Secretary of the Board.

Accordingly, the NCUA amends 12 CFR parts 700, 701, 715, 723, 725, and 790 as follows:

PART 700—DEFINITIONS

1. The authority citation for part 700 continues to read as follows:

Authority: 12 U.S.C. 1752, 1757(6), 1766.

2. Redesignate current § 700.1 as § 700.2 and add a new § 700.1 to read as follows:

§ 700.1 Scope.

The definitions in § 700.2 apply to terms used in this chapter. Many additional definitions appear in the parts where the terms are used.

3. In newly redesignated § 700.2:

A. Remove paragraphs (h) and (j);

B. Redesignate paragraphs (e), (f), (g), and (i), as paragraphs (g), (h), (i), and (e) respectively; and

C. Add new paragraphs (f) and (j), to read as follows:

§ 700.2 Definitions.

* * * * *

(f) *Paid-in and unimpaired capital and surplus* means shares plus post-closing, undivided earnings. This does not include regular reserves or special reserves required by law, regulation or special agreement between the credit union and its regulator or share insurer. ''Paid-in and unimpaired capital and surplus'' for purposes of the Central Liquidity Facility is defined in § 725.2(o) of this chapter.

* * * * *

(j) *Unimpaired capital and surplus* means the same as ''paid-in and unimpaired capital and surplus,'' as defined in paragraph (f) of this section.

* * * * *

PART 701—ORGANIZATION AND OPERATION OF FEDERAL CREDIT UNIONS

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

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

5. In § 701.14, revise paragraphs (b)(3)(ii) and (b)(4)(ii) to read as follows:

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

* * * * *

(b) * * *

(3) * * *

(ii) Has been granted assistance as outlined under sections 208 or 216 of the Federal Credit Union Act.

(4) * * *

(ii) Has been granted assistance as outlined under sections 208 or 216 of the Federal Credit Union Act.

* * * * *

PART 712—CREDIT UNION SERVICE ORGANIZATIONS (CUSOs)

6. The authority citation for part 712 continues to read as follows:

Authority: 12 U.S.C. 1756, 1757(5)(d) and (7)(I), 1766, 1782, 1784, 1785, and 1786.

7. Amend § 712.2 by revising paragraph (d) to read as follows:

§ 712.2 How much can an FCU invest in or loan to CUSOs, and what parties may participate?

* * * * *

(d) *Measurement for calculating regulatory limitation.* For purposes of paragraphs (a) and (b) of this section:

(1) *Paid-in and unimpaired capital and surplus* means shares plus post-closing, undivided earnings (this does not include regular reserves or special reserves required by law, regulation or special agreement between the credit union and its regulator or share insurer); and

(2) Total investments in and total loans to CUSOs will be measured consistent with GAAP.

* * * * *

PART 715—SUPERVISORY COMMITTEE AUDITS AND VERIFICATIONS

8. Revise the authority citation for part 715 to read as follows:

Authority: 12 U.S.C. 1761(b), 1761d, 1782(a)(6).

9. Amend § 715.2(l) by revising the first sentence to read as follows:

§ 715.2 Definitions used in this part.

* * * * *

(l) *Supervisory committee* refers to a supervisory committee as defined in Section 111(b) of the Federal Credit Union Act, 12 U.S.C. 1761(b). * * *

* * * * *

PART 723—MEMBER BUSINESS LOANS

10. The authority citation for part 723 continues to read as follows:

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

11. Amend § 723.4 by revising the second sentence to read as follows:

§ 723.4 What are the other applicable regulations?

* * * Except as required by part 741 of this chapter, federally insured state-chartered credit unions are not required to comply with the provisions of § 701.21(a) through (g) of this chapter.

PART 725—NATIONAL CREDIT UNION ADMINISTRATION CENTRAL LIQUIDITY FACILITY

12. The authority citation for part 725 continues to read as follows:

Authority: 12 U.S.C. 1795–1795f.

13. Amend § 725.2 by revising paragraph (o) to read as follows:

§ 725.2 Definitions.

* * * * *

(o) *Paid-in and unimpaired capital and surplus* means shares and deposits plus post-closing, undivided earnings. This does not include regular reserves or special reserves required by law, regulation or special agreement between the credit union and its regulator or share insurer.

* * * * *

PART 790—DESCRIPTION OF NCUA; REQUESTS FOR AGENCY ACTION

14. The authority citation for part 790 continues to read as follows:

Authority: 12 U.S.C. 1766, 1789, 1795f.

15. Amend § 790.2(b)(13) by revising the heading to read as follows:

§ 790.2 Central and regional office organization.

* * * * *

(b) * * *

(13) Office of Credit Union Development. * * *

* * * * *

[FR Doc. 01–31286 Filed 12–19–01; 8:45 am]

BILLING CODE 7535–01–U

NATIONAL CREDIT UNION ADMINISTRATION

12 CFR Part 701

Organization and Operations of Federal Credit Unions

AGENCY: National Credit Union Administration (NCUA).

ACTION: Interim final rule with request for comments.

SUMMARY: The NCUA Board is amending its chartering and field of membership manual to make two changes to ease regulatory burden on community charters and to update the requirements for a credit union to add an underserved area to its charter. First, an existing community charter need not document in writing how it plans on serving the entire community. Second, the Board is updating the definition of an investment area because of the release of new census data and updated Community Development Financial Institution Fund standards. These amendments will help reduce the costs for community charters and make it easier for credit unions to serve underserved areas.

DATES: *Effective Date:* This rule is effective December 20, 2001. *Comment Date:* Comments must be received on for before February 19, 2002.

ADDRESSES: Comments should be directed to Becky Baker, Secretary of the Board. Mail or hand deliver comments to: National Credit Union Administration, 1775 Duke Street, Alexandria, Virginia 22314–3428. Or, you may fax comments to (703) 518–6319, or e-mail comments to *regcomments@ncua.gov. Please send comments by one method only.*

FOR FURTHER INFORMATION CONTACT: J. Leonard Skiles, Chairman, Field of Membership Task Force, at the above address or telephone: (703) 518–6320 or Michael J. McKenna, Senior Staff Attorney, Division of Operations, Office of General Counsel, at the above address or telephone: (703) 518–6540.

SUPPLEMENTARY INFORMATION:

Background

NCUA's chartering and field of membership policy is set out in Interpretive Ruling and Policy Statement 99–1, Chartering and Field of Membership Policy (IRPS 99–1), as amended by IRPS 00–01 and IRPS 01–01. The policy is incorporated by reference in NCUA's regulations at 12 CFR 701.1. It is also published as NCUA's Chartering and Field of Membership Manual (Chartering Manual), which is the document most interested parties use and to which references in the following discussion are made.

Community Charters

Last year, the NCUA Board required an existing community charter to address, in either its marketing or business plan or other appropriate separate documentation, how it plans on serving the entire community, including how the credit union will market to the community and what products and services the credit union will offer to assist underserved members in the community. Some in the credit union community refer to this as the community action plan requirement or as CAP, though the final rule does not use that term. The NCUA Board stated in the preamble to the final rule that ''existing credit unions will have until December 31, 2001 to have a plan in place addressing how the credit union will serve the entire community.'' 65 FR 64512, 64518 (October 27, 2000). The Board implemented this rule even while recognizing that there was no tangible evidence that credit unions were not planning on serving their entire community. In fact, the NCUA Board stated that, based ''on the comments of community credit unions and the submissions some of them provided, many community credit unions already have adopted plans and offer products and services designed to serve the entire community.'' 65 FR 64512, 64517 (October 27, 2000).

The NCUA Board notes that, while it certainly has the legal authority to impose this regulatory requirement, it has continued to review the necessity of imposing it on a specific type of federal credit union charter. The NCUA Board, after discussing this issue further with agency staff and the credit union community, has decided to repeal this regulatory requirement. This Board has determined that requiring only certain credit unions to adopt specific written policies addressing service to the entire community, where there is no evidence credit unions are not attempting to serve their entire communities, is not a reasonable regulatory practice, particularly when this regulatory requirement raises little, if any, safety and soundness concerns.

This Board believes that a regulation that does not address a substantiated concern or a potential problem is unnecessary. In this case, absent evidence that community charters are not marketing their services to their entire communities, removing the regulatory requirement is prudent.

Underserved Areas

The addition of underserved areas, as defined in Chapter 3 of the Chartering Manual, to the field of membership of operating credit unions is a continuing priority of the NCUA Board. Three criteria must be met before an underserved area can be added to any federal credit union's field of membership. First, the area must be a local community. Second, the area must also be classified as an investment area as defined in section 103(16) of the Community Development Banking and Financial Institutions Act of 1994, 12 U.S.C. 4703(16). Third, the credit union adding the underserved area must establish and maintain an office or facility in the local community.

Last year, the NCUA Board made it less burdensome for federal credit unions to add underserved areas. 65 FR 64512 (October 27, 2000). The NCUA Board modified its policy by stating that a credit union would not have to demonstrate common interests or interaction for a local community if the underserved area to be served is (1) in a recognized political jurisdiction, i.e., a county or its political equivalent or any contiguous political subdivisions contained therein, and if the population of the requested well-defined area does not exceed 300,000, or (2) in multiple contiguous political jurisdictions, i.e., a county or its political equivalent or any political subdivisions contained therein and if the population of the requested well-defined area does not exceed 200,000. The NCUA Board also stated that it presumed that an underserved area for purposes of the investment area criteria would have significant unmet needs for loans or equity investment if the area met the poverty, median family income, unemployment, distressed housing, or population loss criteria set forth in the Community Development Banking and Financial Institutions Act of 1994. Because of these changes and greater interest by the credit union community, the number of underserved areas added to federal credit union's field of membership increased from 50 in 2000 to 231 as of November 30, 2001.

The NCUA Board is continuing to update this section of the Chartering Manual to encourage further development of credit unions in underserved areas and thereby improve financial services to those most in need. The primary reason for this update is the release of the 2000 census.

The Chartering Manual provides examples of what an investment area is for the purpose of adding an underserved area. The Federal Credit Union Act defines an underserved area

as a local community, neighborhood, or rural district that is an ''investment area'' as defined in section 103(16) of the Community Development Banking and Financial Institutions Act of 1994. The 1994 law permits the Community Development Financial Institutions Fund of the United States Department of the Treasury (CDFI Fund) to further define investment areas. With the release of the 2000 census as well as further expansion of an investment area by CDFI, the Board is updating the definition of an investment area in Chapter 3 of the Chartering Manual. These changes will make the Chartering Manual consistent with the data in the 2000 census as well as the modifications promulgated by the CDFI Fund. These amendments will ultimately make it easier for credit unions to add underserved areas and thus serve more members of modest means.

Interim Final Rule

Since issuance of the community service plan requirement, the credit union community has continued to debate its necessity and benefits. The Board notes that previous comment was overwhelmingly against this type of provision and wishes to consider further comment. The NCUA Board is issuing this amendment to its chartering regulation as an interim final rule because it removes a burdensome regulation and merely updates the agencies definition of an investment area for the purpose of adding underserved areas. The Board believes that both these actions are necessary and in the public interest because of the recent and sudden increase in credit union asset growth and the current uncertainty in the national economy. Furthermore, the Board believes the amendments further the public interest in removing a potentially costly and unnecessary regulatory burden and promotes the efficient use of agency resources and staff. Accordingly, for good cause, the Board finds that, pursuant to 5 U.S.C. 553(b)(3)(B), notice and public procedures are impracticable, unnecessary, and contrary to the public interest; and, pursuant to 5 U.S.C. 553(d)(3), the rule shall be effective immediately and without 30 days advance notice of publication. Although the rule is being issued as an interim final rule and is effective immediately, the NCUA Board encourages interested parties to submit comment on whether the community service plan requirement should be deleted from the Chartering Manual and the definition of investment area for the purpose of adding underserved areas should be finalized in the Chartering Manual.

Regulatory Procedures

Regulatory Flexibility Act

The Regulatory Flexibility Act requires NCUA to prepare an analysis to describe any significant economic impact a regulation may have on a substantial number of small credit unions (primarily those under $1 million in assets). The amendments will not have a significant economic impact on a substantial number of small credit unions and, therefore, a regulatory flexibility analysis is not required.

Paperwork Reduction Act

The NCUA Board has determined that this interim final rule does not increase, and will in fact reduce, paperwork requirements under the Paperwork Reduction Act and regulations of the Office of Management and Budget.

Small Business Regulatory Enforcement Fairness Act

The Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121) provides generally for congressional review of agency rules. A reporting requirement is triggered in instances where NCUA issues a final rule as defined by section 551 of the Administrative Procedures Act. 5 U.S.C. 551. The rule has been submitted to the Office of Management and Budget for its determination of whether this is a major rule.

Executive Order 13132

Executive Order 13132 encourages independent regulatory agencies to consider the impact of their regulatory actions on state and local interests. In adherence to fundamental federalism principles, NCUA, an independent regulatory agency as defined in 44 U.S.C. 3502(5), voluntarily complies with the executive order. This final rule only applies to federal credit unions. It will not have 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. NCUA has determined that this rule does not constitute a policy that has federalism implications for purposes of the executive order.

Agency Regulatory Goal

NCUA's goal is clear, understandable regulations that impose a minimal regulatory burden. We request your comments on whether the proposed amendments are understandable and minimally intrusive if implemented as proposed.

List of Subjects in 12 CFR Part 701

Credit, Credit unions, Reporting and recordkeeping requirements.

By the National Credit Union Administration Board on December 13, 2001.

Becky Baker,

Secretary of the Board.

Accordingly, NCUA amends 12 CFR part 701 as follows:

PART 701—ORGANIZATION AND OPERATION OF FEDERAL CREDIT UNIONS

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

Authority: 12 U.S.C. 1752(5), 1755, 1756, 1757, 1759, 1761a, 1761b, 1766, 1767, 1782, 1784, 1787, 1789.

Section 701.6 is also authorized by 15 U.S.C. 3717. Section 701.31 is also authorized by 15 U.S.C. 1601 *et seq.*, 42 U.S.C. 1981 and 3601–3610. Section 701.35 is also authorized by 12 U.S.C. 4311–4312.

2. Section 701.1 is revised to read as follows:

§ 701.1 Federal credit union chartering, field of membership modifications, and conversions.

National Credit Union Administration policies concerning chartering, field of membership modifications, and conversions are set forth in Interpretive Ruling and Policy Statement 99–1, Chartering and Field of Membership Policy (IRPS 99–1), as amended by IRPS 00–1, IRPS 01–1 and IRPS 01–3. Copies may be obtained by contacting NCUA at the address found in § 792.2(g)(1) of this chapter. The combined IRPS are incorporated into this section.

(Approved by the Office of Management and Budget under control number 3133-0015.)

Note: The text of the Interpretive Ruling and Policy Statement (IRPS 99–1) does not, and the following amendments will not, appear in the Code of Federal Regulations.

3. In IRPS 99–1, Chapter 2, Section V.A.2 is revised to read as follows:

In addition to the documentation requirements set forth in Chapter 1 to charter a credit union, a community credit union applicant must provide additional documentation addressing the proposed area to be served and community service policies.

A community credit union is unique in that it must meet the statutory requirements that the proposed community area is (1) well-defined, and (2) a local community, neighborhood, or rural district.

''Well-defined'' means the proposed area has specific geographic boundaries.

Geographic boundaries may include a city, township, county (or its political equivalent), or clearly identifiable neighborhood. Although congressional districts or other political boundaries which are subject to occasional change, and state boundaries are well-defined areas, they do not meet the second requirement that the proposed area be a local community, neighborhood, or rural district.

The meaning of local community, neighborhood, or rural district includes a variety of factors. Most prominent is the requirement that the residents of the proposed community area interact or have common interests. In determining interaction and/or common interests, a number of factors become relevant. For example, the existence of a single major trade area, shared governmental or civic facilities, or area newspaper is significant evidence of community interaction and/or common interests. Conversely, numerous trade areas, multiple taxing authorities, and multiple political jurisdictions, tend to diminish the characteristics of a local area.

Population and geographic size are also significant factors in determining whether the area is local in nature. A large population in a small geographic area or a small population in a large geographic area may meet NCUA community chartering requirements. For example, an ethnic neighborhood, a rural area, a city, and a county with 300,000 or less residents will generally have sufficient interaction and/or common interests to meet community charter requirements. While this may most often be true, it does not preclude community charters consisting of multiple counties or local areas with populations of any size from meeting community charter requirements.

Conversely, a larger population in a large geographic area may not meet NCUA community chartering requirements. It is more difficult for a major metropolitan city, a densely populated county, or an area covering multiple counties with significant population to have sufficient interaction and/or common interests, and to therefore demonstrate that these areas meet the requirement of being ''local.'' In such cases, documentation supporting the interaction and/or common interests will be greater than the evidence necessary for a smaller and less densely populated area.

In most cases, the ''well-defined local community, neighborhood, or rural district'' requirement will be met if (1) the area to be served is in a recognized single political jurisdiction, i.e., a county or its political equivalent or any contiguous political subdivisions contained therein, and if the population of the requested well-defined area does not exceed 300,000, or (2) the area to be served is in multiple contiguous political jurisdictions, i.e. a county or its political equivalent or any political subdivisions contained therein and if the population of the requested well-defined area does not exceed 200,000. If the proposed area meets either of these criteria, the credit union must only submit a letter describing how the area meets the standards for community interaction or common interests.

If NCUA does not find sufficient evidence of community interaction or common interests, more detailed documentation will be necessary to support that the proposed area is a well-defined community. The credit union must also provide evidence of the political jurisdiction(s) and population. Evidence of the political jurisdiction(s) should include maps designating the area to be served. One map must be a regional or state map with the proposed community outlined. The other map must outline the proposed community and the identifying geographic characteristics of the surrounding areas.

If the area to be served does not meet the political jurisdiction(s) and population requirements of the preceding paragraph, or if required by NCUA, the application must include documentation to support that it is a well-defined local community, neighborhood, or rural district. It is the applicant's responsibility to demonstrate the relevance of the documentation provided in support of the application. This must be provided in a narrative summary. The narrative summary must explain how the documentation demonstrates interaction or common interests. For example, simply listing newspapers and organizations in the area is not sufficient to demonstrate that the area is a local community, neighborhood, or rural district.

Examples of acceptable documentation may include:

- The defined political jurisdictions;
- Major trade areas (shopping patterns and traffic flows);
- Shared/common facilities (for example, educational, medical, police and fire protection, school district, water, etc.);
- Organizations and clubs within the community area;
- Newspapers or other periodicals published for and about the area;
- Maps designating the area to be served. One map must be a regional or state map with the proposed community outlined. The other map must outline the proposed community and the identifying geographic characteristics of the surrounding areas;
- Other documentation that demonstrates that the area is a community where individuals have common interests or interact.

An applicant need not submit a narrative summary or documentation to support a proposed community charter, amendment or conversion as a well-defined local community, neighborhood, or rural district if the NCUA has previously determined that the same exact geographic area meets that requirement in connection with consideration of a prior application. Applicants may contact the appropriate regional office to find out if the area they are interested in has already been determined to meet the community requirements. If the area is the same as a previously approved area, an applicant need only include a statement to that effect in the application. Applicants may be required to submit their own summary and documentation regarding the community requirements if NCUA has reason to believe that prior submissions are not sufficient or are no longer accurate.

A community credit union is frequently more susceptible to competition from other local financial institutions and generally does not have substantial support from any single sponsoring company or association. As a result, a community credit union will often encounter financial and operational factors that differ from an occupational or associational charter. Its diverse membership may require special marketing programs targeted to different segments of the community. For example, the lack of payroll deduction creates special challenges in the development of savings promotional programs and in the collection of loans.

Accordingly, it is essential for the proposed community credit union to develop a detailed and practical business and marketing plan to serve the entire community for at least the first two years of operation. The proposed credit union must not only address the documentation requirements set forth in Chapter 1, but also focus on the accomplishment of the unique financial and operational factors of a community charter.

Community credit unions will be expected to regularly review and to follow, to the fullest extent economically possible, the marketing and business plan submitted with their application.

4. In IRPS 99–1, Chapter 3, Section III is revised to read as follows:

All federal credit unions may include in their fields of membership, without regard to location, communities satisfying the definition for serving underserved areas in the Federal Credit Union Act. More than one federal credit union can serve the same underserved area. The Federal Credit Union Act defines an underserved area as a local community, neighborhood, or rural district that is an ''investment area'' as defined in Section 103(16) of the Community Development Banking and Financial Institutions Act of 1994.

The ''well-defined local community, neighborhood, or rural district'' requirement will be met if (1) the area to be served is in a recognized single political jurisdiction, i.e., a county or its political equivalent or any contiguous political subdivisions contained therein, and if the population of the requested well-defined area does not exceed 300,000 or (2) the area to be served is in multiple contiguous political jurisdictions, i.e., a county or its political equivalent or any political subdivisions contained therein and if the population of the requested well-defined area does not exceed 200,000. If the proposed area meets either of these criteria and meets the definition of an investment area that is underserved, then it is presumed to be a local community, neighborhood, or rural district.

An investment area includes any of the following (as reported in the most recently completed decennial census):

- An area encompassed or located in an Empowerment Zone or Enterprise Community designated under section 1391 or the Internal Revenue Code of 1996 (26 U.S.C. 1391);
- An area where the percentage of the population living in poverty is at least 20 percent;
- An area in a Metropolitan Area where the median family income is at or below 80

percent of the Metropolitan Area median family income or the national Metropolitan Area median family income, whichever is greater;

• An area outside of a Metropolitan Area, where the median family income is at or below 80 percent of the statewide non-Metropolitan Area median family income or the national non-Metropolitan Area median family income, whichever is greater;

• An area where the unemployment rate is at least 1.5 times the national average;

• An area where the percentage of occupied distressed housing (as indicated by lack of complete plumbing and occupancy of more than one person per room) is at least 20 percent;

• An area located outside of a Metropolitan Area with a county population loss between the most recent decennial census and the previous decennial census of at least 10 percent;

• An area located outside of a Metropolitan Area with a county net migration loss (out-migration minus in-migration) over the five-year period preceding the most recent decennial census of at least 5 percent;

• An area meeting the criteria for economic distress that may be established by the Community Development Financial Institutions Fund (CDFI) of the United States Department of the Treasury.

In addition, the local community, neighborhood, or rural district must be underserved, based on data considered by the NCUA Board and the Federal banking agencies.

Once an underserved area has been added to a federal credit union's field of membership, the credit union must establish and maintain an office or facility in the community within two years. A service facility is defined as a place where shares are accepted for members' accounts, loan applications are accepted and loans are disbursed. This definition includes a credit union owned branch, a shared branch, a mobile branch, an office operated on a regularly scheduled weekly basis, or a credit union owned electronic facility that meets, at a minimum, these requirements. This definition does not include an ATM.

If a credit union has a preexisting office within close proximity to the underserved area, then it will not be required to maintain an office or facility within the underserved area. Close proximity will be determined on a case-by-case basis, but the office must be readily accessible to the residents and the distance from the underserved area will not be an impediment to a majority of the residents to transact credit union business.

The federal credit union adding the underserved community must document that the community meets the definition for serving underserved areas in the Federal Credit Union Act. The charter type of a federal credit union adding such a community will not change and therefore the credit union will not be able to receive the benefits afforded to low-income designated credit unions, such as expanded use of non member deposits and access to the Community Development Revolving Loan Program for Credit Unions.

A federal credit union that desires to include an underserved community in its field of membership must first develop a business plan specifying how it will serve the community. The business plan, at a minimum, must identify the credit and depository needs of the community and detail how the credit union plans to serve those needs. The credit union will be expected to regularly review the business plan, to determine if the community is being adequately served. The regional director may require periodic service status reports from a credit union about the underserved area to ensure that the needs of the underserved area are being met as well as requiring such reports before NCUA allows a federal credit union to add an additional underserved area.

[FR Doc. 01–31290 Filed 12–19–01; 8:45 am]

BILLING CODE 7535–01–U

NATIONAL CREDIT UNION ADMINISTRATION

12 CFR Part 701

Organization and Operation of Federal Credit Unions

AGENCY: National Credit Union Administration (NCUA).

ACTION: Final rule.

SUMMARY: The NCUA Board is amending its rule limiting compensation to officials. The amendment changes the definition of the term ''compensation'' to exclude the reimbursement or payment of business-related travel costs for an official to be accompanied by a guest.

EFFECTIVE DATE: This rule is effective January 22, 2002.

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

SUPPLEMENTARY INFORMATION:

Background

NCUA published a proposal to amend its regulation covering travel reimbursements for guests accompanying Federal Credit Union (FCU) officials on business. 66 FR 40641, August 3, 2001. During the sixty-day comment period, NCUA received thirty-seven comment letters. After carefully considering the comments, NCUA is publishing this final rule, which is identical to the proposal.

The Federal Credit Union Act (the FCU Act) and NCUA regulations provide that only one board officer of an FCU may be compensated as such and that no other official may receive compensation for serving as a board or committee member. 12 U.S.C. 1761(c), 1761a; 12 CFR 701.33. NCUA has defined compensation to exclude reasonable and proper expense reimbursement for costs incurred by FCU officials in carrying out the responsibilities of the positions to which they were appointed or elected.

Section 701.33 currently permits reimbursement of a board official and one immediate family member for travel expenses incurred in performing board duties if the payment is necessary and appropriate as determined by the FCU board and is made in accordance with written board policies and procedures. 12 CFR 701.33(b)(2)(i).

To give FCUs additional flexibility regarding the reimbursement of reasonable and proper expenses, NCUA has determined to amend § 701.33(b)(2)(i) to use the term ''guest'' rather than ''immediate family member.'' All other provisions of the regulation remain unchanged. Travel and reimbursement policies must still provide for payment of only those costs that are reasonable in relation to the FCUs resources and financial condition. NCUA cautions FCUs that this proposal has no effect on Internal Revenue Service (IRS) regulations regarding the reporting and taxing of any payments or reimbursements. FCUs should consult their tax advisors or attorneys concerning IRS requirements related to their travel reimbursement policies.

Comments

NCUA received thirty-seven comment letters. Seventeen letters were from natural person credit unions and two were from corporate credit unions. Two were from credit union trade associations. Eight were from state credit union leagues and eight were from credit union officials or other individuals.

Twenty-seven of the commenters strongly support the proposal and applaud the agency efforts to minimize government intrusion and maximize flexibility.

Four commenters opposed it, pointing to possible increases in costs to members and concerns of its effect on family unity. The NCUA Board expects that any increase in costs to members will be minor and will support the business of the credit union. Furthermore, any FCU that adopts a new policy must still limit its travel expenditures to amounts that are reasonable in relation to its resources and financial condition. Of course, the amended rule does not require FCUs to change their current travel expense reimbursement or payment policies. The NCUA Board determined to amend the

regulation to allow FCUs greater flexibility to accommodate the needs of officials whose duties include business-related travel. Under the current regulation, FCUs may not pay or reimburse the cost of travel for an official's grandson to accompany her to an FCU-sponsored program, or for an official whose mobility is impaired to be accompanied by an aide, even if the FCU thought it necessary or appropriate. With this amendment, the FCU will have the discretion to adopt policies that provide for the reimbursement or payment of such travel costs. Again, the amendment does not require FCUs to do so.

Five commenters, while generally supportive, suggested that the proposal did not go far enough in expanding credit union authority. These commenters believe that it is unnecessary for NCUA to have a regulation concerning such reimbursements or payments. They suggest that NCUA rescind the regulation so that FCUs can establish reimbursement policies that fit their individual needs. They argue that such policies would be subject to scrutiny in the examination process and would therefore pose no risk to safety and soundness. Two commenters also stated that NCUA should not have a regulation on travel reimbursement, but should rely on the examination process to ensure that FCUs have reasonable and appropriate policies. The NCUA Board believes that it is appropriate for the agency to maintain a regulation in this area. There is a tension between the need of FCUs to attract competent and dedicated officials and the prohibition in the FCU Act against compensating all but one of them. FCUs regularly question NCUA about the permissibility of new types of reimbursements. These new ideas for reimbursements to officials frequently fall beyond the limits of the FCU Act. This regulation provides FCUs with NCUA's interpretation of the FCU Act by clearly stating what types of travel reimbursements NCUA has found to be consistent with the law.

Regulatory Procedures

Regulatory Flexibility Act

The Regulatory Flexibility Act requires NCUA to prepare an analysis to describe any significant economic impact a proposed rule may have on a substantial number of small entities (primarily those under one million dollars in assets). This rule will not have a significant economic impact on a substantial number of small credit unions, and therefore, a regulatory flexibility analysis is not required.

Paperwork Reduction Act

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

Executive Order 13132

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

Small Business Regulatory Enforcement Fairness Act

The Office of Management and Budget (OMB) has determined that this is not a major rule for purposes of the Small Business Regulatory Enforcement Fairness Act of 1996.

List of Subjects in 12 CFR Part 701

Credit unions, Reporting and recordkeeping requirements, Travel and transportation expenses, Travel restrictions.

By the National Credit Union Administration Board on December 13, 2001.

Becky Baker,

Secretary of the Board.

For the reasons set forth in the preamble, the National Credit Union Administration amends 12 CFR part 701 as follows:

PART 701—ORGANIZATION AND OPERATION OF FEDERAL CREDIT UNIONS

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

Authority: 12 U.S.C. 1752(5), 1755, 1756, 1757, 1759, 1761a, 1761b, 1766, 1767, 1782, 1784, 1787, and 1789.

Section 701.6 is also authorized by 31 U.S.C. 3717.

Section 701.31 is also authorized by 15 U.S.C. 1601 *et seq.*, 42 U.S.C. 1861 and 42 U.S.C. 3601–3610.

Section 701.35 is also authorized by 42 U.S.C. 4311–4312.

2. Revise the last sentence of paragraph (b)(2)(i) of § 701.33 to read as follows:

§ 701.33 Reimbursement, insurance, and indemnification of officials and employees.

* * * * *

(b) * * *

(2) * * *

(i) * * * Such payments may include the payment of travel costs for officials and one guest per official;

* * * * *

[FR Doc. 01–31288 Filed 12–19–01; 8:45 am]

BILLING CODE 7535–01–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2001–SW–51–AD; Amendment 39–12559; AD 2001–25–06]

RIN 2120–AA64

Airworthiness Directives; Sikorsky Aircraft Corporation Model S–76B and S–76C Helicopters

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule; request for comments.

SUMMARY: This amendment adopts a new airworthiness directive (AD) for Sikorsky Aircraft Corporation (Sikorsky) Model S–76B and S–76C helicopters. This action requires modifying the electrical power distribution system to change the source of the 28 volts supplied to Nos. 1 and 2 attitude and heading reference (AHRS) WARN circuits. This amendment is prompted by a ground test simulating loss of the essential bus by pulling both bus tie circuit breakers and switching off both batteries. As a result of this action, both autopilots went off-line. The actions specified in this AD are intended to prevent an AHRS fail signal to both autopilots due to a failure of the essential bus, loss of autopilot functions, and subsequent loss of control of the helicopter.

DATES: Effective January 4, 2002.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of January 4, 2002.

Comments for inclusion in the Rules Docket must be received on or before February 19, 2002.

ADDRESSES: Submit comments in triplicate to the Federal Aviation

Administration (FAA), Office of the Regional Counsel, Southwest Region, Attention: Rules Docket No. 2001–SW–51–AD, 2601 Meacham Blvd., Room 663, Fort Worth, Texas 76137. You may also send comments electronically to the Rules Docket at the following address: *9-asw-adcomments@faa.gov*.

The service information referenced in this AD may be obtained from Sikorsky Aircraft Corporation, Attn: Manager, Commercial Tech Support, 6900 Main Street, Stratford, Connecticut 06614, phone (203) 386–3001, fax (203) 386–5983. 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: Solomon Hecht, Aviation Safety Engineer, Boston Aircraft Certification Office, 12 New England Executive Park, Burlington, MA 01803, telephone (781) 238–7159, fax (781) 238–7199.

SUPPLEMENTARY INFORMATION: This amendment adopts a new AD for Sikorsky Model S–76B and S–76C helicopters. This action requires modifying the electrical power distribution system by changing the source of the 28 volts electrical power supplied to Nos. 1 and 2 AHRS WARN circuits. This amendment is prompted by ground testing of a Sikorsky Model S–76B helicopter which simulated loss of the essential bus by pulling both bus tie circuit breakers and switching off both batteries. As a result of this action, both autopilots went off-line. This condition, if not corrected, could result in an unintended AHRS fail signal to both autopilots due to failure of the essential bus, loss of autopilot functions, and subsequent loss of control of the helicopter.

The FAA has reviewed Sikorsky Alert Service Bulletin No. 76–34–7A (320A), Revision A, dated September 17, 2001 (ASB). The ASB describes procedures for modifying the electrical power distribution system to prevent an AHRS fail signal to the autopilots by changing the source of the 28 volts supplied to Nos. 1 and 2 AHRS WARN circuits. The essential bus currently supplies both Nos. 1 and 2 AHRS WARN circuits. If this essential bus failed, the AHRS WARN circuits would generate an AHRS fail signal which would cause both autopilots to go off-line. The modification specified in the ASB changes the 28 volt electrical power source to the AHRS WARN circuits so that one of the two autopilots will remain on-line after an essential bus failure.

We have identified an unsafe condition that is likely to exist or develop on other Sikorsky Model S76–B and S–76C helicopters of this same type design. Therefore, this AD is being issued to prevent an AHRS fail signal to both autopilots, loss of autopilot functions, and subsequent loss of control of the helicopter. This AD requires modifying the AHRS WARN circuits so that one of the two autopilots will remain on-line should the essential bus fail. The actions must be accomplished in accordance with the ASB described previously. The short compliance time involved is required because the previously described critical unsafe condition can adversely affect the controllability of the helicopter. Therefore, modifying the AHRS is required within 30 days and this AD must be issued immediately.

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

The FAA estimates that 20 of the helicopters affected by this AD are on the U.S. register, that it will take approximately 5 work hours to install the modification kit, and that the average labor rate is $60 per work hour. The manufacturer states in the ASB that the required modification kit will be provided at no cost. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $6000.

Comments Invited

Although this action is in the form of a final rule that involves requirements affecting flight safety and, thus, was not preceded by notice and an opportunity for public comment, comments are invited on this rule. Interested persons are invited to comment on this rule by submitting such written data, views, or arguments as they may desire. Communications should identify the Rules Docket number and be submitted in triplicate to the address specified under the caption **ADDRESSES**. All communications received on or before the closing date for comments will be considered, and this rule may be amended in light of the comments received. Factual information that supports the commenter's ideas and suggestions is extremely helpful in evaluating the effectiveness of the AD action and determining whether additional rulemaking action would be needed.

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

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this rule must submit a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket No. 2001–SW–51–AD.'' The postcard will be date stamped and returned to the commenter.

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

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

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

2001–25–06 Sikorsky Aircraft Corporation: Amendment 39–12559. Docket No. 2001–SW–51–AD.

Applicability: Model S–76B helicopters, serial numbers (S/N) 760430, 760441 through 760445, 760448 through 760452, 760454, 760455, 760458, 760462, and 760465, and Model S–76C helicopters, S/N 760420, 760436, 760438, 760440, 760453, 760456, 760457, 760459, 760460, 760461 760463, 760464, 760466 through 760487, 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 30 days after the effective date of this AD, unless accomplished previously.

To prevent an attitude and heading reference (AHRS) fail signal to both autopilots due to a failure of the essential bus, loss of both autopilot functions, and subsequent loss of control of the helicopter, accomplish the following:

(a) Modify Nos. 1 and 2 AHRS WARN circuits in accordance with the Accomplishment Instructions, paragraphs 3.A. through 3.D, of Sikorsky Aircraft Corporation Alert Service Bulletin No. 76–34–7A (320A), Revision A, dated September 17, 2001.

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

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

(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 Accomplishment Instructions, paragraphs 3.A. through 3.D., of Sikorsky Aircraft Corporation Alert Service Bulletin No. 76–34–7A (320A), Revision A, dated September 17, 2001. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Sikorsky Aircraft Corporation, Attn: Manager, Commercial Tech Support, 6900 Main Street, Stratford, Connecticut 06614, phone (203) 386–3001, fax (203) 386–5983. 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 January 4, 2002.

Issued in Fort Worth, Texas, on November 29, 2001.

David A. Downey,

Manager, Rotorcraft Directorate, Aircraft Certification Service.

[FR Doc. 01–31039 Filed 12–19–01; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF COMMERCE

Office of the Secretary

15 CFR Parts 4, 4a and 4b

[Docket No. 990723201–1208–02]

RIN: 0605–AA14

Public Information, Freedom of Information and Privacy

AGENCY: Department of Commerce.

ACTION: Final rule.

SUMMARY: This document sets forth revisions of Department of Commerce (Department) regulations regarding the Freedom of Information Act (FOIA), Privacy Act (PA),[1] and declassification and public availability of national security information. The revisions implement the Electronic Freedom of Information Act (EFOIA) Amendments of 1996 and Executive Order 12958, include an updated duplication fee, and streamline, clarify, and update the regulations.

DATES: Effective December 20, 2001.

FOR FURTHER INFORMATION CONTACT: Andrew W. McCready, 202–482–8044.

SUPPLEMENTARY INFORMATION: On May 31, 2000, the Department published a proposed rule (65 FR 34606) to revise its existing FOIA and PA regulations, and to add new provisions to implement the Electronic Freedom of Information Act (EFOIA) Amendments of 1996 (Pub. L. 104–231). Interested persons were invited to submit written comments on the proposed rule. The Department received one set of comments. After due consideration of the comments, the Department has adopted several of the modifications the commenter recommended, and has made numerous other minor revisions to its proposed rule for clarity. The Department is also increasing the duplication charge from the $.15 announced in the proposed rule (the current charge is $.07) to $.16 per page, to reflect an increase in copying costs since the issuance of the proposed rule.

Discussion of Comments

The comments received were submitted by Public Citizen and the Freedom of Information Clearinghouse, and are addressed below.

(1) The commenter recommended deleting from § 4.2(b)[2] the highlighted phrase in the statement: ''Components shall also make public inspection facility records created by the Department on or after November 1, 1996 available electronically through the Department's 'FOIA Home Page' link found at the Department's World Wide Web site.'' The recommended change is more consistent with the FOIA than is the proposed language above, and thus the Department has deleted the highlighted phrase.

(2) The commenter recommended changing the cut-off date in § 4.5(a) for determining records responsive to a request from the date the request is received to the date that processing of the request begins. Many of the requests the Department receives require a search to be conducted in more than one of its components. Implementing the commenter's recommendation could create confusion about such requests involving multiple components, because each component could begin processing the request on a different date, and thus have a different cut-off date. Further, the Department's cut-off date is consistent with the Supreme Court's requirement that for records to be ''agency records'' subject to the FOIA, the agency must be in control of them at the time the FOIA request is made. *Department of Justice* v. *Tax Analysts*, 492 U.S. 136, 145 (1989). Implementing the commenter's recommendation could also create uncertainty with regard to determining what records are responsive to the request, and preventing their inadvertent disposition between the time the request is received and processing begins. That is, components could be placed in a situation in which

[1] The Department intends to comprehensively update its Privacy Act systems of records, and related provisions in its PA regulations, in a future Notice of Proposed Rulemaking.

[2] Section 4.2(b) in the proposed rule is § 4.2(c) in the final rule set forth below.

they would not be authorized to determine what records are responsive to a request until processing, including search, begins, even though records in the component's control when the request is received would still be potentially subject to the request.

(3) The commenter recommended that in § 4.5(b) the Department clarify the meaning of ''primary interest,'' and state that records will be referred only when referral is necessary because the originating agency has a substantial interest in the record, and the referral is not likely to substantially delay the release or otherwise place unreasonable burdens on the requester.

The Department has decided not to modify the definition of ''primary interest,'' but will clarify its meaning by moving the sentence ''Ordinarily, the agency that originated a record will be presumed to have the primary interest in it.'' from the end of § 4.5(b) to immediately after the first sentence in § 4.5(b), where the phrase ''primary interest'' first appears. Defining ''primary interest'' more specifically to cover possible future rare instances when the agency that originated a document would not have the primary interest in it would require lengthy explanations of limited usefulness.

The Department also will not amend its regulations to state that records will be referred only when referral is necessary because the originating agency has a substantial interest in the record, and when the referral is not likely to substantially delay the release or otherwise place unreasonable burdens on the requester. In the vast majority of cases, the agency that originated a record has the primary, or principal, interest in it, and is in the best position to determine whether to release it. In those rare instances when the originating agency does not have the primary interest in it, the Department's regulations would not require referral to that agency. Revising the Department's regulations, as the commenter suggests, to require Department officials to make case-by-case determinations on whether a referral would be likely to substantially delay a release or otherwise place unreasonable burdens on the requester, would require those officials to make difficult and inherently subjective decisions, and thus is administratively unworkable.

(4) The commenter objected to a sentence in § 4.6(c)(3) that refusal to reasonably modify the scope of a request or arrange an alternate time frame may affect a requester's ability to obtain judicial review. The sentence is misleading and the Department has deleted it.

(5) The commenter objected to the scope of the grounds upon which § 4.9(b) would require business submitters to assert any objections to disclosure by the Department of records submitted by them. The Department had proposed that ''the statement [from the business submitter] must specify all grounds for withholding any portion of the information under any exemption of the FOIA.'' The commenter recommended that the regulation require submitters to specify only the grounds for withholding their records under exemptions (b)(4) and (b)(6), which protect the individual interests of the submitter, but not to require them to assert exemptions intended to protect Government interests. The Department agrees in part with the comment, and has deleted the requirement that the statement specify all grounds for withholding information under any FOIA exemption. The Department has, however, decided to require submitters to specify only grounds for withholding under exemption (b)(4), and not also under exemption (b)(6), because the Department does not routinely notify persons about whom the Department possesses information potentially subject to exemption (b)(6). Thus, requiring business submitters to object to disclosure of potential (b)(6) information without requiring other persons about whom the Department possesses similar (b)(6) information to do so would be unfair.

Other Considerations

It has been determined that this rule is significant under Executive Order 12866.

This rule does not contain a ''collection of information'' as defined by the Paperwork Reduction Act.

In accordance with the Regulatory Flexibility Act (5 U.S.C. 605(b)), the Chief Counsel for Regulation has certified to the Chief Counsel for Advocacy of the Small Business Administration that this rule will not have a significant economic impact on a substantial number of small entities. Under the FOIA, agencies may recover only the direct costs of searching for, reviewing, and duplicating the records processed for requesters. Thus, the fees the Department assesses are ordinarily nominal. Further, the number of ''small entities'' that make FOIA requests is relatively small compared to the number of individuals who make such requests.

List of Subjects

15 CFR Part 4

Administrative practice and procedure, Freedom of Information, Privacy, Public information.

15 CFR Part 4a

Administrative practice and procedure, Classified information.

15 CFR Part 4b

Privacy.

For the reasons stated in the preamble, the Department of Commerce amends 15 CFR as set forth below:

1. Revise Part 4 to read as follows:

PART 4—DISCLOSURE OF GOVERNMENT INFORMATION

Subpart A—Freedom of Information Act

Sec.
4.1 General.
4.2 Public reference facilities.
4.3 Records under the FOIA.
4.4 Requirements for making requests.
4.5 Responsibility for responding to requests.
4.6 Time limits and expedited processing.
4.7 Responses to requests.
4.8 Classified information.
4.9 Business Information.
4.10 Appeals from initial determinations or untimely delays.
4.11 Fees.

Subpart B—Privacy Act

4.21 Purpose and scope.
4.22 Definitions.
4.23 Procedures for making inquiries.
4.24 Procedures for making requests for records.
4.25 Disclosure of requested records to individuals.
4.26 Special procedures: Medical records.
4.27 Procedures for making requests for correction or amendment.
4.28 Agency review of requests for correction or amendment.
4.29 Appeal of initial adverse agency determination on correction or amendment.
4.30 Disclosure of record to person other than the individual to whom it pertains.
4.31 Fees.
4.32 Penalties.
4.33 General exemptions.
4.34 Specific exemptions.
Appendix A to Part 4—Freedom of Information Public Inspection Facilities, and Addresses for Requests for Records Under the Freedom of Information Act and Privacy Act, and Requests for Correction or Amendment Under the Privacy Act.
Appendix B to Part 4—Officials Authorized to Deny Requests for Records Under the Freedom of Information Act, and Requests for Records and Requests for Correction or Amendment Under the Privacy Act.
Appendix C to Part 4—Systems of Records Noticed by Other Federal Agencies and Applicable to Records of the Department, and Applicability of this Part Thereto.

Authority: 5 U.S.C. 301; 5 U.S.C. 552; 5 U.S.C. 552a; 5 U.S.C. 553; 31 U.S.C. 3717; 44 U.S.C. 3101; Reorganization Plan No. 5 of 1950.

Subpart A—Freedom of Information Act

§ 4.1 General.

(a) The information in this part is furnished for the guidance of the public and in compliance with the requirements of the Freedom of Information Act (FOIA), as amended (5 U.S.C. 552). This part sets forth the procedures the Department of Commerce (Department) and its components follow to make publicly available the materials and indices specified in 5 U.S.C. 552(a)(2) and records requested under 5 U.S.C. 552(a)(3). Information routinely provided to the public as part of a regular Department activity (for example, press releases issued by the Office of Public Affairs) may be provided to the public without following this part.

(b) As used in this subpart, *component* means any office, division, bureau or other unit of the Department listed in Appendix A to this part (except that a regional office of a larger office or other unit does not constitute a separate component).

§ 4.2 Public reference facilities.

(a) The Department maintains public reference facilities (listed in Appendix A to this part) that contain the records the FOIA requires to be made regularly available for public inspection and copying; furnishes information; receives and processes requests for records under the FOIA; and otherwise assists the public concerning Department operations under the FOIA.

(b) Each component of the Department shall determine which of its records are required to be made available for public inspection and copying, and make those records available either in its own public reference facility or in the Department's Central Reference and Records Inspection Facility. Each component shall maintain and make available for public inspection and copying a current subject-matter index of its public inspection facility records. Each index shall be updated regularly, at least quarterly, with respect to newly included records. In accordance with 5 U.S.C. 552(a)(2), the Department has determined that it is unnecessary and impracticable to publish quarterly or more frequently and distribute copies of the index and supplements thereto.

(c) Each component shall make public inspection facility records created on or after November 1, 1996 available electronically through the Department's ''FOIA Home Page'' link found at the Department's World Wide Web site (*http://www.doc.gov*). Information available at the site shall include:

(1) Each component's index of its public inspection facility records, which indicates which records are available electronically; and

(2) The general index referred to in paragraph (d)(3) of this section.

(d) The Department shall maintain and make available for public inspection and copying:

(1) A current index providing identifying information for the public as to any matter that is issued, adopted, or promulgated after July 4, 1997, and that is retained as a record and is required to be made available or published. Copies of the index are available upon request after payment of the direct cost of duplication;

(2) Copies of records that have been released and that the component that maintains them determines, because of their subject matter, have become or are likely to become the subject of subsequent requests for substantially the same records;

(3) A general index of the records described in paragraph (d)(2) of this section;

(4) Final opinions and orders, including concurring and dissenting opinions made in the adjudication of cases;

(5) Those statements of policy and interpretations that have been adopted by a component and are not published in the **Federal Register**; and

(6) Administrative staff manuals and instructions to staff that affect a member of the public.

§ 4.3 Records under the FOIA.

(a) Records under the FOIA include all Government records, regardless of format, medium or physical characteristics, and include electronic records and information, audiotapes, videotapes, and photographs.

(b) Under the FOIA, the Department has no obligation to create, compile, or obtain from outside the Department a record to satisfy a request. In complying with a request for electronic data, whether the Department creates or compiles records (as by undertaking significant programming work) or merely extracts them from an existing database may be unclear. The Department shall in any case undertake reasonable efforts to search for the information in electronic format.

(c) Department officials may, upon request, create and provide new records pursuant to user fee statutes, such as the first paragraph of 15 U.S.C. 1525, or in accordance with authority otherwise provided by law. Such creation and provision of records is outside the scope of the FOIA.

(d) Components shall preserve all correspondence pertaining to the requests they receive 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. Components shall not dispose of records while they are the subject of a pending request, appeal, or lawsuit under the FOIA.

§ 4.4 Requirements for making requests.

(a) A request for records of the Department which are not customarily made available to the public as part of the Department's regular informational services must be in writing (and may be sent by mail, facsimile, or E-mail), and shall be processed under the FOIA, regardless whether the FOIA is mentioned in the request. Requests should be mailed to the Department component identified in Appendix A to this part that maintains those records, or may be sent by facsimile or E-mail to the numbers or addresses, respectively, listed at the Department's ''FOIA Home Page'' link found at the Department's World Wide Web site (*http://www.doc.gov*).[1] If the proper component cannot be determined, the request should be sent to the central facility identified in Appendix A to this part. The central facility will forward the request to the component(s) it believes most likely to have the requested records. For the quickest handling, the request (and envelope, if the request is mailed) should be marked ''Freedom of Information Act Request.''

(b) For requests for records about oneself, § 4.24 contains additional requirements. For requests for records about another individual, either a written authorization signed by the individual permitting disclosure of his or her records to the requester or proof that the individual is deceased (for example, a copy of a death certificate or an obituary) facilitates processing the request.

(c) The records requested must be described in enough detail to enable Department personnel to locate them with a reasonable amount of effort. If

[1] The United States Patent and Trademark Office (USPTO), which is established as an agency of the United States within the Department of Commerce, operates under its own FOIA regulations at 37 CFR part 102, subpart A. Accordingly, requests for USPTO records should be sent directly to the USPTO.

possible, a request should include specific information about each record sought, such as the date, title or name, author, recipient, and subject matter of the record, and the name and location of the office where the record is located. Also, if records about a court case are sought, the title of the case, the court in which the case was filed, and the nature of the case should be included. If known, any file designations or descriptions of the requested records should be included. In general, the more specifically the request describes the records sought, the greater the likelihood that the Department will be able to locate those records. If a component determines that a request does not reasonably describe records, it shall inform the requester what additional information is needed or how the request is otherwise insufficient, to enable the requester to modify the request to meet the requirements of this section.

§ 4.5 Responsibility for responding to requests.

(a) *In general.* Except as stated in paragraph (b) of this section, the proper component of the Department to respond to a request for records is the component that first receives the request and has responsive records, or the component to which the Departmental Freedom of Information Officer assigns lead responsibility for responding to the request. Records responsive to a request shall include only those records within the Department's possession and control as of the date the proper component receives the request.

(b) *Consultations and referrals.* If a component receives a request for a record in its possession in which another Federal agency subject to the FOIA has the primary interest, the component shall refer the record to that agency for direct response to the requester. Ordinarily, the agency that originated a record will be presumed to have the primary interest in it. A component shall consult with another Federal agency before responding to a requester if the component receives a request for a record in which another Federal agency subject to the FOIA has a significant interest, but not the primary interest; or another Federal agency not subject to the FOIA has the primary interest or a significant interest (see § 4.8 for additional information about referrals of classified information).

(c) *Notice of referral.* Whenever a component refers a document to another Federal agency for direct response to the requester, it ordinarily shall notify the requester in writing of the referral and inform the requester of the name of the agency to which the document was referred.

(d) *Timing of responses to consultations and referrals.* All consultations and referrals shall be handled in chronological order, based on when the FOIA request was received by the first Federal agency.

(e) *Agreements regarding consultations and referrals.* Components may make agreements with other Federal agencies to eliminate the need for consultations or referrals for particular types of records.

§ 4.6 Time limits and expedited processing.

(a) *In general.* Components ordinarily shall respond to requests according to their order of receipt.

(b) *Initial response and appeal.* Subject to paragraph (c)(1) of this section, an initial response shall be made within 20 working days (i.e., excluding Saturdays, Sundays, and legal public holidays) of the receipt of a request for a record under this part by the proper component identified in accordance with § 4.5(a), and an appeal shall be decided within 20 working days of its receipt by the Office of the General Counsel.

(c) *Unusual circumstances.* (1) In unusual circumstances as specified in paragraph (c)(2) of this section, an official listed in Appendix B to this part may extend the time limits in paragraph (b) of this section by notifying the requester in writing as soon as practicable of the unusual circumstances and of the date by which processing of the request is expected to be completed. If the extension is for more than ten working days, the component shall provide the requester an opportunity either to modify the request so that it may be processed within the applicable time limit, or to arrange an alternative time frame for processing the request or a modified request.

(2) As used in this section, *unusual circumstances* means, but only to the extent reasonably necessary to properly process the particular request:

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

(ii) The need to search for, collect, and appropriately examine a voluminous amount of separate and distinct records that are the subject of a single request; or

(iii) The need for consultation, which shall be conducted with all practicable speed, with another component or Federal agency having a substantial interest in the determination of the request.

(3) If a component reasonably believes that multiple requests submitted by a requester, or by a group of requesters acting in concert, constitute a single request that would otherwise involve unusual circumstances, and the requests involve clearly related matters, the component may aggregate them. Multiple requests involving unrelated matters will not be aggregated.

(d) *Multitrack processing.* (1) A component may use two or more processing tracks by distinguishing between simple and more complex requests based on the number of pages involved, or some other measure of the amount of work and/or time needed to process the request, and whether the request qualifies for expedited processing as described in paragraph (e) of this section.

(2) A component using multitrack processing may provide requesters in its slower track(s) with an opportunity to limit the scope of their requests in order to qualify for faster processing. A component doing so shall contact the requester by telephone, E-mail, or letter, whichever is most efficient in each case.

(e) *Expedited processing.* (1) Requests and appeals shall be taken out of order and given expedited treatment whenever it is determined that they involve:

(i) 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;

(ii) The loss of substantial due process rights;

(iii) A matter of widespread and exceptional media interest involving questions about the Government's integrity which affect public confidence; or

(iv) An urgency to inform the public about an actual or alleged Federal Government activity, if made by a person primarily engaged in disseminating information.

(2) A request for expedited processing may be made at the time of the initial request for records or at any later time. For a prompt determination, a request for expedited processing should be sent to the component listed in Appendix A to this part that maintains the records requested.

(3) 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. For example, a requester within the category

described in paragraph (e)(1)(iv) of this section, if not a full-time member of the news media, must establish that he or she is a person whose main professional activity or occupation is information dissemination, though it need not be his or her sole occupation. A requester within the category described in paragraph (e)(1)(iv) of this section must also establish a particular urgency to inform the public about the Government activity involved in the request, beyond the public's right to know about Government activity generally.

(4) Within ten calendar days of its receipt of a request for expedited processing, the proper component shall decide whether to grant it and shall notify the requester of the decision. Solely for purposes of calculating the foregoing time limit, any request for expedited processing shall always be considered received on the actual date of receipt by the proper component. If a request for expedited processing is granted, the request shall be given priority and processed as soon as practicable, subject to § 4.11(i). If a request for expedited processing is denied, any appeal of that decision shall be acted on expeditiously.

§ 4.7 Responses to requests.

(a) *Grants of requests.* If a component makes a determination to grant a request in whole or in part, it shall notify the requester in writing. The component shall inform the requester in the notice of any fee to be charged under § 4.11 and disclose records to the requester promptly upon payment of any applicable fee. Records disclosed in part shall be marked or annotated to show the applicable FOIA exemption(s) and the amount of information deleted, unless doing so would harm an interest protected by an applicable exemption. The location of the information deleted shall also be indicated on the record, if feasible.

(b) *Adverse determinations of requests.* If a component makes an adverse determination regarding a request, it shall notify the requester of that determination in writing. An adverse determination is a denial of a request in any respect, namely: 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 a record is not readily reproducible in the form or format sought by the requester; a determination that what has been requested is not a record subject to the FOIA (except that a determination under § 4.11(j) that records are to be made available under a fee statute other than the FOIA is not an adverse determination); a determination against the requester on any disputed fee matter, including a denial of a request for a reduction or waiver of fees; or a denial of a request for expedited processing. Each denial letter shall be signed by an official listed in Appendix B to this part, and shall include:

(1) The name and title or position of the denying official;

(2) A brief statement of the reason(s) for the denial, including applicable FOIA exemption(s);

(3) An estimate of the volume of records or information withheld, in number of pages or some other reasonable form of estimation. This estimate need not 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 FOIA exemption; and

(4) A statement that the denial may be appealed, and a list of the requirements for filing an appeal under § 4.10(b).

§ 4.8 Classified Information.

In processing a request for information classified under Executive Order 12958 or any other executive order concerning the classification of records, the information shall be reviewed to determine whether it should remain classified. Ordinarily the component or other Federal agency that classified the information should conduct the review, except that if a record contains information that has been derivatively classified by a component because it contains information classified by another component or agency, the component shall refer the responsibility for responding to the request to the component or agency that classified the underlying information. Information determined to no longer require classification shall not be withheld on the basis of FOIA exemption (b)(1) (5 U.S.C. 552(b)(1)), but should be reviewed to assess whether any other FOIA exemptions should be invoked. Appeals involving classified information shall be processed in accordance with § 4.10(c).

§ 4.9 Business Information.

(a) *In general.* Business information obtained by the Department from a submitter will be disclosed under the FOIA only under this section.

(b) *Definitions.* For the purposes of this section:

(1) *Business information* means commercial or financial information, obtained by the Department from a submitter, which may be protected from disclosure under FOIA exemption (b)(4) (5 U.S.C. 552(b)(4)).

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

(c) *Designation of business information.* A submitter of business information should designate by appropriate markings, either at the time of submission or at a reasonable time thereafter, any portions of its submission that it considers protected from disclosure under FOIA exemption (b)(4). These designations will expire ten years after the date of the submission unless the submitter requests, and provides justification for, a longer period.

(d) *Notice to submitters.* A component shall provide a submitter with prompt written notice of a FOIA request or administrative appeal that seeks its business information whenever required under paragraph (e) of this section, except as provided in paragraph (h) of this section, in order to give the submitter an opportunity under paragraph (f) of this section to object to disclosure of any specified portion of that information. Such written notice shall be sent via certified mail, return receipt requested, or similar means. The notice shall either describe the business information requested or include copies of the requested records containing the information. If notification of a large number of submitters is required, notification may be made by posting or publishing the notice in a place reasonably likely to accomplish notification.

(e) *When notice is required.* Notice shall be given to the submitter whenever:

(1) The submitter has designated the information in good faith as protected from disclosure under FOIA exemption (b)(4); or

(2) The component has reason to believe that the information may be protected from disclosure under FOIA exemption (b)(4).

(f) *Opportunity to object to disclosure.* A component shall allow a submitter seven working days (i.e., excluding Saturdays, Sundays, and legal public holidays) from the date of receipt of the written notice described in paragraph (d) of this section to provide the component with a statement of any objection to disclosure. The statement must identify any portions of the information the submitter requests to be withheld under FOIA exemption (b)(4), and describe how each qualifies for

protection under the exemption: that is, why the information is a trade secret, or commercial or financial information that is privileged or confidential. If a submitter fails to respond to the notice within the time specified, the submitter will be considered to have no objection to disclosure of the information. Information a submitter provides under this paragraph may itself be subject to disclosure under the FOIA.

(g) *Notice of intent to disclose.* A component shall consider a submitter's objections and specific grounds under the FOIA for nondisclosure in deciding whether to disclose business information. If a component decides to disclose business information over a submitter's objection, the component shall give the submitter written notice via certified mail, return receipt requested, or similar means, which shall include:

(1) A statement of reason(s) why the submitter's objections to disclosure were not sustained;

(2) A description of the business information to be disclosed; and

(3) A statement that the component intends to disclose the information seven working days from the date the submitter receives the notice.

(h) *Exceptions to notice requirements.* The notice requirements of paragraphs (d) and (g) of this section shall not apply if:

(1) The component determines that the information should not be disclosed;

(2) The information has been lawfully published or has been officially made available to the public;

(3) Disclosure of the information is required by statute (other than the FOIA) or by a regulation issued in accordance with Executive Order 12600; or

(4) The designation made by the submitter under paragraph (c) of this section appears obviously frivolous, in which case the component shall provide the submitter written notice of any final decision to disclose the information seven working days from the date the submitter receives the notice.

(i) *Notice to submitter of FOIA lawsuit.* Whenever a requester files a lawsuit seeking to compel the disclosure of business information, the component shall promptly notify the submitter.

(j) *Corresponding notice to requester.* Whenever a component provides a submitter with notice and an opportunity to object to disclosure under paragraph (d) of this section, the component shall also notify the requester. Whenever a submitter files a lawsuit seeking to prevent the disclosure of business information, the component shall notify the requester.

§ 4.10 Appeals from initial determinations or untimely delays.

(a) If a request for records is initially denied in whole or in part, or has not been timely determined, or if a requester receives an adverse initial determination regarding any other matter under this subpart (as described in § 4.7(b)), the requester may file a written appeal, which must be received by the Office of General Counsel within thirty calendar days of the date of the written denial or, if there has been no determination, may be submitted anytime after the due date, including the last extension under § 4.6(c), of the determination.

(b) Appeals shall be decided by the Assistant General Counsel for Administration (AGC–Admin), except that appeals from requests initially denied by the AGC–Admin shall be decided by the General Counsel. Appeals should be addressed to the AGC–Admin, or the General Counsel if the records were initially denied by the AGC–Admin. The address of both is: U.S. Department of Commerce, Office of General Counsel, Room 5875, 14th Street and Constitution Avenue NW, Washington, DC 20230. Both the letter and the appeal envelope should be clearly marked ''Freedom of Information Appeal''. The appeal must include a copy of the original request, the initial denial, if any, and a statement of the reasons why the records requested should be made available and why the initial denial, if any, was in error. No opportunity for personal appearance, oral argument or hearing on appeal is provided.

(c) Upon receipt of an appeal involving records initially denied on the basis of FOIA exemption (b)(1), the records shall be forwarded to the Deputy Assistant Secretary for Security (DAS) for a declassification review. The DAS may overrule previous classification determinations in whole or in part if continued protection in the interest of national security is no longer required, or no longer required at the same level. The DAS shall advise the AGC–Admin, or the General Counsel, as appropriate, of his or her decision.

(d) If an appeal is granted, the person who filed the appeal shall be immediately notified and copies of the releasable documents shall be made available promptly thereafter upon receipt of appropriate fees determined in accordance with § 4.11.

(e) If no determination on an appeal has been sent to the requester within the twenty working day period specified in § 4.6(b) or the last extension thereof, the requester is deemed to have exhausted all administrative remedies with respect to the request, giving rise to a right of judicial review under 5 U.S.C. 552(a)(6)(C). If the requester initiates a court action against the Department based on the provision in this paragraph, the administrative appeal process may continue.

(f) The determination on an appeal shall be in writing and, when it denies records in whole or in part, the letter to the requester shall include:

(1) A brief explanation of the basis for the denial, including a list of the applicable FOIA exemptions and a description of how they apply;

(2) A statement that the decision is final for the Department;

(3) Notification that judicial review of the denial is available in the district court of the United States in the district in which the requester resides, or has his or her principal place of business, or in which the agency records are located, or in the District of Columbia; and

(4) The name and title or position of the official responsible for denying the appeal.

§ 4.11 Fees.

(a) *In general.* Components shall charge for processing requests under the FOIA in accordance with paragraph (c) of this section, except when fees are limited under paragraph (d) of this section or when a waiver or reduction of fees is granted under paragraph (k) of this section. A component shall collect all applicable fees before sending copies of requested records to a requester. Requesters must pay fees by check or money order made payable to the Treasury of the United States.

(b) *Definitions.* For purposes of this section:

(1) *Commercial use request* means a request from or on behalf of a person who seeks information for a use or purpose that furthers his or her commercial, trade, or profit interests, which can include furthering those interests through litigation. Components shall determine, whenever reasonably possible, the use to which a requester will put the requested records. If it appears that the requester will put the records to a commercial use, or if a component has reasonable cause to doubt a requester's asserted non-commercial use, the component shall provide the requester a reasonable opportunity to submit further clarification.

(2) *Direct costs* means those expenses a component incurs in providing a particular service. Such expenses would include, for example, the labor costs of the employee performing the service (the basic rate of pay for the employee, plus 16 percent of that rate to cover

benefits). Not included in direct costs are overhead expenses such as the costs of space, heating, or lighting of the facility in which the service is performed.

(3) *Duplication* means the making of a copy of a record, or of the information contained in it, necessary to respond to a FOIA request. Copies may take the form of paper, microform, audiovisual materials, or electronic records (for example, magnetic tape or disk), among others. A component shall honor a requester's specified preference of form or format of disclosure if the component can reproduce the record in the requested form or format with reasonable effort.

(4) *Educational institution* means 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 sought to further scholarly research rather than for a commercial use.

(5) *Noncommercial scientific institution* means an institution that is not operated on a ''commercial'' basis, as that term is defined in paragraph (b)(1) of this section, and that is operated solely for the purpose of conducting scientific research, the results of which are not intended to promote any particular product or industry. 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 sought to further scientific research rather than for a commercial use.

(6) *Representative of the news media, or news media requester* means 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 if they can qualify as disseminators of ''news'') that 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 components 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 a 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.

(7) *Review* means the examination of a record located in response to a request in order to determine whether any portion of it is exempt from disclosure. It also includes processing any record for disclosure, for example, redacting it and marking any applicable exemptions. Review costs are recoverable even if a record ultimately is not disclosed. Review time does not include time spent resolving general legal or policy issues regarding the application of exemptions.

(8) *Search* means 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 information within records and also includes reasonable efforts to locate and retrieve information from records maintained in electronic form or format. Components shall ensure that searches are done in the most efficient and least expensive manner reasonably possible.

(c) *Fees.* In responding to FOIA requests, components shall charge the fees summarized in chart form in paragraphs (c)(1) and (c)(2) of this section and explained in paragraphs (c)(3) through (c)(5) of this section, unless a waiver or reduction of fees has been granted under paragraph (k) of this section.

(1) The four categories and chargeable fees are:

Category	Chargeable fees
(i) Commercial Use Requesters	Search, Review, and Duplication.
(ii) Educational and Non-commercial Scientific Institution Requesters	Duplication (excluding the cost of the first 100 pages).
(iii) Representatives of the News Media	Duplication (excluding the cost of the first 100 pages).
(iv) All Other Requesters	Search and Duplication (excluding the cost of the first 2 hours of search and 100 pages).

(2) Uniform fee schedule.

Service	Rate
(i) Manual search	Actual salary rate of employee involved, plus 16 percent of salary rate.
(ii) Computerized search	Actual direct cost, including operator time.
(iii) Duplication of records:	
(A) Paper copy reproduction	$.16 per page
(B) Other reproduction (e.g., computer disk or printout, microfilm, microfiche, or microform).	Actual direct cost, including operator time.
(iv) Review of records (including redaction)	Actual salary rate of employee conducting review, plus 16 percent of salary rate.

(3) *Search.* (i) Search fees shall be charged for all requests—other than requests made by educational institutions, noncommercial scientific institutions, or representatives of the news media—subject to the limitations of paragraph (d) of this section. Components shall charge for time spent searching even if they do not locate any responsive records or if they withhold any records located as entirely exempt from disclosure. Search fees shall be the direct costs of conducting the search by the involved employees.

(ii) For computer searches of records, requesters will be charged the direct costs of conducting the search, although certain requesters (as provided in

paragraph (d)(1) of this section) will be charged no search fee and certain other requesters (as provided in paragraph (d)(3) of this section) are entitled to the cost equivalent of two hours of manual search time without charge.

(4) *Duplication.* Duplication fees shall be charged to all requesters, subject to the limitations of paragraph (d) of this section. For a paper photocopy of a record (no more than one copy of which need be supplied), the fee shall be $.16 cents per page. For copies produced by computer, such as tapes or printouts, components shall charge the direct costs, including operator time, of producing the copy. For other forms of duplication, components shall charge the direct costs of that duplication.

(5) *Review.* Review fees shall be charged to requesters who make a commercial use request. Review fees shall be charged only for the initial record review, in which a component determines whether an exemption applies to a particular record at the initial request level. No charge shall be imposed for review at the administrative appeal level for an exemption already applied. However, records withheld under an exemption that is subsequently determined not to apply may be reviewed again to determine whether any other exemption not previously considered applies, and the costs of that review are chargeable. Review fees shall be the direct costs of conducting the review by the involved employees.

(d) *Limitations on charging fees.*

(1) No search fee shall be charged for requests from educational institutions, noncommercial scientific institutions, or representatives of the news media.

(2) No search fee or review fee shall be charged for a quarter-hour period unless more than half of that period is required for search or review.

(3) Except for requesters seeking records for a commercial use, components shall provide without charge:

(i) The first 100 pages of duplication (or the cost equivalent); and

(ii) The first two hours of search (or the cost equivalent).

(4) If a total fee calculated under paragraph (c) of this section is $20.00 or less for any request, no fee shall be charged. If such total fee is more than $20.00, the full amount of such fee shall be charged.

(5) The provisions of paragraphs (d)(3) and (4) of this section work together. This means that for requesters other than those seeking records for a commercial use, no fee shall be charged unless the cost of search in excess of two hours plus the cost of duplication in excess of 100 pages totals more than $20.00.

(e) *Notice of anticipated fees over $20.00.* If a component determines or estimates that the total fee to be charged under this section will be more than $20.00, the component shall notify the requester of the actual or estimated fee, unless the requester has stated in writing a willingness to pay a fee as high as that anticipated. If only a portion of the fee can be estimated readily, the component shall advise the requester that the estimated fee may be only a portion of the total fee. If the component has notified a requester that the actual or estimated fee is more than $20.00, the component shall not consider the request received for purposes of calculating the time limit in § 4.6(b) to respond to a request, or process it further, until the requester agrees to pay the anticipated total fee. Any agreement to pay should be memorialized in writing. A notice under this paragraph shall offer the requester an opportunity to contact Departmental personnel to discuss modifying the request to meet the requester's needs at a lower cost.

(f) *Charges for other services.* Apart from the other provisions of this section, if a component decides, as a matter of administrative discretion, to comply with a request for special services, the component shall charge the direct cost of providing them. Such services could include certifying that records are true copies or sending records by other than ordinary mail.

(g) *Charging interest.* Components shall charge interest on any unpaid bill starting on the 31st calendar day following the date of billing the requester. Interest charges shall be assessed at the rate provided in 31 U.S.C. 3717 and accrue from the date of the billing until the component receives payment. Components shall take all steps authorized by the Debt Collection Act of 1982, as amended by the Debt Collection Improvement Act of 1996, to effect payment, including offset, disclosure to consumer reporting agencies, and use of collection agencies.

(h) *Aggregating requests.* If a component 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 component may aggregate those requests and charge accordingly. Among the factors a component shall consider in deciding whether to aggregate are the closeness in time between the component's receipt of the requests, and the relatedness of the matters about which the requests are made. A component may generally presume that multiple requests that involve related matters made by the same requester or a closely related group of requesters within a 30 calendar day period have been made in order to avoid fees. If requests are separated by a longer period, a component shall aggregate them only if a solid basis exists for determining that aggregation is warranted under all the circumstances involved. Multiple requests involving unrelated matters shall not be aggregated.

(i) *Advance payments.* (1) For requests other than those described in paragraphs (i)(2) and (3) of this section, a component shall not require the requester to make an advance payment: a payment made before work is begun or continued on a request. Payment owed for work already completed (i.e., a payment before copies are sent to a requester) is not an advance payment.

(2) If a component determines or estimates that a total fee to be charged under this section will be more than $250.00, the component shall not consider the request received for purposes of calculating the time limit in § 4.6(b) to respond to a request, or process it further, until it receives payment from the requester of the entire anticipated fee.

(3) If a requester has previously failed to pay a properly charged FOIA fee to any component or other Federal agency within 30 calendar days of the date of billing, a component shall require the requester to pay the full amount due, plus any applicable interest, and to make an advance payment of the full amount of any anticipated fee, before the component begins to process a new request or continues to process a pending request from that requester. For purposes of calculating the time limit in § 4.6(b) to respond to a request, the component shall not consider the request received until it receives full payment of all applicable fees and interest in this paragraph.

(4) Upon the completion of processing of a request, if a specific fee is determined to be payable and appropriate notice has been given to the requester, a component shall make records available to the requester only upon receipt of full payment of the fee.

(j) *Other statutes specifically providing for fees.* The fee schedule of this section does not apply to fees charged under any statute (except for the FOIA) that specifically requires an agency to set and collect fees for particular types of records. If records responsive to requests are maintained for distribution by agencies operating such statutorily based fee schedule programs, components shall inform

requesters how to obtain records from those sources. Provision of such records is not handled under the FOIA.

(k) *Requirements for waiver or reduction of fees.* (1) Records responsive to a request will be furnished without charge, or at a charge reduced below that established under paragraph (c) of this section, if the requester asks for such a waiver in writing and the responsible component determines, after consideration of information provided by the requester, that the requester has demonstrated that:

(i) Disclosure of the requested 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

(ii) Disclosure of the information is not primarily in the commercial interest of the requester.

(2) To determine whether the first fee waiver requirement is met, components shall consider the following factors:

(i) *The subject of the request:* whether the subject of the requested records concerns the operations or activities of the Government. The subject of the requested records must concern identifiable operations or activities of the Federal Government, with a connection that is direct and clear, not remote or attenuated.

(ii) *The informative value of the information to be disclosed:* whether the disclosure is ''likely to contribute'' to an understanding of Government operations or activities. The disclosable portions of the requested records must be meaningfully informative about Government operations or activities in order to be ''likely to contribute'' to an increased public understanding of those operations or activities. The disclosure of information that already is in the public domain, in either a duplicative or a substantially identical form, would not be likely to contribute to such understanding.

(iii) *The contribution to an understanding of the subject by the public likely to result from disclosure:* whether disclosure of the requested information will contribute to the understanding of a reasonably broad audience of persons interested in the subject, as opposed to the individual understanding of the requester. A requester's expertise in the subject area and ability and intention to effectively convey information to the public shall be considered. It shall be presumed that a representative of the news media satisfies this consideration. Merely providing information to media sources is insufficient to satisfy this consideration.

(iv) *The significance of the contribution to public understanding:* whether the disclosure is likely to contribute ''significantly'' to public understanding of Government operations or activities. The public's understanding of the subject in question prior to the disclosure must be significantly enhanced by the disclosure.

(3) To determine whether the second fee waiver requirement (i.e., that disclosure is not primarily in the commercial interest of the requester) is met, components shall consider the following factors:

(i) *The existence and magnitude of a commercial interest:* whether the requester has a commercial interest that would be furthered by the requested disclosure. Components shall consider any commercial interest of the requester (with reference to the definition of ''commercial use request'' in paragraph (b)(1) of this section), or of any person on whose behalf the requester may be acting, that would be furthered by the requested disclosure. Requesters shall be given an opportunity to provide explanatory information regarding this consideration.

(ii) *The primary interest in disclosure:* whether any identified commercial interest of the requester is sufficiently great, in comparison with the public interest in disclosure, that disclosure is ''primarily in the commercial interest of the requester.'' A fee waiver or reduction is justified if the public interest standard (paragraph (k)(1)(i) of this section) is satisfied and the public interest is greater than any identified commercial interest in disclosure. Components ordinarily shall presume that if a news media requester has satisfied the public interest standard, the public interest is the primary interest served by disclosure to that 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.

(4) If only some of the records to be released satisfy the requirements for a fee waiver, a waiver shall be granted for those records.

(5) Requests for the waiver or reduction of fees should address the factors listed in paragraphs (k)(2) and (3) of this section, insofar as they apply to each request.

Subpart B—Privacy Act

§ 4.21 Purpose and scope.

(a) This subpart establishes policies and procedures for implementing the Privacy Act of 1974, as amended (5 U.S.C. 552a). The main objectives of the subpart are to facilitate full exercise of rights conferred on individuals under the Act, and to protect the privacy of individuals on whom the Department maintains records in systems of records under the Act.

(b) The Department shall act promptly and in accordance with the Act upon receipt of any inquiry, request or appeal from a citizen of the United States or an alien lawfully admitted for permanent residence into the United States, regardless of the individual's age. Further, the Department shall maintain only such information on individuals as is relevant and necessary to the performance of its lawful functions; maintain that information with such accuracy, relevancy, timeliness, and completeness as is reasonably necessary to assure fairness in determinations made by the Department about the individual; obtain information from the individual to the extent practicable; and take every reasonable step to protect that information from unwarranted disclosure. The Department shall maintain no record describing how an individual exercises rights guaranteed by the First Amendment unless expressly authorized to do so by statute or by the individual about whom the record is maintained, or unless to do so is pertinent to and within the scope of an authorized law enforcement activity. An individual's name and address shall not be sold or rented by the Department unless such action is specifically authorized by law.

(c) This subpart applies to all components of the Department. Components may promulgate supplementary orders and rules not inconsistent with this subpart.

(d) The Assistant Secretary for Administration is delegated responsibility for maintaining this subpart, for issuing such orders and directives internal to the Department as are necessary for full compliance with the Act, and for publishing all required notices concerning systems of records.

(e) Matters outside the scope of this subpart include:

(1) Requests for records that do not pertain to the requester, or to the individual about whom the request is made if the requester is the parent or guardian of the individual;

(2) Requests involving information pertaining to an individual that is in a record or file but not within the scope of a system of records notice published in the **Federal Register**;

(3) Requests to correct a record if a grievance procedure is available to the individual either by regulation or through a provision in a collective

bargaining agreement with the Department or a component of the Department, and the individual has initiated, or expressed in writing the intention of initiating, such a grievance procedure; and

(4) Requests for employee-employer services and counseling that were routinely granted prior to enactment of the Act, including, but not limited to, test calculations of retirement benefits, explanations of health and life insurance programs, and explanations of tax withholding options.

(f) Any request for records that pertains to the requester, or to the individual about whom the request is made if the requester is the parent or guardian of the individual, shall be processed under the Act and this subpart and under the Freedom of Information Act and the Department's implementing regulations at subpart A of this part, regardless whether the Act or the Freedom of Information Act is mentioned in the request.

§ 4.22 Definitions.

(a) All terms used in this subpart which are defined in 5 U.S.C. 552a shall have the same meaning herein.

(b) As used in this subpart:

(1) *Act* means the ''Privacy Act of 1974, as amended (5 U.S.C. 552a)''.

(2) *Appeal* means a request by an individual to review and reverse an initial denial of a request from that individual for correction or amendment.

(3) *Component* means any office, division, bureau or other unit of the Department listed in Appendix A to this part (except that a regional office of a larger office or other unit does not constitute a separate component).

(4) *Department* means the Department of Commerce.

(5) *Inquiry* means either a request for general information regarding the Act and this subpart or a request from an individual (or that individual's parent or guardian) that the Department determine whether it has any record in a system of records that pertains to that individual.

(6) *Person* means any human being and also shall include, but is not limited to, corporations, associations, partnerships, trustees, receivers, personal representatives, and public or private organizations.

(7) *Privacy Officer* means those officials, identified in Appendix B to this part, who are authorized to receive and act upon inquiries, requests for access, and requests for correction or amendment.

(8) *Request for access* means a request from an individual or an individual's parent or guardian to see a record pertaining to that individual in a particular system of records.

(9) *Request for correction or amendment* means a request from an individual or an individual's parent or guardian that the Department change (by correction, amendment, addition or deletion) a particular record pertaining to that individual in a system of records.

§ 4.23 Procedures for making inquiries.

(a) Any individual, regardless of age, who is a citizen of the United States or an alien lawfully admitted for permanent residence into the United States may submit an inquiry to the Department. The inquiry should be made either in person or by mail addressed to the appropriate component identified in Appendix A to this part or to the official identified in the notification procedures paragraph of the systems of records notice published in the **Federal Register**.[2] If an individual believes the Department maintains a record pertaining to him or her but does not know which system of records might contain such a record and/or which component of the Department maintains the system of records, assistance in person or by mail will be provided at the first address listed in Appendix A to this part.

(b) Inquiries submitted by mail should include the words ''PRIVACY ACT INQUIRY'' in capital letters at the top of the letter and on the face of the envelope. If the inquiry is for general information regarding the Act and this subpart, no particular information is required. The Department reserves the right to require compliance with the identification procedures appearing at § 4.24(d). If the inquiry is a request that the Department determine whether it has a record pertaining to the individual, the following information should be submitted:

(1) Name of individual whose record is sought;

(2) Statement that individual whose record is sought is either a U.S. citizen or an alien lawfully admitted for permanent residence;

(3) Identifying data that will help locate the record (for example, maiden name, occupational license number, period or place of employment, etc.);

(4) Record sought, by description and by record system name, if known;

(5) Action requested (that is, sending information on how to exercise rights under the Act; determining whether requested record exists; gaining access to requested record; or obtaining copy of requested record);

(6) Copy of court guardianship order or minor's birth certificate, as provided in § 4.24(d)(3), but only if requester is guardian or parent of individual whose record is sought;

(7) Requester's name (printed), signature, address, and (optional) telephone number;

(8) Date; and,

(9) Certification of request by notary or other official, but only if

(i) Request is for notification that requested record exists, for access to requested record, or for copy of requested record;

(ii) Record is not available to any person under 5 U.S.C. 552; and

(iii) Requester does not appear before an employee of the Department for verification of identity.

(c) Any inquiry which is not addressed as specified in paragraph (a) of this section or which is not marked as specified in paragraph (b) of this section will be so addressed and marked by Department personnel and forwarded immediately to the responsible Privacy Officer. An inquiry which is not properly addressed by the individual will not be deemed to have been ''received'' for purposes of measuring the time period for response until actual receipt by the Privacy Officer. In each instance when an inquiry so forwarded is received, the Privacy Officer shall notify the individual that his or her inquiry was improperly addressed and the date the inquiry was received at the proper address.

(d)(1) Each inquiry received shall be acted upon promptly by the responsible Privacy Officer. Every effort will be made to respond within ten working days (i.e., excluding Saturdays, Sundays and legal public holidays) of the date of receipt at the proper address. If a response cannot be made within ten working days, the Privacy Officer shall send an acknowledgment during that period providing information on the status of the inquiry and asking for such further information as may be necessary to process the inquiry. The first correspondence sent by the Privacy Officer to the requester shall contain the Department's control number assigned to the request, as well as a statement that the requester should use that number in all future contacts with the Department. The Department shall use that control number in all subsequent correspondence.

(2) If the Privacy Officer fails to send an acknowledgment within ten working days, as provided in paragraph (d)(1) of

[2] The United States Patent and Trademark Office (USPTO), which is established as an agency of the United States within the Department of Commerce, operates under its own PA regulations at 37 CFR part 102, subpart B. Accordingly, requests concerning records maintained by the USPTO should be sent directly to the USPTO.

this section, the requester may ask the Assistant General Counsel for Administration to take corrective action. No failure of a Privacy Officer to send an acknowledgment shall confer administrative finality for purposes of judicial review.

(e) An individual shall not be required to state a reason for or otherwise justify his or her inquiry.

(f) Special note should be taken that certain agencies are responsible for publishing notices of systems of records having Government-wide application to other agencies, including the Department. The agencies known to be publishing these general notices and the types of records covered therein appear in Appendix C to this part. These general notices do not identify the Privacy Officers in the Department to whom inquiries should be presented or mailed. The provisions of this section, and particularly paragraph (a) of this section, should be followed in making inquiries with respect to such records. Such records in the Department are subject to the provisions of this part to the extent indicated in Appendix C to this part. The exemptions, if any, determined by the agency publishing a general notice shall be invoked and applied by the Department after consultation, as necessary, with that other agency.

§ 4.24 Procedures for making requests for records.

(a) Any individual, regardless of age, who is a citizen of the United States or an alien lawfully admitted for permanent residence into the United States may submit a request to the Department for access to records. The request should be made either in person or by mail addressed to the appropriate office listed in Appendix A to this part.

(b) Requests submitted by mail should include the words ''PRIVACY ACT REQUEST'' in capital letters at the top of the letter and on the face of the envelope. Any request which is not addressed as specified in paragraph (a) of this section or which is not marked as specified in this paragraph will be so addressed and marked by Department personnel and forwarded immediately to the responsible Privacy Officer. A request which is not properly addressed by the individual will not be deemed to have been ''received'' for purposes of measuring time periods for response until actual receipt by the Privacy Officer. In each instance when a request so forwarded is received, the Privacy Officer shall notify the individual that his or her request was improperly addressed and the date the request was received at the proper address.

(c) If the request follows an inquiry under § 4.23 in connection with which the individual's identity was established by the Department, the individual need only indicate the record to which access is sought, provide the Department control number assigned to the request, and sign and date the request. If the request is not preceded by an inquiry under § 4.23, the procedures of this section should be followed.

(d) The requirements for identification of individuals seeking access to records are:

(1) *In person.* Each individual making a request in person shall be required to present satisfactory proof of identity. The means of proof, in the order of preference and priority, are:

(i) A document bearing the individual's photograph (for example, driver's license, passport or military or civilian identification card);

(ii) A document, preferably issued for participation in a Federally-sponsored program, bearing the individual's signature (for example, unemployment insurance book, employer's identification card, national credit card, and professional, craft or union membership card); and,

(iii) A document bearing neither the photograph nor the signature of the individual, preferably issued for participation in a Federally-sponsored program (for example, Medicaid card). If the individual can provide no suitable documentation of identity, the Department will require a signed statement asserting the individual's identity and stipulating that the individual understands the penalty provision of 5 U.S.C. 552a(i)(3) recited in § 4.32(a). In order to avoid any unwarranted disclosure of an individual's records, the Department reserves the right to determine the adequacy of proof of identity offered by any individual, particularly if the request involves a sensitive record.

(2) *Not in person.* If the individual making a request does not appear in person before a Privacy Officer or other employee authorized to determine identity, a certification of a notary public or equivalent officer empowered to administer oaths must accompany the request under the circumstances prescribed in § 4.23(b)(9). The certification in or attached to the letter must be substantially in accordance with the following text:

City of _____ County of _____.ss (Name of individual), who affixed (his) (her) signature below in my presence, came before me, a (title), in and for the aforesaid County and State, this ____ day of _____, 20__, and established (his) (her) identity to my satisfaction.

My commission expires _____.
(Signature)

(3) *Parents of minors and legal guardians.* An individual acting as the parent of a minor or the legal guardian of the individual to whom a record pertains shall establish his or her personal identity in the same manner prescribed in either paragraph (d)(1) or (d)(2) of this section. In addition, such other individual shall establish his or her identity in the representative capacity of parent or legal guardian. In the case of the parent of a minor, the proof of identity shall be a certified or authenticated copy of the minor's birth certificate. In the case of a legal guardian of an individual who has been declared incompetent due to physical or mental incapacity or age by a court of competent jurisdiction, the proof of identity shall be a certified or authenticated copy of the court's order. For purposes of the Act, a parent or legal guardian may represent only a living individual, not a decedent. A parent or legal guardian may be accompanied during personal access to a record by another individual, provided the provisions of § 4.25(f) are satisfied.

(e) If the provisions of this subpart are alleged to impede an individual in exercising his or her right to access, the Department will consider, from an individual making a request, alternative suggestions regarding proof of identity and access to records.

(f) An individual shall not be required to state a reason for or otherwise justify his or her request for access to a record.

§ 4.25 Disclosure of requested records to individuals.

(a)(1) The responsible Privacy Officer shall act promptly upon each request. Every effort will be made to respond within ten working days (i.e., excluding Saturdays, Sundays and legal public holidays) of the date of receipt. If a response cannot be made within ten working days due to unusual circumstances, the Privacy Officer shall send an acknowledgment during that period providing information on the status of the request and asking for any further information that may be necessary to process the request. ''Unusual circumstances'' shall include circumstances in which:

(i) A search for and collection of requested records from inactive storage, field facilities or other establishments is required;

(ii) A voluminous amount of data is involved;

(iii) Information on other individuals must be separated or expunged from the particular record; or

(iv) Consultations with other agencies having a substantial interest in the determination of the request are necessary.

(2) If the Privacy Officer fails to send an acknowledgment within ten working days, as provided in paragraph (a)(1) of this section, the requester may ask the Assistant General Counsel for Administration to take corrective action. No failure of a Privacy Officer to send an acknowledgment shall confer administrative finality for purposes of judicial review.

(b) Grant of access: (1) *Notification.* An individual shall be granted access to a record pertaining to him or her, unless the provisions of paragraph (g)(1) of this section apply. The Privacy Officer shall notify the individual of a determination to grant access, and provide the following information:

(i) The methods of access, as set forth in paragraph (b)(2) of this section;

(ii) The place at which the record may be inspected;

(iii) The earliest date on which the record may be inspected and the period of time that the records will remain available for inspection. In no event shall the earliest date be later than thirty calendar days from the date of notification;

(iv) The estimated date by which a copy of the record will be mailed and the fee estimate pursuant to § 4.31. In no event shall the estimated date be later than thirty calendar days from the date of notification;

(v) The fact that the individual, if he or she wishes, may be accompanied by another individual during personal access, subject to the procedures set forth in paragraph (f) of this section; and,

(vi) Any additional prerequisites for granting access to a specific record.

(2) *Methods of access.* The following methods of access to records by an individual may be available depending on the circumstances of a given situation:

(i) Inspection in person may be had in the office specified by the Privacy Officer granting access, during the hours indicated in Appendix A to this part;

(ii) Transfer of records to a Federal facility more convenient to the individual may be arranged, but only if the Privacy Officer determines that a suitable facility is available, that the individual's access can be properly supervised at that facility, and that transmittal of the records to that facility will not unduly interfere with operations of the Department or involve unreasonable costs, in terms of both money and manpower; and,

(iii) Copies may be mailed at the request of the individual, subject to payment of the fees prescribed in § 4.31. The Department, at its own initiative, may elect to provide a copy by mail, in which case no fee will be charged the individual.

(c) Access to medical records is governed by the provisions of § 4.26.

(d) The Department shall supply such other information and assistance at the time of access as to make the record intelligible to the individual.

(e) The Department reserves the right to limit access to copies and abstracts of original records, rather than the original records. This election would be appropriate, for example, when the record is in an automated data medium such as tape or disc, when the record contains information on other individuals, and when deletion of information is permissible under exemptions (for example, 5 U.S.C. 552a(k)(2)). In no event shall original records of the Department be made available to the individual except under the immediate supervision of the Privacy Officer or his or her designee.

(f) Any individual who requests access to a record pertaining to that individual may be accompanied by another individual of his or her choice. ''Accompanied'' includes discussing the record in the presence of the other individual. The individual to whom the record pertains shall authorize the presence of the other individual in writing. The authorization shall include the name of the other individual, a specific description of the record to which access is sought, the Department control number assigned to the request, the date, and the signature of the individual to whom the record pertains. The other individual shall sign the authorization in the presence of the Privacy Officer. An individual shall not be required to state a reason or otherwise justify his or her decision to be accompanied by another individual during personal access to a record.

(g) Initial denial of access: (1) *Grounds.* Access by an individual to a record that pertains to that individual will be denied only upon a determination by the Privacy Officer that:

(i) The record is exempt under § 4.33 or 4.34, or exempt by determination of another agency publishing notice of the system of records, as described in § 4.23(f);

(ii) The record is information compiled in reasonable anticipation of a civil action or proceeding;

(iii) The provisions of § 4.26 pertaining to medical records temporarily have been invoked; or,

(iv) The individual unreasonably has failed to comply with the procedural requirements of this part.

(2) *Notification.* The Privacy Officer shall give notice of denial of access to records to the individual in writing, and the notice shall include the following information:

(i) The Privacy Officer's name and title or position;

(ii) The date of the denial;

(iii) The reasons for the denial, including citation to the appropriate section of the Act and this part;

(iv) The individual's opportunities, if any, for further administrative consideration, including the identity and address of the responsible official. If no further administrative consideration within the Department is available, the notice shall state that the denial is administratively final; and,

(v) If stated to be administratively final within the Department, the individual's right to judicial review provided under 5 U.S.C.552a(g)(1), as limited by 5 U.S.C. 552a(g)(5).

(3) *Administrative review.* If a Privacy Officer issues an initial denial of a request, the individual's opportunities for further consideration shall be as follows:

(i) As to denial under paragraph (g)(1)(i) of this section, two opportunities for further consideration are available in the alternative:

(A) If the individual contests the application of an exemption to the records, the review procedures in § 4.25(g)(3)(ii) shall apply; or,

(B) If the individual challenges the validity of the exemption itself, the individual must file a petition for the issuance, amendment, or repeal of a rule under 5 U.S.C. 553(e). If the exemption was determined by the Department, such petition shall be filed with the Assistant Secretary for Administration. If the exemption was determined by another agency (as described in § 4.23(f)), the Department will provide the individual with the name and address of the other agency and any relief sought by the individual shall be that provided by the regulations of the other agency. Within the Department, no such denial is administratively final until such a petition has been filed by the individual and disposed of on the merits by the Assistant Secretary for Administration.

(ii) As to denial under paragraphs (g)(1)(ii) of this section, (g)(1)(iv) of this section or (to the limited extent provided in paragraph (g)(3)(i)(A) of this section) paragraph (g)(1)(i) of this section, the individual may file for review with the Assistant General Counsel for Administration, as

indicated in the Privacy Officer's initial denial notification. The individual and the Department shall follow the procedures in § 4.28 to the maximum extent practicable.

(iii) As to denial under paragraph (g)(1)(iii) of this section, no further administrative consideration within the Department is available because the denial is not administratively final until expiration of the time period indicated in § 4.26(a).

(h) If a request is partially granted and partially denied, the Privacy Officer shall follow the appropriate procedures of this section as to the records within the grant and the records within the denial.

§ 4.26 Special procedures: Medical records.

(a) No response to any request for access to medical records from an individual will be issued by the Privacy Officer for a period of seven working days (i.e., excluding Saturdays, Sundays and legal public holidays) from the date of receipt.

(b) For every request from an individual for access to medical records, the Privacy Officer shall:

(1) Inform the individual of the waiting period prescribed in paragraph (a) of this section;

(2) Seek from the individual the name and address of the individual's physician and/or psychologist;

(3) Seek from the individual written consent for the Department to consult the individual's physician and/or psychologist, if the Department believes such consultation is advisable;

(4) Seek written consent from the individual for the Department to provide the medical records to the individual's physician or psychologist, if the Department believes access to the record by the individual is best effected under the guidance of the individual's physician or psychologist; and,

(5) Forward the individual's medical record to the Department's medical officer for review and a determination on whether consultation with or transmittal of the medical records to the individual's physician or psychologist is warranted. If consultation with or transmittal of such records to the individual's physician or psychologist is determined to be warranted, the Department's medical officer shall so consult or transmit. Whether or not such a consultation or transmittal occurs, the Department's medical officer shall provide instruction to the Privacy Officer regarding the conditions of access by the individual to his or her medical records.

(c) If an individual refuses in writing to give the names and consents set forth in paragraphs (c)(2) through (c)(4) of this section, the Department shall give the individual access to said records by means of a copy, provided without cost to the requester, sent registered mail, return receipt requested.

§ 4.27 Procedures for making requests for correction or amendment.

(a) Any individual, regardless of age, who is a citizen of the United States or an alien lawfully admitted for permanent residence into the United States may submit a request for correction or amendment to the Department. The request should be made either in person or by mail addressed to the Privacy Officer who processed the individual's request for access to the record, and to whom is delegated authority to make initial determinations on requests for correction or amendment. The offices of Privacy Officers are open to the public between the hours of 9 a.m. and 4 p.m. Monday through Friday (excluding Saturdays, Sundays, and legal public holidays).

(b) Requests submitted by mail should include the words ''PRIVACY ACT REQUEST'' in capital letters at the top of the letter and on the face of the envelope. Any request that is not addressed as specified in paragraph (a) of this section or that is not marked as specified in this paragraph will be so addressed and marked by Department personnel and forwarded immediately to the responsible Privacy Officer. A request that is not properly addressed by the individual will not be deemed to have been ''received'' for purposes of measuring the time period for response until actual receipt by the Privacy Officer. In each instance when a request so forwarded is received, the Privacy Officer shall notify the individual that his or her request was improperly addressed and the date the request was received at the proper address.

(c) Since the request, in all cases, will follow a request for access under § 4.25, the individual's identity will be established by his or her signature on the request and use of the Department control number assigned to the request.

(d) A request for correction or amendment should include the following:

(1) Specific identification of the record sought to be corrected or amended (for example, description, title, date, paragraph, sentence, line and words);

(2) The specific wording to be deleted, if any;

(3) The specific wording to be inserted or added, if any, and the exact place at which it is to be inserted or added; and,

(4) A statement of the basis for the requested correction or amendment, with all available supporting documents and materials that substantiate the statement. The statement should identify the criterion of the Act being invoked, that is, whether the information in the record is unnecessary, inaccurate, irrelevant, untimely or incomplete.

§ 4.28 Agency review of requests for correction or amendment.

(a)(1)(i) Not later than ten working days (i.e., excluding Saturdays, Sundays and legal public holidays) after receipt of a request to correct or amend a record, the Privacy Officer shall send an acknowledgment providing an estimate of time within which action will be taken on the request and asking for such further information as may be necessary to process the request. The estimate of time may take into account unusual circumstances as described in § 4.25(a). No acknowledgment will be sent if the request can be reviewed, processed and the individual notified of the results of review (either compliance or denial) within the ten working days. Requests filed in person will be acknowledged in writing at the time submitted.

(ii) If the Privacy Officer fails to send the acknowledgment within ten working days, as provided in paragraph (a)(1)(i) of this section, the requester may ask the Assistant General Counsel for Administration to take corrective action. No failure of a Privacy Officer to send an acknowledgment shall confer administrative finality for purposes of judicial review.

(2) Promptly after acknowledging receipt of a request, or after receiving such further information as might have been requested, or after arriving at a decision within the ten working days, the Privacy Officer shall either:

(i) Make the requested correction or amendment and advise the individual in writing of such action, providing either a copy of the corrected or amended record or, in cases in which a copy cannot be provided (for example, erasure of information from a record maintained only in magnetically-recorded computer files), a statement as to the means by which the correction or amendment was effected; or,

(ii) Inform the individual in writing that his or her request is denied and provide the following information:

(A) The Privacy Officer's name and title or position;

(B) The date of the denial;

(C) The reasons for the denial, including citation to the appropriate sections of the Act and this subpart; and,

(D) The procedures for appeal of the denial as set forth in § 4.29, including the address of the Assistant General Counsel for Administration.

(3) The term *promptly* in this section means within thirty working days (i.e., excluding Saturdays, Sundays and legal public holidays). If the Privacy Officer cannot make the determination within thirty working days, the individual will be advised in writing of the reason for the delay and of the estimated date by which the determination will be made.

(b) Whenever an individual's record is corrected or amended pursuant to a request from that individual, the Privacy Officer shall notify all persons and agencies to which the corrected or amended portion of the record had been disclosed prior to its correction or amendment, if an accounting of such disclosure required by the Act was made. The notification shall require a recipient agency maintaining the record to acknowledge receipt of the notification, to correct or amend the record, and to apprise any agency or person to which it had disclosed the record of the substance of the correction or amendment.

(c) The following criteria will be considered by the Privacy Officer in reviewing a request for correction or amendment:

(1) The sufficiency of the evidence submitted by the individual;

(2) The factual accuracy of the information to be corrected or amended;

(3) The relevance and necessity of the information in terms of the purpose for which it was collected;

(4) The timeliness and currency of the information in light of the purpose for which it was collected;

(5) The completeness of the information in terms of the purpose for which it was collected;

(6) The degree of risk that denial of the request could unfairly result in determinations adverse to the individual;

(7) The character of the record sought to be corrected or amended; and,

(8) The propriety and feasibility of complying with the specific means of correction or amendment requested by the individual.

(d) The Department will not undertake to gather evidence for the individual, but does reserve the right to verify the evidence the individual submits.

(e) Correction or amendment of a record requested by an individual will be denied only upon a determination by the Privacy Officer that:

(1) The individual has failed to establish, by a preponderance of the evidence, the propriety of the correction or amendment in light of the criteria set forth in paragraph (c) of this section;

(2) The record sought to be corrected or amended is part of the official record in a terminated judicial, quasi-judicial or quasi-legislative proceeding to which the individual was a party or participant;

(3) The information in the record sought to be corrected or amended, or the record sought to be corrected or amended, is the subject of a pending judicial, quasi-judicial or quasi-legislative proceeding to which the individual is a party or participant;

(4) The correction or amendment would violate a duly enacted statute or promulgated regulation; or,

(5) The individual unreasonably has failed to comply with the procedural requirements of this part.

(f) If a request is partially granted and partially denied, the Privacy Officer shall follow the appropriate procedures of this section as to the records within the grant and the records within the denial.

§ 4.29 Appeal of initial adverse agency determination on correction or amendment.

(a) If a request for correction or amendment is denied initially under § 4.28, the individual may submit a written appeal within thirty working days (i.e., excluding Saturdays, Sundays and legal public holidays) of the date of the initial denial. If an appeal is submitted by mail, the postmark is conclusive as to timeliness.

(b) An appeal should be addressed to the Assistant General Counsel for Administration, U.S. Department of Commerce, Room 5875, 14th and Constitution Avenue, NW., Washington, DC 20230. An appeal should include the words ''PRIVACY APPEAL'' in capital letters at the top of the letter and on the face of the envelope. An appeal not addressed and marked as provided herein will be so marked by Department personnel when it is so identified, and will be forwarded immediately to the Assistant General Counsel for Administration. An appeal which is not properly addressed by the individual will not be deemed to have been ''received'' for purposes of measuring the time periods in this section until actual receipt by the Assistant General Counsel for Administration. In each instance when an appeal so forwarded is received, the Assistant General Counsel for Administration shall notify the individual that his or her appeal was improperly addressed and the date on which the appeal was received at the proper address.

(c) The individual's appeal shall be signed by the individual, and shall include a statement of the reasons why the initial denial is believed to be in error, and the Department's control number assigned to the request. The Privacy Officer who issued the initial denial shall furnish to the Assistant General Counsel for Administration the record the individual requests to be corrected or amended, and all correspondence between the Privacy Officer and the requester. Although the foregoing normally will comprise the entire record on appeal, the Assistant General Counsel for Administration may seek any additional information necessary to ensure that the final determination is fair and equitable and, in such instances, disclose the additional information to the individual to the greatest extent possible, and provide an opportunity for comment thereon.

(d) No personal appearance or hearing on appeal will be allowed.

(e) The Assistant General Counsel for Administration shall act upon the appeal and issue a final determination in writing not later than thirty working days (i.e., excluding Saturdays, Sundays and legal public holidays) from the date on which the appeal is received, except that the Assistant General Counsel for Administration may extend the thirty days upon deciding that a fair and equitable review cannot be made within that period, but only if the individual is advised in writing of the reason for the extension and the estimated date by which a final determination will issue. The estimated date should not be later than the sixtieth working day after receipt of the appeal unless unusual circumstances, as described in § 4.25(a), are met.

(f) If the appeal is determined in favor of the individual, the final determination shall include the specific corrections or amendments to be made and a copy thereof shall be transmitted promptly to the individual and to the Privacy Officer who issued the initial denial. Upon receipt of such final determination, the Privacy Officer shall promptly take the actions set forth in § 4.28(a)(2)(i) and (b).

(g) If the appeal is denied, the final determination shall be transmitted promptly to the individual and state the reasons for the denial. The notice of final determination also shall inform the individual that:

(1) The individual has a right under the Act to file with the Assistant General Counsel for Administration a

concise statement of reasons for disagreeing with the final determination. The statement ordinarily should not exceed one page and the Department reserves the right to reject an excessively lengthy statement. It should provide the Department control number assigned to the request, indicate the date of the final determination and be signed by the individual. The Assistant General Counsel for Administration shall acknowledge receipt of such statement and inform the individual of the date on which it was received;

(2) Any such disagreement statement submitted by the individual would be noted in the disputed record, and filed with it;

(3) The purposes and uses to which the statement would be put are those applicable to the record in which it is noted, and that a copy of the statement would be provided to persons and agencies to which the record is disclosed subsequent to the date of receipt of such statement;

(4) The Department would append to any such disagreement statement a copy of the final determination or summary thereof, which also would be provided to persons and agencies to which the disagreement statement is disclosed; and

(5) The individual has a right to judicial review of the final determination under 5 U.S.C. 552a(g)(1)(A), as limited by 5 U.S.C. 552a(g)(5).

(h) In making the final determination, the Assistant General Counsel for Administration shall employ the criteria set forth in § 4.28(c) and shall deny an appeal only on the grounds set forth in § 4.28(e).

(i) If an appeal is partially granted and partially denied, the Assistant General Counsel for Administration shall follow the appropriate procedures of this section as to the records within the grant and the records within the denial.

(j) Although a copy of the final determination or a summary thereof will be treated as part of the individual's record for purposes of disclosure in instances where the individual has filed a disagreement statement, it will not be subject to correction or amendment by the individual.

(k) The provisions of paragraphs (g)(1) through (g)(3) of this section satisfy the requirements of 5 U.S.C. 552a(e)(3).

§ 4.30 Disclosure of record to person other than the individual to whom it pertains.

(a) The Department may disclose a record pertaining to an individual to a person other than the individual to whom it pertains only in the following instances:

(1) Upon written request by the individual, including authorization under § 4.25(f);

(2) With the prior written consent of the individual;

(3) To a parent or legal guardian under 5 U.S.C. 552a(h);

(4) When required by the Act and not covered explicitly by the provisions of 5 U.S.C. 552a(b); and

(5) When permitted under 5 U.S.C. 552a(b)(1) through (12), as follows:[3]

(i) To those officers and employees of the agency that maintains the record who have a need for the record in the performance of their duties;

(ii) Required under 5 U.S.C. 552;

(iii) For a routine use as defined in 5 U.S.C. 552a(a)(7);

(iv) To the Bureau of the Census for purposes of planning or carrying out a census or survey or related activity pursuant to the provisions of Title 13 of the U.S. Code;

(v) To a requester who has provided the agency with advance adequate written assurance that the record will be used solely as a statistical research or reporting record, and the record is to be transferred in a form that is not individually identifiable;

(vi) To the National Archives and Records Administration as a record that has sufficient historical or other value to warrant its continued preservation by the United States Government, or for evaluation by the Archivist of the United States, or the designee of the Archivist, to determine whether the record has such value;

(vii) To another agency or to an instrumentality of any governmental jurisdiction within or under the control of the United States for a civil or criminal law enforcement activity if the activity is authorized by law, and if the head of the agency or instrumentality has made a written request to the agency which maintains the record, specifying the particular portion desired and the law enforcement activity for which the record is sought;

(viii) To a person pursuant to a showing of compelling circumstances affecting the health or safety of an individual if upon such disclosure notification is transmitted to the last known address of such individual;

(ix) To either House of Congress, or, to the extent of matter within its jurisdiction, any committee or subcommittee thereof, any joint committee of Congress or subcommittee of any such joint committee;

(x) To the Comptroller General, or any of his or her authorized representatives, in the course of the performance of the duties of the General Accounting Office;

(xi) Pursuant to the order of a court of competent jurisdiction; or

(xii) To a consumer reporting agency in accordance with 31 U.S.C. 3711(e).

(b) The situations referred to in paragraph (a)(4) of this section include the following:

(1) 5 U.S.C. 552a(c)(4) requires dissemination of a corrected or amended record or notation of a disagreement statement by the Department in certain circumstances;

(2) 5 U.S.C. 552a(d) requires disclosure of records to the individual to whom they pertain, upon request; and

(3) 5 U.S.C. 552a(g) authorizes civil action by an individual and requires disclosure by the Department to the court.

(c) The Privacy Officer shall make an accounting of each disclosure by him of any record contained in a system of records in accordance with 5 U.S.C. 552a(c)(1) and (2). Except for a disclosure made under 5 U.S.C. 552a(b)(7), the Privacy Officer shall make such accounting available to any individual, insofar as it pertains to that individual, upon any request submitted in accordance with § 4.24. The Privacy Officer shall make reasonable efforts to notify any individual when any record in a system of records is disclosed to any person under compulsory legal process, promptly upon being informed that such process has become a matter of public record.

§ 4.31 Fees.

(a) The only fee to be charged to an individual under this part is for duplication of records at the request of the individual. Components shall charge a fee for duplication of records under the Act in the same way in which they charge a duplication fee under § 4.11, except as provided in this section. Accordingly, no fee shall be charged or collected for: search, retrieval, or review of records; copying at the initiative of the Department without a request from the individual; transportation of records; or first-class postage.

(b) The Department shall provide an individual one copy of each record corrected or amended pursuant to the individual's request without charge as evidence of the correction or amendment.

(c) As required by the United States Office of Personnel Management in its published regulations implementing the Act, the Department shall charge no fee for a single copy of a personnel record

[3] 5 U.S.C. 552b(b)(4) has no application within the Department.

covered by that agency's Government-wide published notice of systems of records.

§ 4.32 Penalties.

(a) The Act provides, in pertinent part:

Any person who knowingly and willfully requests or obtains any record concerning an individual from an agency under false pretenses shall be guilty of a misdemeanor and fined not more than $5,000. (5 U.S.C. 552a(i)(3)).

(b) A person who falsely or fraudulently attempts to obtain records under the Act also may be subject to prosecution under such other criminal statutes as 18 U.S.C. 494, 495 and 1001.

§ 4.33 General exemptions.

(a) Individuals may not have access to records maintained by the Department but which were provided by another agency which has determined by regulation that such information is subject to general exemption under 5 U.S.C. 552a(j). If such exempt records are within a request for access, the Department will advise the individual of their existence and of the name and address of the source agency. For any further information concerning the record and the exemption, the individual must contact that source agency.

(b) The general exemptions determined to be necessary and proper with respect to systems of records maintained by the Department, including the parts of each system to be exempted, the provisions of the Act from which they are exempted, and the justification for the exemption, are as follows:

(1) *Individuals identified in Export Transactions*—COMMERCE/ITA–1. Pursuant to 5 U.S.C. 552a(j)(2), these records are hereby determined to be exempt from all provisions of the Act, except 5 U.S.C. 552a(b), (c)(1) and (2), (e)(4) (A) through (F), (e) (6), (7), (9), (10), and (11), and (i). These exemptions are necessary to ensure the proper functioning of the law enforcement activity, to protect confidential sources of information, to fulfill promises of confidentiality, to maintain the integrity of the law enforcement process, to avoid premature disclosure of the knowledge of criminal activity and the evidentiary bases of possible enforcement actions, to prevent interference with law enforcement proceedings, to avoid disclosure of investigative techniques, and to avoid endangering law enforcement personnel. Section 12(c) of the Export Administration Act of 1979, as amended, also protects this information from disclosure.

(2) *Fisheries Law Enforcement Case Files—COMMERCE/NOAA–5.* Pursuant to 5 U.S.C. 552a(j)(2), these records are hereby determined to be exempt from all provisions of the Act, except 5 U.S.C. 552a (b), (c) (1) and (2), (e) (4) (A) through (F), (e) (6), (7), (9), (10), and (11), and (i). These exemptions are necessary to ensure the proper functioning of the law enforcement activity, to protect confidential sources of information, to fulfill promises of confidentiality, to prevent interference with law enforcement proceedings, to avoid the disclosure of investigative techniques, to avoid the endangering of law enforcement personnel, to avoid premature disclosure of the knowledge of criminal activity and the evidentiary bases of possible enforcement actions, and to maintain the integrity of the law enforcement process.

(3) *Investigative and Inspection Records—COMMERCE/DEPT–12.* Pursuant to 5 U.S.C. 552a(j)(2), these records are hereby determined to be exempt from all provisions of the Act, except 5 U.S.C. 552a (b), (c) (1) and (2), (e)(4) (A) through (F), (e) (6), (7), (9), (10), and (11), and (i). These exemptions are necessary to ensure the proper operation of the law enforcement activity, to protect confidential sources of information, to fulfill promises of confidentiality, to prevent interference with law enforcement proceedings, to avoid the disclosure of investigative techniques, to avoid the endangering of law enforcement personnel, to avoid premature disclosure of the knowledge of criminal activity and the evidentiary bases of possible enforcement actions, and to maintain the integrity of the law enforcement process.

§ 4.34 Specific exemptions.

(a)(1) Certain systems of records under the Act that are maintained by the Department may occasionally contain material subject to 5 U.S.C. 552a(k)(1), relating to national defense and foreign policy materials. The systems of records published in the **Federal Register** by the Department that are within this exemption are:

COMMERCE/ITA–1, COMMERCE/ITA–2, COMMERCE/ITA–3, COMMERCE/NOAA–11, COMMERCE/PAT–TM–4, COMMERCE/DEPT–12, COMMERCE/DEPT–13, and COMMERCE/DEPT–14.

(2) The Department hereby asserts a claim to exemption of such materials wherever they might appear in such systems of records, or any systems of records, at present or in the future. The materials would be exempt from 5 U.S.C. 552a (c)(3), (d), (e)(1), (e)(4) (G), (H), and (I), and (f), because the materials are required by Executive order to be kept secret in the interest of the national defense and foreign policy.

(b) The specific exemptions determined to be necessary and proper with respect to systems of records maintained by the Department, including the parts of each system to be exempted, the provisions of the Act from which they are exempted, and the justification for the exemption, are as follows:

(1) Exempt under 5 U.S.C. 552a(k)(1). The systems of records exempt hereunder appear in paragraph (a) of this section. The claims for exemption of COMMERCE/DEPT–12, COMMERCE/ITA–1, and COMMERCE/NOAA–11 under this paragraph are subject to the condition that the general exemption claimed in § 4.33(b)(3) is held to be invalid.

(2)(i) Exempt under 5 U.S.C. 552a(k)(2). The systems of records exempt (some only conditionally), the sections of the Act from which exempted, and the reasons therefor are as follows:

(A) Individuals identified in Export Administration compliance proceedings or investigations—COMMERCE/ITA–1, but only on condition that the general exemption claimed in § 4.33(b)(1) is held to be invalid;

(B) Individuals involved in export transactions—COMMERCE/ITA–2;

(C) Fisheries Law Enforcement Case Files—COMMERCE/NOAA–11, but only on condition that the general exemption claimed in § 4.33(b)(2) is held to be invalid;

(D) Investigative and Inspection Records—COMMERCE/DEPT–12, but only on condition that the general exemption claimed in § 4.33(b)(3) is held to be invalid;

(E) Investigative Records—Persons Within the Investigative Jurisdiction of the Department—COMMERCE/DEPT–13;

(F) Litigation, Claims and Administrative Proceeding Records—COMMERCE/DEPT–14; and

(ii) The foregoing are exempted from 5 U.S.C. 552a (c)(3), (d), (e)(1), (e)(4)(G), (H), and (I), and (f). The reasons for asserting the exemption are to prevent subjects of investigation from frustrating the investigatory process; to ensure the proper functioning and integrity of law enforcement activities; to prevent disclosure of investigative techniques; to maintain the ability to obtain necessary information; to fulfill commitments made to sources to protect their identities and the confidentiality of information; and to avoid endangering these sources and law enforcement personnel. Special note is

taken that the proviso clause in this exemption imports due process and procedural protections for the individual. The existence and general character of the information exempted shall be made known to the individual to whom it pertains.

(3)(i) Exempt under 5 U.S.C. 552a(k)(4). The systems of records exempt, the sections of the Act from which exempted, and the reasons therefor are as follows:

(A) Agriculture Census Records for 1974 and 1978—COMMERCE/CENSUS–1;

(B) Individual and Household Statistical Surveys and Special Census Studies Records— COMMERCE/CENSUS–3;

(C) Minority-Owned Business Enterprises Survey Records—COMMERCE/CENSUS–4;

(D) Population and Housing Census Records of the 1960 and Subsequent Censuses—COMMERCE/ CENSUS–5;

(E) Population Census Personal Service Records for 1900 and All Subsequent Decennial Censuses—COMMERCE/CENSUS–6; and

(F) Special Censuses of Population Conducted for State and Local Government—COMMERCE/CENSUS–7.

(G) Statistical Administrative Records System—COMMERCE/CENSUS–8.

(ii) The foregoing are exempted from 5 U.S.C. 552a(c)(3), (d), (e)(1), (e)(4)(G) (H), and (I), and (f). The reasons for asserting the exemption are to comply with the prescription of Title 13 of the United States Code, especially sections 8 and 9 relating to prohibitions against disclosure, and to avoid needless consideration of these records whose sole statistical use comports fully with a basic purpose of the Act, namely, that no adverse determinations are made from these records as to any identifiable individual.

(4)(i) Exempt under 5 U.S.C. 552a(k)(5). The systems of records exempt (some only conditionally), the sections of the Act from which exempted, and the reasons therefor are as follows:

(A) Applications to U.S. Merchant Marine Academy (USMMA)—COMMERCE/MA–1;

(B) USMMA Midshipman Medical Files—COMMERCE/MA–17;

(C) USMMA Midshipman Personnel Files—COMMERCE/MA–18;

(D) USMMA Non-Appropriated fund Employees—COMMERCE/MA–19;

(E) Applicants for the NOAA Corps—COMMERCE/NOAA–4;

(F) Commissioned Officer Official Personnel Folders—COMMERCE/NOAA–7;

(G) Conflict of Interest Records, Appointed Officials—COMMERCE/DEPT–3;

(H) Investigative and Inspection Records—COMMERCE/DEPT–12, but only on condition that the general exemption claimed in § 4.33(b)(3) is held to be invalid;

(I) Investigative Records—Persons Within the Investigative Jurisdiction of the Department—COMMERCE/DEPT–13; and

(J) Litigation, Claims, and Administrative Proceeding Records—COMMERCE/DEPT–14.

(ii) The foregoing are exempted from 5 U.S.C. 552a (c)(3), (d), (e)(1), (e)(4) (G), (H), and (I), and (f). The reasons for asserting the exemption are to maintain the ability to obtain candid and necessary information, to fulfill commitments made to sources to protect the confidentiality of information, to avoid endangering these sources and, ultimately, to facilitate proper selection or continuance of the best applicants or persons for a given position or contract. Special note is made of the limitation on the extent to which this exemption may be asserted. The existence and general character of the information exempted will be made known to the individual to whom it pertains.

(c) At the present time, the Department claims no exemption under 5 U.S.C. 552a(k) (3), (6) and (7).

Appendix A to Part 4—Freedom of Information Public Inspection Facilities, and Addresses for Requests for Records Under the Freedom of Information Act and Privacy Act, and Requests for Correction or Amendment Under the Privacy Act

Each address listed below is the respective component's mailing address for receipt and processing of requests for records under the Freedom of Information Act and Privacy Act, for requests for correction or amendment under the Privacy Act and, unless otherwise noted, its public inspection facility for records available to the public under the Freedom of Information Act. Requests should be addressed to the component the requester knows or has reason to believe has possession of, control over, or primary concern with the records sought. Otherwise, requests should be addressed to the Central Reference and Records Inspection Facility. The telephone number for each component is included after its address. Public inspection facilities are open to the public Monday through Friday (excluding Saturdays, Sundays, and legal public holidays) between 9 a.m. and 4 p.m. local time of the facility at issue. Certain public inspection facility records of components are also available electronically through the Department's ''FOIA Home Page'' link found at the Department's World Wide Web site (*http://www.doc.gov*)), as described in § 4.2(b). The Departmental Freedom of Information Officer is authorized to revise this appendix to reflect changes in the information contained in it. Any such revisions shall be posted at the Department's ''FOIA Home Page'' link found at the Department's World Wide Web site (*http://www.doc.gov*).

(1) Department of Commerce Freedom of Information Central Reference and Records Inspection Facility, U.S. Department of Commerce, Room 6022, 14th and Constitution Avenue, NW, Washington, DC 20230; (202) 482–4115. This facility serves the Office of the Secretary, all other components of the Department not identified below, and those components identified below that do not have separate public inspection facilities.

(2) Bureau of the Census, Policy Office, U.S. Department of Commerce, Federal Building 3, Room 2430, Suitland, Maryland 20233; (301) 457–2520. This agency maintains a separate public inspection facility in Room 2455, Federal Building 3, Suitland, Maryland 20233.

(3) Bureau of Economic Analysis/Economics and Statistics Administration, Office of the Under Secretary for Economic Affairs, Department of Commerce, Room 4836, 14th and Constitution Avenue, NW, Washington, DC 20230; (202) 482–3308. This component does not maintain a separate public inspection facility.

(4) Bureau of Export Administration, Office of Administration, U.S. Department of Commerce, Room 6883, 14th and Constitution Avenue, NW, Washington, DC 20230; (202) 482–0500. This component does not maintain a separate public inspection facility.

(5) Economic Development Administration, Office of the Chief Counsel, U.S. Department of Commerce, Room 7005, 14th and Constitution Avenue, NW, Washington, DC 20230; (202) 482–4687. Regional EDA offices (none of the following regional EDA offices maintains a separate public inspection facility):

(i) Philadelphia Regional Office, EDA, U.S. Department of Commerce, Curtis Center, Suite 140 South, Independence Square West, Philadelphia, Pennsylvania 19106; (215) 597–7896.

(ii) Atlanta Regional Office, EDA, U.S. Department of Commerce, 401 West Peachtree Street, NW, Suite 1820, Atlanta, GA 30308; (404) 730–3006.

(iii) Denver Regional Office, EDA, U.S. Department of Commerce, Room 670, 1244 Speer Boulevard, Denver, Colorado 80204; (303) 844–4716.

(iv) Chicago Regional Office, EDA, U.S. Department of Commerce, 111 North Canal Street, Suite 855, Chicago, IL 60606; (312) 353–8580.

(v) Seattle Regional Office, EDA, U.S. Department of Commerce, Jackson Federal Building, Room 1856, 915 Second Avenue, Seattle WA 98174; (206) 220–7701.

(vi) Austin Regional Office, EDA, U.S. Department of Commerce, 327 Congress Avenue, Suite 200, Austin, Texas 78701; (512) 381–8169.

(6) International Trade Administration, Office of Organization and Management Support, U.S. Department of Commerce, Room 4001, 14th and Constitution Avenue, NW, Washington, DC 20230; (202) 482–3032.

(7) Minority Business Development Agency, Data Resources Division, U.S. Department of Commerce, Room 5084, 14th and Constitution Avenue, NW, Washington, DC 20230; (202) 482–2025. This agency does not maintain a separate public inspection facility.

(8) National Institute of Standards and Technology, Management and Organization Division, Administration Building, Room A525, 100 Bureau Drive, Gaithersburg, Maryland 20899; (301) 975–4054. This agency maintains a separate public inspection facility in Room E–106, Administration Building, Gaithersburg, Maryland.

(9) National Oceanic and Atmospheric Administration, Public Reference Facility (OFAx2) 1315 East West Highway (SSMC3), Room 10730, Silver Spring, Maryland 20910; (301) 713–3540.

(10) National Technical Information Service, Office of Administration, 5285 Port Royal Road, Springfield, Virginia 22161; (703) 605–6449. This agency does not maintain a separate public inspection facility.

(11) National Telecommunications and Information Administration, Office of the Chief Counsel, U.S. Department of Commerce, Room 4713, 14th and Constitution Avenue, NW, Washington, DC 20230; (202) 482–1816. This component does not maintain a separate public inspection facility.

(12) Office of Inspector General, Counsel to the Inspector General, U.S. Department of Commerce, Room 7892, 14th and Constitution Avenue, NW, Washington, DC 20230; (202) 482–5992. This component does not maintain a separate public inspection facility.

(13) Technology Administration, Office of the Under Secretary, U.S. Department of Commerce, Room 4835, 14th and Constitution Avenue, NW, Washington, DC 20230; (202) 482–1984. This component does not maintain a separate public inspection facility.

Appendix B to Part 4— Officials Authorized to Deny Requests for Records Under the Freedom of Information Act, and Requests for Records and Requests for Correction or Amendment Under the Privacy Act

The officials of the Department listed below and their superiors have authority, with respect to the records for which each is responsible, to deny requests for records under the FOIA,[1] and requests for records and requests for correction or amendment under the PA. In addition, the Departmental Freedom of Information Officer and the Freedom of Information Officer for the Office of the Secretary have the foregoing FOIA and PA denial authority for all records of the Department, and the Departmental Freedom of Information officer is authorized to assign that authority, on a case-by-case basis only, to any of the officials listed below, if the records responsive to a request include records for which more than one official listed below is responsible. The Departmental Freedom of Information Officer is authorized to revise this appendix to reflect changes in designation of denial officials. Any such revisions shall be posted at the Department's ''FOIA Home Page'' link found at the Department's World Wide Web site *(http://www.doc.gov).*

Office of the Secretary

Office of the Secretary: Executive Secretary; Freedom of Information Officer
Office of Business Liaison: Director
Office of Public Affairs: Director; Deputy Director; Press Secretary; Deputy Press Secretary
Assistant Secretary for Legislative and Intergovernmental Affairs; Deputy Assistant Secretary for Legislative and Intergovernmental Affairs
Office of the Inspector General: Counsel to the Inspector General; Deputy Counsel to the Inspector General
Office of the General Counsel: Deputy General Counsel; Assistant General Counsel for Administration
Office of Executive Support: Director

Assistant Secretary for Administration

Office of Civil Rights: Director
Office of Budget: Director
Office of Management and Organization: Director
Office of Chief Information Officer: Director
Office of Executive Budgeting and Assistance Management: Director
Office of Executive Assistance Management: Director; Grants Officer
Departmental Freedom of Information Officer.
Office of Financial Management: Director
Office of Human Resources Management: Director; Deputy Director.
Office of Administrative Services: Director
Office of Security: Director, Deputy Director
Office of Acquisition Management: Director
Office of Acquisition Services: Director
Office of Small and Disadvantaged Business Utilization: Director

Bureau of Export Administration

Under Secretary
Deputy Under Secretary
Director, Office of Administration
Director, Office of Planning, Evaluation and Management
Assistant Secretary for Export Administration
Deputy Assistant Secretary for Export Administration
Director, Office of Strategic Industries and Economic Security
Director, Office of Nonproliferation Controls and Treaty Compliance
Director, Office of Strategic Trade and Foreign Policy Controls
Director, Office of Exporter Services
Assistant Secretary for Export Enforcement
Deputy Assistant Secretary for Export Enforcement
Director, Office of Export Enforcement
Director, Office of Enforcement Analysis
Director, Office of Antiboycott Compliance

Economics and Statistics Administration

Office of Administration: Director
Bureau of Economic Analysis: Director
Bureau of the Census: Chief, Policy Office

Economic Development Administration

Freedom of Information Officer

International Trade Administration

Under Secretary for International Trade
Deputy Under Secretary for International Trade
Counselor to the Department
Director, Trade Promotion Coordinating Committee Secretariat
Director, Office of Public Affairs
Director, Office of Legislative and Intergovernmental Affairs

Administration

Chief Financial Officer and Director of Administration
Director, Office of Organization and Management Support
Director, Office of Human Resources Management
Director, Office of Information Resources Management
ITA Freedom of Information Officer

Import Administration

Assistant Secretary for Import Administration
Deputy Assistant Secretary for Antidumping and Countervailing Duty Enforcement I
Deputy Assistant Secretary for Antidumping and Countervailing Duty Enforcement II
Deputy Assistant Secretary for Antidumping and Countervailing Duty Enforcement III
Director for Policy and Analysis
Director, Office of Policy
Director, Office of Accounting
Director, Central Records Unit
Director, Foreign Trade Zones Staff
Director, Statutory Import Programs Staff
Director, Office of Antidumping Countervailing Duty Enforcement I
Director, Office of Antidumping Countervailing Duty Enforcement II
Director, Office of Antidumping Countervailing Duty Enforcement III
Director, Office of Antidumping Countervailing Duty Enforcement IV
Director, Office of Antidumping Countervailing Duty Enforcement V
Director, Office of Antidumping Countervailing Duty Enforcement VI
Director, Office of Antidumping Countervailing Duty Enforcement VII
Director, Office of Antidumping Countervailing Duty Enforcement VIII
Director, Office of Antidumping Countervailing Duty Enforcement IX

Market Access and Compliance

Assistant Secretary for Market Access and Compliance
Deputy Assistant Secretary for Agreements Compliance
Deputy Assistant Secretary for the Middle East and North Africa
Deputy Assistant Secretary for Europe
Deputy Assistant Secretary for the Western Hemisphere

[1] The foregoing officials have sole authority under § 4.7(b) to deny requests for records in any respect, including, for example, denying requests for reduction or waiver of fees.

Deputy Assistant Secretary for Asia and the Pacific
Deputy Assistant Secretary for Africa
Director, Office of Policy Coordination
Director, Office of Multilateral Affairs
Director, Trade Compliance Center
Director, Office of the Middle East and North Africa
Director, Office of European Union and Regional Affairs
Director, Office of Eastern Europe, Russia and Independent States
Director, Office of Latin America and the Caribbean
Director, Office of NAFTA and Inter-American Affairs
Director, Office of China Economic Area
Director, Office of the Pacific Basin
Director, Office of South Asia and Oceania
Director, Office of Japan
Director, Office of Africa

Trade Development

Assistant Secretary for Trade Development
Deputy Assistant Secretary for Transportation and Technology Industries
Deputy Assistant Secretary for Textiles, Apparel and Consumer Goods Industries
Deputy Assistant Secretary for Service Industries and Finance
Deputy Assistant Secretary for Basic Industries
Deputy Assistant Secretary for Information Technology Industries
Deputy Assistant Secretary for Environmental Technologies Industries
Deputy Assistant Secretary for Tourism Industries
Director, Office of Export Promotion Coordination
Director, Trade Information Center
Director, Office of Trade and Economic Analysis
Director, Advocacy Center
Director, Office of Planning, Coordination and Resource Management
Director, Office of Aerospace
Director, Office of Automotive Affairs
Director, Office of Microelectronics, Medical Equipment and Instrumentation
Director, Office of Textiles and Apparel
Director, Office of Consumer Goods
Director, Office of Environmental Technologies
Director, Office of Export Trading Company Affairs
Director, Office of Finance
Director, Office of Service Industries
Director, Office of Metals, Materials and Chemicals
Director, Office of Energy, Infrastructure and Machinery
Director, Office of Electronic Commerce
Director, Office of Information Technologies
Director, Office of Telecommunications Technologies

U.S. and Foreign Commercial Service

Assistant Secretary and Director General
Deputy Director General
Deputy Assistant Secretary for International Operations
Deputy Assistant Secretary for Export Promotion Services
Deputy Assistant Secretary for Domestic Operations
Director, Office of Information Systems
Director, Office of Planning
Director, Office of Foreign Service Human Resources
Director for Europe
Director for Western Hemisphere
Director for East Asia and the Pacific
Director, Multilateral Development Bank Operations
Director, Office of Public/Private Initiatives
Director, Office of Export Information and Marketing Services
Director, Office of Operations

Minority Business Development Administration

Freedom of Information Officer

National Oceanic and Atmospheric Administration

Under Secretary
Assistant Secretary
Director, Office of Public and Constituent Affairs
Director, Office of Marine and Aviation Operations
General Counsel
Assistant Administrator for Ocean Services and Coastal Zone Management
Assistant Administrator for Fisheries
Assistant Administrator for Weather Services
Assistant Administrator for Satellite and Information Services
Assistant Administrator for Oceanic and Atmospheric Research
Office of Finance and Administration: Chief Financial Officer/Chief Administrative Officer
Director, Acquisition and Grants Office
Director, Systems Acquisition Office
Director, Human Resources Management Office
Director, Office of Finance
Director, Budget Office
Director, Facilities Office
Director, Information Systems Management Office
Director, Eastern Administrative Support Center
Director, Central Administrative Support Center
Director, Mountain Administrative Support Center
Director, Western Administrative Support Center
Freedom of Information Officer

National Telecommunications and Information Administration

Deputy Assistant Secretary
Chief Counsel
Deputy Chief Counsel

Technology Administration

Under Secretary for Technology
Deputy Under Secretary for Technology
Assistant Secretary for Technology Policy
Chief Counsel
Deputy Chief Counsel
Senior Counsel for Internet Technology
National Institute of Standards and Technology: Director for Administration and Chief Financial Officer; Chief, Management and Organization Division; NIST Counsel.
National Technical Information Service: Director; Deputy Director; Chief Financial Officer/Associate Director for Finance and Administration.

Appendix C to Part 4—Systems of Records Noticed by Other Federal Agencies and Applicable to Records of the Department and Applicability of this Part Thereto

Category of records	Other Federal Agency
Federal Personnel Records	Office of Personnel Management.[1]
Federal Employee Compensation Act Program Program	Department of Labor.[2]
Equal Employment Opportunity Appeal Complaints	Equal Employment Opportunity Commission.[3]
Formal Complaints/Appeals of Adverse Personnel Actions	Merit Systems Protection Board.[4]

[1] The provisions of this part do not apply to these records covered by notices of systems of records published by the Office of Personnel Management for all agencies. The regulations of OPM alone apply.
[2] The provisions of this part apply only initially to these records covered by notices of systems of records published by the U.S. Department of Labor for all agencies. The regulations of that Department attach at the point of any denial for access or for correction or amendment.
[3] The provisions of this part do not apply to these records covered by notices of systems of records published by the Equal Employment Opportunity Commission for all agencies. The regulations of the Commission alone apply.
[4] The provisions of this part do not apply to these records covered by notices of systems of records published by the Merit Systems Protection Board for all agencies. The regulations of the Board alone apply.

2. Part 2 is revised to read as follows:

PART 4a—CLASSIFICATION, DECLASSIFICATION, AND PUBLIC AVAILABILITY OF NATIONAL SECURITY INFORMATION

Sec.
4a.1 General.
4a.2 Deputy Assistant Secretary for Security.
4a.3 Classification levels.
4a.4 Classification authority.
4a.5 Duration of classification.
4a.6 General.
4a.7 Mandatory review for declassification.
4a.8 Access to classified information by individuals outside the Government.

Authority: E.O. 12958; 47 FR 14874, April 6, 1982; 47 FR 15557, April 12, 1982.

§ 4a.1 General.

Executive Order 12958 provides the only basis for classifying information within the Department of Commerce (Department), except as provided in the Atomic Energy Act of 1954, as amended. The Department's policy is to make information concerning its activities available to the public, consistent with the need to protect the national defense and foreign relations of the United States. Accordingly, security classification shall be applied only to protect the national security.

§ 4a.2 Deputy Assistant Secretary for Security.

The Deputy Assistant Secretary for Security (DAS) is responsible for implementing E.O. 12958 and this part.

§ 4a.3 Classification levels.

Information may be classified as national security information by a designated original classifier of the Department if it is determined that the information concerns one or more of the categories described in § 1.5 of E.O. 12958. The levels established by E.O. 12958 (Top Secret, Secret, and Confidential) are the only terms that may be applied to national security information. Except as provided by statute, no other terms shall be used within the Department for the three classification levels.

§ 4a.4 Classification authority.

Authority to originally classify information as Secret or Confidential may be exercised only by the Secretary of Commerce and by officials to whom such authority is specifically delegated. No official of the Department is authorized to originally classify information as Top Secret.

§ 4a.5 Duration of classification.

(a) Information shall remain classified no longer than ten years from the date of its original classification, except as provided in § 1.6(d) of E.O. 12958. Under E.O. 12958, information may be exempted from declassification within ten years if the unauthorized disclosure of such information could reasonably be expected to cause damage to the national security for more than ten years and meets one of the eight criteria listed in § 1.6 (d).

(b) Department of Commerce originally classified information marked for an indefinite duration of classification under predecessor orders to E.O. 12958 shall be declassified after twenty years. Classified information contained in archive records determined to have permanent historical value under Title 44 of the United States Code shall be automatically declassified no longer than 25 years from the date of its original classification, except as provided in § 3.4(d) of E.O. 12958.

§ 4a.6 General.

National security information over which the Department exercises final classification jurisdiction shall be declassified or downgraded as soon as national security considerations permit. If information is declassified, it may continue to be exempt from public disclosure by the Freedom of Information Act (5 U.S.C. 552) or other applicable law.

§ 4a.7 Mandatory review for declassification.

(a) *Requests.* Classified information under the jurisdiction of the Department is subject to review for declassification upon receipt of a written request that describes the information with sufficient specificity to locate it with a reasonable amount of effort. Requests must be submitted to the Deputy Assistant Secretary for Security, U.S. Department of Commerce, Room 1069, 14th and Constitution Avenue, NW., Washington, DC 20230.

(b) *Exemptions.* The following are exempt from mandatory review for declassification:

(1) Information that has been reviewed for declassification within the past two years;

(2) Information that is the subject of pending litigation;

(3) Information originated by the incumbent President, the incumbent President's White House Staff, committees, commissions, or boards appointed by the incumbent President, or other entities within the Executive Office of the President that solely advise and assist the incumbent President; and

(4) Information specifically exempt from such review by law.

(c) *Processing requirements.* (1) The DAS shall acknowledge receipt of the request directly to the requester. If a request does not adequately describe the information sought in accordance with paragraph (a) of this section, the requester shall be notified that unless additional information is provided, no further action will be taken. The request shall be forwarded to the component that originated the information or that has primary interest in the subject matter. The component assigned action shall review the information in accordance with § 4a.7(c)(2) through (4) within twenty working days.

(2) The component assigned action shall determine whether, under the declassification provisions of the U.S. Department of Commerce Security Manual, the entire document or portions thereof may be declassified. Declassification of the information shall be accomplished by a designated declassification authority. Upon declassification the information shall be remarked. If the information is not partially or entirely declassified, the reviewing official shall provide the reasons for denial by citing the applicable provisions of E.O. 12958. If the classification is a derivative decision based on classified source material of another Federal agency, the component shall provide the information to the originator for review.

(3) If information is declassified, the component shall also determine whether it is releasable under the Freedom of Information Act. If the information is not releasable, the component shall advise the DAS that the information has been declassified but that it is exempt from disclosure, citing the appropriate exemption of the Freedom of Information Act.

(4) If the request for declassification is denied in whole or in part, the requester shall be notified of the right to appeal the determination within sixty calendar days and of the procedures for such an appeal. If declassified information remains exempt from disclosure under the Freedom of Information Act, the requester shall be advised of the appellate procedures under that law.

(d) *Fees.* If the request requires services for which fees are chargeable, the component assigned action shall calculate the anticipated fees to be charged, and may be required to ascertain the requester's willingness to pay the allowable charges as a precondition to taking further action on the request, in accordance with § 4.11 of the Department of Commerce Freedom

of Information Act rules and § 4.31 of the Department's Privacy Act rules.

(e) *Right of appeal.* (1) A requester may appeal to the DAS when information requested under this section is not completely declassified and released after expiration of the applicable time limits. Within thirty working days (i.e., excluding Saturdays, Sundays, and legal public holidays) of receipt of a written appeal:

(i) The DAS shall determine whether continued classification of the requested information is required in whole or in part;

(ii) If information is declassified, determine whether it is releasable under the Freedom of Information Act; and

(iii) Notify the requester of his or her determination, making available any information determined to be releasable. If continued classification is required under the provisions of the Department of Commerce National Security Manual, the DAS shall notify the requester of his or her determination, including the reasons for denial based on applicable provisions of E.O. 12958, and of the right of final appeal to the Interagency Security Classification Appeals Panel.

(2) During the declassification review of information under appeal the DAS may overrule previous determinations in whole or in part if continued protection in the interest of national security is no longer required. If the DAS determines that the information no longer requires classification, it shall be declassified and, unless it is otherwise exempt from disclosure under the Freedom of Information Act, released to the requester. The DAS shall advise the original reviewing component of his or her decision.

§ 4a.8 Access to classified information by individuals outside the Government.

(a) *Industrial, Educational, and Commercial Entities.* Certain bidders, contractors, grantees, educational, scientific, or industrial organizations may receive classified information under the procedures prescribed by the National Industrial Security Program Operating Manual.

(b) *Access by historical researchers and former Presidential appointees.* An individual engaged in historical research projects or who has previously occupied a policy-making position to which he or she was appointed by the President may be authorized access to classified information for a limited period, provided that the head of the component with jurisdiction over the information:

(1) Determines in writing that:

(i) Access is consistent with national security;

(ii) The individual has a compelling need for access; and

(iii) The Department's best interest is served by providing access;

(2) Obtains in writing from the individual:

(i) Consent to a review by the Department of any resultant notes and manuscripts for the purpose of determining that no classified information is contained in them; and

(ii) Agreement to safeguard classified information in accordance with applicable requirements; and

(iii) A detailed description of the individual's research;

(3) Ensures that custody of classified information is maintained at a Department facility;

(4) Limits access granted to former Presidential appointees to items that the individual originated, reviewed, signed, or received while serving as a Presidential appointee; and

(5) Receives from the DAS:

(i) A determination that the individual is trustworthy; and

(ii) Approval to grant access to the individual.

(c) An individual seeking access should describe the information with sufficient specificity to locate and compile it with a reasonable amount of effort. If the access requested by a historical researcher or former Presidential appointee requires services for which fees are chargeable, the responsible component shall notify the individual in advance.

(d) This section applies only to classified information originated by the Department, or to information in the sole custody of the Department. Otherwise, the individual shall be referred to the classifying agency.

PART 4b—[REMOVED]

3. Remove Part 4b.

Dated: December 6, 2001.

Robert F. Kugelman,

Director, Office of Executive Budgeting and Assistance Management.

[FR Doc. 01–31131 Filed 12–19–01; 8:45 am]

BILLING CODE 3510–BW–P

DEPARTMENT OF DEFENSE

Department of the Army

32 CFR Part 619

Program for Qualifying DOD Freight Motor Carriers, Exempt Surface Freight Forwarders, Shippers Agents, and Freight Brokers

AGENCY: Headquarters Military Traffic Management Command (MTMC), DoD.

ACTION: Final rule.

SUMMARY: This action removes 32 CFR Part 619 published in the **Federal Register** Aug 20, 1993 (58 FR 44405, amended at 61 FR 49060, Sept. 18, 1996). The rule is being removed to allow for publication in MTMC rules publication. This rule is now obsolete and no longer applies to or governs the qualifications of carriers to do business with MTMC or with the Department of Defense.

DATES: Effective December 20, 2001.

ADDRESSES: Headquarters Military Traffic Management Command, ATTN: MTOP–MRM (Mr. Rick Wirtz, TMS) 200 Stovall Street, Alexandria, VA 22332.

FOR FURTHER INFORMATION CONTACT: Mr. Rick Wirtz, (703) 428–2382

SUPPLEMENTARY INFORMATION: The Commander, MTMC, is the proponent of this rule and, acting with the advice of his acquisition, operations and legal staffs, had concluded that it is obsolete. Due to changes in the laws governing interstate commerce, including a transition of much of our procurement from nonFAR to FAR contract procedures, there is no longer any necessity for this rule. Under FAR contracting the contracting Officer has the responsibility for making determinations as to whether a carrier bidder is a responsible bidder who is qualified to do business with the DoD under the contract in issue.

This rule has been replaced with a simpler program, which meets the requirements of the current Interstate Commerce Act and the requirements of our current transportation needs. The current procedures for carriers to follow in order to qualify for doing business with MTMC are published on the MTMC Home Page. The carrier industry has been properly notified of this change and is currently following the new procedures to the satisfaction of all parties. The new program for qualifying carriers is not a ''Rule'', as that term is used in rulemaking proceedings under the Administrative Procedures Act and thus does not require publication in the Code of Federal Regulations or in the **Federal Register**. We understand that the volume of the CFR that contains 49 CFR Part 619 is due to be reprinted soon. Therefore, it would be helpful in avoiding confusion with the public if 32 CFR Part 619 is removed.

List of Subjects in 32 CFR Part 619

Program for Qualifying DOD Freight Motor Carriers, Exempt Surface Freight Forwarders, Shippers Agents, and Freight Brokers.

PART 619—[REMOVED]

Accordingly, for reasons stated in the preamble, under the authority: 49 U.S.C. 5101–5127, 31132, 31136, and 31142, 32 CFR Part 619, *Program for Qualifying DOD Freight Motor Carriers, Exempt Surface Freight Forwarders, Shippers Agents, and Freight Brokers,* is removed in its entirety.

Ms. Luz D. Ortiz,

Army Federal Register Liaison Officer.

[FR Doc. 01–31357 Filed 12–19–01; 8:45 am]

BILLING CODE 3710–08–M

NATIONAL ARCHIVES AND RECORDS ADMINISTRATION

36 CFR Part 1202

RIN 3095–AA99

Privacy Act; Implementation

AGENCY: National Archives and Records Administration (NARA).

ACTION: Final rule.

SUMMARY: NARA is rewriting our Privacy Act regulations to update the procedures for making a Privacy Act request, and to reflect the President's memorandum of June 1, 1998, Plain Language in Government Writing. This rule will affect individuals and entities seeking access or disclosure of information contained in NARA Privacy Act systems of records and subject individuals covered by a NARA Privacy Act system.

EFFECTIVE DATE: January 22, 2002.

FOR FURTHER INFORMATION CONTACT: Nancy Allard at telephone number 301–713–7360, ext. 226, or fax number 301–713–7270.

SUPPLEMENTARY INFORMATION:

NARA published a notice of proposed rulemaking in the June 5, 2001 **Federal Register** (66 FR 30134) for a 60-day comment period. No comments were received. However, we have determined that one of the Privacy Act systems cited in §§ 1202.92 and 1202.94, General Law Files, should not be exempt under 5 U.S.C. 552a(k)(2) and (k)(5) of the Privacy Act. We have therefore removed references to this system of records. In addition, minor editorial corrections to legal citations have been made.

This final rule is not a significant regulatory action for the purposes of Executive Order 12866 and has not been reviewed by the Office of Management and Budget. As required by the Regulatory Flexibility Act, I certify that this rule will not have a significant impact on a substantial number of small entities because it only affects individuals and entities seeking access or disclosure of information contained in NARA Privacy Act systems of records. This rule does not have any federalism implications. This rule is not a major rule.

List of Subjects in 36 CFR Part 1202

Privacy.

For the reason set forth in the preamble, part 1202 of title 36, Code of Federal Regulations, is revised to read as follows:

PART 1202—REGULATIONS IMPLEMENTING THE PRIVACY ACT OF 1974

Subpart A—General Information About the Privacy Act

Sec.
1202.1 What does this part cover?
1202.2 What this part does not cover.
1202.4 Definitions.
1202.6 Whom should I contact for Privacy Act matters at NARA?
1202.8 How does NARA handle records that are in Government-wide Privacy Act systems?
1202.10 Does NARA handle access to and disclosure of records of defunct agencies in the custody of NARA?

Subpart B—Collecting Information

1202.18 How does NARA collect information about individuals?
1202.20 What advisory information does NARA provide before collecting information from me?
1202.22 Will NARA need my Social Security Number?
1202.24 Will NARA ever request information about me from someone else?
1202.26 Who will make sure that my record is accurate?
1202.28 What rules do NARA employees follow in managing personal information?
1202.30 How does NARA safeguard its systems of records?

Subpart C—Individual Access to Records

1202.40 How can I gain access to NARA records about myself?
1202.42 How are requests for access to medical records handled?
1202.44 How long will it take for NARA to process my request?
1202.46 In what ways will NARA provide access?
1202.48 Will I have to pay for copies of records?
1202.50 Does NARA require prepayment of fees?
1202.52 How do I pay?
1202.54 On what grounds can NARA deny my Privacy Act request?
1202.56 How do I appeal a denial of my Privacy Act request?
1202.58 How are appeals processed?

Subpart D—Disclosure of Records

1202.60 When does NARA disclose a record in a Privacy Act system of records?
1202.62 What are the procedures for disclosure of records to a third party?
1202.64 How do I appeal a denial of disclosure?
1202.66 How does NARA keep account of disclosures?

Subpart E—Request to Amend Records

1202.70 Whom should I contact at NARA to amend records about myself?
1202.72 How does NARA handle requests to amend records?
1202.74 How will I know if NARA approved my amendment request?
1202.76 Can NARA deny my request for amendment?
1202.78 How do I accept an alternative amendment?
1202.80 How do I appeal the denial of a request to amend a record?
1202.82 How do I file a Statement of Disagreement?
1202.84 Can I seek judicial review?

Subpart F—Exemptions

1202.90 What NARA systems of records are exempt from release under the National Security Exemption of the Privacy Act?
1202.92 What NARA systems of records are exempt from release under the Law Enforcement Exemption of the Privacy Act?
1202.94 What NARA systems of records are exempt from release under the Investigatory Information Material Exemption of the Privacy Act?

Authority: 5 U.S.C. 552a; 44 U.S.C. 2104(a).

Subpart A—General Information About the Privacy Act

§ 1202.1 What does this part cover?

(a) This part covers requests under the Privacy Act (5 U.S.C. 552a) for NARA operational records and records of defunct agencies stored in NARA record centers.

(b) This part explains how NARA collects, uses and maintains records about you that are filed by your name or other personal identifiers and which are contained in a ''system of records'' as defined by 5 U.S.C. 552a(a)(5).

(c) This part describes the procedures to gain access to and contest the contents of your records, and the conditions under which NARA discloses such records to others.

§ 1202.2 What this part does not cover.

This part does not cover:

(a) Records that have been transferred into the National Archives of the United States for permanent preservation. Archival records that are contained in systems of records that become part of the National Archives of the United States are exempt from most provisions of the Privacy Act (see 5 U.S.C.

552a(l)(2) and (l)(3)). See subchapter C of this chapter for rules governing access to these type records.

(b) Records of other agencies that are stored in NARA record centers on behalf of that agency are governed by the Privacy Act rules of the transferring agency. Send your request for those records directly to those agencies.

(c) Personnel and medical records held by the National Personnel Records Center (NPRC) on behalf of the Department of Defense and the Office of Personnel Management. Privacy Act requests for these records should come to the NPRC.

§ 1202.4 Definitions.

For the purposes of this part, the term:

(a) *Access* means a transfer of a record, a copy of a record, or the information in a record to the subject individual, or the review of a record by the subject individual.

(b) *Agency* means any executive department, military department, Government corporation, Government-controlled corporation, or other establishment in the executive branch of the Government (including the Executive Office of the President), or any independent regulatory agency.

(c) *Defunct agency* means an agency that has ceased to exist, and has no successor in function.

(d) *Defunct agency* records means the records in a Privacy Act system of a defunct agency that are stored in a NARA records center.

(e) *Disclosure* means a transfer by any means of a record, a copy of a record, or the information contained in a record to a recipient other than the subject individual, or the review of a record by someone other than the subject individual.

(f) *Individual* means a citizen of the United States or an alien lawfully admitted for permanent residence.

(g) *Maintain* includes maintain, collect, use, or disseminate.

(h) *NARA Privacy Act Appeal Official* means the Deputy Archivist of the United States for appeals of denials of access to or amendment of records maintained in a system of records, except where the system manager is the Inspector General; then the term means the Archivist of the United States.

(i) *Record* means any item, collection, or grouping of information about an individual that is maintained by an agency, including, but not limited to, his or her education, financial transactions, medical history and criminal or employment history, and that contains his or her name or an identifying number, symbol, or other identifying particular assigned to the individual, such as a fingerprint, voiceprint, or photograph. For purposes of this part, ''record'' does not mean archival records that have been transferred to the National Archives of the United States.

(j) *Routine use* means, with respect to the disclosure of a record, the use of that record for a purpose which is compatible with the purpose for which it was collected.

(k) *Solicitation* means a request by a NARA employee or contractor that an individual provide information about himself or herself.

(l) *Statistical record* means a record in a system of records maintained for statistical research or reporting purposes only and not used in whole or in part in making any determination about an identifiable individual, except as provided by 13 U.S.C. 8.

(m) *Subject individual* means the individual named or discussed in a record or the individual to whom a record otherwise pertains.

(n) *System manager* means the NARA employee who is responsible for the maintenance of a system of records and for the collection, use, and dissemination of information in that system of records.

(o) *System of records* means a group of records from which information is retrieved by the name of the individual or by some identifying number, symbol, or other identifier assigned to that individual.

§ 1202.6 Whom should I contact for Privacy Act matters at NARA?

Contact the NARA Privacy Act Officer, National Archives and Records Administration (NGC), Room 3110, 8601 Adelphi Road, College Park, MD 20740–6001, for guidance in making a Privacy Act request, or if you need assistance with an existing request. The Privacy Act Officer will refer you to the responsible system manager. Details about what to include in your Privacy Act request are discussed in Subpart C of this part.

§ 1202.8 How does NARA handle records that are in Government-wide Privacy Act systems?

Records in the custody of NARA in a Government-wide Privacy Act system are the primary responsibility of another agency, e.g., the Office of Personnel Management (OPM) or the Office of Government Ethics (OGE). These records are governed by the regulations established by that agency pursuant to the Privacy Act. NARA provides access using that agency's regulations.

§ 1202.10 Does NARA handle access to and disclosure of records of defunct agencies in the custody of NARA?

Yes, records of defunct agencies in the custody of NARA at a NARA record center are covered by the provisions of this part.

Subpart B—Collecting Information

§ 1202.18 How does NARA collect information about individuals?

Any information that is used in making a determination about your rights, benefits, or privileges under NARA programs is collected directly from you—the subject individual— to the greatest extent possible.

§ 1202.20 What advisory information does NARA provide before collecting information from me?

(a) Before collecting information from you, NARA will advise you of:

(1) The authority for collecting the information and whether providing the information is mandatory or voluntary;

(2) The purpose for which the information will be used;

(3) The routine uses of the information; and

(4) The effect on you, if any, of not providing the information.

(b) NARA ensures that forms used to record the information that you provide are in compliance with the Privacy Act and this part.

§ 1202.22 Will NARA need my Social Security Number?

(a) Before a NARA employee or NARA contractor asks you to provide your social security number (SSN), he or she will ensure that the disclosure is required by Federal law or under a Federal law or regulation adopted before January 1, 1975.

(b) If you are asked to provide your SSN, the NARA employee or contractor must first inform you:

(1) Whether the disclosure is mandatory or voluntary;

(2) The statute or authority under which your SSN is solicited; and

(3) How your SSN will be used.

§ 1202.24 Will NARA ever request information about me from someone else?

NARA will make every effort to gather information from you directly. When NARA solicits information about you from someone else, NARA will explain to that person the purpose for which the information will be used.

§ 1202.26 Who will make sure that my record is accurate?

The system manager ensures that all records used by NARA to make a determination about any individual are maintained with such accuracy,

relevancy, timeliness, and completeness as is reasonably possible to ensure fairness to you.

§ 1202.28 What rules do NARA employees follow in managing personal information?

All NARA employees and contractors involved in the design, development, operation or maintenance of any system of records must review the provisions of the Privacy Act and the regulations in this part. NARA employees and contractors must conduct themselves in accordance with the rules of conduct concerning the protection of nonpublic information in the Standards of Ethical Conduct for Employees of the Executive Branch, 5 CFR 2635.703.

§ 1202.30 How does NARA safeguard its systems of records?

(a) The system manager ensures that appropriate administrative, technical, and physical safeguards are established to ensure the security and confidentiality of records. In order to protect against any threats or hazards to their security or loss of integrity, paper records are maintained in areas accessible only to authorized NARA personnel. Electronic records are protected in accordance with the Computer Security Act, OMB Circular A–11 requiring privacy analysis in reporting to OMB, and are accessed via passwords from terminals located in attended offices. After hours, buildings have security guards and/or doors are secured and all entrances are monitored by electronic surveillance equipment.

(b) The system manager, at his/her discretion, may designate additional safeguards similar to or greater than those described in paragraph (a) of this section for unusually sensitive records.

(c) The system manager only permits access to and use of automated or manual personnel records to persons whose official duties require such access, or to you or to a representative designated by you.

Subpart C—Individual Access to Records

§ 1202.40 How can I gain access to NARA records about myself?

(a) If you wish to request access to information about yourself contained in a NARA Privacy Act system of records, you must notify the NARA Privacy Act Officer, National Archives and Records Administration, Rm. 3110, 8601 Adelphi Rd., College Park, MD 20740–6001. If you wish to allow another person to review or obtain a copy of your record, you must provide authorization for that person to obtain access as part of your request.

(b) Your request must be in writing and the letter and the envelope must be marked ''Privacy Act Request.'' Your request letter must contain:

(1) The complete name and identifying number of the NARA system as published in the **Federal Register**;

(2) A brief description of the nature, time, place, and circumstances of your association with NARA;

(3) Any other information, which you believe, would help NARA to determine whether the information about you is included in the system of records;

(4) If you are authorizing another individual to have access to your records, the name of that person; and

(5) A Privacy Act certification of identity. When you make a request for access to records about yourself, you must verify your identity. You must sign your request and your signature must either be notarized or submitted by you under 28 U.S.C. 1746, a law that permits statements to be made under penalty of perjury as a substitute for notarization. While no specific form is required, you may obtain a Certification of Identity form for this purpose from the NARA Privacy Act Officer. The following information is required:

(i) Your full name;

(ii) An acknowledgment that you understand the criminal penalty in the Privacy Act for requesting or obtaining access to records under false pretenses (5 U.S.C. 552a(i)(3)); and

(iii) A declaration that your statement is true and correct under penalty of perjury (18 U.S.C. 1001).

(c) The procedure for accessing an accounting of disclosure is identical to the procedure for access to a record as set forth in this section.

§ 1202.42 How are requests for access to medical records handled?

When NARA receives a request for access to medical records, if NARA believes that disclosure of medical and/or psychological information directly to you could have an adverse effect on you, you may be asked to designate in writing a physician or mental health professional to whom you would like the records to be disclosed, and disclosure that otherwise would be made to you will instead be made to the designated physician or mental health professional.

§ 1202.44 How long will it take for NARA to process my request?

(a) NARA will acknowledge your request within 10 workdays of its receipt by NARA and if possible, will make the records available to you at that time. If NARA cannot make the records immediately available, the acknowledgment will indicate when the system manager will make the records available.

(b) If NARA anticipates more than a 10 workday delay in making a record you requested available, NARA also will explain in the acknowledgment specific reasons for the delay.

(c) If your request for access does not contain sufficient information to permit the system manager to locate the records, NARA will request additional information from you. NARA will have 10 workdays following receipt of the additional information in which to make the records available or to acknowledge receipt of the request and to indicate when the records will be available.

§ 1202.46 In what ways will NARA provide access?

(a) At your request, NARA will provide you, or a person authorized by you, a copy of the records by mail or by making the records available in person during normal business hours at the NARA facility where the records are located. If you are seeking access in person, the system manager will permit you to examine the original record, will provide you with a copy of the records, or both.

(b) When obtaining access to the records in person at a NARA facility, you must provide proof of identification either by producing at least one piece of identification bearing a name or signature and either a photograph or physical description (e.g., a driver's license or employee identification card) or by signing the Certification of Identity form described in § 1204.40 (b)(5). NARA reserves the right to ask you to produce additional pieces of identification to assure NARA of your identity. You will also be asked to sign an acknowledgement that you have been given access.

§ 1202.48 Will I have to pay for copies of records?

Yes. However NARA will waive fees for the first 100 pages copied or when the cost to collect the fee will exceed the amount collected. When a fee is charged, the charge per copy is $0.20 per page if NARA makes the copy or $0.15 per page if you make the copy on a NARA self-service copier. Fees for other reproduction processes are computed upon request.

§ 1202.50 Does NARA require prepayment of fees?

If the system manager determines that the estimated total fee is likely to exceed $250, NARA will notify you that the estimated fee must be prepaid before you can have copies of the records. If

the final fee is less than the amount you prepaid, NARA will refund the difference.

§ 1202.52 How do I pay?

You must pay by check or money order. Make your check or money order payable to the National Archives and Records Administration and send it to the NARA Privacy Act Officer, Room 3110, 8601 Adelphi Road, College Park, MD 20740–6001.

§ 1202.54 On what grounds can NARA deny my Privacy Act request?

(a) NARA can deny your Privacy Act request for records if the records are maintained in an exempt systems of records are described in subpart F of this part.

(b) A system manager may deny your request for access to your records only if:

(1) NARA has published rules in the **Federal Register** exempting the pertinent system of records from the access requirement; and

(2) The record is exempt from disclosure under the Freedom of Information Act (FOIA).

(c) Upon receipt of a request for access to a record which is contained within an exempt system of records, NARA will:

(1) Review the record to determine whether all or part of the record must be released to you in accordance with § 1202.40, notwithstanding the inclusion of the record within an exempt system of records; and

(2) Provide access to the record (or part of the record, if it is not fully releasable) in accordance with § 1202.46 or notify you that the request has been denied in whole or in part.

(d) If your request is denied in whole or in part, NARA's notice will include a statement specifying the applicable Privacy Act and FOIA exemptions and advising you of the right to appeal the decision as explained in § 1202.56.

§ 1202.56 How do I appeal a denial of my Privacy Act request?

(a) If you are denied access in whole or in part to records pertaining to yourself, you may file with NARA an appeal of that denial. Your appeal letter must be post marked no later than 35 calendar days after the date of the denial letter from NARA.

(1) Address appeals involving denial of access to Office of Inspector General records to NARA Privacy Act Appeal Official (N), National Archives and Records Administration, Room 4200, 8601 Adelphi Road, College Park, MD 20740–6001.

(2) Address all other appeals to the NARA Privacy Act Appeal Official (ND), National Archives and Records Administration, Room 4200, 8601 Adelphi Road, College Park, MD 20740–6001.

(b) All appeals of denial of access to the NARA Privacy Act Appeal Official must be in writing. Mark both the envelope and the appeal ''Privacy Act '' Access Appeal.''

§ 1202.58 How are appeals processed?

(a) Upon receipt of your appeal, the NARA Privacy Act Appeal Official will consult with the system manager, legal counsel, and such other officials as may be appropriate. If the NARA Privacy Act Appeal Official determines that the records you requested are not exempt from release, NARA grants you access and so notifies you.

(b) If the NARA Privacy Act Appeal Official determines that your appeal must be rejected, NARA will immediately notify you in writing of that determination. This decision is final and cannot be appealed further within NARA. NARA's notification to you will include:

(1) The reason for the rejection of the appeal; and

(2) Notice of your right to seek judicial review of NARA's final determination, as described in 36 CFR 1202.84.

(c) NARA will make its final determination no later than 30 workdays from the date on which NARA receives your appeal. NARA may extend this time limit by notifying you in writing before the expiration of the 30 workdays. This notification will include an explanation of the reasons for the time extension.

Subpart D—Disclosure of Records

§ 1202.60 When does NARA disclose a record in a Privacy Act system of records?

NARA will not disclose any records in a Privacy Act system of records to any person or to another agency without the express written consent of the subject individual unless the disclosure is:

(a) To NARA employees who have a need for the information in the official performance of their duties;

(b) Required by the provisions of the Freedom of Information Act, as amended;

(c) For a routine use that has been published in a notice in the **Federal Register**;

(d) To the Bureau of Census for purposes of planning or carrying out a census or survey or related activity pursuant to title 13 U.S.C.;

(e) To a person who has provided NARA with advance adequate written assurance as specified in § 1202.62(a) that the record will be used solely as a statistical research or reporting record. (Personal identifying information is deleted from the record released for statistical purposes. The system manager ensures that the identity of the individual cannot reasonably be deduced by combining various statistical records.)

(f) To the National Archives of the United States as a record which has sufficient historical or other value to warrant its continued preservation by the United States Government or for evaluation by the Archivist or the designee of the Archivist to determine whether the record has such value;

(g) To another agency or any governmental jurisdiction within or under the control of the United States for a civil or criminal law enforcement activity if the activity is authorized by law, and if the head of the agency or his or her other designated representative has made a written request to NARA specifying the particular portion desired and the law enforcement activity for which the record is sought;

(h) To a person showing compelling circumstances affecting the health or safety of an individual, and not necessarily the individual to whom the record pertains. A disclosure of this nature is followed by a notification to the last known address of the subject individual;

(i) To either House of Congress or to a committee or subcommittee (joint or of either House), in the course of the performance of official legislative activities;

(j) To the Comptroller General or any of his authorized representatives in the course of the performance of the duties of the General Accounting Office;

(k) Pursuant to the order of a court of competent jurisdiction; or

(l) To a consumer reporting agency in accordance with 31 U.S.C. 3711(e).

§ 1202.62 What are the procedures for disclosure of records to a third party?

(a) To obtain access to records about a person other than yourself, address the request to the NARA Privacy Act Officer, National Archives and Records Administration, Room 3110, 8601 Adelphi Rd., College Park, MD 20740–6001. If you are requesting access for statistical research as described in § 1202.60(e), you must submit a written statement that includes as a minimum:

(1) A statement of the purpose for requesting the records; and

(2) Certification that the records will be used only for statistical purposes.

(b) NARA will acknowledge your request within 10 workdays and will

make a decision within 30 workdays, unless NARA notifies you that the time limit must be extended for good cause.

(c) Upon receipt of your request, NARA will verify your right to obtain access to documents pursuant to § 1202.60. Upon verification, the system manager will make the requested records available to you.

(d) If NARA determines that the disclosure is not permitted under § 1202.60, the system manager will deny your request in writing. NARA will inform you of the right to submit a request for review of the denial and a final determination to the appropriate NARA Privacy Act Appeal Officer.

§ 1202.64 How do I appeal a denial of disclosure?

(a) Your request for a review of the denial of disclosure to records maintained by the Office of the Inspector General must be addressed to the NARA Privacy Act Appeal Officer (N), National Archives and Records Administration, Room 4200, 8601 Adelphi Rd., College Park, MD 20740–6001.

(b) Requests for a review of a denial of disclosure to all other NARA records must be addressed to the NARA Privacy Act Appeal Officer (ND), National Archives and Records Administration, Room 4200, 8601 Adelphi Rd., College Park, MD 20740–6001.

§ 1202.66 How does NARA keep account of disclosures?

(a) Except for disclosures made to NARA employees in the course of the performance of their duties or when required by the Freedom of Information Act (see § 1202.60(a) and (b)), NARA keeps an accurate accounting of each disclosure and retains it for 5 years after the disclosure or for the life of the record, whichever is longer. The accounting includes the:

(1) Date of disclosure;

(2) Nature, and purpose of each disclosure; and

(3) Name and address of the person or agency to which the disclosure is made.

(b) The system manager also maintains with the accounting of disclosures:

(1) A full statement of the justification for the disclosures;

(2) All documentation surrounding disclosure of a record for statistical or law enforcement purposes; and

(3) Evidence of written consent by the subject individual to a disclosure, if applicable.

(c) Except for the accounting of disclosures made for a law enforcement activity (see § 1202.60(g)) or of disclosures made from exempt systems (see subpart F of this part), the accounting of disclosures will be made available to the subject individual upon request. Procedures for requesting access to the accounting of disclosures are in subpart C.

Subpart E—Request To Amend Records

§ 1202.70 Whom should I contact at NARA to amend records about myself?

If you believe that a record that NARA maintains about you is not accurate, timely, relevant or complete, you may request that the record be amended. Write to the NARA Privacy Act Officer, Room 3110, 8601 Adelphi Rd, College Park, MD 20470–6001. Employees of NARA who desire to amend their personnel records should write to the Director, Human Resources Services Division. You should include as much information, documentation, or other evidence as needed to support your request to amend the pertinent record. Mark both the envelop and the letter with the phrase ''Privacy Act—Request To Amend Record.''

§ 1202.72 How does NARA handle requests to amend records?

(a) NARA will acknowledge receipt of a request to amend a record within 10 workdays. If possible, the acknowledgment will include the system manager's determination either to amend the record or to deny your request to amend as provided in § 1202.76.

(b) When reviewing a record in response to your request to amend, the system manager will assess the accuracy, relevance, timeliness, and completeness of the existing record in light of your proposed amendment to determine if your request to amend is justified. If you request the deletion of information, the system manager also will review your request and the existing record to determine whether the information is relevant and necessary to accomplish NARA's purpose, as required by law or Executive order.

§ 1202.74 How will I know if NARA approved my amendment request?

If NARA approves your amendment request, the system manager will promptly make the necessary amendment to the record and will send a copy of the amended record to you. NARA will also advise all previous recipients of the record, using the accounting of disclosures, that an amendment has been made and give the substance of the amendment. Where practicable, NARA will also send a copy of the amended record to previous recipients.

§ 1202.76 Can NARA deny my request for amendment?

If the system manager denies your request to amend or determines that the record should be amended in a manner other than that requested by you, NARA will advise you in writing of the decision. The denial letter will state:

(a) The reasons for the denial of your amendment request;

(b) Proposed alternative amendments, if appropriate;

(c) Your right to appeal the denial; and

(d) The procedures for appealing the denial.

§ 1202.78 How do I accept an alternative amendment?

If your request to amend a record is denied and NARA suggested alternative amendments, and you agree to those alternative amendments, you must notify the Privacy Act Officer who will then make the necessary amendments in accordance with § 1202.74.

§ 1202.80 How do I appeal the denial of a request to amend a record?

(a) If you disagree with a denial of your request to amend a record, you can file an appeal of that denial.

(1) Address your appeal of the denial to amend records signed by a system manager other than the Inspector General, to the NARA Privacy Act Appeal Official (ND), Room 3110, 8601 Adelphi Road, College Park, MD, 20740–6001.

(2) Address the appeal of the denial to amend records signed by the Inspector General to the NARA Privacy Act Appeal Official (N), Room 3110, 8601 Adelphi Road, College Park, MD, 20740–6001.

(3) For current NARA employees if the denial to amend concerns a record maintained in the employee's Official Personnel Folder or in another Government-wide system maintained by NARA on behalf of another agency, NARA will provide the employee with name and address of the appropriate appeal official in that agency.

(b) Appeals to NARA must be in writing and must be postmarked no later than 35 calendar days from the date of the NARA denial of a request to amend. Your appeal letter and envelope must be marked ''Privacy Act—Appeal''.

(c) Upon receipt of an appeal, the NARA Privacy Act Appeal Official will consult with the system manager, legal counsel, and such other officials as may be appropriate. If the appeal official determines that the record should be amended, he or she will instruct the

system manager to amend the record in accordance with § 1202.74 and will notify you of that action.

(d) If, after consulting with officials specified in paragraph (c) of this section, the NARA Privacy Act Appeal Official determines that your appeal should be rejected, the NARA Privacy Act Appeal Official will notify you in writing of that determination. This notice serves as NARA's final determination on your request to amend a record. The letter to you will include:

(1) The reason for the rejection of your appeal;

(2) Proposed alternative amendments, if appropriate, which you may accept (see 36 CFR 1202.78 for the procedure);

(3) Notice of your right to file a Statement of Disagreement for distribution in accordance with § 1202.82; and

(4) Notice of your right to seek judicial review of the NARA final determination, as provided in § 1202.84.

(e) The NARA final determination will be made no later than 30 workdays from the date on which the appeal is received by the NARA Privacy Act Appeal Official. In extraordinary circumstances, the NARA Privacy Act Appeal Official may extend this time limit by notifying you in writing before the expiration of the 30 workdays. The notification will include a justification for the extension of time.

§ 1202.82 How do I file a Statement of Disagreement?

If you receive a NARA final determination denying your request to amend a record, you may file a Statement of Disagreement with the appropriate system manager. The Statement of Disagreement must include an explanation of why you believe the record to be inaccurate, irrelevant, untimely, or incomplete. The system manager will maintain your Statement of Disagreement in conjunction with the pertinent record. The System Manager will send a copy of the Statement of Disagreement to any person or agency to whom the record has been disclosed, only if the disclosure was subject to the accounting requirements of § 1202.60.

§ 1202.84 Can I seek judicial review?

Yes, within 2 years of receipt of a NARA final determination as provided in § 1202.54 or § 1202.80, you may seek judicial review of that determination. You may file a civil action in the Federal District Court:

(a) In which you reside or have a principal place of business;

(b) In which the NARA records are located; or

(c) In the District of Columbia.

Subpart F—Exemptions

§ 1202.90 What NARA systems of records are exempt from release under the National Security Exemption of the Privacy Act?

(a) The Investigative Case Files of the Inspector General (NARA–23) and the Personnel Security Case Files (NARA–24) systems of records are eligible for exemption under 5 U.S.C. 552a(k)(1) because the records in these systems:

(1) Contain information specifically authorized under criteria established by an Executive Order to be kept secret in the interest of national defense or foreign policy and

(2) Are in fact properly classified pursuant to such Executive Order.

(b) The systems described in paragraph (a) are exempt from 5 U.S.C. 552a (c)(3), (d), (e)(1), and (e)(4)(G) and (H). Exemptions from the particular subsections are justified for the following reasons:

(1) From subsection (c)(3) because accounting for each disclosure could result in the release of properly classified information which would compromise the national defense or disrupt foreign policy.

(2) From the access and amendment provisions of subsection (d) because access to the records in these systems of records could result in the release of properly classified information which would compromise the national defense or disrupt foreign policy. Amendment of either of these series of records would interfere with ongoing investigations and law enforcement or national security activities and impose an impossible administrative burden by requiring investigations to be continuously reinvestigated.

(3) From subsection (e)(1) because verification of the accuracy of all information to the records could result in the release of properly classified information which would compromise the national defense or disrupt foreign policy.

(4) From subsection (e)(4)(G) and (H) because these systems are exempt from the access and amendment provisions of subsection (d), pursuant to subsection (k)(1) of the Privacy Act.

§ 1202.92 What NARA systems of records are exempt from release under the Law Enforcement Exemption of the Privacy Act?

(a) The Investigative Files of the Inspector General (NARA–23) system of records is eligible for exemption under 5 U.S.C. 552a(k)(2) because this record system contains investigatory material of actual, potential or alleged criminal, civil or administrative violations, compiled for law enforcement purposes other than within the scope of subsection (j)(2) of 5 USC 552a. If you are denied any right, privilege or benefit that you would otherwise be entitled by Federal law, or for which you would otherwise be eligible, as a result of the record, NARA will make the record available to you, except for any information in the record that would disclose the identity of a confidential source as described in 5 U.S.C. 552a(k)(2).

(b) The system described in paragraph (a) of this section is exempt from 5 U.S.C. 552a (c)(3), (d), (e)(1) and (e)(4)(G) and (H), and (f). Exemptions from the particular subsections are justified for the following reasons:

(1) From subsection (c)(3) because release of disclosure accounting could alert the subject of an investigation about the alleged violations, to the existence of the investigation and to the fact that they are being investigated by the Office of Inspector General (OIG) or another agency. Release of such information could provide significant information concerning the nature of the investigation, resulting in the tampering or destruction of evidence, influencing of witnesses, danger to individuals involved, and other activities that could impede or compromise the investigation.

(2) From the access and amendment provisions of subsection (d) because access to the records contained in this system of records could inform the subject of an investigation of an actual or potential criminal, civil, or administrative violation, of the existence of that investigation; of the nature and scope of the information and evidence obtained as to his/her activities; of the identity of confidential sources, witnesses, and law enforcement personnel; and of information that may enable the subject to avoid detection or apprehension. These factors would present a serious impediment to effective law enforcement where they prevent the successful completion of the investigation, endanger the physical safety of confidential sources, witnesses, and law enforcement personnel, and/or lead to the improper influencing of witnesses, the destruction of evidence, or the fabrication of testimony. In addition, granting access to such information could disclose security-sensitive or confidential business information or information that would constitute an unwarranted invasion of the personal privacy of third parties. The amendment of these records could allow the subject to avoid detection or apprehension and interfere with ongoing investigations and law enforcement activities.

(3) From subsection (e)(1) because the application of this provision could impair investigations and interfere with the law enforcement responsibilities of the OIG or another agency for the following reasons:

(i) It is not possible to detect relevance or need for specific information in the early stages of an investigation, case or matter. After the information is evaluated, relevance and necessity may be established.

(ii) During an investigation, the OIG may obtain information about other actual or potential criminal, civil or administrative violations, including those outside the scope of its jurisdiction. The OIG should retain this information, as it may aid in establishing patterns of inappropriate activity, and can provide valuable leads for Federal and other law enforcement agencies.

(iii) In interviewing individuals or obtaining other forms of evidence during an investigation, information may be supplied to an investigator, which relates to matters incidental to the primary purpose of the investigation but which may relate also to matters under the investigative jurisdiction of another agency. Such information cannot readily be segregated.

(iv) From subsection (e)(4)(G) and (H) because this system is exempt from the access and amendment provisions of subsection (d), pursuant to subsection (k)(2) of the Privacy Act.

(v) From subsection (f) because this system is exempt from the access and amendment provisions of subsection (d), pursuant to subsection (k)(2) of the Privacy Act.

§ 1202.94 What NARA systems of records are exempt from release under the Investigatory Information Material exemption of the Privacy Act?

(a) The Personnel Security Case Files (NARA–24) system of records is eligible for exemption under 5 U.S.C. 552a(k)(5) because it contains investigatory material compiled solely for the purpose of determining suitability, eligibility, or qualifications for federal employment or access to classified information. The only information exempt under this provision is that which would disclose the identity of a confidential source described in 5 U.S.C. 552a(k)(2).

(b) The system of records described in paragraph (a) of this section is exempt from 5 U.S.C. 552a(d)(1). Exemption from the particular subsection is justified as access to records in the system would reveal the identity(ies) of the source(s) of information collected in the course of a background investigation.

Dated: December 14, 2001.

John W. Carlin,

Archivist of the United States.

[FR Doc. 01–31340 Filed 12–19–01; 8:45 am]

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Parts 222 and 223

[Docket No. 011214299—1299—01; I.D.121001B]

RIN 0648-AP75

Sea Turtle Conservation; Shrimp Trawling Requirements

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

ACTION: Temporary rule; request for comments.

SUMMARY: NMFS is imposing, for a 30-day period, an additional restriction on shrimp trawlers that are required to have a turtle excluder device (TED) installed in each net rigged for fishing, and that are operating in Atlantic offshore waters out to 10 nautical miles (nm)(18.3 km) from the coast of Florida between 28°N. latitude and the Georgia-Florida border. During this 30-day period shrimp vessels operating in this area must use a TED with an escape opening large enough to exclude leatherback turtles, as specified in the regulations. The use of such TEDs by shrimp trawlers has previously been required under similar circumstances. This action is necessary to prevent mortality of endangered leatherback sea turtles incidentally captured in shrimp trawls, and is prompted by recent strandings of such turtles.

DATES: This action is effective from December 14, 2001 through January 14, 2002. Comments on this action are requested, and must be received by January 14, 2002.

ADDRESSES: Comments on this action should be addressed to Phil Williams, Chief, Endangered Species Division, Office of Protected Resources, NMFS, 1315 East-West Highway, Silver Spring, MD 20910.

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

SUPPLEMENTARY INFORMATION:

Background

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.

The incidental take of sea turtles as a result of shrimp trawling activities has been documented in the Gulf of Mexico and in the Atlantic Ocean. Under the ESA and its implementing regulations, taking sea turtles is prohibited, subject to exceptions identified in 50 CFR 223.206. Existing sea turtle conservation regulations (50 CFR part 223, subpart B) require most shrimp trawlers operating in the Gulf and Atlantic areas to have a NMFS-approved TED installed in each net rigged for fishing, year-round.

The regulations provide a mechanism to implement further restrictions of fishing activities, if necessary, to avoid takings of sea turtles that would (1) likely jeopardize the continued existence of listed species or (2) that would violate the terms and conditions of an incidental take statement or incidental take permit. Upon a determination that incidental takings of sea turtles during fishing activities are likely to trigger either scenario, additional restrictions may be imposed to conserve listed species and to avoid such takings. Restrictions may be effective for a period of up to 30 days and may be renewed for additional periods of up to 30 days each (50 CFR 223.206(d)(4)).

Leatherback Sea Turtles

Leatherback sea turtles are the largest species of sea turtle. They weigh between 600 and 1,300 pounds (272 and 590 kg) and have carapaces 5 to 6 ft (1.5 to 1.8 m) in length. Leatherbacks are widely distributed and can range from the tropics to extreme northern and southern latitudes during their feeding and reproductive migrations. They nest in small but significant numbers on U.S. beaches and are primarily seen in coastal waters of the southeast U.S. during their northern springtime migration, especially when high abundances of jellyfish occur nearshore. However, they can be found in U.S. waters throughout the year.

Because of their size, leatherbacks are not likely to escape from trawls, even when the trawls are equipped with approved TEDs, unless the size of the opening is sufficient to allow escape. The sea turtle conservation regulations specify a minimum TED opening size in the Atlantic of 35 inches (89 cm) horizontally and 12 inches (30.5 cm) vertically. When the regulations requiring TEDs in shrimp trawls year-round were adopted (57 FR 57348, December 4, 1992), NMFS recognized that the then-existing TEDs would not protect leatherbacks, and the biological opinion (BO) on the regulations concluded that leatherback mortality would remain a problem that must be addressed to avoid jeopardizing the recovery of this species. Consequently, the August 19, 1992, BO's incidental take statement required that the episodic take of leatherback turtles by shrimp trawlers during periods of high jellyfish abundance must be eliminated. This could be accomplished by temporary area closures, by requiring an increase in the size of TED openings to allow leatherbacks to escape at times when their abundance is high, by limiting tow times, or by implementing some other protective measure. To address this problem, the 1992 sea turtle conservation regulations included the provisions of 50 CFR 223.206(d)(4), to provide ''a mechanism to prevent sea turtle mortalities...when existing restrictions on the shrimp fishery are found to be ineffective (57 FR 18453).''

Recent Events

NMFS has been notified by the Florida Fish and Wildlife Conservation Commission (FWCC) that extraordinarily high numbers of endangered leatherback sea turtles stranded along northeast Florida beaches in November and early December 2001. From November 4 to December 10, 2001, a total of 15 leatherback turtles and 2 turtles reported as leatherbacks, but not yet verified by FWCC, washed ashore between St. Johns and Brevard counties in shrimp zones 28 and 29. During aerial surveys conducted for right whales, up to 10 leatherback turtles per flight were seen during two flights; one of these turtles was dead. By comparison, the total annual number of leatherback strandings statewide has averaged 24 over the past 10 years, and has averaged only 14 per year in zones 28–30. Considering the rarity of leatherbacks—an average of only 45–50 females nest in Florida each year—and the fact that strandings are only a minimum estimate of actual mortality, these strandings represent a serious impact to the recovery and survival of the local population.

The late fall and early winter is traditionally a major shrimping season along northeast Florida. During this period, shrimp leave the estuaries to the north and migrate southward along the coast as waters cool. Shrimp fishing along the coast is currently active. Trawlers have been reported in the same areas as the leatherback strandings. The minimum size for TED openings specified in the sea turtle conservation regulations is not large enough to release leatherback turtles. Shrimp trawling with TEDs with openings that are not large enough to release leatherbacks is likely to lead to additional takes that would violate the terms and conditions of the incidental take permit. NMFS and state personnel will continue to investigate factors other than shrimping that may contribute to leatherback sea turtle mortality in Florida, including other fisheries and environmental factors.

Restrictions on Fishing by Shrimp Trawlers

Pursuant to 50 CFR 223.206(d)(4), the exemption for incidental taking of sea turtles in 50 CFR 223.206(d) does not authorize incidental takings during fishing activities if the takings would violate the restrictions, terms or conditions of an incidental take statement (ITS) or incidental take permit, or if the taking would jeopardize the continued existence of a species listed under the ESA. The August 19, 1992, biological opinion includes a condition under the ITS that specifies that NMFS must eliminate the episodic take of leatherback turtles by shrimp trawlers through area closures, requirements for large TED opening sizes, limitations on tow times, or some other protective measure. Failure by NMFS to take action to address the mortality seen in northeast Florida over the past month would likely violate the ITS. As a result, NMFS is requiring that fishing by shrimp trawlers in all Atlantic offshore waters within 10 nm (18.5 km) seaward of the COLREGS demarcation line, bounded on the south by 28°N. lat. and on the north by 30°42′45.6″N. lat. (the Georgia-Florida border), must be done with a net that is rigged for fishing with a TED installed that has an escape opening large enough to exclude leatherback turtles, meeting the specifications at 50 CFR 223.207(a)(7)(ii)(B)(*1*) and (*2*) or 223.207(c)(1)(iv)(B). These regulations specify modifications that can be made to either single-grid hard TEDs or Parker soft TEDs to allow leatherbacks to escape. This restriction is effective from December 14, 2001 through 11:59 p.m. (local time) January 14, 2002.

This restriction has been announced on the NOAA weather channel, in newspapers, and other media.

Additional Conservation Measures

The AA may withdraw or modify a determination concerning unauthorized takings or any restriction on shrimping activities if the AA determines that such action is warranted. Notification of any additional sea turtle conservation measures, including any extension of this 30-day action, will be published in the **Federal Register** pursuant to 50 CFR 223.206(d)(4).

NMFS will continue to monitor sea turtle strandings to gauge the effectiveness of these conservation measures.

Classification

This action has been determined to be not significant for purposes of Executive Order 12866.

The AA has determined that this action is necessary to respond to an emergency situation to provide adequate protection for endangered leatherback sea turtles pursuant to the ESA and other applicable law.

Pursuant to 5 U.S.C. 553(b)(B), the AA finds that there is good cause to waive prior notice and opportunity to comment on this action. It would be impracticable and contrary to the public interest to provide prior notice and opportunity for comment because providing notice and comment would prevent the agency from implementing this action in a timely manner to protect identified large congregations of endangered leatherback sea turtles that are currently present in areas where substantial fishing effort is occurring. Furthermore, the AA finds good cause also under 5 U.S.C. 553(d)(3) not to delay the effective date of this temporary rule for 30 days. Such delay would also prevent the agency from implementing this action in a timely manner to protect endangered leatherback sea turtles for the same reason. Accordingly, the AA is making the rule effective December 14, 2001 through January 14, 2002. Also as stated, this restriction has been announced on the NOAA weather channel, in newspapers, and other media.

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

The AA prepared an Environmental Assessment (EA) for the final rule (57

FR 57348, December 4, 1992) requiring TED use in shrimp trawls and creating the regulatory framework for the issuance of notifications such as this. Copies of the EA are available (see **ADDRESSES**).

Dated: December 14, 2001.

William T. Hogarth,

Assistant Administrator for Fisheries, National Marine Fisheries Service.

[FR Doc. 01–31275 Filed 12–14–01; 4:34 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 648

[Docket No. 001121328–1066–03; I.D. 121401B]

Fisheries of the Northeastern United States; Summer Flounder Fishery; Commercial Quota Harvested for Rhode Island

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

ACTION: Closure; commercial quota harvested for Rhode Island.

SUMMARY: NMFS announces that the summer flounder commercial quota available to the State of Rhode Island has been harvested. Vessels issued a commercial Federal fisheries permit for the summer flounder fishery may not land summer flounder in Rhode Island for the remainder of calendar year 2001, unless additional quota becomes available through a transfer. Regulations governing the summer flounder fishery require publication of this notification to advise the State of Rhode Island that the quota has been harvested and to advise vessel permit holders and dealer permit holders that no commercial quota is available for landing summer flounder in Rhode Island.

DATES: Effective from 0001 hours, December 20, 2001 through 2400 hours, December 31, 2001.

FOR FURTHER INFORMATION CONTACT: Paul H. Jones, Fishery Policy Analyst, (978) 281–9273.

SUPPLEMENTARY INFORMATION: Regulations governing the summer flounder fishery are found at 50 CFR part 648. The regulations require annual specification of a commercial quota that is apportioned on a percentage basis among the coastal states from North Carolina through Maine. The process to set the annual commercial quota and the percent allocated to each state is described in § 648.100.

The initial total commercial quota for summer flounder for the 2001 calendar year was set equal to 10,747,535 lb (4,875,000 kg)(66 FR 16151, March 23, 2001). The percent allocated to vessels landing summer flounder in Rhode Island is 15.68298 percent, or 1,685,534 lb (764,545 kg). This allocation was adjusted due to an underage in 2000, as provided in § 648.100 (e)(4), for a final allocation of 1,733,817 lb (786,446 kg).

Section 648.101 (b) requires the Administrator, Northeast Region, NMFS (Regional Administrator) to monitor state commercial quotas and to determine when a state's commercial quota is harvested. NMFS then publishes notification in the **Federal Register** advising a state and notifying Federal vessel and dealer permit holders that, effective upon a specific date, the state's commercial quota has been harvested and no commercial quota is available for landing summer flounder in that state. The Regional Administrator has determined, based upon dealer reports and other available information, that the State of Rhode Island has attained its quota for 2001.

The regulations at § 648.4 (b) provide that Federal permit holders agree as a condition of the permit not to land summer flounder in any state that the Regional Administrator has determined no longer has commercial quota available. Therefore, effective 0001 hours, December 20, 2001, further landings of summer flounder in Rhode Island by vessels holding summer flounder commercial Federal fisheries permits are prohibited for the remainder of the 2001 calendar year, unless additional quota becomes available through a transfer and is announced in the Federal Register. Effective 0001 hours, December 20, 2001, federally permitted dealers are also notified that they may not purchase summer flounder from federally permitted vessels that land in Rhode Island for the remainder of the calendar year, or until additional quota becomes available through a transfer.

Classification

This action is required by 50 CFR part 648 and is exempt from review under Executive Order 12866.

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

Dated: December 14, 2001.

Richard W. Surdi,

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

[FR Doc. 01–31383 Filed 12–17–01; 2:44 pm]

BILLING CODE 3510–22–S

Proposed Rules

Federal Register
Vol. 66, No. 245
Thursday, December 20, 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.

NUCLEAR REGULATORY COMMISSION

10 CFR Part 50

Fire Protection

AGENCY: U.S. Nuclear Regulatory Commission.

ACTION: Availability of draft rule wording.

SUMMARY: The Nuclear Regulatory Commission (NRC) is making available the draft wording of a possible amendment to its regulations. The NRC has initiated this rulemaking to amend Title 10 of the Code of Federal Regulations (10 CFR) part 50.48, ''Fire protection,'' to endorse the National Fire Protection Association (NFPA) Standard 805, ''Performance-Based Standard for Fire Protection for Light Water Reactor Electric Generating Plants 2001 Edition,'' with exceptions, as a voluntary alternative fire protection requirement for holders of operating nuclear power plant licenses. In support of this rulemaking effort, the NRC is seeking public comment on the draft rule language.

DATES: Comments should be submitted within 45 days from the date of this notice. Any comments received after this date may not be considered during drafting of the proposed rule. Because of scheduling considerations in preparing a proposed rule, the NRC staff requests that stakeholders provide their comments at their earliest convenience before the end of the comment period, if practicable.

ADDRESSES: Submit written comments to: Secretary, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Attention: Rulemakings and Adjudications Staff, Mail Stop O–16C1 or deliver written comments to One White Flint North, 11555 Rockville Pike, Rockville, Maryland, between 7:30 a.m. and 4:15 p.m. on Federal workdays.

You may also provide comments via the NRC's interactive rulemaking Web site through the NRC's home page at *http://ruleforum.llnl.gov.* This site provides the capability to upload comments as files (any format), if your web browser supports that function. For information about the interactive rulemaking web site, contact Ms. Carol Gallagher at (301) 415–5905 or by e-mail to *cag@nrc.gov.* Copies of any comments received and certain documents related to this rulemaking may be examined at the NRC Public Document Room, located at One White Flint North, 11555 Rockville Pike (first floor), Rockville, Maryland. 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.*

FOR FURTHER INFORMATION CONTACT: Leon E. Whitney, Office of Nuclear Reactor Regulation, U.S. Nuclear Regulatory Commission, Washington DC 20555–0001, telephone (301) 415–3081, e-mail: *lew1@nrc.gov.*

SUPPLEMENTARY INFORMATION: The NRC's existing fire protection requirements are derived from General Design Criterion 3, ''Fire protection,'' of Appendix A to 10 CFR part 50, 10 CFR 50.48, ''Fire protection,'' and for plants operating before January 1, 1979, certain provisions of Appendix R to 10 CFR part 50, ''Fire Protection Program for Nuclear Power Facilities Operating Prior to January 1, 1979.'' Exemptions approved by the staff may apply for individual licensees.

The current (10 CFR 50.48) fire protection requirements were developed before the staff or industry had the benefit of probabilistic risk assessments (PRAs) for fires and before there was a significant body of operating experience. These deterministic fire protection requirements have been described by industry representatives and some members of the public as ''prescriptive'' and an ''unnecessary regulatory burden.'' In the late 1990s, the Commission provided the NRC staff with guidelines to identify and assess performance-based approaches to regulation (see SECY–00–0191, and a Commission White Paper, ''Risk-Informed and Performance-Based Regulation,'' issued as a Staff Requirements Memorandum (SRM) to SECY–98–144). This guidance was in addition to the risk-related guidance in the NRC's Probabilistic Risk Assessment Policy Statement and Regulatory Guide 1.174, ''An Approach for Using PRA in Risk-Informed Decisions on Plant-Specific Changes to the Licensing Basis.''

On January 13, 2001, the National Fire Protection Association Standards Council issued NFPA 805, 2001 Edition, as a performance-based American National Standard for light water nuclear power plants. As stated in Section 1.1 of the standard, ''This standard specifies the minimum fire protection requirements for existing light water nuclear power plants during all phases of plant operation, including shutdown, degraded conditions, and decommissioning.'' The U.S. Nuclear Regulatory Commission staff cooperatively participated in the development of NFPA 805. In the opinion of the NRC staff, with certain exceptions noted in Sections (c)(2) of the proposed rule revision, NFPA 805 could serve as a risk-informed, performance-based, voluntary alternative to the fire protection requirements of 10 CFR 50.48(b) and (f). Therefore, the staff requested (in SECY–00–009) and received Commission approval for proceeding with a rulemaking to permit reactor licensees to adopt NFPA 805, as excepted, as a voluntary alternative fire protection licensing basis for the requirements of 10 CFR 50.48(b) and (f). However, licensees which choose not to change their fire protection licensing basis would continue to be subject to the requirements of 10 CFR 50.48(b) and (f) as before.

ALTERNATIVE CONSENSUS STANDARDS: This draft rule revision is consistent with the requirements of the National Technology Advancement and Transfer Act of 1995, as the rule revision would endorse an industry consensus standard, NFPA 805, with exceptions. The NRC is seeking public comment on the proposed rule revision language. The NRC is also seeking public comment regarding whether there are consensus standards other than NFPA 805 that could be considered as

voluntary alternatives to current fire protection regulations.

This draft rule language is preliminary and may be incomplete in one or more respects. This draft rule language has been released to inform stakeholders of the current status of the contemplated 10 CFR 50.48 rule change and to provide stakeholders with an opportunity to comment on a draft version. Comments received prior to publishing the proposed rule revision will be considered in the development of the proposed rule revision. As appropriate, the Statements of Consideration for the proposed rule will briefly discuss substantive changes made to the rule language as a result of comments received. Comments may be provided through the rulemaking Web site at *http://ruleforum.llnl.gov* or by mail as indicated under the **ADDRESSES** heading. The NRC may post updates periodically on the rulemaking web site that may be of interest to stakeholders.

Dated at Rockville, Maryland, this 12th day of December 2001.

For the Nuclear Regulatory Commission.

John N. Hannon,

Chief, Plant Systems Branch, Division of Systems Safety and Analysis, Office of Nuclear Reactor Regulation.

[FR Doc. 01–31217 Filed 12–19–01; 8:45 am]

BILLING CODE 7590–01–P

NATIONAL CREDIT UNION ADMINISTRATION

12 CFR Part 701

Organization and Operations of Federal Credit Unions

AGENCY: National Credit Union Administration (NCUA).

ACTION: Proposed rule with request for comments.

SUMMARY: NCUA proposes to amend its rule that permits a federal credit union to provide reasonable retirement benefits to its employees and officers. The amendments clarify the scope of the rule.

DATES: Comments must be received on or before February 19, 2002.

ADDRESSES: Direct comments to Becky Baker, Secretary of the Board. Mail or hand-deliver comments to: National Credit Union Administration, 1775 Duke Street, Alexandria, Virginia 22314–3428. You are encouraged to fax comments to (703) 518–6319 or e-mail comments to *regcomments@ncua.gov* instead of mailing or hand-delivering them. Whatever method you choose, *please send comments by one method only.*

FOR FURTHER INFORMATION CONTACT: Frank Kressman, Staff Attorney, Office of General Counsel, at the above address or telephone: (703) 518–6540.

SUPPLEMENTARY INFORMATION: Section 701.19(a) states that a federal credit union (FCU) may provide reasonable retirement benefits for it employees and officers. 12 CFR 701.19(a). NCUA wishes to clarify that the scope of § 701.19(a) is not limited only to retirement benefits, but is more broadly applicable to other employee benefit plans.

As competition to attract and retain highly qualified employees has increased and the employee benefits marketplace has become more sophisticated, FCUs are increasingly providing more diverse and less traditional forms of employee benefits including, for example, deferred compensation plans and stock option plans. As a result, FCUs need flexibility to use safe, reasonable and efficient methods to fund their employee benefit obligations. In addition to providing this flexibility, the proposed rule updates the regulatory language to reflect current employee benefits terminology including renaming the rule ''Benefits for Employees of Federal Credit Unions.''

An FCU investing on its own behalf is subject to the investment provisions of the Federal Credit Union Act (Act) and NCUA regulations. 12 U.S.C. 1757(7), (8), (15); 12 CFR part 703. In legal opinion letters, the NCUA's Office of General Counsel has stated that these investment provisions do not apply when an FCU is acting under its authority to provide and fund retirement or other employee benefits. 12 U.S.C. 1761b(12); 12 CFR 701.19. NCUA's long-standing position is that an FCU may purchase an otherwise impermissible investment to fund an employee benefit obligation as long as there is a direct connection between the investment and the employee benefit obligation it serves to fund. In that context, NCUA has also stated that once the obligation ceases to exist, the FCU must divest itself of the impermissible investment.

For example, an FCU is generally not permitted to purchase equity investments when investing for its own account. An FCU that is obligated under an employee benefit plan to provide an employee with 100 shares of XYZ Corporation stock on a specific date, however, may purchase and hold 100 shares of that stock for that purpose. It may not, however, purchase 100 shares of *ABC Corporation* stock. In that instance, there would not be a sufficient connection between the investment and the obligation to be funded.

NCUA is aware that it is not uncommon for for-profit corporations to provide employee benefits that contain investment options the employee may exercise after he or she has separated or retired from the employer. For example, an employer may grant an employee the option to purchase a fixed number of shares in a mutual fund for a fixed price on a specific date after the employee separates or retires from the employer.

These post-separation or post-retirement options would require a prudent FCU to buy and hold shares in that mutual fund to fund the potential obligation it faces after its employee has separated or retired. In legal opinion letters, the NCUA's Office of General Counsel has also taken the position that an FCU may hold an impermissible investment to fund an ongoing employee benefit obligation after the employee separates or retires provided the investment option period is reasonable. Upon the exercise or expiration of the option, the FCU must divest itself of the impermissible investment. The proposed regulation incorporates the positions taken by the Office of General Counsel in these legal opinion letters.

An FCU must comply with safety and soundness standards by ensuring that the kind and value of employee benefits it offers are reasonable given its size and financial condition. Furthermore, an FCU's authority to offer and fund an employee benefit plan does not guarantee the permissibility of the plan under other laws, such as the Employee Retirement Income Security Act (ERISA) or the Internal Revenue Code. 29 U.S.C. 1001; 26 U.S.C. 1.

Additionally, FCUs with assets over $10 million are reminded that they are required to account for their employee benefit plans in accordance with generally accepted accounting principles (GAAP). FCUs with assets under $10 million are not required to follow GAAP, but are encouraged to do so in this context. All FCUs are encouraged to seek the advice of an independent accountant if they have questions regarding the proper accounting for these benefit plans.

Finally, § 701.19(b) provides that an FCU acting as a fiduciary, as defined in ERISA, must obtain appropriate liability coverage as provided in 410(b) of ERISA. NCUA wishes to clarify that 410(b) of ERISA describes certain kinds of insurance coverage and permits certain parties to purchase that insurance, but does not require any party to purchase insurance. 29 U.S.C. 1110.

Regulatory Procedures

Regulatory Flexibility Act

The Regulatory Flexibility Act requires NCUA to prepare an analysis to describe any significant economic impact a proposed rule may have on a substantial number of small credit unions (those under one million dollars in assets). The proposed rule only clarifies that credit unions have additional options and flexibility to manage their employee benefit obligations without imposing any regulatory burden. The proposed rule would not have a significant economic impact on a substantial number of small credit unions, and therefore, a regulatory flexibility analysis is not required.

Paperwork Reduction Act

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

Executive Order 13132

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

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

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

Agency Regulatory Goal

NCUA's goal is to promulgate clear and understandable regulations that impose minimal regulatory burden. We request your comments on whether the proposed rule is understandable and minimally intrusive.

List of Subjects in 12 CFR Part 701

Credit unions.

By the National Credit Union Administration Board on December 13, 2001.

Becky Baker,

Secretary of the Board.

Accordingly, NCUA proposes to amend 12 CFR part 701 as follows:

PART 701—ORGANIZATION AND OPERATIONS OF FEDERAL CREDIT UNIONS

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

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

2. Revise § 701.19 to read as follows:

§ 701.19 Benefits for employees of Federal credit unions.

(a) *General authority.* A federal credit union may provide employee benefits, including retirement benefits, to its employees and officers who are compensated in conformance with the Act and the bylaws, individually or collectively with other credit unions. The kind and value of these benefits must be reasonable given the federal credit union's size and financial condition. Where a federal credit union is the benefit plan trustee or custodian, the plan must be authorized and maintained in accordance with the provisions of part 724 of this chapter. Where the benefit plan trustee or custodian is a party other than a federal credit union, the benefit plan must be maintained in accordance with applicable laws governing employee benefit plans, including any applicable rules and regulations issued by the Secretary of Labor, the Secretary of the Treasury, or any other federal or state authority exercising jurisdiction over the plan.

(b) *Investments.* A federal credit union investing to fund an employee benefit plan obligation is not subject to the investment provisions of the Act and part 703 of this chapter and may purchase an investment that would otherwise be impermissible if:

(1) The investment is directly related to the federal credit union's obligation or potential obligation under the employee benefit plan; and

(2) The federal credit union holds the investment only for as long as it has an actual or potential obligation under the employee benefit plan.

(c) *Liability insurance.* No federal credit union may occupy the position of a fiduciary, as defined in the Employee Retirement Income Security Act of 1974 and the rules and regulations issued by the Secretary of Labor, unless it has obtained appropriate liability insurance as described and permitted by section 410(b) of the Employee Retirement Income Security Act of 1974.

[FR Doc. 01–31287 Filed 12–19–01; 8:45 am]

BILLING CODE 7535–01–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2001–CE–17–AD]

RIN 2120–AA64

Airworthiness Directives; Fairchild Aircraft Incorporated SA226 and SA227 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Supplemental notice of proposed rulemaking (NPRM); Reopening of the comment period.

SUMMARY: This document proposes to revise an earlier proposed airworthiness directive (AD) that would apply to certain Fairchild Aircraft Incorporated (Fairchild Aircraft) SA226 and SA227 series airplanes equipped with Skidmore-Wilheim Manufacturing Co. (Skidmore-Wilheim) (formerly Hydromotive) Model V1–15–1000 brake master cylinders. The earlier NPRM would have required you replace these brake master cylinders with new or overhauled units of the same design. The earlier NPRM resulted from reports of dragging brakes during taxi operations. Additional airplane models have been identified on which the unsafe condition exists or could develop. Since these actions impose an additional burden over that proposed in the NPRM, we are reopening the comment period to allow the public the chance to comment on these additional actions.

DATES: The Federal Aviation Administration (FAA) must receive any comments on this proposed rule on or before February 22, 2002.

ADDRESSES: Submit comments to FAA, Central Region, Office of the Regional Counsel, Attention: Rules Docket No. 2001–CE–17–AD, 901 Locust, Room 506, Kansas City, Missouri 64106. You may view any comments at this location between 8 a.m. and 4 p.m., Monday through Friday, except Federal holidays.

You may get service information that applies to this proposed AD from

Fairchild Aircraft Incorporated, P.O. Box 790490, San Antonio, Texas 78279–0490; telephone: (210) 824–9421; facsimile: (210) 820–8609. You may also view this information at the Rules Docket at the address above.

FOR FURTHER INFORMATION CONTACT: Werner Koch, Aerospace Engineer, FAA, Airplane Certification Office, 2601 Meacham Boulevard, Fort Worth, Texas 76193–0150; telephone: (817) 222–5133; facsimile: (817) 222–5960.

SUPPLEMENTARY INFORMATION:

Comments Invited

How Do I Comment on This Proposed AD?

The FAA invites comments on this proposed rule. You may submit whatever written data, views, or arguments you choose. You need to include the rule's docket number and submit your comments to the address specified under the caption **ADDRESSES**. We will consider all comments received on or before the closing date. We may amend this proposed rule in light of comments received. Factual information that supports your ideas and suggestions is extremely helpful in evaluating the effectiveness of this proposed AD action and determining whether we need to take additional rulemaking action.

Are There any Specific Portions of This Proposed AD I Should Pay Attention to?

The FAA specifically invites comments on the overall regulatory, economic, environmental, and energy aspects of this proposed rule that might suggest a need to modify the rule. You may view all comments we receive before and after the closing date of the proposed rule in the Rules Docket. We will file a report in the Rules Docket that summarizes each contact we have with the public that concerns the substantive parts of this proposed AD.

How Can I Be Sure FAA Receives My Comment?

If you want FAA to acknowledge the receipt of your comments, you must include a self-addressed, stamped postcard. On the postcard, write ''Comments to Docket No. 2001–CE–17–AD.'' We will date stamp and mail the postcard back to you.

Discussion

What Events Have Caused This Proposed AD?

The FAA received several reports of dragging brakes on Fairchild SA226 series airplanes when the brake pedals were operated during taxi operations. After troubleshooting by maintenance personnel, the problem was traced to the master brake cylinder. Disassembly of the malfunctioning master cylinders revealed broken check valve spring washers that, together with the action of the shuttle valve, prevented the release of brake pressure when the brake pedal was released after a brake application. Based on observed failures, FAA has determined that the brake master cylinders should be replaced at intervals of 15,000 hours time-in-service.

What Are the Consequences if the Condition is Not Corrected?

This condition, if not detected or corrected, could cause dragging brakes, which can result in overheated brakes and cause an in-flight wheelwell fire if the dragging takes place during takeoff and the gear is later retracted.

Has FAA Taken Any Action to This Point?

We issued a proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an AD that would apply to certain Fairchild Aircraft SA226 series airplanes equipped with Skidmore-Wilheim Model V1–15–1000 brake master cylinders. This proposal was published in the **Federal Register** as a notice of proposed rulemaking (NPRM) on August 21, 2001 (66 FR 43814). The NPRM proposed to require you to replace these brake master cylinders with new or overhauled units of the same design.

You would have to accomplish the proposed actions in accordance with the applicable maintenance manual or service bulletin.

Was the Public Invited To Comment?

The FAA encouraged interested persons to participate in the making of this amendment. The following presents the comments received on the proposal and FAA's response to each comment:

Comment Issue No. 1: Expand the applicability.

What Is the Commenter's Concern?

The NPRM indicates that only series SA226 aircraft are affected by this AD. However, the commenter indicates that some SA 227 series airplanes are also affected and the unsafe condition referenced in the NPRM exists or could also develop on those SA227 series airplanes.

What Is FAA's Response to the Concern?

The commenter correctly identified additional applicable SA227 aircraft models. The FAA will include the additional applicable models in the proposed rule. Because this change increases the burden upon the public, we are reopening the comment period for this action.

Comment Issue No. 2: Change the manufacturer's reference.

What Is the Commenter's Concern?

The commenter requests that all references in the NPRM to Fairchild Aircraft, Inc. be changed to Fairchild Aircraft Incorporated.

What Is FAA's Response to the Concern?

The company name Fairchild Aircraft Incorporated is correct on the type certificates. The name Fairchild Aircraft Incorporated will be used in the NPRM.

The FAA's Determination

What Has FAA Decided?

After examining the circumstances and reviewing all available information related to the incidents described above, we have determined that:

—The unsafe condition referenced in this document exists or could develop on other Fairchild SA226 and SA227 series airplanes of the same type design equipped with Skidmore-Wilheim Model V1–15–1000 brake master cylinders;

—The NPRM should be expanded to include these actions; and

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

The Supplemental NPRM

How Will the Changes to the NPRM Impact the Public?

Proposing that the NPRM apply to certain Fairchild Aircraft SA226 and SA227 series airplanes equipped with Skidmore-Wilheim Model V1–15–1000 brake master cylinders presents actions that go beyond the scope of what was already proposed. Therefore, we are issuing a supplemental NPRM and reopening the comment period to allow the public additional time to comment on the proposed AD.

What Are the Provisions of the Supplemental NPRM?

The proposed AD would require you to replace or overhaul the brake master cylinders. Procedures are in the applicable Fairchild service bulletin.

Cost Impact

How Many Airplanes Would This Proposed AD Impact?

We estimate that this proposed AD affects 140 airplanes in the U.S. registry.

What Would be the Cost Impact of This Proposed AD on Owners/Operators of the Affected Airplanes?

We estimate the following costs to do any necessary replacements:

Labor cost	New or overhauled parts cost (4 parts for each aircraft required	Total cost per airplane	Total cost on U.S. operators
8 hours × $60 for each hour = $480	4 parts × $200 = $800.00	$1,280	140 airplanes × $1,280 = $179,200.

Regulatory Impact

Would This Proposed AD Impact Various Entities?

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

Would This Proposed AD Involve a Significant Rule or Regulatory Action?

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

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

Fairchild Aircraft Incorporated: Docket No. 2001–CE–17–AD

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

Model	Serial Nos.
SA226–AT	All.
SA226–T	All.
SA226–T(B)	All.
SA226–TC	All.
SA227–AC, SA227–AT, and SA227–TT.	420 through 583.

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

(c) *What problem does this AD address?* The actions specified by this AD are intended to correct and prevent future malfunctioning brake master cylinders. Malfunctioning brake master cylinders could cause dragging brakes, which can result in overheated brakes and a wheelwell fire if the dragging takes place during takeoff and the gear is later retracted.

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

Actions	Compliance	Procedures
Replace the Skidmore-Wilheim Manufacturing Co. Model V1–15–1000 brake master cylinders with new or overhauled Model V1–15–1000 brake master cylinders or FAA-approved equivalent part numbers.	Upon the accumulation of 200 hours time in service (TIS) after the effective date of this AD or 15,000 hours total TIS on the affected brake master cylinders, whichever occurs later. Later replacement intervals shall be at 15,000 hours TIS	For SA226 series airplanes, do this action following the procedures in the applicable maintenance manual. Overhaul the brake master cylinders following the procedures in Fairchild Service Bulletin SB 226–32–069, issued October 24, 2001. For SA227 series airplanes, do this action following the procedures in the applicable maintenance manual. Overhaul the brake master cylinders following the procedures in Fairchild Service Bulletin SB 227–32–045, issued October 24, 2001.

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

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

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

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

(f) *Where can I get information about any already–approved alternative methods of compliance?* Contact Werner Koch, Aerospace Engineer, FAA, Airplane Certification Office, 2601 Meacham Boulevard, Fort Worth, Texas 76193–0150; telephone: (817) 222–5133; facsimile: (817) 222–5960.

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

(h) *How do I get copies of the documents referenced in this AD?* You may get copies of the documents referenced in this AD from Fairchild Aircraft Incorporated, P.O. Box 790490, San Antonio, Texas 78279–0490. You may view these documents at FAA,

Central Region, Office of the Regional Counsel, 901 Locust, Room 506, Kansas City, Missouri 64106.

Issued in Kansas City, Missouri, on December 11, 2001.

Michael Gallagher,

Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 01–31298 Filed 12–19–01; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 98–CE–57–AD]

RIN 2120–AA64

Airworthiness Directives; Cessna Aircraft Company 150, 172, 175, 180, 182, 185, 206, 210, and 336 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Proposed rule; Withdrawal.

SUMMARY: This document withdraws a notice of proposed rulemaking (NPRM) that would have applied to certain Cessna Aircraft Company (Cessna) 150, 172, 175, 180, 182, 185, 206, 210, and 336 series airplanes. The proposed AD would have affected those airplanes equipped with 0513166 series plastic control wheels. The proposed AD would have required you to repetitively inspect these wheels for cracks, conduct a pull test on these wheels, and replace any control wheels that are cracked or that do not pass the pull test. Replacement of the control wheels would have been with ones that were FAA-approved and were not 0513166 series plastic control wheels. After evaluating all the comments received on the proposal, we have determined that the cracking or failure of the control wheel is not a safety hazard and that a special airworthiness information bulletin would be more appropriate. There have been only four service difficulty reports made in the FAA database; however, there were neither associated accidents nor incidents. Most of the affected airplanes have dual control wheels with each wheel having two handles for redundancy, which would provide an alternative means to control the airplane should actual failure occur. For these reasons, we are withdrawing the NPRM.

ADDRESSES: You may look at information related to this action at the Federal Aviation Administration (FAA), Central Region, Office of the Regional Counsel, Attention: Rules Docket No. 98–CE–57–AD, 901 Locust, Room 506, Kansas City, Missouri 64106, between 8 a.m. and 4 p.m., Monday through Friday, except holidays.

FOR FURTHER INFORMATION CONTACT: Eual Conditt, Aerospace Engineer, Wichita Aircraft Certification Office, FAA, 1801 Airport Road, Room 100, Wichita, Kansas 67209; telephone: (316) 946–4102; facsimile: (316) 946–4407.

SUPPLEMENTARY INFORMATION:

Discussion

What Action Has FAA Taken to Date?

We issued a proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an AD that would have applied to certain Cessna Aircraft Company (Cessna) 150, 172, 175, 180, 182, 185, 206, 210, and 336 series airplanes. The proposal was published in the **Federal Register** as an NPRM on December 29, 2000 (65 FR 82954). The comment period was extended from February 2, 2001, to April 4, 2001 on January 22, 2001 (66 FR 6499). The proposed rule would have required you to:

—Repetitively inspect and pull test the 0513166 series control wheels; and

—Replace any control wheels that fail the inspection or pull test.

Was the Public Invited to Comment?

The FAA invited interested persons to participate in the making of this amendment. The comments, in most part, reflect the public's desire to have FAA withdraw the proposal and instead issue a special airworthiness information bulletin or general aviation alert. The reason for this is because there are only four service difficulty reports of control wheel cracks in the FAA database and most of the affected airplanes have dual control wheels with each wheel having two handles for redundancy, which would provide an alternative means to control the airplane should actual failure occur.

The FAA's Determination

What Is FAA's Final Determination on This Issue?

After re-evaluating all information related to this subject, we have determined that:

—The unsafe condition is appropriately addressed through a special airworthiness bulletin (No. CE–01–41);

—Because there are only four service difficulty reports of control wheel cracks in the FAA database regarding this subject on the affected airplanes, there is no need for the NPRM, Docket No. 98–CE–57–AD; and

—We should withdraw the NPRM.

Withdrawal of this action does not prevent us from taking or commit us to any future action.

Regulatory Impact

Does This Proposed AD Withdrawal Involve a Significant Rule or Regulatory Action?

Since this action only withdraws a proposed AD, it is not an AD and, therefore, is not covered under Executive Order 12866, the Regulatory Flexibility Act,or DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979).

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Withdrawal

Accordingly, FAA withdraws the notice of proposed rulemaking, Docket No. 98–CE–57–AD, published in the **Federal Register** on December 29, 2000 (65 FR 82954) with the comment period extended from February 2, 2001, to April 4, 2001 on January 22, 2001 (66 FR 6499).

Issued in Kansas City, Missouri, on December 11, 2001.

Michael Gallagher,

Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 01–31299 Filed 12–19–01; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF COMMERCE

Bureau of Export Administration

15 CFR Parts 738 and 742

[Docket No. 011019257–1257–01]

RIN 0694–AC48

Removal of Licensing Exemption for Exports and Reexports of Missile Technology-Controlled Items Destined to Canada

AGENCY: Bureau of Export Administration, Commerce.

ACTION: Advance notice of proposed rulemaking.

SUMMARY: The Bureau of Export Administration (BXA) is reviewing the existing license exemption contained within the Export Administration Regulations (EAR) for the export of missile technology (MT)-controlled items to Canada, because of the recommendations contained in the Government Accounting Office Report entitled: ''Export Controls: Regulatory

Change Needed to Comply with Missile Technology Licensing Requirements'' (GA–01–530). BXA is seeking comments on how removing the existing licensing exemption for MT-controlled exports to Canada would affect industry and more specifically the exporting community.

DATES: Comments must be received by February 19, 2002.

ADDRESSES: Written comments (three copies) should be sent to Sharron Cook, Regulatory Policy Division, Office of Exporter Services, Bureau of Export Administration, Department of Commerce, 14th and Pennsylvania Avenue, NW, PO Box 273, Room 2705, Washington, DC 20230; E-Mailed to: *scook@bxa.doc.gov*; or faxed to 202–482–3355.

FOR FURTHER INFORMATION CONTACT: Steven Goldman, Director, Office of Nonproliferation Controls and Treaty Compliance, Bureau of Export Administration, Telephone: (202) 482–4188. Copies of the referenced GAO Report are available at the GAO website: *http://www.gao.gov.*

SUPPLEMENTARY INFORMATION:

Background

The Government Accounting Office (GAO) Report entitled: ''Export Controls: Regulatory Change Needed to Comply with Missile Technology Licensing Requirements'' (GA–01–530), recommended that the Department of Commerce amend the Export Administration Regulations (EAR) to require a license for the export of dual-use items controlled pursuant to the Missile Technology Control Regime (MTCR) to Canada. The GAO based its recommendation on a provision in the National Defense Authorization Act (NDAA) for Fiscal Year (FY) 1991, which amended the Export Administration Act (EAA) of 1979 to require a license for any export of dual-use Missile Technology Control Regime (MTCR) controlled goods or technology to any country. In 1991, the Department of Commerce implemented the NDAA requirements in EAR by controlling MTCR Annex items on the Commerce Control List (CCL) under a new designated reason for control, ''missile technology (MT)'' and generally requiring a license for the export or reexport of these items and technologies. Many of these items were already on the CCL and controlled under foreign policy or national security reasons. However, the Department of Commerce did not revise the EAR's existing license exemption for exports to Canada to require licenses for MT-controlled items to Canada. The license exemption for Canada existed in the EAR many years prior to the enactment of the MT provisions of the EAA. Since the Hyde Park Declaration of 1941, the United States has authorized nearly all dual-use goods intended for consumption in Canada to be exported without a license, although any reexport of U.S.-origin items controlled for MT concerns from Canada would require a license from the U.S. Government. The Department of Commerce is interested in evaluating the impact on U.S. exporters of removing the existing licensing exemption for MT-controlled exports to Canada.

The current missile technology (MT) controls maintained by the Bureau of Export Administration (BXA) are set forth in the Export Administration Regulations (EAR), parts 742 (CCL Based Controls) and 744 (End-User and End-Use Based Controls). A regulatory implementation would entail adding an ''X'' in the row for Canada under the column from ''MT 1'' in the ''Missile Tech'' column of Supplement No. 1 to part 738, Commerce Country Chart. In addition, section 742.5 of the EAR would be revised to remove the phrase ''except Canada'' in the third sentence of paragraph (a)(1).

To ensure maximum public participation in the review process, comments are solicited for the next 60 days on the removal of the existing licensing exemption for the export of MT-controlled goods and technologies to Canada. BXA is particularly interested in the experience of individual exporters with the licensing exemption for MT-controlled exports to Canada, with emphasis on economic impact and specific business circumstances. BXA is also interested in industry information relating to the following:

1. Information on the effect of a licensing requirement for the export of MT-controlled items (commodities, software, and technology) to Canada on sales of U.S. products and market-share.

2. Information on joint-ventures or U.S. industry owned facilities in Canada that would be affected by the removal of a licensing exemption for the export of MT-controlled items to Canada.

3. Information on controls maintained by U.S. trade partners (i.e., to what extent do other MTCR Partners have similar exemptions for the export of MT-controlled goods and technology to other countries)?

4. Additional suggestions for revisions to the Canadian licensing exemption policy.

5. Data or other information as to the effect of a Canadian licensing requirement on overall trade, either for individual firms or for individual industrial sectors.

Parties submitting comments are asked to be as specific as possible. Accordingly, the Department encourages interested persons who wish to comment to do it at the earliest possible time.

The period for submission of comments will close February 19, 2002. 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 material be treated confidentially because of its business proprietary nature or for any other reason. The Department will return such comments and materials to the persons submitting the comments and will not consider them in the development of final regulations. All public comments on these regulations will be a matter of public record and will be available for public inspection and copying. The Department requires comments be submitted in written form, which will be a matter of public record and will be available for public review and copying.

The public record concerning these comments will be maintained in the Bureau of Export Administration, Office of Administration, U.S. Department of Commerce, Room 6883, 14th and Constitution Avenue, NW, Washington, DC 20230; (202) 482–0637. This component does not maintain a separate public inspection facility. Requesters should first view BXA's FOIA website (which can be reached through *http://www.bxa.doc.gov/foia*). If the records sought cannot be located at this site, or if the requester does not have access to a computer, please call the phone number above for assistance.

List of Subjects in 15 CFR Parts 738 and 742

Exports, Foreign trade.

Dated: December 14, 2001.

James J. Jochum,

Assistant Secretary for Export Administration.

[FR Doc. 01–31322 Filed 12–19–01; 8:45 am]

BILLING CODE 3510–33–P

POSTAL SERVICE

39 CFR Part 111

Domestic Mail Manual Changes for Bedloaded Bundles of Periodicals

AGENCY: Postal Service.

ACTION: Proposed rule.

SUMMARY: The Postal Service is seeking comments on a proposal to delete the standards in the Domestic Mail Manual (DMM) that allow bundles (more than one package strapped together) of Periodicals flat-size mail to be bedloaded instead of placed in a sack or on a pallet.

DATES: Comments must be received on or before January 22, 2002.

ADDRESSES: Send written comments to the Manager, Mail Preparation and Standards, U.S. Postal Service, 1735 North Lynn Street, Room 3025, Arlington VA 22209–6038. Written comments may be submitted via fax to (703) 292–4058 or via email to aemmerth@email.usps.gov (please use ''Fed Reg Bedloaded Bundles'' as the subject line of the message). Copies of all written comments will be available for inspection and photocopying between 9 a.m. and 4 p.m., Monday through Friday, at the above address.

FOR FURTHER INFORMATION CONTACT: Anne Emmerth at (703) 292–3641.

SUPPLEMENTARY INFORMATION: Current DMM M210.5.0 and M220.5.0 allow authorized mailers to place packages of Presorted rate and carrier route rate Periodicals flats directly into a truck or trailer if the packages are secured together into bundles containing a minimum of 20 pounds of mail (instead of sacking or palletizing those packages). Such preparation requires Postal Service authorization from Business Mailer Support (BMS). It should be noted that DMM M820 does not include any provisions for bedloading bundles of automation rate flats. The records of the Postal Service indicate that there are no mailers who are preparing bedloaded bundles in this manner. Because of this, and because bedloaded bundles are generally not cost-efficient for the Postal Service to handle and process, the Postal Service is proposing to delete the options to prepare Periodicals flats as bedloaded bundles.

If this proposal is adopted, then all Periodicals flats must be prepared in sacks or on pallets.

This change does not apply to mailers who transport packages of Periodicals to destination delivery units under exceptional dispatch.

Although exempt from the notice and comment requirements of the Administrative Procedures Act (5 U.S.C. 553(b), (c)) regarding proposed rulemaking by 39 U.S.C. 410(a), the Postal Service invites comments on the following proposed revisions to the DMM, incorporated by reference into the Code of Federal Regulations (see 39 CFR part 111).

List of Subjects in 39 CFR Part 111

Postal Service.

PART 111—[AMENDED]

1. The authority citation for 39 CFR part 111 continues to read as follows:

Authority: 5 U.S.C. 552(a); 39 U.S.C. 101, 401, 403, 404, 414, 3001–3011, 3201–3219, 3403–3406, 3621, 3626, 5001.

2. Amend the following sections of the Domestic Mail Manual (DMM) as set forth below:

M Mail Preparation and Sortation

M000 General Preparation Standards

M010 Mailpieces

M011 Basic Standards

1.0 Terms and Conditions

* * * * *

1.3 Preparation Instructions

[Delete item z, which defines a ''bundle.'' Renumber items aa through ac as items z through ab, respectively.]

* * * * *

M013 Optional Endorsement Lines

1.0 Use

1.1 Basic Standards

[Revise 1.1 by deleting the entry for SCF.]

* * * * *

M200 Periodicals (Nonautomation)

M210 Presorted Rates

* * * * *

[Delete section 5.0, Bedloaded Bundles (Flat-Size Pieces). Renumber section 6.0 as 5.0.]

* * * * *

M220 Carrier Route Rates

* * * * *

[Delete section 5.0, Bedloaded Bundles (Flat-Size Pieces). Renumber section 6.0 as 5.0.]

* * * * *

An appropriate amendment to 39 CFR 111 to reflect these changes will be published if the proposal is adopted.

Stanley F. Mires,

Chief Counsel, Legislative.

[FR Doc. 01–31386 Filed 12–19–01; 8:45 am]

BILLING CODE 7710–12–P

FEDERAL EMERGENCY MANAGEMENT AGENCY

44 CFR Part 67

[Docket No. FEMA–D–7518]

Proposed Flood Elevation Determinations

AGENCY: Federal Emergency Management Agency, FEMA.

ACTION: Proposed rule.

SUMMARY: Technical information or comments are requested on the proposed base (1% annual chance) flood elevations and proposed base flood elevation modifications for the communities listed below. The base flood elevations are the basis for the floodplain management measures that the community is required either to adopt or to show evidence of being already in effect in order to qualify or remain qualified for participation in the National Flood Insurance Program (NFIP).

DATES: The comment period is ninety (90) days following the second publication of this proposed rule in a newspaper of local circulation in each community.

ADDRESSES: The proposed base flood elevations for each community are available for inspection at the office of the Chief Executive Officer of each community. The respective addresses are listed in the following table.

FOR FURTHER INFORMATION CONTACT: Matthew B. Miller, P.E., Chief, Hazards Study Branch, Federal Insurance and Mitigation Administration, Federal Emergency Management Agency, 500 C Street SW., Washington, DC 20472, (202) 646–3461, or (email) *matt.miller@fema.gov.*

SUPPLEMENTARY INFORMATION: The Federal Emergency Management Agency (FEMA or Agency) proposes to make determinations of base flood elevations and modified base flood elevations for each community listed below, in accordance with Section 110 of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4104, and 44 CFR 67.4(a).

These proposed base flood and modified base flood elevations, together with the floodplain management criteria

required by 44 CFR 60.3, are the minimum that are required. They should not be construed to mean that the community must change any existing ordinances that are more stringent in their floodplain management requirements. The community may at any time enact stricter requirements of its own, or pursuant to policies established by other Federal, state or regional entities. These proposed elevations are used to meet the floodplain management requirements of the NFIP and are also used to calculate the appropriate flood insurance premium rates for new buildings built after these elevations are made final, and for the contents in these buildings.

National Environmental Policy Act. This proposed rule is categorically excluded from the requirements of 44 CFR Part 10, Environmental Consideration. No environmental impact assessment has been prepared.

Regulatory Flexibility Act. The Acting Administrator, Federal Insurance and Mitigation Administration, certifies that this proposed rule is exempt from the requirements of the Regulatory Flexibility Act because proposed or modified base flood elevations are required by the Flood Disaster Protection Act of 1973, 42 U.S.C. 4104, and are required to establish and maintain community eligibility in the NFIP. As a result, a regulatory flexibility analysis has not been prepared.

Regulatory Classification. This proposed rule is not a significant regulatory action under the criteria of Section 3(f) of Executive Order 12866 of September 30, 1993, Regulatory Planning and Review, 58 FR 51735.

Executive Order 12612, Federalism. This proposed rule involves no policies that have federalism implications under Executive Order 12612, Federalism, dated October 26, 1987.

Executive Order 12778, Civil Justice Reform. This proposed rule meets the applicable standards of Section 2(b)(2) of Executive Order 12778.

List of Subjects in 44 CFR Part 67

Administrative practice and procedure, flood insurance, reporting and recordkeeping requirements.

Accordingly, 44 CFR Part 67 is proposed to be amended as follows:

PART 67—[AMENDED]

1. The authority citation for Part 67 continues to read as follows:

Authority: 42 U.S.C. 4001 *et seq.*; Reorganization Plan No. 3 of 1978, 3 CFR, 1978 Comp., p. 329; E.O. 12127, 44 FR 19367, 3 CFR, 1979 Comp., p. 376.

§ 67.4 [Amended]

2. The tables published under the authority of § 67.4 are proposed to be amended as follows:

Source of flooding	Location	#Depth in feet above ground. *Elevation in feet (NGVD)		Communities affected
		Existing	Modified	
OHIO				
Gallia County (Unincorporated Areas)				
Ohio River ..	Approximately 1.7 miles upstream of county boundary.	*561	*560	Unincorporated Areas of Gallia County, Village of Crown City.
	Approximately 3.2 miles downstream of county boundary.	*573	*572	City of Gallipolis, Village of Cheshire.
City of Gallipolis				
Maps available for inspection at the Gallipolis City Building, 518 Second Avenue, Gallipolis, Ohio. Send comments to Mr. E. V. Clark, Jr., Gallipolis City Manager, 518 2nd Avenue, Gallipolis, Ohio 45631.				
Village of Crown City				
Maps available for inspection at the Crown City Village Hall, 156 Charles Street, Crown City, Ohio. Send comments to The Honorable Sam Johnson, Mayor of the Village of Crown City, P.O. Box 316, Crown City, Ohio 45623.				
Village of Cheshire				
Maps available for inspection at the Cheshire Village Office, 1828 Eastern Avenue, Gallipolis, Ohio. Send comments to The Honorable H. Thomas Reese, Mayor of the Village of Cheshire, P.O. Box 276, Cheshire, Ohio 45620.				
Gallia County (Unincorporated Areas)				
Maps available for inspection at the Gallia County Offices, 18 Locust Street, Gallipolis, Ohio. Send comments to Mr. Skip Meadows, President of the Gallia County Board of Commissioners, 18 Locust Street, Gallipolis, Ohio 45631.				
Meigs County (Unincorporated Areas)				
Ohio River ..	Approximately 2 miles upstream of the downstream county boundary.	*575	*576	Village of Middleport, Village of Pomeroy, Village of Racine.
	At the upstream county boundary	*603	*602	Village of Syracuse, and unincorporated areas of Meigs County.
Little Leading Creek.	Approximately 0.8 mile upstream of the Village of Rutland corporate limits.	None	*578	Unincorporated areas of Meigs County.
	Approximately 0.9 mile upstream of the Village of Rutland corporate limits.	None	*578	
Kerr Run	Just upstream of the Village of Pomeroy corporate limits.	None	*579	Unincorporated areas of Meigs County.
	Approximately 250 feet upstream of the Village of Pomeroy corporate limits.	None	*579	
Unnamed Tributary to Kerr Run.	Just upstream of the Village of Pomeroy corporate limits.	None	*579	Unincorporated areas of Meigs County.
	Approximately 50 feet upstream of the Village of Pomeroy corporate limits.	None	*579	

Source of flooding	Location	#Depth in feet above ground. *Elevation in feet (NGVD)		Communities affected
		Existing	Modified	
Unnamed Tributary to Wolf Run.	Approximately 750 feet of the confluence with Wolf Run.	None	*582	Unincorporated areas of Meigs County.
	Approximately 950 feet upstream of the confluence with Wolf Run.	None	*582	
Rose Creek	Approximately 0.8 mile upstream of the confluence with Ohio River.	None	*580	Unincorporated areas of Meigs County.
	Approximately 1.1 miles upstream of confluence with the Ohio River.	None	*580	
Johns Run	Approximately 200 feet downstream of State Route 338.	None	*587	Unincorporated areas of Meigs County.
	Approximately 0.7 mile upstream of State Route 338.	None	*587	
Groundhog Creek.	Just upstream of State Route 338	None None	*593	Unincorporated areas of Meigs County.
	Approximately 1.7 miles upstream of State Route 338.	None	*593	
Sugarcamp Run.	Just upstream of State Route 124	None	*601	Unincorporated areas of Meigs County.
	Approximately 0.8 mile upstream of State Route 124.	None	*601	
Indian Run	Just upstream of State Route 124	None	*602	Unincorporated areas of Meigs County.
	Approximately 0.9 mile upstream of State Route 124.	None	*602	

Meigs County (Unincorporated Areas)

Maps available for inspection at the Meigs County Courthouse, 100 East Second Street, Pomeroy, Ohio.

Send comments to Mr. Jeff Thorton, President of the Meigs County Board of Commissioners, Meigs County Courthouse, 100 East Second Street, Pomeroy, Ohio 45769.

Village of Middleport

Maps available for inspection at the Middleport Village Hall, 237 Race Street, Middleport, Ohio.

Send comments to The Honorable Sandy Iannarelli, Mayor of the Village of Middleport, 237 Race Street, Middleport, Ohio 45760.

Village of Pomeroy

Maps available for inspection at the Pomeroy Village Hall, 320 East Main Street, Pomeroy, Ohio.

Send comments to The Honorable John Blaettnar, Mayor of the Village of Pomeroy, 320 East Main Street, Pomeroy, Ohio 45769.

Village of Racine

Maps available for inspection at the Racine Village Hall, 405 Main Street, Racine, Ohio.

Send comments to The Honorable J. Scott Hill, Mayor of the Village of Racine, P.O. Box 375, Racine, Ohio 45771.

Village of Syracuse

Maps available for inspection at the Syracuse Village Hall, 2581 Third Street, Syracuse, Ohio.

Send comments to The Honorable Larry Lavender, Mayor of the Village of Syracuse, 2581 Third Street, P.O. Box 266, Syracuse, Ohio 45779.

VIRGINIA

Southampton County (Unincorporated Areas)

Blackwater River.	At the confluence with Chowan River	*11	*14	Southampton County (Unincorporated Areas).
	Approximately 6,700 feet upstream of State Route 620 (Broadwater Road).	None	*36	
Nottoway River.	At the confluence with Chowan River	*11	*14	Southampton County (Unincorporated Areas); Courtland (Town).
	Approximately 2,400 feet upstream of Norfolk Franklin & Danville Railroad.	*26	*27	

Southampton County (Unincorporated Areas)

Maps available for inspection at the Southampton County Administrator's Office, 26022 Administration Center Drive, Courtland, Virginia.

Send comments to Mr. Michael W. Johnson, Southampton County Administrator, 26022 Administration Center Drive, Courtland, Virginia 23837.

Town of Courtland

Maps available for inspection at the Courtland Town Office, 22219 Meherrin Road, Courtland, Virginia.

Send comments to The Honorable Lewis H. Davis, Sr., Mayor of the Town of Courtland, P.O. Box 39, Courtland, Virginia 23837.

(Catalog of Federal Domestic Assistance No. 83.100, ''Flood Insurance'')

Dated: December 11, 2001.

Robert F. Shea,

Acting Administrator, Federal Insurance and Mitigation Administration.

[FR Doc. 01–31372 Filed 12–19–01; 8:45 am]

BILLING CODE 6718–04–P

FEDERAL EMERGENCY MANAGEMENT AGENCY

44 CFR Part 67

[Docket No. FEMA–D–7516]

Proposed Flood Elevation Determinations

AGENCY: Federal Emergency Management Agency, FEMA.

ACTION: Proposed rule.

SUMMARY: Technical information or comments are requested on the proposed base (1% annual chance) flood elevations and proposed base flood elevation modifications for the communities listed below. The base flood elevations are the basis for the floodplain management measures that the community is required either to adopt or to show evidence of being already in effect in order to qualify or remain qualified for participation in the National Flood Insurance Program (NFIP).

DATES: The comment period is ninety (90) days following the second publication of this proposed rule in a newspaper of local circulation in each community.

ADDRESSES: The proposed base flood elevations for each community are available for inspection at the office of the Chief Executive Officer of each community. The respective addresses are listed in the following table.

FOR FURTHER INFORMATION CONTACT: Matthew B. Miller, P.E., Chief, Hazards Study Branch, Federal Insurance and Mitigation Administration, Federal Emergency Management Agency, 500 C Street SW., Washington, DC 20472, (202) 646–3461, or (email) *matt.miller@fema.gov*.

SUPPLEMENTARY INFORMATION: The Federal Emergency Management Agency (FEMA or Agency) proposes to make determinations of base flood elevations and modified base flood elevations for each community listed below, in accordance with Section 110 of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4104, and 44 CFR 67.4(a).

These proposed base flood and modified base flood elevations, together with the floodplain management criteria required by 44 CFR 60.3, are the minimum that are required. They should not be construed to mean that the community must change any existing ordinances that are more stringent in their floodplain management requirements. The community may at any time enact stricter requirements of its own, or pursuant to policies established by other Federal, state or regional entities. These proposed elevations are used to meet the floodplain management requirements of the NFIP and are also used to calculate the appropriate flood insurance premium rates for new buildings built after these elevations are made final, and for the contents in these buildings.

National Environmental Policy Act. This proposed rule is categorically excluded from the requirements of 44 CFR part 10, Environmental Consideration. No environmental impact assessment has been prepared.

Regulatory Flexibility Act. The Acting Administrator, Federal Insurance and Mitigation Administration, certifies that this proposed rule is exempt from the requirements of the Regulatory Flexibility Act because proposed or modified base flood elevations are required by the Flood Disaster Protection Act of 1973, 42 U.S.C. 4104, and are required to establish and maintain community eligibility in the NFIP. As a result, a regulatory flexibility analysis has not been prepared.

Regulatory Classification. This proposed rule is not a significant regulatory action under the criteria of Section 3(f) of Executive Order 12866 of September 30, 1993, Regulatory Planning and Review, 58 FR 51735.

Executive Order 12612, Federalism. This proposed rule involves no policies that have federalism implications under Executive Order 12612, Federalism, dated October 26, 1987.

Executive Order 12778, Civil Justice Reform. This proposed rule meets the applicable standards of Section 2(b)(2) of Executive Order 12778.

List of Subjects in 44 CFR Part 67

Administrative practice and procedure, flood insurance, reporting and recordkeeping requirements.

Accordingly, 44 CFR Part 67 is proposed to be amended as follows:

PART 67—[AMENDED]

1. The authority citation for Part 67 continues to read as follows:

Authority: 42 U.S.C. 4001 *et seq.*; Reorganization Plan No. 3 of 1978, 3 CFR, 1978 Comp., p. 329; E.O. 12127, 44 FR 19367, 3 CFR, 1979 Comp., p. 376.

§ 67.4 [Amended]

2. The tables published under the authority of § 67.4 are proposed to be amended as follows:

State	City/town/county	Source of flooding	Location	#Depth in feet above ground. *Elevation in feet (NGVD)	
				Existing	Modified
Florida	Franklin County (Unincorporated Areas).	Apalachicola Bay	Approximately 2.6 miles southeast of West Pass.	*7	*8
			Approximately 4.1 miles southwest of Government Cut in St. George Island.	*7	*10
		St. George Sound	Just east of St. George Island Bridge	*9	*10
			Shoreline of St. George Island at (and include) Marsh Island.	*15	*12
		Gulf of Mexico	Approximately 2.6 miles southeast of West Pass.	*7	*8
			Approximately 1.5 miles southeast of the confluence of Big Claires Creek with Ochlockonee Bay.	*21	*23
		Alligator Harbor	Approximately 1,000 feet north of the intersection of State Route 370 and West Harbor Road.	*15	*16

State	City/town/county	Source of flooding	Location	#Depth in feet above ground. *Elevation in feet (NGVD)	
				Existing	Modified
			Approximately 900 feet east of Peninsula Point.	*18	*17
Maps available for inspection at the Planning and Engineering Department, 33 Commerce Street, Apalachicola, Florida.					
Send comments to Mr. Tim Turner, Director of the Franklin County Emergency Management Agency, 33 Commerce Street, Apalachicola, Florida 32320.					
Florida	Minneola (City), Lake County.	Plum Lake	Entire shoreline within county	*84	*87
		Ponding Area 535–1		None	*100
		Ponding Area 535–2		None	*99
		Little Grassy Lake	Approximately 0.55 mile northeast of the intersection of Perl Street and Galena Avenue.	None	*90
		Grassy Lake	Entire shoreline within county	None	*85
Maps available for inspection at the Minneola City Hall, 302 West Pearl Street, Minneola, Florida.					
Send comments to The Honorable Glenn A. Irby, Mayor of the City of Minneola, P.O. Box 678, Minneola, Florida 34755.					
Illinois	Elburn (Village), Kane County.	Blackberry Creek	At the confluence of Blackberry Creek Tributary D.	None	*741
			Approximately 1,050 feet upstream of Hughes Road.	None	*747
		Blackberry Creek Tributary D.	Approximately 600 feet upstream of confluence with Blackberry Creek.	None	*742
			Approximately 2,550 feet downstream of Keslinger Road.	None	*799
Maps available for inspection at the Elburn Village Hall, 301 East North Street, Elburn, Illinois.					
Send comments to Mr. James Willey, President of the Village of Elburn Board of Trustees, 301 East North Street, Elburn, Illinois 60119.					
Illinois	Elgin (City), Kane County.	Sandy Creek	At Randall Road	*821	*826
			Approximately 325 feet upstream of Randall Road.	None	*826
		Tyler Creek	Approximately 500 feet upstream of confluence with Fox River.	*716	*715
			Approximately 120 feet downstream of Soo Line Railroad.	None	*839
Maps available for inspection at City of Elgin Public Works Department, Engineering Division, 150 Dexter Court, Elgin, Illinois.					
Send comments to Ms. Joyce Parker, Elgin City Manager, 150 Dexter Court, Elgin, Illinois 60120.					
Illinois	Gilberts (Village), Kane County.	Tyler Creek	Just upstream of Big Timber Road	None	*867
			Approximately 200 feet downstream of McCornack Road.	None	*886
Maps available for inspection at the Gilberts Village Hall, 86 Railroad Street, Gilberts, Illinois.					
Send comments to Mr. Mike Isitoro, Gilberts Village President, 86 Railroad Street, Gilberts, Illinois 60136.					
Illinois	Kane County (Unincorporated Areas).	Blackberry Creek Tributary F.	Approximately 0.6 mile upstream of confluence with Blackberry Creek Tributary B.	*704	*703
			Approximately 250 feet downstream of Bliss Road.	*728	*727
		Main Street Ditch	At confluence with Blackberry Creek Tributary F.	None	*707
			Approximately 130 feet upstream of Main Street.	None	*709
		Tyler Creek	Approximately 375 feet downstream of Eagle Road East.	*791	*793
			Approximately 200 feet upstream of Illinois Route 72.	None	*898
		Pingree Creek	At confluence with Tyler Creek	None	*893
			Approximately 325 feet upstream of U.S. Route 20.	None	*906
		Mastadon Lake	Approximately 300 feet southeast of the intersection of Parker Avenue and Hinman Street.	None	*662
		Sandy Creek	Approximately 130 feet downstream of Randall Road.	*820	*821
			Just downstream of U.S. Route 20	None	*889

State	City/town/county	Source of flooding	Location	#Depth in feet above ground. *Elevation in feet (NGVD)	
				Existing	Modified
		Indian Creek	Approximately 0.41 mile upstream of Wood Street.	None	*676
			At downstream side of East-West Tollway	None	*717
		Indian Creek Tributary B	Approximately 0.61 mile upstream of confluence with Indian Creek.	None	*716
			Approximately 0.86 mile upstream of confluence with Indian Creek.	None	*716
		South Tributary	At confluence with Indian Creek	None	*684
			Approximately 680 feet upstream of confluence with Indian Creek.	None	*688
		Welch Creek	Approximately 1,110 feet downstream of Fay's Lane.	None	*680
			Just upstream of Burlington Northern Railroad.	None	*692
		Welch Creek Tributary 1	Just upstream of Aurora Municipal Airport	None	*693
			Approximately 2,600 feet upstream of Aurora Municipal Airport.	None	*694
		Blackberry Creek Tributary H.	Approximately 750 feet southwest of Lake View Court and Lake View Drive intersection.	None	*670
		Selmarten Creek	At confluence with Indian Creek	*715	*716
			At county boundary	*718	*720
Maps available for inspection at the Kane County Water Resources Department, Kane County Government Center Building ''A,'' 719 Batavia Avenue, Geneva, Illinois.					
Send comments to Mr. Michael W. McCoy, Chairman of the Kane County Board of Commissioners, 719 Batavia Avenue, Geneva, Illinois 60134.					
Illinois	Lily Lake (Village), Kane County.	Ferson Creek	Approximately 100 feet downstream of Great Western Trail Railroad.	None	*862
			Just downstream of Route 64	None	*872
Maps available for inspection at the Lily Lake Village Hall, 43W680 Empire Road, St. Charles, Illinois.					
Send comments to Mr. Glenn Bork, Lily Lake Village President, 44W508 I.C. Trail, Lily Lake, Illinois 60151.					
Illinois	Montgomery (Village), Kane County.	Blackberry Creek Tributary G.	Approximately 2,050 feet downstream of Aucutt Road.	None	*661
			Approximately 550 feet downstream of Jericho Road.	None	*666
		Blackberry Creek	Approximately 0.4 mile downstream of Jericho Road.	None	*664
			At Jericho Road	None	*666
Maps available for inspection at the Montgomery Village Clerk's Office, 1300 South Broadway, Montgomery, Illinois.					
Send comments to Ms. Marilyn Michelini, Montgomery Village President, 1300 South Broadway, Montgomery, Illinois 60538.					
Illinois	Pingree Grove (Village), Kane County.	Pingree Creek	Approximately 1,000 feet upstream of Highland Avenue.	None	*901
			Approximately 800 feet upstream of Soo Line Railroad.	None	*902
Maps available for inspection at the Pingree Grove Village Hall, 14N042 Reinking Road, Hampshire, Illinois.					
Send comments to Mr. Vern Wester, President of the Village of Pingree Grove Board, 14N042 Reinking Road, Hampshire, Illinois 60140.					
Illinois	Sugar Grove (Village), Kane County.	Blackberry Creek	Approximately 1,050 feet upstream of Densmore Road.	None	*678
			Approximately 1,800 feet upstream of Bliss Road.	None	*690
		Blackberry Creek Tributary E.	At confluence with Blackberry Creek	None	*680
			At Mankes Road	None	*680
Maps available for inspection at the Sugar Grove Village Office, 10 Municipal Drive, Sugar Grove, Illinois.					
Send comments to Mr. P. Sean Michels, Sugar Grove Village President, 10 Municipal Drive, Sugar Grove, Illinois 60554.					
Massachusetts	Malden (City), Middlesex County.	Town Line Brook	Approximately 1,000 feet downstream of corporate limits.	None	*9
			Approximately 500 feet upstream of Lynn Street	*8	*9

State	City/town/county	Source of flooding	Location	#Depth in feet above ground. *Elevation in feet (NGVD)	
				Existing	Modified
		Linden Brook	Approximately 250 feet downstream of corporate limits.	None	*9
			On downstream side of Beach Street	None	*9
Maps available for inspection at the Malden Engineering Office, Malden City Hall, 200 Pleasant Street, Malden, Massachusetts.					
Send comments to The Honorable Richard C. Howard, Mayor of the City of Malden, Malden City Hall, 200 Pleasant Street, Malden, Massachusetts 02148.					
Massachusetts	Revere (City), Suffolk County.	Town Line Brook	Approximately 100 feet east of intersection of Washington Avenue and Squire Road.	None	*9
		Linden Brook	Approximately 180 feet south of the intersection of Lynn Street and Adamski Memorial Highway.	None	*9
Maps available for inspection at the Revere Planning Office, 281 Broadway, Revere, Massachusetts.					
Send comments to The Honorable Thomas Ambrosino, Mayor of the City of Revere, City Hall, 281 Broadway, Revere, Massachusetts 02151.					
New Hampshire	Errol (Town), Coos County.	Akers Pond	Entire shoreline within community	None	*1,231
Maps available for inspection at the Errol Town Office Building, 33 Main Street, Errol, New Hampshire.					
Send comments to Mr. Larry S. Enman, Chairman of the Town of Errol Board of Selectmen, P.O. Box 100, Errol, New Hampshire 03579.					
New Hampshire	Nashua (City), Hillsborough County.	Nashua River	At the downstream side of B&M Railroad bridge.	*115	*114
			Approximately 0.75 mile upstream of State Route 111.	*177	*176
		Bartemus Brook	At confluence with Nashua River	*167	*165
			At upstream corporate limits	*168	*166
		Lyle Reed Brook	At confluence with Nashua River	*169	*167
			Approximately 0.75 mile upstream of State Route 11.	*169	*167
Maps available for inspection at the Nashua City Hall, 229 Main Street, Nashua, New Hampshire.					
Send comments to The Honorable Bernard A. Streeter, Mayor of the City of Nashua, City Hall, 229 Main Street, Nashua, New Hampshire 03061–2019.					
New York	Corning (City), Steuben County.	Post Creek	Approximately 0.52 mile upstream of the confluence with Chemung River.	*923	*924
			Approximately 1.55 miles upstream of the confluence with Chemung River.	None	*958
Maps available for inspection at Corning Code Enforcement Office, 7 Nasser Civic Center, Corning, New York.					
Send comments to The Honorable Alan Lewis, Sr., Mayor of the City of Corning, 7 Nasser Civic Center, Corning, New York 14830.					
New York	Hamilton (Village), Madison County.	Canal Tributary	At confluence with Payne Brook Tributary	None	*1,110
			At the upstream corporate limits	None	*1,116
		Payne Brook	Approximately 1,360 feet downstream of College Street.	None	*1,101
			At upstream corporate limits	None	*1,125
		Payne Brook Tributary	At the confluence with Payne Brook	None	*1,104
			Approximately 80 feet upstream of Eaton Street.	None	*1,119
Maps available for inspection at the Hamilton Village Hall, 3 Broad Street, Hamilton, New York.					
Send comments to The Honorable Charlie Getchonis, Mayor of the Village of Hamilton, 3 Broad Street, Hamilton, New York 13346–0119.					
New York	Lisle (Town), Broome County.	Dudley Creek	Approximately 650 feet downstream of Owen Hill Road.	None	*1,044
			At Popple Hill Road	None	*1,097
		Culver Creek	At the confluence with Dudley Creek	None	*1,075
			At Hunts Corners Road	None	*1,106
		Tioughnioga River	Approximately 3.12 miles downstream of Main Street.	None	*979
			A point approximately 1.19 miles upstream of Main Street.	None	*1,003
Maps available for inspection at the Lisle Town Office, 9234 NYS Route 79, Lisle, New York.					
Send comments to Mr. James C. Dunham, Lisle Town Supervisor, P.O. Box 98, Lisle, New York 13797.					
New York	Lockport (Town), Niagara County.	Eighteen Mile Creek	At downstream corporate limits	None	*356

State	City/town/county	Source of flooding	Location	#Depth in feet above ground. *Elevation in feet (NGVD)	
				Existing	Modified
			Approximately 130 feet upstream of Stone Road.	None	365
		East Tributary to Eighteen Mile Creek.	At downstream corporate limits	None	*360
			Approximately 1 mile upstream of State Route 104.	None	*363
		West Tributary to Eighteen Mile Creek.	At confluence with Eighteen Mile Creek	None	*359
			At Lockport town line	None	*384
		East Branch to Eighteen Mile Creek.	At downstream corporate limits	None	*357
			Approximately 1,500 feet upstream of upstream corporate limits.	None	*375
		Gulf Branch	At Niagara Street	None	*472
			Just downstream of Upper Mountain Road.	None	*584
		Gulf Tributary	At confluence with Gulf Branch	None	*497
			Approximately 2,250 feet upstream of confluence with Gulf Branch.	None	*514
		Tonawanda Creek	Approximately 1 mile upstream of Rapids Road.	*590	*591
			At upstream corporate limits	*590	*591
		Donner Creek	At the downstream corporate limits	*605	*606
			Approximately 1,660 feet upsteam of Hamm Road.	*617	*618
Maps available for inspection at the Lockport Town Hall, 6560 Dysing Road, Lockport, New York.					
Send comments to Mr. John Austin, Lockport Town Supervisor, Town Hall, 6560 Dysinger Road, Lockport, New York 14094.					
Ohio	Portsmouth (City), Scioto County.	Scioto River	From approximately 0.80 mile upstream of U.S. Route 52.	*536	*535
		Ohio River	At the downstream corporate limit	*537	*538
			Approximately 1.0 mile downstream of CSX Transportation.	*537	*538
Maps available for inspection at the Portsmouth Municipal Building, 728 2nd Street, Portsmouth, Ohio.					
Send comments to The Honorable Gregory A. Bauer, Mayor of the City of Portsmouth, 728 2nd Street, Portsmouth, Ohio 45662.					
Ohio	Rarden (Village), Scioto County.	Rarden Creek	At Norfolk Southern Railway	None	*615
			At the upstream corporate limits	None	*615
Maps available for inspection at the Rarden City Hall, 1400 Main Street, Rarden, Ohio.					
Send comments to The Honorable Anna J. Gardner, Mayor of the Village of Rarden, P.O. Box 8, Rarden, Ohio 45671.					
Ohio	Scioto County (Unicorporated Areas).	Ohio River	Approximately 1,270 feet downstream of the confluence of Spencer Creek.	*530	*531
			Approximately 4.2 miles downstream of CSX Transportation.	*536	*537
Maps available for inspection at the Scioto County Courthouse, 602 7th Street, Room 1, Portsmouth, Ohio.					
Send comments to Mr. Vern Riffe III, Chairman of the Scioto County Board of Commissioners, 602 7th Street, Room 1, Portsmouth, Ohio 45662.					
Vermont	Hardwick (Town/Village), Caledonia County.	Lamoille River Divergence	Approximately 460 feet upstream of the confluence with Lamoille River.	*793	*794
			At the divergence from Lamoille River	*805	*804
Maps available for inspection at the Hardwick Town Hall, 20 Church Street, Hardwick, Vermont.					
Send comments to Mr. Daniel P. Hill, Hardwick Town/Village Manager, P.O. Box 523, 20 Church Street, Hardwick, Vermont 05843.					
Wisconsin	Bay City (Village), Pierce County.	Mississippi River (Lake Pepin).	Entire shoreline within community	*681	*682
		Bay City Creek	Approximately 520 feet downstream of CSX Transportation.	*682	*683
			Approximately 900 feet upstream of Great River Road.	*691	*690

State	City/town/county	Source of flooding	Location	#Depth in feet above ground. *Elevation in feet (NGVD)	
				Existing	Modified
Maps available for inspection at Bay City Village Hall, W6371 Main Street, Bay City, Wisconsin. Send comments to Mr. James Turvaville, Bay City Village President, P.O. Box 9, Bay City, Wisconsin 54723.					
Wisconsin	Chippewa Falls (City), Chippawa County.	Duncan Creek	Upstream side of Bridge Street	*828	*827
			Approximately 0.72 mile upstream of Glen Loch Dam.	*899	*898
Maps available for inspection at the Chippewa Falls City Hall, 30 West Central Street, Chippewa Falls, Wisconsin. Send comments to The Honorable Virginia O. Smith, Mayor of the City of Chippewa Falls, 30 West Central Street, Chippewa Falls, Wisconsin 54729.					

(Catalog of Federal Domestic Assistance No. 83.100, ''Flood Insurance'')

Dated: December 11, 2001.

Robert F. Shea,

Acting Administrator, Federal Insurance and Mitigation Administration.

[FR Doc. 01–31371 Filed 12–19–01; 8:45 am]

BILLING CODE 6718–04–P

DEPARTMENT OF DEFENSE

48 CFR Part 235

[DFARS Case 2001–D002]

Defense Federal Acquisition Regulation Supplement; Research and Development Streamlined Contracting Procedures; Correction

AGENCY: Department of Defense (DoD).

ACTION: Correction.

SUMMARY: DoD is issuing a correction to the preamble to the proposed rule published at 66 FR 63348–63349, December 6, 2001, pertaining to streamlined research and development contracting.

FOR FURTHER INFORMATION CONTACT: Ms. Angelena Moy, Defense Acquisition Regulations Council, OUSD (AT&L)DP(DAR), IMD 3C132, 3062 Defense Pentagon, Washington, DC 20301–3062. Telephone (703) 602–1302; facsimile (703) 602–0350.

Correction

In the issue of Thursday, December 6, 2001, on page 63349, in the first column, the second sentence of the **Background** section is corrected to read as follows: ''The standard format is available on the research and development streamlined solicitation (RDSS) website at *http://www.rdss.osd.mil.''*

Michele P. Peterson,

Executive Editor, Defense Acquisition Regulations Council.

[FR Doc. 01–31354 Filed 12–19–01; 8:45 am]

BILLING CODE 5000–04–M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 223 and 224

[Docket No. 011212298–1298–01; I.D. No. 113001A;]

Listing Endangered and Threatened Wildlife and Plants and Designating Critical Habitat; 90-Day Finding for a Petition to List Atlantic White marlin (*Tetrapturus albidus*)

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

ACTION: Notice of petition finding; request for information and comments.

SUMMARY: NMFS announces the 90–day finding for a petition to list Atlantic white marlin (*Tetrapturus albidus*) as threatened or endangered throughout its known range and to designate critical habitat under the Endangered Species Act (ESA). NMFS finds that the petition presents substantial scientific information indicating that the petitioned action may be warranted. NMFS will conduct a status review of Atlantic white marlin to determine if the petitioned action is warranted. To ensure that the review is comprehensive, NMFS is soliciting information and comments pertaining to this species and potential critical habitat from any interested party. NMFS also seeks suggestions from the public for peer reviewers to take part in the peer review process for the Atlantic white marlin status review.

DATES: Comments and information related to this petition finding must be received by February 19, 2002.

ADDRESSES: Requests for copies of the petition, and information and comments on this finding should be submitted to Georgia Cranmore, Assistant Regional Administrator for Protected Resources, National Marine Fisheries Service, Southeast Regional Office, 9721 Executive Center Drive North, St. Peterburg, FL 33702–2432. The petition, finding and supporting data are available for public inspection, by appointment, during normal business hours at the above address.

FOR FURTHER INFORMATION CONTACT: Jennifer Lee, NMFS Southeast Region, (727) 570–5312; or David O'Brien, NMFS, Office of Protected Resources, (301) 713–1401.

SUPPLEMENTARY INFORMATION:

Background

Section 4 (b)(3)(A) of the ESA (16 U.S.C. 1531 *et seq.*) requires that NMFS make a finding as to whether a petition to list, delist, or reclassify a species presents substantial scientific or commercial information indicating that the petitioned action may be warranted. NMFS' ESA implementing regulations (50 CFR 424.14) define ''substantial information'' as the amount of information that would lead a reasonable person to believe that the measure proposed in the petition may be warranted. In determining whether substantial information exists for a petition to list a species, NMFS takes into account several factors, including information submitted with, and referenced in, the petition and all other information readily available in NMFS' files. To the maximum extent

practicable, this finding is to be made within 90 days of the receipt of the petition, and the finding is to be published promptly in the **Federal Register**. If NMFS finds that a petition presents substantial information indicating that the requested action may be warranted, section 4 (b)(3)(A) of the ESA requires the Secretary of Commerce (Secretary) to conduct a status review of the species. Section 4 (b)(3)(B) requires the Secretary to make a finding as to whether or not the petitioned action is warranted within 1 year of the receipt of the petition.

Analysis of Petition

On September 4, 2001, NMFS received a petition from the Biodiversity Legal Foundation and James R. Chambers requesting NMFS to list the Atlantic white marlin (Tetrapturus albidus) as threatened or endangered throughout its range, and to designate critical habitat under the ESA. The petition contained a detailed description of the species, including the present legal status; taxonomy and physical appearance; ecological and fisheries importance; distribution; physical and biological characteristics of its habitat and ecosystem relationships; population status and trends; and factors contributing to the population's decline. Potential threats identified in the petition include: (1) overutilization for commercial purposes; (2) inadequacy of existing regulatory mechanisms; (3) predation; and (4) other natural or man-made factors affecting the species' continued existence. The petitioners also included information regarding how the species would benefit from being listed under the ESA, cited references and provided appendices in support of the petition.

Under the ESA, a listing determination can address a species, subspecies, or a distinct population segment (DPS) of a species (16 U.S.C. 1532 (16)). The petitioners requested that NMFS list Atlantic white marlin throughout its entire range. They are found in warm waters throughout tropical and temperate portions of the Atlantic Ocean and its adjacent seas (Caribbean, Mediterranean and Gulf of Mexico). A highly migratory pelagic species, they are found predominantly in the open ocean over deep water, near the surface in the vicinity of major ocean currents where their prey is concentrated. Their food resources include small fishes and invertebrates such as squid that can be swallowed whole.

The petitioners provided a detailed narrative justification for their petitioned action, describing past and present numbers and distribution of Atlantic white marlin. Information regarding its status was provided for the entire range of the species. The petition was accompanied by appropriate supporting documentation, including the most recent stock assessment for this species (SCRS/00/23).

In 1997, the Atlantic white marlin was listed as overfished under the Magnuson-Stevens Fishery Conservation and Management Act (16 U.S.C. 1801 *et seq.*). In April 1999, NMFS published Amendment 1 to the Atlantic Billfish Fishery Management Plan, which included rebuilding programs and measures to reduce bycatch and bycatch mortality for Atlantic billfish, including white marlin. The International Commission for the Conservation of Atlantic Tunas (ICCAT), responsible for management of tunas and tuna-like fishes of the Atlantic Ocean also considers the Atlantic white marlin to be overfished. Several binding recommendations have been adopted by ICCAT over the last few years to reduce landings and improve data and monitoring. The most recent recommendation in November 2000 included a two-phase rebuilding plan involving further landing reductions and the development of more rebuilding measures after the next stock assessments in 2002.

The petitioners assert that existing protection for Atlantic white marlin at both the national and international level is inadequate to conserve the species or prevent its slide to extinction. The population's decline has been documented thoroughly by ICCAT's scientific advisors, the Standing Committee for Research and Statistics (SCRS). According to the petitioners, the primary cause of the Atlantic white marlin decline is due to bycatch in the international swordfish and tuna fisheries. The most recent stock assessment conducted in July of 2000 (SCRS/00/23) indicates that by the end of 1999: (1) the total Atlantic stock biomass had declined to less than 15 percent of its maximum sustainable yield level; (2) fishing mortality was estimated to be at least seven times higher than the sustainable level; (3) overfishing has taken place for over three decades; and (4) the stock is less productive than previously estimated, with a maximum sustainable yield smaller than 1,300 metric tons. The population's abundance was last at its long-term sustainable level in 1980. Reduction in prey species availability may also be a threat to the species, with two of its important prey species, Atlantic bluefish and squid, listed as overfished under the Magnuson-Stevens Act (16 U.S.C. 1801 *et seq.*).

Petition Finding

Based on the above information and the criteria specified in 50 CFR 424.14 (b)(2), NMFS finds that the petitioner presents substantial scientific and commercial information indicating that a listing of Atlantic white marlin may be warranted. Under section 4 (b)(3)(A) of the ESA, this finding requires that NMFS commence a status review on Atlantic white marlin. NMFS is now initiating this review. Within one year of the receipt of the petition (by September 3, 2002), a finding will be made as to whether listing the Atlantic population of the white marlin as threatened or endangered is warranted, as required by section 4 (b)(3)(B) of the ESA. If warranted, NMFS will publish a proposed rule and take public comment before developing and publishing a final rule.

Listing Factors and Basis for Determination

Under section 4 (a)(1) of the ESA, a species can be determined to be threatened or endangered for any one of the following reasons: (1) Present or threatened destruction, modification, or curtailment of habitat or range; (2) over-utilization for commercial, recreational, scientific, or educational purposes; (3) disease or predation; (4) inadequacy of existing regulatory mechanisms; or (5) other natural or manmade factors affecting its continued existence. Listing determinations are made solely on the basis of the best scientific and commercial data available, after conducting a review of the status of the species and taking into account efforts made by any state or foreign nation to protect such species.

Information Solicited

To ensure that the status review is completed in a timely manner and based on the best available scientific and commercial data, NMFS is soliciting information and comments on whether the Atlantic white marlin is endangered or threatened based on the above listing criteria. Specifically, NMFS is soliciting information in the following areas: (1) Historical and current abundance of Atlantic white marlin; (2) current spatial distribution; (3) population status and trends; (4) information on any current or planned activities that may adversely impact Atlantic white marlin, especially related to the five listing factors identified above; and (4) ongoing efforts to protect Atlantic white marlin and their habitat. NMFS requests that all data,

information, and comments be accompanied by: (1) supporting documentation such as maps, bibliographic references, or reprints of pertinent publications; and (2) the submitter's name, address, and any association, institution, or business that the person represents.

Critical Habitat

NMFS is also requesting information on areas that may qualify as critical habitat for the Atlantic white marlin. Areas that include the physical and biological features essential to the recovery of the species should be identified. Areas outside the present range should also be identified if such areas are essential to the recovery of the species. Essential features include, but are not limited to: (1) space for individual growth and for normal behavior; (2) food, water, air, light, minerals, or other nutritional or physiological requirements; (3) cover or shelter; (4) sites for reproduction and development of offspring; and (5) habitats that are protected from disturbance or are representative of the historical, geographical, and ecological distributions of the species (50 CFR 424.12 (b)).

For areas potentially qualifying as critical habitat, NMFS requests information describing (1) the activities that affect the area or that could be affected by the designation, and (2) the economic costs and benefits of management measures likely to result from the designation. NMFS is required to consider the probable economic and other impacts on proposed or ongoing activities in making a final critical habitat designation(50 CFR 424.19).

Peer Review

On July 1, 1994, NMFS, jointly with the U.S. Fish and Wildlife Service, published a series of policies regarding listings under the ESA, including a policy for peer review of scientific data (59 FR 34270). The intent of the peer review policy is to ensure that listings are based on the best scientific and commercial data available. NMFS is soliciting the names of recognized experts in the field that could take part in the peer review process for this status review. Independent peer reviewers will be selected from the academic and scientific community, tribal and other Native American groups, Federal and state agencies, the private sector, and public interest groups.

References Cited

SCRS. 2000. Report of the ICCAT Billfish Workshop (Miami, FL, USA, July 18–28,2000) – Billfish Detailed Report

Authority: 16 U.S.C. 1531 *et seq.*

Dated: December 14, 2001.

William T. Hogarth,

Assistant Administrator for Fisheries, National Marine Fisheries Service.

[FR Doc. 01–31285 Filed 12–19–01; 8:45 am]

BILLING CODE 3510–22–S

Notices

Federal Register

Vol. 66, No. 245

Thursday, December 20, 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

Office of the Secretary

[Docket No. 01–082–1]

Declaration of Emergency Because of Infectious Salmon Anemia

Infectious salmon anemia (ISA) is a foreign animal disease of Atlantic salmon caused by an orthomyxovirus. While this virus appears to only cause disease in Atlantic salmon, both wild and farmed, sea run brown trout, rainbow trout, and other wild fish such as herring may act as carriers or reservoirs of the virus. Since its first isolation in Norway in 1984, it has also been found in Canada and Scotland. ISA may also be called hemorrhagic kidney syndrome (HKS) in Atlantic salmon. The first case of ISA in the United States was confirmed on February 15, 2001. As of June 25, 2001, eight cases have been confirmed in Maine.

Clinical signs of ISA generally appear within 2 to 4 weeks after infection and include lethargy, swelling and hemorrhaging of the kidneys and other organs, protruding eyes, pale gills, darkening of the posterior gut, and swelling of the spleen. Mortality is highly variable and can range from 3 percent to over 50 percent over one production cycle, depending on a number of factors.

Transmission occurs by direct contact, through parts from infected fish (mucus, blood, viscera, trimmings, feces), contact with equipment contaminated with parts from infected fish, people who handled infected fish, and sea lice. Salmon pens within 3 miles of infected farms or processing plants handling infected fish without adequate waste treatment have up to 13 times greater risk of becoming infected with ISA.

The State of Maine has taken steps to prevent further spread of ISA; however, the State lacks sufficient funding and personnel to effectively control this disease, which poses a potentially serious threat to animal health and the U.S. economy. Therefore, State officials have asked the United States Department of Agriculture (USDA) to assist with epidemiology, surveillance, and indemnification programs. Our goal is to control and contain the disease through rapid detection and depopulation of salmon that have been infected with or exposed to ISA.

We believe the virus can be controlled and contained within high-risk zones through surveillance, vaccination, and best management practices. Control of ISA requires depopulation of all pens holding infected fish, but the risk of loss of stock without indemnification makes it less likely that farmers will report outbreaks, and currently, farmers are under no obligation to report the occurrence of fish disease to the Animal and Plant Health Inspection Service (APHIS) of the USDA. Indemnification is necessary to provide an incentive for farmers to report diseased fish and to continue testing.

Vaccination appears to be a potentially effective means of controlling ISA. If vaccines now being tested prove to be efficacious, restocking affected zones with vaccinated smolts could reduce the incidence and spread of ISA. APHIS could be instrumental in vaccine development and providing permits for vaccine distribution.

Successful control of ISA also requires extensive surveillance. Current surveillance in the high-risk zones of Maine's Cobscook and Passamaquoddy Bays has been limited to once per month because of that State's budgetary and personnel considerations. Elsewhere, surveillance has been limited to a quarterly basis. To control ISA, it is vital that all sites, both high- and low-risk, undergo monthly surveillance.

Canada has been seriously affected by ISA. Fish farmers in that country have lost $70 million (in U.S. dollars) as a result of the virus, and Canada's Federal and Provincial governments have contributed over $29.5 million (in U.S. dollars) to compensate salmon farmers. As a result of a comprehensive ISA program that includes indemnification, Canada has reduced the incidence of ISA from 18 infected sites in 1998 to 4 infected sites in 2001.

In addition to posing a significant worldwide risk to the economic viability and sustainability of salmon aquaculture, ISA poses a specific threat to the United States. Salmon production in Maine exceeds 36.2 million pounds annually, with a value of $101 million. Outbreaks of ISA in Maine have already cost that State's salmonid industry approximately $11 million due to the depopulation of infected or exposed salmon. This loss is greater when capital expenditures such as labor costs and equipment are considered.

These lost revenues have more significant effects. Resulting budgetary effects have compromised efforts by the State of Maine and by the salmonid industry to control ISA. Additionally, the devastating effects of the virus reach the economies of other States and have serious ramifications for international trade. For example, when ISA emerged in Maine, Chile and the European Union prohibited the importation of trout and salmon eggs from the States of Washington, Maine, and Idaho. The resulting trade loss is estimated at $2 million for 2001.

Therefore, in order to address the ISA threat to the U.S. salmonid industry, APHIS has determined that additional funds are needed for an ISA control program. In addition to the payment of indemnity, these funds will be used for program activities such as depopulation and disposal, clean-up and disinfection, establishment of surveillance programs, epidemiology and diagnostic support, and training for producers and veterinarians. These activities will reduce the spread of ISA and should save the Federal Government and salmonid industry from having to deal with a more costly and widespread problem in the future.

Therefore, in accordance with the provisions of the Act of September 25, 1981, as amended (7 U.S.C. 147b), I declare that there is an emergency that threatens the livestock industry of this country and hereby authorize the transfer and use of such funds as may be necessary from appropriations or other funds available to the agencies or corporations of the United States Department of Agriculture to establish an ISA control program in the United States.

EFFECTIVE DATE: This declaration of emergency shall become effective December 13, 2001.

Ann M. Veneman,

Secretary of Agriculture.

[FR Doc. 01–31365 Filed 12–19–01; 8:45 am]

BILLING CODE 3410–34–U

DEPARTMENT OF AGRICULTURE

Hood/Willamette Resource Advisory Committee (RAC); Meeting

AGENCY: Forest Service, USDA.

ACTION: Meeting.

SUMMARY: The Hood/Willamette Resource Advisory Committee (RAC) will meet on Thursday and Friday, January 24–25, 2001. The meeting is scheduled to begin at 9:30 a.m. on Thursday and 8 a.m. on Friday, and will conclude at approximately 5 p.m. on Thursday and 12 p.m. on Friday. The meeting will be held at the Linn County Fair and Expo Center; 3700 Knox Butte Road; Albany, Oregon; (541) 926–4314. The tentative agenda includes: (1) Training on Federal Advisory Committee Act regulations; (2) Orientation on operation, roles, and responsibilities of the RAC; (3) Project submission and approval process; (4) Public Forum; (5) Training on collaboration; (6) Election of RAC chairperson.

The Public Forum is tentatively scheduled to begin at 3:30 p.m. on Thursday. Time allotted for individual presentations will be limited to 3–4 minutes. Written comments are encouraged, particularly if the material cannot be presented within the time limits for the Public Forum. Written comments may be submitted prior to the January 24th meeting by sending them to Designated Federal Official Donna Short at the address given below.

FOR FURTHER INFORMATION CONTACT: For more information regarding this meeting, contact Designated Federal Official Donna Short; Sweet Home Ranger District; 3225 Highway 20; Sweet Home, Oregon 97386; (541) 367–9220.

Dated: December 14, 2001.

Y. Robert Iwamoto,

Acting Forest Supervisor.

[FR Doc. 01–31324 Filed 12–19–01; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF AGRICULTURE

Forest Service

Madera and Fresno County Resource Advisory Committees; Meeting

AGENCY: Forest Service, USDA.

ACTION: Notice of Resource Advisory Committee meeting.

SUMMARY: Pursuant to the authorities in the Federal Advisory Committee Act of 1972 (Pub. L. 92–463) and under the Secure Rural Schools and Community Self-Determination Act of 2000 (Public Law 106–393) the Sierra National Forest's Resource Advisory Committees (RAC) for Madera and Fresno Counties will meet on January 12, 2002. The Madera Resource Advisory Committee will meet at the Mariposa/Minarets Ranger Station in North Fork, CA. The Fresno County Resource Advisory Committee will meet at the Pineridge/Kings River Ranger Station in Prather, CA. The purpose of the meetings is to provide an overview of Resource Advisory Committee roles and responsibilities and to determine how the RAC will conduct business for future meetings.

DATES: Both the Madera and the Fresno meetings will be held on January 12, 2002. The meetings will be held from 8 a.m. To 4 p.m.

ADDRESSES: The Madera County RAC meeting will be held at the Mariposa/Minarets Ranger Station, 57003 Road 225, North Fork CA. The Fresno County RAC meeting will be held at the Pineridge/Kings River Ranger Station, 29688 Auberry Road, Prather CA.

FOR FURTHER INFORMATION CONTACT: Sue Exline, USDA, Sierra National Forest, 1600 Tollhouse Road, Clovis, CA 93611 (559) 297–0706 ext. 4804 e-MAIL *skexline@fs.fed.us.*

SUPPLEMENTARY INFORMATION: Agenda items to be covered include: (1) Roles and responsibility of Advisory Committee; (2) Flow of work; (3) Project process, submission forms and deadlines; (4) Election of RAC chairperson; (5) Public comment. The meeting is open to the public. Public input opportunity will be provided and individuals will have the opportunity to address the Committee at that time.

Dated: December 14, 2001.

James L. Boynton,

Forest Supervisor.

[FR Doc. 01–31323 Filed 12–19–01; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 121401D]

Proposed Information Collection; Comment Request; Alaska Region Logbook Family of Forms

AGENCY: National Oceanic and Atmospheric Administration (NOAA)

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 February 19, 2002.

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 Patsy A. Bearden, F/AKR2, P.O. Box 21668, Juneau, AK 99802–1668 (telephone 907–586–7008).

SUPPLEMENTARY INFORMATION:

I. Abstract

NMFS manages the U.S. groundfish fisheries of the Exclusive Economic Zone (EEZ) off Alaska under the Fishery Management Plan for Groundfish of the Gulf of Alaska and the Fishery Management Plan for the Groundfish Fishery of the Bering Sea and Aleutian Islands Area (FMPs). The North Pacific Fishery Management Council prepared the FMPs pursuant to the Magnuson-Stevens Act. Regulations implementing the FMPs are at 50 CFR part 679.

The recordkeeping and reporting requirements at 50 CFR part 679.5 form the basis for this collection of information. The National Marine Fisheries Service (NMFS) Alaska Region requests information from participating groundfish fishermen which, upon receipt, results in an increasingly more efficient and accurate database. The collection is necessary for the management and monitoring of the groundfish fisheries of the EEZ off

Alaska for purposes of conservation of the fisheries.

II. Method of Collection

Daily logbooks and paper forms are required from participants, and methods of submittal include paper logbooks, facsimile transmission of paper forms, and electronic reporting. The specific types of reporting required are identified below in the section for ''Estimated Time Per Response.''

III. Data

OMB Number: 0648–0213.

Form Number: None.

Type of Review: Regular submission.

Affected Public: Individuals or households, business or other for-profit organizations.

Estimated Number of Respondents: 1,033.

Estimated Time Per Response: 35 minutes for Weekly Cumulative Mothership ADF&G Fish Tickets; 14 minutes for U.S. Vessel Activity Report; 18 minutes for Catcher Vessel trawl gear daily fishing logbook (DFL); 28 minutes for Catcher Vessel longline and pot gear DFL; 30 minutes for Catcher/processor trawl gear daily cumulative production logbook (DCPL); 41 minutes for Catcher/processor longline and pot gear DCPL; 31 minutes for Shoreside processor DCPL; 31 minutes for Mothership DCPL; 8 minutes for Shoreside Processor Check-in/Check-out Report; 7 minutes for Mothership or Catcher/processor Check-in/Check-out Report; 11 minutes for Product transfer report; 17 minutes for Weekly Production Report; 11 minutes for Daily Production Report; estimated time to electronically submit the weekly production report (5 min./report); 5 minutes to electronically submit the check-in/check-out report; 23 minutes for buying station report.

Estimated Total Annual Burden Hours: 45,086.

Estimated Total Annual Cost to Public: $215,786.

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: December 13, 2001.

Gwellnar Banks,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. 01–31396 Filed 12–19–01; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF DEFENSE

Department of the Army; Corps of Engineers

Intent To Prepare a Draft Environmental Impact Statement (EIS) for the Mississippi River Diversion Near Benny's Bay, Ecosystem Restoration Analysis, Mississippi River Delta, LA

AGENCY: Army Corps of Engineers, DoD.

ACTION: Notice of intent.

SUMMARY: Estimates show that approximately 30 square miles of coastal wetlands convert to open water in Louisiana each year. The causes of the wetland loss are varied and complex, depending upon wetland location and type. Wetland loss has been attributed to the loss of freshwater, nutrient, and sediment input from the Mississippi River due the construction of flood protection levees, salt water intrusion, oil and gas access canals, navigation channels, subsidence, and sea level rise. The loss of wetlands has serious negative impacts to fish and wildlife populations, hurricane protection, and the economy of Louisiana and the nation. Many believe that reestablishment of freshwater, nutrient, and sediment flows from the Mississippi River into degraded wetlands would restore and sustain coastal wetland ecosystem structure and function that have been lost.

FOR FURTHER INFORMATION CONTACT: Questions concerning the EIS should be addressed to Mr. Michael Salyer at (504) 862–2037. Mr. Salyer may also be reached at fax number (504) 862–2572 or by e-mail at *michael.r.salyer@mvn02.usace.army.mil*. Mr. Salyer's address is U.S. Army Corps of Engineers, PM–RS, P.O. Box 60267, New Orleans, Louisiana 70160–0267.

SUPPLEMENTARY INFORMATION:

1. *Authority.* The U.S. Army Corps of Engineers, New Orleans District, at the direction of the Louisiana Coastal Wetlands Conservation and Restoration Task Force, is initiating this study under the authority of the Coastal Wetlands Planning, Protection and Restoration Act, Pub. L. 101–646. This act includes funds for the planning of measures for the creation, restoration, protection and enhancement of coastal wetlands.

2. *Proposed Action.* The proposed action would restore, enhance, and sustain the coastal wetlands ecosystem east of the Mississippi River in Mississippi River Delta, Louisiana. This ecosystem is located in Region 2, Mississippi River Delta, Plaquemines Parish. The diversion inlet would be located on the east bank of the Mississippi River at Mile 7.5 above Head of Passes. This action would likely utilize the nutrients, freshwater, and sediment of the Mississippi River for this restoration. This proposed action is intended to reestablish ecosystem functions. This proposed action would restore the wetland acreage and biodiversity of the Mississippi River Delta. Environmental analysis would be used to determine the most practical plan, which would provide for the greatest overall public benefit. The recommended plan would restore degraded wetlands with the least adverse impacts to stakeholder interests.

3. *Alternatives.* Alternatives recommended for consideration presently include the construction of a river diversion structure in the vicinity of Benny's Bay, dedicated dredging to construct wetlands, the construction of outfall management structures, and combinations of the above. Various capacities for the diversion structure would be investigated. Various increments of dedicated dredging and increments of long-term diversion amounts would also be investigated.

4. *Scoping.* Scoping is the process for determining the scope of alternatives and significant issues to be addressed in the EIS. For this analysis, a letter will be sent to all parties believed to have an interest in the analysis, requesting their input on alternatives and issues to be evaluated. The letter will also notify interested parties of public scoping meetings that will be held in the local area. Notices will also be sent to local news media. All interested parties are invited to comment at this time, and anyone interested in this study should request to be included in the study mailing list.

A public scoping meeting will be held in the early part of 2002. The meeting will be held in Plaquemines parish, Louisiana. Additional meetings could be held, depending upon interest and if it

is determined that further public coordination is warranted.

5. *Significant Issues.* The tentative list of resources and issues to be evaluated in the EIS includes tidal wetlands (marshes and swamps), aquatic resources, commercial and recreational fisheries, wildlife resources, essential fish habitat, water quality, air quality, threatened and endangered species, recreation resources, and cultural resources. Socioeconomic items to be evaluated in the EIS include navigation, flood protection, business and industrial activity, employment, land use, property values, public/community facilities and services, tax revenues, population, community and regional growth, transportation, housing, community cohesion, and noise.

6. *Environmental Consultation and Review.* The U.S. Fish and Wildlife Service (USFWS) will be assisting in the documentation of existing conditions and assessment of effects of project alternatives through Fish and Wildlife Coordination Act consultation procedures. The USFWS will also provide a Fish and Wildlife Coordination Act report. Consultation will also be accomplished with the USFWS and the National Marine Fisheries Service (NMFS) concerning threatened and endangered species and their critical habitat. The NMFS will be consulted on the effects of this proposed action on Essential Fish Habitat. The draft EIS or a notice of its availability will be distributed to all interested agencies, organizations, and individuals.

7. *Estimated Date of Availability.* Funding levels will dictate the date when the draft EIS is available. The earliest that the draft EIS is expected to be available is summer of 2002.

Dated: December 11, 2001.

Michael R. Burt,

Lieutenant Colonel, U.S. Army, Acting District Engineer.

[FR Doc. 01–31358 Filed 12–19–01; 8:45 am]

BILLING CODE 3710–84–P

DEPARTMENT OF ENERGY

Office of Science; Continuation of Solicitation for the Office of Science Financial Assistance Program—Notice 02–01

AGENCY: U.S. Department of Energy.

ACTION: Annual notice of continuation of availability of grants and cooperative agreements.

SUMMARY: The Office of Science of the Department of Energy hereby announces its continuing interest in receiving grant applications for support of work in the following program areas: Basic Energy Sciences, High Energy Physics, Nuclear Physics, Advanced Scientific Computing, Fusion Energy Sciences, Biological and Environmental Research, and Energy Research Analyses. On September 3, 1992, (57 FR 40582), DOE published in the **Federal Register** the Office of Energy Research Financial Assistance Program (now called the Office of Science Financial Assistance Program), 10 CFR part 605, Final Rule, which contained a solicitation for this program. Information about submission of applications, eligibility, limitations, evaluation and selection processes and other policies and procedures are specified in 10 CFR part 605.

DATES: Applications may be submitted at any time in response to this Notice of Availability.

ADDRESSES: Applications must be sent to: Director, Grants and Contracts Division, Office of Science, SC–64, U.S. Department of Energy, 19901 Germantown Road, Germantown, MD 20874–1290. When preparing applications, applicants should use the Office of Science Financial Assistance Program Application Guide and Forms located on the World Wide Web at *http://www.science.doe.gov/production/grants/grants.html.* Applicants without Internet access may call 301–903–5212 for information.

SUPPLEMENTARY INFORMATION: This notice is published annually and remains in effect until it is succeeded by another issuance by the Office of Science, usually published after the beginning of the fiscal year. This annual Notice 02–01 succeeds Notice 01–01, which was published December 7, 2000.

It is anticipated that approximately $400 million will be available for grant and cooperative agreement awards in FY 2002. The DOE is under no obligation to pay for any costs associated with the preparation or submission of an application. DOE reserves the right to fund, in whole or in part, any, all, or none of the applications submitted in response to this Notice.

The following program descriptions are offered to provide more in-depth information on scientific and technical areas of interest to the Office of Science:

1. Basic Energy Sciences

The Basic Energy Sciences (BES) program supports fundamental research in the natural sciences and engineering leading to new and improved energy technologies and to understanding and mitigating the environmental impacts of energy technologies. The science areas and their objectives are as follows:

(a) Materials Sciences

The objective of this program is to increase the understanding of phenomena and properties important to materials behavior that will contribute to meeting the needs of present and future energy technologies. It is comprised of the subfields metallurgy, ceramics, condensed matter physics, materials chemistry, and related disciplines where the emphasis is on the science of materials.

Program Contact: (301) 903–3427.

(b) Chemical Sciences

The objective of this program is to expand, through support of basic research, knowledge of various areas of chemistry, chemical engineering and atomic molecular and optical physics with a goal of contributing to new or improved processes for developing and using domestic energy resources in an efficient and environmentally sound manner. Disciplinary areas where research is supported include atomic molecular and optical physics; physical, inorganic and organic chemistry; chemical physics; photochemistry; radiation chemistry; analytical chemistry; separations science; actinide chemistry; and chemical engineering sciences. Program Contact: (301) 903–5804.

(c) Engineering Research

This program's objectives are: (1) To extend the body of knowledge underlying current engineering practice in order to open new ways for enhancing energy savings and production, prolonging useful equipment life, and reducing costs while maintaining output performance, and environmental quality; and (2) to broaden the technical and conceptual base for solving future engineering problems in the energy technologies. Program Contact: (301) 903–3427.

(d) Geosciences

The goal of this program is to develop a quantitative and predictive understanding of geologic processes related to energy and environmental quality. The program emphasizes cross-cutting basic research that will improve understanding of reactive geochemical transport and other subsurface processes and properties and how to image them using techniques ranging from electrons, x-rays or neutrons to electromagnetic and seismic waves. Applications of this fundamental understanding might include transport of contaminant fluids, hydrocarbons, sequestered CO2 or

performance prediction for repository sites. The emphasis is on the disciplinary areas of geochemistry, geophysics, geomechanics, and hydrogeology with a focus on the upper levels of the earth's crust. Particular emphasis is on processes taking place at the atomic and molecular scale. Specific topical areas receiving emphasis include: high resolution geophysical imaging; rock physics, physics of fluid transport, and fundamental properties and interactions of rocks, minerals, and fluids.

Program Contact: (301) 903–4061.

(e) Energy Biosciences

The primary objective of this program is to generate an understanding of fundamental biological mechanisms in plants and microorganisms that will support future technological developments related to DOE's mission. The research serves to provide the basic information foundation for environmentally responsible production and conversion of renewable resources for fuels, chemicals, and the conservation of energy. This program has special requirements for the submission of preapplications, when to submit, and the length of the applications. Applicants are encouraged to contact the program regarding these requirements.

Program Contact: (301)–903–2873.

2. High Energy and Nuclear Physics

This program supports about 90% of the U.S. efforts in high energy and nuclear physics. The objectives of these programs are indicated below:

(a) High Energy Physics

The primary objectives of this program are to understand the ultimate structure of matter in terms of the properties and interrelations of its basic constituents, and to understand the nature and relationships among the fundamental forces of nature. The research falls into three broad categories: Experimental research, theoretical research, and technology R&D in support of the high energy physics program.

Program Contact: (301)–903–3624.

(b) Nuclear Physics (Including Nuclear Data Program)

The primary objectives of this program are an understanding of the interactions and structures of atomic nuclei and nuclear matter at the most elementary level possible, and an understanding of the fundamental forces of nature as manifested in nuclear matter.

Program Contact: (301)–903–3613.

3. Advanced Scientific Computing Research

This program fosters and supports fundamental research in advanced computing research (applied mathematics, computer science and networking), and operates supercomputer, networking, and related facilities to enable the analysis, modeling, simulation, and prediction of complex phenomena important to the Department of Energy.

Mathematical, Information, and Computational Sciences

This subprogram supports a spectrum of fundamental research in applied mathematical sciences, computer science, and networking from basic through prototype development. Results of these efforts are used to form partnerships with users in scientific disciplines to validate the usefulness of the ideas and to develop them into tools. Testbeds on important applications for DOE are supported by this subprogram. Areas of particular focus are:

Applied Mathematics: Research on the underlying mathematical understanding and numerical algorithms to enable effective description and prediction of physical systems such as fluids, magnetized plasmas, or protein molecules. This includes, for example, methods for solving large systems of partial differential equations on parallel computers, techniques for choosing optimal values for parameters in large systems with hundreds to hundreds of thousands of parameters, improving our understanding of fluid turbulence, and developing techniques for reliably estimating the errors in simulations of complex physical phenomena.

Computer Science: Research in computer science to enable large scientific applications through advances in massively parallel computing such as very lightweight operating systems for parallel computers, distributed computing such as development of the Parallel Virtual Machine (PVM) software package which has become an industry standard, and large scale data management and visualization. The development of new computer and computational science techniques will allow scientists to use the most advanced computers without being overwhelmed by the complexity of rewriting their codes every 18 months.

Networking: Research in high performance networks and information surety required to support high performance applications—protocols for high performance networks, methods for measuring the performance of high performance networks, and software to enable high speed connections between high performance computers and networks. The development of high speed communications and collaboration technologies will allow scientists to view, compare, and integrate data from multiple sources remotely.

Program Contact: (301)–903–5800.

4. Fusion Energy Sciences

The mission of the Fusion Energy Sciences program is to advance plasma science, fusion science, and fusion technology—the knowledge base needed for an economically and environmentally attractive fusion energy source. The Office of Fusion Energy Sciences (OFES) supports basic and applied research, encourages technical connectivity with the broader U.S. science community, and uses international collaboration to accomplish this mission.

(a) Research Division

This Division seeks to develop the physics knowledge base needed to advance the Fusion Energy Sciences program toward its goals. Research into physics issues associated with medium to large-scale confinement devices is essential to studying conditions relevant to the production of fusion energy. Experiments on this scale of devices are used to explore the limits of specific confinement concepts, as well as study associated physical phenomena. Specific areas of interest include: (1) Reducing plasma energy and particle transport at high densities and temperatures, (2) understanding the physical laws governing confinement of high pressure plasmas, (3) investigating plasma wave interactions, and (4) studying and controlling impurity particle transport and exhaust in plasmas.

Research is also carried out in the following areas: (1) Basic plasma science research directed at furthering the understanding of fundamental processes in plasmas; (2) theoretical research to provide the understanding of fusion plasmas necessary for interpreting results from present experiments, planning future experiments, and designing future confinement devices; (3) critical data on plasma properties, atomic physics and new diagnostic techniques for support of confinement experiments; (4) supporting research on innovative confinement concepts; and (5) research on issues that support the development of Inertial Fusion Energy, for which target development is carried out by the

Office of Defense Programs in the Department of Energy's National Nuclear Security Agency.

Program Contact: (301) 903–4095.

(b) Facilities and Enabling Technologies Division

This Division is responsible for overseeing the facility operations and enabling research and development activity budgets within the OFES. Grant program opportunities are in the enabling research and development activity. (Grants for scientific use of the facilities operated/maintained by this Division should be addressed to the Research Division.) The enabling technologies program supports the advancement of fusion science in the nearer-term by carrying out research on technological topics that: (1) Enable domestic experiments to achieve their full performance potential and scientific research goals; (2) permit scientific exploitation of the performance gains being sought from physics concept improvements; (3) allow the U.S. to enter into international collaborations gaining access to experimental conditions not available domestically; and (4) explore the science underlying these technological advances.

The enabling technologies program supports pursuit of fusion energy science for the longer-term by conducting research aimed at innovative technologies, designs and materials to point toward an attractive fusion energy vision and affordable pathways for optimized fusion development.

Program Contact: (301) 903–3068.

5. Biological and Environmental Research Program

For over 50 years the Biological and Environmental Research (BER) Program has been investing to advance environmental and biomedical knowledge connected to energy. The BER program provides fundamental science to underpin the business thrusts of the Department's strategic plan. Through its support of peer-reviewed research at national laboratories, universities, and private institutions, the program develops the knowledge needed (1) To identify, understand, and anticipate the long-term health and environmental consequences of energy production, development, and use, and (2) to develop biology based solutions that address DOE and National needs.

(a) Life Sciences Research

Research is focused on using DOE's unique resources and facilities to develop fundamental biological information and advanced technologies to understand and mitigate potential health effects of energy development, energy use, and waste cleanup, and that will underpin biotechnology based solutions to energy challenges. The objectives are: (1) To create and apply new technologies and resources in DNA sequencing, comparative genomics, and bioinformatics to characterize the human genome; (2) to develop and support DOE national user facilities for use in fundamental structural biology; (3) to use model organisms to understand human genome organization, human gene function and control, and the functional relationships between human genes and proteins; (4) to characterize and exploit the genomes and diversity of microbes with potential relevance for energy, bioremediation, or global climate; (5) to understand and characterize the risks to human health from exposures to low levels of radiation; and (6) to anticipate and address ethical, legal, and social implications arising from genome research.

Program Contact: (301) 903–5468.

(b) Medical Applications and Measurement Science

The research is designed to develop beneficial applications of nuclear and other energy-related technologies for medical diagnosis and treatment. The research is directed at discovering new applications of radiotracer agents for medical research as well as for clinical diagnosis and therapy. A major emphasis is placed on application of the latest concepts and developments in genomics, structural biology, computational biology, and instrumentation. Much of the research seeks breakthroughs in noninvasive imaging technologies such as positron emission tomography.

The measurement science activities focus on research in the basic science of chemistry, physics and engineering as applied to bioengineering.

Program Contact: (301) 903–3213.

(c) Environmental Remediation

The research is primarily focused on the fundamental biological, chemical, geological, and physical processes that must be understood for the development and advancement of new, effective, and efficient processes for the remediation and restoration of the Nation's nuclear weapons production sites. Priorities of this research are bioremediation and operation of the William R. Wiley Environmental Molecular Sciences Laboratory (EMSL). Bioremediation activities are centered on the Natural and Accelerated Bioremediation Research (NABIR) program, which provides the fundamental science to serve as the basis for development of cost-effective bioremediation and long-term stewardship of radionuclides and metals in the subsurface at DOE sites.

Program Contact: (301) 903–3281.

(d) Environmental Processes

The program seeks to understand the basic physical, chemical, and biological processes of the Earth's atmosphere, land, and oceans and how these processes may be affected by energy production and use. The research is designed to provide data that will enable an objective assessment of the potential for and the consequences of human-induced climate change at global and regional scales. It also provides data to enable assessments of mitigation options to prevent such a change. The program is comprehensive with an emphasis on understanding and simulating the radiation balance from the surface of the Earth to the top of the atmosphere (including the effect of clouds, water vapor, trace gases, and aerosols), on enhancing the quantitative models necessary to predict possible climate change at global and regional scales, and on understanding ecological effects of climate change.

The Climate Change Technology (CCT) research seeks the understanding necessary to exploit the biosphere's natural carbon cycling processes to enhance the sequestration of carbon dioxide in terrestrial systems and the ocean, and to understand its potential environmental implications. The CCT includes research that can lead to the development of approaches to reduce or overcome the environmental and biological factors or processes that limit the sequestration of carbon in these systems to enhance the net sequestration of carbon. The research includes studies on terrestrial and ocean carbon sequestration and disposal, including research to modify the carbon sequestration capacity and rate by marine and terrestrial organisms and to understand the potential environmental implications of designed enhancements of carbon sequestration by terrestrial systems, and impacts of purposeful CO_2 injection in oceans.

Program Contact: (301) 903–3281.

6. Energy Research Analyses

This program supports energy research analyses of the Department's basic and applied research activities. Specific objectives include assessments to identify any duplication or gaps in scientific research activities, and impartial and independent evaluations of scientific and technical research efforts. Consistent with these overall objectives, this program conducts

numerous research studies to assess directions in science and to identify and assess new and improved approaches to science management.

Program Contact: (202) 586–9942.

7. Experimental Program to Stimulate Competitive Research (EPSCoR)

The objective of the EPSCoR program is to enhance the capabilities of EPSCoR states to conduct nationally competitive energy-related research and to develop science and engineering manpower to meet current and future needs in energy-related fields. This program addresses basic research needs across all of the Department of Energy research interests. Research supported by the EPSCoR program is concerned with the same broad research areas addressed by the Office of Science programs that are described in this notice. The EPSCoR program is restricted to applications, which originate in twenty-one states (Alabama, Alaska, Arkansas, Hawaii, Idaho, Kansas, Kentucky, Louisiana, Maine, Mississippi, Montana, Nebraska, Nevada, New Mexico, North Dakota, Oklahoma, South Carolina, South Dakota, Vermont, West Virginia, and Wyoming) and the commonwealth of Puerto Rico. It is anticipated that only a limited number of new competitive research grants will be awarded under this program subject to the availability of funds.

Program Contact: (301) 903–3427.

Issued in Washington, DC on: December 10, 2001.

John Rodney Clark,

Associate Director of Science for Resource Management.

[FR Doc. 01–31351 Filed 12–19–01; 8:45 am]

BILLING CODE 6450–02–U

DEPARTMENT OF ENERGY

Environmental Management Site-Specific Advisory Board, Nevada

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), Nevada Test Site. The Federal Advisory Committee Act (Pub. L. No. 92–463, 86 Stat. 770) requires that public notice of these meetings be announced in the **Federal Register**.

DATES: Wednesday, January 9, 2002, 6:00 p.m.–9:00 p.m.

ADDRESSES: Grant Sawyer State Office Building, 555 East Washington Avenue, Room 4401, Las Vegas, Nevada.

FOR FURTHER INFORMATION CONTACT: Kevin Rohrer, U.S. Department of Energy, Office of Environmental Management, P.O. Box 98518, Las Vegas, Nevada 89193–8513, phone: 702–295–0197, fax: 702–295–5300.

SUPPLEMENTARY INFORMATION: *Purpose of the Board:* The purpose of the Advisory Board is to make recommendations to DOE and its regulators in the areas of environmental restoration, waste management, and related activities.

Tentative Agenda: 1. Focus on the results of the recent peer review conducted on the Nevada Test Site Underground Test Area project strategy. Members of the Peer Review Team will be at the meeting to discuss their approach to the review and will be available to address question related to the technical report.

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 Kevin Rohrer, at the telephone number listed above. Requests must be received 5 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 a maximum of five minutes 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 p.m., Monday–Friday, except Federal holidays. Minutes will also be available by writing to Kevin Rohrer at the address listed above.

Issued at Washington, DC, on December 17, 2001.

Rachel M. Samuel,

Deputy Advisory Committee Management Officer.

[FR Doc. 01–31348 Filed 12–19–01; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Environmental Management Site-Specific Advisory Board, Fernald; Open Meeting

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), Fernald. The Federal Advisory Committee Act (Pub. L. No. 92–463, 86 Stat. 770) requires that public notice of these meetings be announced in the **Federal Register**.

DATES: Saturday, January 12, 2002, 8:30 a.m.–12:00 p.m.

ADDRESSES: Public Environmental Information Center 10995 Hamilton-Cleves Highway, Harrison, OH.

FOR FURTHER INFORMATION CONTACT: Doug Sarno, Phoenix Environmental, 6186 Old Franconia Road, Alexandria, VA 22310, at (703) 971–0030 or (513) 648–6478, or e-mail; djsarno@theperspectivesgroup.com.

SUPPLEMENTARY INFORMATION: *Purpose of the Board:* The purpose of the Board is to make recommendations to DOE in the areas of environmental restoration, waste management, and related activities.

Tentative Agenda:

8:30 a.m., Call to Order
8:30–8:45 a.m., Chair's Remarks and Ex Officio Announcements
8:45–9:45 a.m., Current Remediation Issues, Silos, Efficiency Efforts
9:45–10:00 a.m., Break
10:00–11:15 a.m., Budget and Priority Issues for FY 2006 Planning
11:15–11:45 a.m., Update and Planning for Public Records Feasibility Study
11:45–12:00 p.m., Public Comments
12:00 p.m., Adjourn

Public Participation: The meeting is open to the public. Written statements may be filed with the Board chair either before or after the meeting. Individuals who wish to make oral statements pertaining to agenda items should contact the Board chair at the address or telephone number listed below. 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, Gary Stegner, Public Affairs Office, Ohio Field Office, U.S. Department of Energy, 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.

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 the Fernald Citizens' Advisory Board, % Phoenix Environmental Corporation, MS–76, Post Office Box 538704, Cincinnati, OH 43253–8704, or by calling the Advisory Board at (513) 648–6478.

Issued at Washington, DC, on December 14, 2001.

Rachel Samuel,

Deputy Advisory Committee Management Officer.

[FR Doc. 01–31349 Filed 12–19–01; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Office of Energy Efficiency and Renewable Energy

Objective Merit Review of Discretionary Financial Assistance Applications

AGENCY: Department of Energy.

ACTION: Notice of objective merit review procedure.

SUMMARY: This Notice establishes the procedure followed by program and regional support offices under the purview of the Assistant Secretary for Energy Efficiency and Renewable Energy in conducting the objective merit review of discretionary financial assistance applications.

DATES: Effective date: December 20, 2001.

FOR FURTHER INFORMATION CONTACT: LaTonya Poole, Office of Energy Efficiency and Renewable Energy, EE–3.2, U.S. Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585–0121, (202) 586–3835.

SUPPLEMENTARY INFORMATION:

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I. Introduction

The Department of Energy (DOE) today gives notice of the procedure for the objective merit review of discretionary financial assistance in the Office of Energy Efficiency and Renewable Energy (EERE). Financial assistance is provided, in the form of a grant or cooperative agreement, when the principal purpose of the transaction is the transfer of money or property to accomplish a public purpose of support or stimulation as authorized by Federal statute. Discretionary financial assistance is financial assistance provided under a Federal statute which authorizes DOE to select the recipient and the project to be supported and to determine the amount to be awarded. This differs from a procurement, which refers to instruments used when the principal purpose of the transaction is the acquisition of supplies or services for the direct benefit of the Government. The procedure implements the objective merit review provisions of the DOE Financial Assistance Rules in (10 Code of Federal Regulations (CFR) 600.13).

II. Applicability of Notice

The procedure covers the evaluation of all discretionary financial assistance applications within the programs of the DOE Office of Energy Efficiency and Renewable Energy and applies to both solicited and unsolicited applications.

III. Distinction Between Solicited and Unsolicited Proposals

Solicited proposals are direct responses by interested organizations or individuals to published requests issued by DOE for the submission of applications for discretionary financial assistance awards. Solicited proposals are awarded on a competitive basis using the criteria set forth in 10 CFR 600.8. When a proposal is submitted solely on the proposer's initiative and the idea, method or approach which would not be eligible for assistance under a recent, current, or planned solicitation, and if, as determined by DOE, a competitive solicitation would not be appropriate, the proposal is considered an unsolicited proposal. Unsolicited proposals are awarded on a noncompetitive basis using the criteria set forth in 10 CFR 600.6 (c). The two types of proposals are treated differently, as described in paragraph IV. (c), below.

IV. Objective Merit Review Procedure

(a) *Definition and Purpose.* Merit review is the process of evaluating applications for discretionary financial assistance using established criteria. The review is thorough, consistent and independent and is completed by individuals knowledgeable in the field of endeavor for which support is requested. The purpose of the review is to provide advice on the technical and cost-related merits of applications to the Selection Official with decision-making authority over the award of discretionary financial assistance.

(b) *Basic Review Standards.* (1) *Initial Review.* All discretionary financial assistance applications received by EERE will be assigned to the respective EERE program official who will initially review the document(s) for conformance with the technical and administrative requirements stated in the program rule, notice or solicitation. Applicants not meeting the technical and administrative requirements of the program rule, notice or solicitation will be considered non-responsive. Non-responsive applications will not receive further consideration for financial assistance. Non-responsive applicants will be notified in writing. (2) *Evaluation.* Solicited applications which pass the initial review will be evaluated in accordance with stated evaluation criteria set forth in the program rule, notice or solicitation. Those applications not meeting the evaluation criteria of the program rule, notice or solicitation may be returned to the sender to be corrected, modified or supplemented by the sender. Those applications judged to be so inadequate that an evaluation is not warranted will not receive further consideration for financial assistance and may be returned to the sender. Unsolicited proposals will be reviewed to determine whether program policy factors would encourage further review of the proposal.

(c) *Criteria for Merit Review.* Applications which pass the initial review and meet the evaluation criteria set forth in the program rule, notice or solicitation are subjected to an objective merit review for discretionary financial assistance. The criteria used for the evaluation of solicited applications must be clearly stated in the solicitation along with the relative importance given to each criterion. The criteria, and other mandatory information specified in 10 CFR 600.8, must be in the solicitation. If an unsolicited proposal is initially favorably evaluated against program policy factors, it should be considered for an objective merit review for discretionary financial assistance. Eligibility requirements for the award of unsolicited proposals are set forth in 10 CFR 600.6 (c).

(d) *The Merit Review Committee.* (1) The Assistant Secretary for Energy Efficiency and Renewable Energy (ASEE) has the ultimate responsibility for appointments to a merit review committee (the Committee). The ASEE may delegate the appointment authority and decision-making authority (Selection Official function) to Deputy Assistant Secretaries (DAS), Office Directors and Regional Support Office Directors.

(2) The Committee, whether a standing committee or other review committee, will consist of three or more professionally and technically qualified

persons. The committee members may be a mixture of Federal and Non-federal experts. Non-federal members will be selected on the basis of their professional qualifications and expertise.

(3) Members of the merit review committee should exclude anyone who, on behalf of the Federal Government, performs any of the following functions:

(i) Providing substantial technical assistance to the applicant;

(ii) Approving/disapproving or having any decision-making role regarding the application;

(iii) Serving as the Contracting Officer (CO) or performing business management functions for the project;

(iv) Auditing the recipient for the project;

(v) Exercising line authority over anyone ineligible to serve as a reviewer because of the above limitations.

(4) The Selection Official must appoint one member of the merit review committee to serve as chairperson. The chairperson is responsible for:

(i) Obtaining signed certificates of confidentiality from all committee members;

(ii) Preparing the written summary of the evaluation and recommendations for the Selection Official for the applicant's file; and

(iii) Performing the merit review duties of a regular committee member.

(5) The nature of EERE's program solicitations will dictate the feasibility of using standing or ad hoc committees. When solicitations are generally being issued to meet specific program objectives with time or subject limitations, EERE program offices will use ad hoc committees. Ad hoc committees are also appropriate under the following circumstances:

(i) For small numbers of applications received intermittently;

(ii) For programs of short duration, usually under one year;

(iii) To supplement review by standing committees when the volume of applications is usually large, and for applications with special review requirements.

(6) The regular use of ad hoc committees does not preclude the use of standing committees under the following circumstances:

(i) When required by legislation,

(ii) When a sufficient number of applications on a specific topic are received regularly and there is a sufficient number of qualified experts willing to serve on the committee for a prolonged tenure; and

(iii) When the legislative authority for the particular program involved extends for more than one year.

(7) Field readers may be used as an adjunct to a review committee. Field readers must be fully briefed by the designated Contract Officer's Representative so as to understand the process, including the review criteria, the weight given each criterion, and the fact that any criteria not specified in the solicitation are not to be used to evaluate the applications. Field readers must sign a certificate of confidentiality, as provided in 10 CFR 600.13(d). Field readers should follow, as closely as possible, the procedures that would have been used by a standing committee.

(e) *Conflict of Interest.* Members of the review committee must act in a manner consistent with 10 CFR 1010.101. Reviewers who do not meet these requirements shall not review, discuss, or make recommendations concerning the application. Review committee members with a conflict of interest shall also absent themselves from all meetings in which the application in question is discussed.

(f) *Authorized Uses of Information.* The review committee must act in a manner consistent with 10 CFR 600.15 when dealing with applications containing trade secrets, privileged, confidential commercial, and/or financial information, unless the information is unrestricted information available from other sources.

(g) *Authority Beyond Evaluation.* The Selection Official may decide not to accept a proposal that receives a favorable recommendation from the merit review committee due to policy program factors. The explanation for the decision not to accept a recommendation from the merit review committee must be documented in writing for the applicant's file and must be prepared and signed by the ASEE or his/her designee.

(h) *Written Evaluation Summary.* Upon request, applicants are to be furnished a written summary of the evaluation of their application.

V. Deviations

If an EERE program office wants to deviate from these procedures for merit review of an application or a class of applications, but will still follow the rules of 10 CFR 600.13, that office must obtain written permission from the ASEE. Permission to use procedures which deviate from 10 CFR 600 must be requested in writing to the responsible DOE Contracting Officer in accordance with 10 CFR 600.4. The Head of Contracting Activity has the authority to approve such procedures for a single case deviation, while the DAS for Procurement and Assistance Management has the authority to approve a class deviation. A deviation may be authorized only upon written determination that the deviation is necessary for any of the reasons set forth in 10 CFR 600.4(b).

VI. EERE Selection Process

Selection of applications for discretionary financial assistance will be based on the Selection Officials' acceptance of the merit review committees' recommendations and the findings of a separate programmatic review of program policy factors relevant to EERE's mission.

Issued in Washington, DC.

David K. Garman,

Assistant Secretary, Energy Efficiency and Renewable Energy.

[FR Doc. 01–31350 Filed 12–19–01; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. PR02–9–000]

Consumers Energy Company; Notice of Petition for Rate Approval

December 14, 2001.

Take notice that on November 30, 2001, Consumers Energy Company (Consumers) filed, pursuant to Section 284.123(b)(2) of the Commission's Regulations, a petition for rate approval requesting that the Commission approve an initial interruptible transportation service rate on Consumers system of $0.01065 per Dth, and an interruptible transportation service rate of $0.01357 per Dth following Commission approval in Docket No. CP02–22–000 of the roll-in of the facilities of Michigan Gas Storage Company to Consumers' facilities. These rates will be applicable to the transportation of natural gas under Section 311(a)(2) of the Natural Gas Policy Act of 1978 (NGPA).

Pursuant to section 284.123(b)(2)(ii), if the Commission does not act within 150 days of the date of this filing, the rates will be deemed to be fair and equitable and not in excess of an amount which interstate pipelines would be permitted to charge for similar transportation service. The Commission may, prior to the expiration of the 150 day period, extend the time for action or institute a proceeding to afford parties an opportunity for written comments and for the oral presentation of views, data, and arguments.

Any person desiring to participate in this rate proceeding must file a motion

to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All motions must be filed with the Secretary of the Commission on or before December 31, 2001. This petition for rate approval 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). 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. 01–31313 Filed 12–19–01; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. RP00–407–002 and RP00–619–003]

High Island Offshore System, L.L.C., Notice Compliance Filing

December 14, 2001.

Take notice that December 7, 2001, High Island Offshore System (HIOS) tendered for filing as part of its FERC Gas Tariff, Third Revised Volume No. 1, the tariff sheets listed on Appendix A to the filing, with an effective date of January 7, 2002.

HIOS states that the filing is being made in compliance with the Commission's November 8, 2001, Order in the above-referenced proceeding, which relates to compliance with the Commission's Order No. 637.

HIOS states that copies of the filing has been mailed to each of the parties who have intervened 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. 01–31316 Filed 12–19–01; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. PR02–8–000]

Hill-Lake Gas Storage, L.P.; Notice of Petition for Rate Approval

December 14, 2001.

Take notice that on November 30, 2001, Hill-Lake Gas Storage, L.P. (Hill-Lake) tendered for filing pursuant to Section 284.123(b)(2) of the Commission's regulations, a petition for rate approval requesting that the Commission approve as fair and equitable, market-based rates for firm and interruptible storage services performed under Section 311(a)(2) of the Natural Gas Policy Act of 1978 (NGPA). The rates for the individual storage services will be negotiated between Hill-Lake and various shippers. Hill-Lake does not propose to have established any maximum or minimum rate for any generic service.

Hill-Lake states that it operates as an intrastate natural gas pipeline company within the meaning of Section 2(16) of the NGPA in the State of Texas. Hill-Lake owns storage facilities in the State of Texas, which are the subject of this petition and which are located in Eastland County, Texas (Storage Facility). Hill-Lake indicates that it will provide the proposed storage services using the excess natural gas storage capacity of its Storage Facility.

Pursuant to section 284.123(b)(2)(ii), if the Commission does not act within 150 days of the date of this filing, the rates will be deemed to be fair and equitable and not in excess of an amount which interstate pipelines would be permitted to charge for similar transportation service. The Commission may, prior to the expiration of the 150 day period, extend the time for action or institute a proceeding to afford parties an opportunity for written comments and for the oral presentation of views, data, and arguments.

Any person desiring to participate in this rate proceeding must file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All motions must be filed with the Secretary of the Commission on or before December 31, 2001. This petition for rate approval 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). 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. 01–31312 Filed 12–19–01; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP99–518–024]

PG&E Gas Transmission, Northwest Corporation; Notice of Negotiated Rate

December 14, 2001.

Take notice that on December 3, 2001, PG&E Gas Transmission, Northwest Corporation (GTN) tendered for filing as part of its FERC Gas Tariff, First Revised Volume No. 1–A, Seventeenth Revised Sheet No. 7, Eighth Revised Sheet No. 7A, Third Revised Sheet No. 7B, and Fifth Revised Sheet No. 7C, with an effective date of December 1, 2001.

GTN states that these sheets are being filed to reflect the implementation of two negotiated rate agreements and to remove negotiated rate agreements that have expired. GTN notes that the capacity sold under these negotiated rates contracts was posted as available on GTN's website, and that the shippers executing the negotiated rate contracts have affirmatively acknowledged that they had the option to acquire the capacity at GTN's maximum recourse rate. GTN further indicates that a copy of this filing has been served on GTN's

jurisdictional customers and interested state regulatory agencies.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with 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. 01–31315 Filed 12–19–01; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP02–69–000]

PG&E Gas Transmission, Northwest Corporation; Notice of Tariff Filing

December 14, 2001.

Take notice that on November 30, 2001, PG&E Gas Transmission, Northwest Corporation (GTN) tendered for filing as part of its FERC Gas Tariff, First Revised Volume No. 1–A, Thirty-fifth Revised Sheet No. 4, Nineteenth Revised Sheet No. 4A and Fourteenth Revised Sheet No. 6C, with an effective date of January 1, 2002.

GTN states that these tariff sheets establish GTN's Gas Research Institute (GRI) surcharge for calendar year 2002.

GTN further states that a copy of this filing has been served on GTN's jurisdictional customers and interested state regulatory agencies.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with 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. 01–31317 Filed 12–19–01; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP02–100–000]

PG&E Gas Transmission, Northwest Corporation; Notice of Compliance Filing

December 14, 2001.

Take notice that on November 30, 2001, PG&E Gas Transmission, Northwest Corporation (GTN) tendered for filing workpapers supporting the restatement of its fuel and line loss surcharge.

GTN asserts that the purpose of this filing is to comply with Paragraph 37 of the General Terms and Conditions of its FERC Gas Tariff, ''Adjustment for Fuel, Line Loss and Other Unaccounted For Gas Percentages.'' These workpapers reflect that GTN's fuel and line loss surcharge percentage will remain at 0.0000% per Dth per pipeline-mile for the six-month period beginning January 1, 2002. Also included, as required by Paragraph 37, are workpapers showing the derivation of the current fuel and line loss percentage in effect for each month of the six-month period from May, 2001 through October, 2001.

GTN further states that a copy of this filing has been served on GTN's jurisdictional customers and interested state regulatory agencies.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., 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 on or before December 19, 2001. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection. 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. 01–31318 Filed 12–19–01; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP97–28–008]

Wyoming Interstate Company, Ltd; Notice of Negotiated Rate

December 14, 2001.

Take notice that on December 10, 2001, Wyoming Interstate Company, Ltd (WIC) tendered for filing to its FERC Gas Tariff Second, Revised Volume No. 2, the following tariff sheet, to become effective January 9, 2002:

Third Revised Sheet No. 1

WIC states that the tendered tariff sheet and related transportation service agreements are being filed to implement negotiated rate transactions related to the Medicine Bow facilities and for acceptance as non-conforming agreements, if applicable. The transportation service agreements are proposed to become effective December 1, 2001.

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. 01–31314 Filed 12–19–01; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER01–1328–001, et al.]

American Electric Power Service Corporation, et al.; Electric Rate and Corporate Regulation Filings

December 13, 2001.

Take notice that the following filings have been made with the Commission:

1. American Electric Power Service Corporation

[Docket No. ER01–1328–001]

Take notice that on December 6, 2001, American Electric Power Service Corporation (AEPSC), on behalf of AEP operating companies, submitted with the Federal Energy Regulatory Commission (Commission) a non-redacted, confidential copy and a redacted, non-confidential copy of a long-term power purchase agreement with Public Utility District No. 1 of Snohomish County.

Comment date: December 27, 2001, in accordance with Standard Paragraph E at the end of this notice.

2. Electric Generation LLC

[Docket No. ER02–456–000]

Take notice that on November 30, 2001, Electric Generation LLC (Applicant) submitted for filing with the Federal Energy Regulatory Commission (Commission), pursuant to section 205 of the Federal Power Act, and part 35 of the Commission's regulations, an application for acceptance of a power sales agreement and interim code of conduct and grant of various waivers. The application is being submitted in connection with the reorganization of Pacific Gas and Electric Company.

A copy of the application was served upon the California Public Utilities Commission.

Comment date: January 30, 2002, in accordance with Standard Paragraph E at the end of this notice.

3. American Transmission Company LLC

[Docket No. ER02–483–000]

Take notice that on December 5, 2001, American Transmission Company LLC (ATCLLC) tendered for filing an executed Distribution-Transmission Interconnection Agreement between ATCLLC and Badger Power Marketing Authority. ATCLLC requests an effective date of June 25, 2001.

Comment date: December 26, 2001, in accordance with Standard Paragraph E at the end of this notice.

4. Midwest Independent Transmission System Operator, Inc.

[Docket No. ER02–484–000]

Take notice that on December 3, 2001, the Midwest Independent Transmission System Operator, Inc. (Midwest ISO) and the Midwest ISO Transmission Owners jointly submitted for filing revisions to the Midwest ISO Open Access Transmission Tariff (OATT) to implement a Regional Through and Out Rate surcharge (RTOR Adder) and revisions to the Midwest ISO Agreement to implement the revenue distribution for the RTOR Adder revenues and revenues from the Super-Regional Rate Adjustment (SRA). The Midwest ISO and the Midwest ISO Transmission Owners propose that the RTOR Adder and RTOR Adder revenue distribution become effective on February 1, 2002, the beginning of the billing month at least 60 days after the filing. The Midwest ISO and Midwest ISO Transmission Owners propose that the SRA revenue distribution take effect on the date the SRA charges take effect.

The Midwest ISO seeks waiver of the Commission's regulations, 18 CFR 385.2010 (2001), with respect to service on all parties on the official service list in this proceeding. The Midwest ISO has electronically served a copy of this filing, with attachments, upon all Midwest ISO Members, Member representatives of Transmission Owners and Non-Transmission Owners, the Midwest ISO Advisory Committee participants, Policy Subcommittee participants, as well as all state commissions within the region. In addition, the filing has been electronically posted on the Midwest ISO's website at *www.midwestiso.org* under the heading ''Filings to FERC'' for other interested parties in this matter. The Midwest ISO will provide hard copies to any interested parties upon request.

Comment date: December 26, 2001, in accordance with Standard Paragraph E at the end of this notice.

5. Midwest Independent Transmission System Operator, Inc.

[Docket No. ER02–485–000]

Take notice that on December 3, 2001, the Midwest Independent Transmission System Operator, Inc. (Midwest ISO) and the participating Midwest ISO Transmission Owners jointly submitted for filing revisions to the Midwest ISO Open Access Transmission Tariff (OATT) requesting a higher rate of return on common equity and amending Attachment N (Recovery of Costs Associated with New Facilities) to implement specific return on equity and accelerated depreciation incentives. The Midwest ISO and the participating Midwest ISO Transmission Owners propose that the filing become effective on February 1, 2001, 60 days from the date of filing.

The Midwest ISO seeks waiver of the Commission's regulations, 18 CFR 385.2010 (2001), with respect to service on all parties on the official service list in this proceeding. The Midwest ISO has electronically served a copy of this filing, with attachments, upon all Midwest ISO Members, Member representatives of Transmission Owners and Non-Transmission Owners, the Midwest ISO Advisory Committee participants, Policy Subcommittee participants, as well as all state commissions within the region. In addition, the filing has been electronically posted on the Midwest ISO's website at *www.midwestiso.org* under the heading ''Filings to FERC'' for other interested parties in this matter. The Midwest ISO will provide hard copies to any interested parties upon request.

Comment date: December 26, 2001, in accordance with Standard Paragraph E at the end of this notice.

6. New England Power Company

[Docket No. ER02–486–000]

Take notice that on December 4, 2001, New England Power Company (NEP)

tendered for filing with the Federal Energy Regulatory Commission (Commission) Second Revised Service Agreement No. 17 for Network Integration Service under NEP's Open Access Transmission Tariff, FERC Electric Tariff, Second Revised Volume No. 9 between NEP and Rowley Municipal Light Plant (Service Agreement). This Service Agreement is a fully executed version of the First Revised Service Agreement No. 17 that was filed unexecuted on August 8, 2001 in Docket No. ER01–28702–000. No other changes have been made to the Service Agreement and the terms remain the same as filed on August 8, 2001.

NEP states that this filing has been served upon Rowley Municipal Light Plant and the Department of Telecommunications and Energy of the Commonwealth of Massachusetts.

Comment date: December 26, 2001, in accordance with Standard Paragraph E at the end of this notice.

7. Arizona Public Service Company

[Docket No. ER02–487–000]

Take notice that on December 5, 2001, Arizona Public Service Company (APS) tendered for filing a revised Network Agreement with Pinnacle West Capital Corporation Marketing and Trading '(Pinnacle) under APS' Open Access Transmission Tariff.

A copy of this filing has been served on Pinnacle and the Arizona Corporation Commission.

Comment date: December 26, 2001, in accordance with Standard Paragraph E at the end of this notice.

8. Midwest Independent Transmission System

[Docket No. ER02–488–000]

Take notice that on December 5, 2001, the Midwest Independent Transmission System Operator, Inc. (Midwest ISO) tendered for filing with the Federal Energy Regulatory Commission (Commission) Operating Protocols for Existing Generators (Operating Protocols), which establish the obligations of the Midwest ISO and of owners or operators of existing generators (Generators). The Midwest ISO submits that the Operating protocols are necessary for the reliable operation of the facilities under the control of the Midwest ISO and that the Operating Protocols describe the direction that the Midwest ISO may provide Generators.

Midwest ISO also seeks waiver of the Commission's regulations (18 CFR 385.2010) with respect to service on all parties on the official service list in this proceeding. The Midwest ISO has electronically served a copy of this filing, with attachments upon all Midwest ISO Members, Member representatives of Transmission Owners and Non-Transmission Owners, the Midwest ISO Advisory Committee participants, Policy Subcommittee participants, we well as all state commissions with the region. In addition, the filing has been electronically posted on the Midwest ISO's website at *www.midwestiso.org* under the heading ''Filings to FERC'' for other interested parties in this matter. The Midwest ISO will provide paper copies to any interested parties upon requests.

Comment date: December 26, 2001, in accordance with Standard Paragraph E at the end of this notice.

9. Midwest Independent Transmission System Operator, Inc.

[Docket No. ER02–489–000]

Take notice that on December 5, 2001, the Midwest Independent Transmission System Operator, Inc. (the Midwest ISO) tendered for filing with the Federal Energy Regulatory Commission (Commission) revised pages to its Open Access Transmission Tariff (OATT), FERC Electric Tariff, Original Volume No. 1, which implement a cost recovery mechanism for review and preparation of alternative credit support documentation.

The Midwest ISO also seeks waiver of the Commission's regulations, 18 CFR 385.2010 (2000) with respect to service on all parties on the official service list in this proceeding. The Midwest ISO has electronically served a copy of this filing, with attachments, upon all Midwest ISO Members, Member representatives of Transmission Owners and Non-Transmission Owners, the Midwest ISO Advisory Committee participants, Policy Subcommittee participants, as well as all state commissions within the region. In addition, the filing has been electronically posted on the Midwest ISO's Website at *www.midwestiso.org* under the heading ''FERC Filings'' for other interested parties in this matter. The Midwest ISO will provide hard copies to any interested parties upon request.

Comment date: December 26, 2001, in accordance with Standard Paragraph E at the end of this notice.

10. Arizona Public Service Company

[Docket No. ER02–490–000]

Take notice that on December 6, 2001, Arizona Public Service Company (APS) tendered for filing a revised Service Agreement to provide Firm Point-to-Point Transmission Service to Ak Chin Electric Utility Authority (AkChin) under APS' Open Access Transmission Tariff.

A copy of this filing has been served on Ak Chin and the Arizona Corporation Commission.

Comment date: December 27, 2001, in accordance with Standard Paragraph E at the end of this notice.

11. Florida Power Corporation

[Docket No. ER02–492–000]

Take notice that on December 7, 2001, Florida Power Corporation (FPC) tendered for filing Service Agreements for Short-Term Firm and Non-Firm Point-to-Point Transmission Service with Calpine Energy Services, L.P. Service to this Eligible Customer will be in accordance with the terms and conditions of the Open Access Transmission Tariff filed on behalf of FPC.

FPC is requesting an effective date of August 1, 2001 for the Service Agreements.

A copy of the filing was served upon the Florida Public Service Commission.

Comment date: December 28, 2001, in accordance with Standard Paragraph E at the end of this notice.

12. Arizona Public Service Company

[Docket No. ER02–493–000]

Take notice that on December 7, 2001, Arizona Public Service Company tendered for filing a Service Agreement under the Western Systems Power Pool Agreement for service to the Department of Energy, Bonneville Power Administration.

A copy of this filing has been served on Department of Energy, Bonneville Power Administration and the Arizona Corporation Commission.

Comment date: December 28, 2001, in accordance with Standard Paragraph E at the end of this notice.

13. Arizona Public Service Company

[Docket No. ER02–494–000]

Take notice that on December 7, 2001, Arizona Public Service Company (APS) tendered for filing an Interconnection and Operating Agreement with Pinnacle West Energy under APS' Open Access Transmission Tariff.

A copy of this filing has been served on Pinnacle West Energy and the Arizona Corporation Commission.

Comment date: December 28, 2001, in accordance with Standard Paragraph E at the end of this notice.

14. Alliant Energy Corporate Services Inc.

[Docket No. ER02–495–000]

Take notice that on December 7, 2001, Alliant Energy Corporate Services Inc. (ALTM) tendered for filing a signed Service Agreement under ALTM's Market Based Wholesale Power Sales Tariff (MR–1) between itself and The City of Springfield, Illinois, City Water, Light and Power.

ALTM respectfully requests an effective date of December 6, 2001.

Comment date: December 28, 2001, in accordance with Standard Paragraph E at the end of this notice.

15. Arizona Public Service Company

[Docket No. ER02–499–000]

Take notice that on December 6, 2001, Arizona Public Service Company (APS) effective January 31, 2002, Service Agreement No. 198 under FERC Electric Tariff, Tenth Revised Volume No. 2, effective date October 9, 2001 and filed with the Federal Energy Regulatory Commission (Commission) by Arizona Public Service Company is to be canceled.

Notice of the proposed cancellation has been served upon Ak Chin Electric Utility Authority and the Arizona Corporation Commission.

Comment date: December 27, 2001, in accordance with Standard Paragraph E at the end of this notice.

16. Deseret Generation & Transmission Co-operative

[Docket No. ER02–500–000]

Take notice that on December 6, 2001, Deseret Generation & Transmission Co-operative tendered for filing with the Federal Energy Regulatory Commission (Commission) a Wholesale Power Agreement For Large Industrial Loads (Implementing Deseret Rate Schedule ML–COG1) between Deseret Generation & Transmission Co-operative and Moon Lake Electric Association, Inc. The proposed change would result in a rate decrease and is being made by agreement of the parties and pursuant to the provisions of First Revised Service Agreement No. 5 under FERC Electric Tariff, Original Volume 1, which is already on file with the Commission.

Copies of this filing have been served upon Deseret's member cooperatives.

Comment date: December 27, 2001, in accordance with Standard Paragraph E at the end of this notice.

17. Great Northern Paper, Inc.

[Docket No. ER02–501–000]

On December 6, 2001, Great Northern Paper, Inc. located at filed with the Federal Energy Regulatory Commission (Commission) an application for market-based rate authorization to sell energy, capacity and specified ancillary services, waivers and exemptions and a request for an effective date of January 15, 2002 for its market-based rate authorization.

Great Norther Paper, Inc. is a Delaware corporation that owns and operates two thermo electric plants located at or near Millinocket, Maine, with a total nameplate capacity of approximately 150 megawatts, and is seeking market-based rate authorization, waivers and exemptions, and a request for an effective date of January 15, 2002 for its market-based rate authorization in order to sell the output of the facilities to wholesale purchasers.

Comment date: December 27, 2001, in accordance with Standard Paragraph E at the end of this notice.

18. Michigan Electric Transmission Company

[Docket No. ER02–502–000]

Take notice that on December 7, 2001, Michigan Electric Transmission Company (METC) tendered for filing a revised Service Agreement with Wolverine Power Supply Cooperative, Inc. (Customer) for Network Integration Transmission Service (designated First Revised Service Agreement No. 8 under METC FERC Electric Tariff No. 1). The Revised Service Agreement reflects the terms of Amendment No. 1 to the original Service Agreement which deals with the addition of direct assignment facilities and the resulting adjustment in the Facilities Usage Fee from $733 to $888 per month.

METC requests a November 1, 1998 effective date.

Copies of the filing were served upon the Customer and the Michigan Public Service Commission.

Comment date: December 28, 2001, in accordance with Standard Paragraph E at the end of this notice.

19. Nine Mile Point Nuclear Station, LLC

[Docket No. ER02–503–000]

Take notice that on December 7, 2001, Nine Mile Point Nuclear Station, LLC (Nine Mile LLC) submitted for filing five revised service agreements under Nine Mile LLC's market-based rate tariff (Service Agreement Nos. 1 through 5 under FERC Electric Tariff, Original Volume No. 1) reflecting the assignment of such service agreements by Constellation Nuclear, LLC to its subsidiary, Nine Mile LLC.

Comment date: December 28, 2001, in accordance with Standard Paragraph E at the end of this notice.

20. The Dayton Power and Light Company

[Docket No. ER02–504–000]

Take notice that on December 7, 2001, The Dayton Power and Light Company (Dayton) submitted service agreements establishing The Dayton Power & Light Company (Energy Services) as customers under the terms of Dayton's Open Access Transmission Tariff.

Copies of this filing were served upon The Dayton Power & Light Company (Energy Services) and the Public Utilities Commission of Ohio.

Comment date: December 28, 2001, in accordance with Standard Paragraph E at the end of this notice.

21. Bluegrass Generation Company, L.L.C.

[Docket No. ER02–506–000]

Take notice that on December 7, 2001, Bluegrass Generation Company, L.L.C. (Bluegrass) tendered for filing with the Federal Energy Regulatory Commission (Commission) pursuant to rule 205, 18 CFR 385.205, a petition for waivers and blanket approvals under various regulations of the Commission and for an order accepting its FERC Electric Tariff No. 1.

Bluegrass intends to sell electric power at wholesale rates, terms, and conditions to be mutually agreed to with the purchasing party. The Bluegrass tariff provides for the sale of electric energy and capacity at agreed prices.

Bluegrass seeks an effective date of December 8, 2001 for its tariff.

Comment date: December 28, 2001, in accordance with Standard Paragraph E at the end of this notice.

22. Cambridge Electric Light Company, Central Maine Power Company, The Connecticut Light and Power Company, New England Power Company, Public Service Company of New Hampshire, and Western Massachusetts Electric Company

[Docket No. ER02–505–000]

Take notice that on December 7, 2001, Cambridge Electric Light Company, Central Maine Power Company, The Connecticut Light and Power Company, New England Power Company, Public Service Company of New Hampshire, and Western Massachusetts Electric Company (the Sponsors) submitted notice of cancellations, effective February 28, 2002, for power contracts between the Sponsors and Boylston Municipal Light Department, Braintree Electric Light Department, City of Chicopee Municipal Lighting Plant, Danvers Electric Division, Georgetown Municipal Light Department, Hingham Municipal Light Plant, City of Holyoke

Gas & Electric Department, Hudson Light and Power Department, Hull Municipal Lighting Plant, Ipswich Municipal Light Department, Marblehead Municipal Light Department, Middleborough Gas and Electric Department, Middleton Municipal Light Department, North Attleborough Electric Department, Paxton Municipal Light Department, Peabody Municipal Light Plant, Shrewsbury's Electric Light Plant, Sterling Municipal Light Department, Taunton Municipal Lighting Plant, Wakefield Municipal Light Department, West Boylston Municipal Lighting Plant, Westfield Gas & Electric Light Department, and the Connecticut Municipal Electric Energy Cooperative. The contracts to be canceled are Cambridge Electric Light Company, Rate Schedule FERC No.22; Central Maine Power Company, Rate Schedule FERC No. 46, The Connecticut Light and Power Company, Rate Schedule FERC No. 72, New England Power Company, Rate Schedule FERC No. 237, Public Service Company of New Hampshire, Rate Schedule FERC No. 63, and Montaup Electric Company, Rate Schedule FERC No. 25.

Notices of the proposed cancellations have been served on the appropriate state regulatory agencies and all affected customers.

Comment date: December 28, 2001, in accordance with Standard Paragraph E at the end of this notice.

23. TPS McAdams, LLC

[Docket No. ER02–507–000]

Take notice that on December 7, 2001, TPS McAdams, LLC tendered for filing with the Federal Energy Regulatory Commission (Commission) an application for authorization to sell energy, capacity and ancillary services at market-based rates pursuant to section 205 of the Federal Power Act.

A copy of this filing has been served on the Florida Public Service Commission.

Comment date: December 28, 2001, in accordance with Standard Paragraph E at the end of this notice.

24. Tampa Electric Company

[Docket No. ER02–508–000]

Take notice that on December 7, 2001, Tampa Electric Company (TEC) tendered for filing pursuant to Section 205 of the Federal Power Act an executed Interconnection and Operating Agreement between TEC and CPV Pierce, Ltd. as a service agreement under TEC's open access transmission tariff.

Comment date: December 28, 2001, in accordance with Standard Paragraph E at the end of this notice.

25. Entergy Services, Inc.

[Docket No. ER02–509–000]

Take notice that on December 7, 2001, Entergy Services, Inc., on behalf of Entergy Gulf States, Inc., tendered for filing a unilaterally executed Interconnection and Operating Agreement with Shell Chemical LP, acting as agent for Shell Oil Company (Shell), and a Generator Imbalance Agreement with Shell.

Comment date: December 28, 2001, in accordance with Standard Paragraph E at the end of this notice.

26. TPS Dell, LLC

[Docket No. ER02–510–000]

Take notice that on December 7, 2001, TPS Dell, LLC tendered for filing an application for authorization to sell energy, capacity and ancillary services at market-based rates pursuant to section 205 of the Federal Power Act.

A copy of this filing has been served on the Florida Public Service Commission.

Comment date: December 28, 2001, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraph

E. Any person desiring to be heard or to protest such filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with rules 211 and 214 of the Commission's rules of practice and procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of 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. 01–31307 Filed 12–19–01; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EL00–73–002, et al.]

New England Power Company, et al.; Electric Rate and Corporate Regulation Filings

December 14, 2001.

Take notice that the following filings have been made with the Commission:

1. New England Power Company

[Docket No. EL00–73–002]

Take notice that on December 7, 2001, New England Power Company (NEP) tendered for filing with the Federal Energy Regulatory Commission (Commission) a Refund Report along with supporting documents. The refunds were made in compliance with a November 7, 2001 Commission order issued in the above-referenced proceeding.

NEP states that copies of the Refund Report have been served on the persons listed on the official service list for this proceeding and the Massachusetts Department of Telecommunications and Energy.

Comment date: January 8, 2002, in accordance with Standard Paragraph E at the end of this notice.

2. NRG Power Marketing Inc.

[Docket No. ER97–4281–012]

Take notice that on December 11, 2001, NRG Power Marketing Inc., tendered for filing with the Federal Energy Regulatory Commission (Commission) an updated market power study in compliance with the Commission's Order in NRG Power Marketing, Inc. Docket No. ER97–4281–001.

Comment date: January 2, 2002, in accordance with Standard Paragraph E at the end of this notice.

3. Arizona Public Service Company

[Docket No. ER01–463–006]

Take notice that on December 10, 2001, Arizona Public Service Company (APS) tendered for filing with the Federal Energy Regulatory Commission (Commission) its Compliance to Commission's Order on Compliance Filing in Docket No. ER01–463–005.

A copy of this filing has been served on all parties on the official service list.

Comment date: December 31, 2001, in accordance with Standard Paragraph E at the end of this notice.

4. Duke Energy South Bay, LLC

[Docket No. ER02–239–002]

Take notice that on December 11, 2001, Duke Energy South Bay, L.L.C. (DESB) tendered for filing with the Federal Energy Regulatory Commission (Commission) Substitute Third Revised Sheet No. 8 to DESB's FERC Electric Rate Schedule No. 2. DESB States that this Substitute sheet is being filed to correct omissions from their November 1, 2001 filing in this proceeding. Specifically these corrections are to Schedule A, sections 12 and 13 of its Reliability Must Run Service Agreement (RMR Agreement) with the California Independent System Operator (CAISO).

DESB requests an effective date of January 1, 2002, for these revisions.

Copies of the filing have been served upon each person designated on the official service list compiled by the Secretary in this proceeding.

Comment date: January 2, 2002, in accordance with Standard Paragraph E at the end of this notice.

5. Duke Energy Oakland, LLC

[Docket No. ER02–240–001]

Take notice that on December 11, 2001, Duke Energy Oakland, L.L.C. (DEO) tendered for filing with the Federal Energy Regulatory Commission (Commission) First Revised Sheet No. 136 and Substitute Fifth Revised Sheet No. 140 to DEO's FERC Electric Rate Schedule No. 2. DEO States that these sheets are being filed to correct omissions from their November 1, 2001 filing in this proceeding. Specifically these corrections are to Schedule A, Section 13 and Schedule B, Table B–2 of its Reliability Must Run Service Agreement (RMR Agreement) with the California Independent System Operator (CAISO).

DEO requests an effective date of January 1, 2002, for these revisions.

Copies of the filing have been served upon each person designated on the official service list compiled by the Secretary in this proceeding.

Comment date: January 2, 2002, in accordance with Standard Paragraph E at the end of this notice.

6. Western Resources, Inc.

[Docket No. ER02–379–001]

Take notice that on December 10, 2001, Western Resources, Inc., (WR) amended its filing to cancel Market Based Rate Tariff Agreement with the Allegheny Energy Service Corporation, American Electric Power Service Corp., Arizona Public Service Company, Coral Power, L.L.C., Engage Energy US, L.P., Otter Tail Power Company, Rainbow Energy Marketing Corporation, and The Board of Municipal Utilities of Sikeston, Missouri.

WR requests an effective date of December 10, 2001.

Notice of the proposed termination has been served upon the above mentioned corporations and utilities and the Kansas Corporation Commission.

Comment date: December 31, 2001, in accordance with Standard Paragraph E at the end of this notice.

7. Allegheny Energy Service Corporation, on behalf of Monongahela Power Company, The Potomac Edison Company, and West Penn Power Company (Allegheny Power)

[Docket No. ER02–454–001]

Take notice that on December 10, 2001, Allegheny Energy Service Corporation on behalf of Monongahela Power Company, The Potomac Edison Company and West Penn Power Company (Allegheny Power), filed Service Agreement Nos. 364–367 under Allegheny Power's Open Access Transmission Service Tariff which has been accepted for filing by the Federal Energy Regulatory Commission in Docket No. ER96–58–000. Service Agreement Nos. 364–367 are designated to comply with Order 614. The proposed effective date for the Service Agreements is December 1, 2001.

Copies of the filing have been provided to the customer.

Comment date: December 31, 2001, in accordance with Standard Paragraph E at the end of this notice.

8. Virginia Electric and Power Company

[Docket No. ER02–511–000]

Take notice that on December 10, 2001, Virginia Electric and Power Company (Dominion Virginia Power) tendered for filing an executed Generator Interconnection and Operating Agreement (Interconnection Agreement) with Southeastern Public Service Authority of Virginia (SPSA). The Interconnection Agreement sets forth the terms and conditions governing the interconnection between SPSA's generating facility (Generating Facility) and Dominion Virginia Power's transmission system. Copies of the filing were served upon SPSA and the Virginia State Corporation Commission.

Dominion Virginia Power requests that the Commission waive its notice of filing requirements and accept this filing to make the Interconnection Agreement effective on December 11, 2001, the day after the date of filing.

Comment date: December 31, 2001, in accordance with Standard Paragraph E at the end of this notice.

9. American Transmission Systems, Incorporated

[Docket No. ER02–512–000]

Take notice that on December 10, 2001, American Transmission Systems, Incorporated filed an Agreement for construction of a new 34.5 kV delivery point with The Village of Woodville. The Agreement provides for the addition of a new 34.5 kV distribution delivery point. This filing is made pursuant to Section 205 of the Federal Power Act. Copies of this filing have been served on Woodville, American Municipal Power-Ohio, Inc., and the Public Utility Commission of Ohio.

Comment date: December 31, 2001, in accordance with Standard Paragraph E at the end of this notice.

10. American Transmission Systems, Inc.

[Docket No. ER02–513–000]

Take notice that on December 10, 2001, American Transmission Systems, Inc. filed a Service Agreement to provide Non-Firm Point-to-Point Transmission Service for Dominion Nuclear Marketing II, Inc., the Transmission Customer. Services are being provided under the American Transmission Systems, Inc. Open Access Transmission Tariff submitted for filing by the Federal Energy Regulatory Commission in Docket No. ER99–2647–000. The proposed effective date under the Service Agreement is December 6, 2001 for the above mentioned Service Agreement in this filing.

Comment date: December 31, 2001, in accordance with Standard Paragraph E at the end of this notice.

11. American Transmission Systems, Inc.

[Docket No. ER02–514–000]

Take notice that on December 10, 2001, American Transmission Systems, Inc. filed a Service Agreement to provide Firm Point-to-Point Transmission Service for Dominion Nuclear Marketing II, Inc., the Transmission Customer. Services are being provided under the American Transmission Systems, Inc. Open Access Transmission Tariff submitted for filing by the Federal Energy Regulatory Commission in Docket No. ER99–2647–000. The proposed effective

date under the Service Agreement is December 6, 2001 for the above mentioned Service Agreement in this filing.

Comment date: December 31, 2001, in accordance with Standard Paragraph E at the end of this notice.

12. Western Resources, Inc.

[Docket No. ER02–515–000]

Take notice that on December 10, 2001, Western Resources, Inc. (WR) tendered for filing a Service Agreement between WR and Calpine Energy Services, L.P. (Calpine). WR states that the purpose of this agreement is to permit Calpine to take service under WR's Market Based Power Sales Tariff on file with the Commission. This agreement is proposed to be effective November 15, 2001.

Copies of the filing were served upon Calpine and the Kansas Corporation Commission.

Comment date: December 31, 2001, in accordance with Standard Paragraph E at the end of this notice.

13. Allegheny Energy Service Corporation, on behalf of Monongahela Power Company, The Potomac Edison Company and West Penn Power Company (Allegheny Power)

[Docket No. ER02–516–000]

Take notice that on December 10, 2001, Allegheny Energy Service Corporation on behalf of Monongahela Power Company, The Potomac Edison Company and West Penn Power Company (Allegheny Power) filed Schedule 13, Retail Transmission Service—Virginia to its Pro Forma Open Access Transmission Tariff (OATT). Updated customer lists and miscellaneous changes to the OATT were also filed. Allegheny Power has requested an effective date for Schedule 13 and the other changes proposed in the filing of January 1, 2002.

Copies of the filing have been provided to Allegheny Power's jurisdictional customers, the Public Utilities Commission of Ohio, the Pennsylvania Public Utility Commission, the Maryland Public Service Commission, the Virginia State Corporation Commission and the West Virginia Public Service Commission.

Comment date: December 31, 2001, in accordance with Standard Paragraph E at the end of this notice.

14. Central Vermont Public Service Corporation

[Docket No. ER02–518–000]

Take notice that on December 11, 2001, Central Vermont Public Service Corporation (Central Vermont), tendered for filing executed Service Agreements for Firm Point-to-Point Transmission Service and Non-Firm Point-to-Point Transmission Service with H.Q. Energy Services (U.S.) Inc. under Central Vermont's FERC Electric Tariff, First Revised Volume No. 7. Copies of the filing were served upon the above-mentioned company and the Vermont Public Service Board.

Central Vermont requests that the Service Agreements become effective on December 7, 2001, the date service commenced.

Comment date: January 2, 2002, in accordance with Standard Paragraph E at the end of this notice.

15. Commonwealth Edison Company

[Docket No. ER02–519–000]

Take notice that on December 11, 2001 Commonwealth Edison Company (ComEd) submitted for filing a Service Agreement for Network Integration Transmission Service (NSA) between ComEd and Nicor Energy, L.L.C. (Nicor). This agreement govern ComEd's provision of network service to serve retail load under the terms of ComEd's Open Access Transmission Tariff (OATT).

ComEd requests an effective date of December 1, 2001, and accordingly seeks waiver of the Commission's notice requirements.

Copies of this filing were served on Nicor.

Comment date: January 2, 2002, in accordance with Standard Paragraph E at the end of this notice.

16. Southwest Power Pool, Inc.

[Docket No. ER02–521–000]

Take notice that on December 11, 2001, Southwest Power pool, Inc. (SPP) submitted for filing one executed service agreement for Firm Point-to-Point Transmission Service with Western Resources Generation Services (WRGS).

SPP requests an effective date of January 1, 2002 for this service agreement. A copy of this filing was served on WRGS.

Comment date: January 2, 2002, in accordance with Standard Paragraph E at the end of this notice.

17. Commonwealth Edison Company

[Docket No. ER02–522–000]

Take notice that on December 11, 2001 Commonwealth Edison Company (ComEd) submitted for filing an amended Form of Service Agreement for Firm Point-to-Point Transmission Service (Amended Service Agreement) with Split Rock Energy, LLC (Split Rock) and a Form of Service Agreement for Firm Point-to-Point Transmission Service (Service Agreement) with NRG Power Marketing Inc. (NRG) under the terms of ComEd's Open Access Transmission Tariff (OATT). Copies of this filing were served on Split Rock and NRG.

ComEd requests an effective date of November 12, 2001, for the Amended Service Agreement with Split Rock and an effective date of November 12, 2001 for the Service Agreement with NRG, and accordingly seeks waiver of the Commission's notice requirements.

Comment date: January 2, 2002, in accordance with Standard Paragraph E at the end of this notice.

18. Illinois Power Company

[Docket No. ER02–523–000]

Take notice that on December 11, 2001, Illinois Power Company (Illinois Power), filed with the Federal Energy Regulatory Commission (Commission) nine (9) Firm Long-Term Point-To-Point Transmission Service Agreements entered into with Dynegy Power Marketing, Inc. (DPM), an affiliate of Illinois Power.

Illinois Power requests an effective date of January 1, 2002 for the agreements and seeks a waiver of the Commission's notice requirement. Illinois Power states that a copy of this filing has been sent to DPM.

Comment date: January 2, 2002, in accordance with Standard Paragraph E at the end of this notice.

19. Progress Energy Inc. on behalf of Carolina Power & Light Company

[Docket No. ER02–524–000]

Take notice that on December 11, 2001, Carolina Power & Light Company (CP&L) tendered for filing an executed Service Agreement between CP&L and the following eligible buyer, Western Resources, Inc. Service to this eligible buyer will be in accordance with the terms and conditions of CP&L's Market-Based Rates Tariff, FERC Electric Tariff No. 5.

CP&L requests an effective date of December 1, 2001 for this Service Agreement.

Copies of the filing were served upon the North Carolina Utilities Commission and the South Carolina Public Service Commission.

Comment date: January 2, 2002, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraph

E. Any person desiring to be heard or to protest such filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC

20426, in accordance with rules 211 and 214 of the Commission's rules of practice and procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of 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. 01–31308 Filed 12–19–01; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. CP00–232–000 and CP00–232–001]

Iroquois Gas Transmission System, L.P.; Notice of Availability of the Final Environmental Impact Statement for the Proposed Eastchester Project

December 14, 2001.

The staff of the Federal Energy Regulatory Commission (FERC or Commission) has prepared a Final Environmental Impact Statement (FEIS) on the natural gas pipeline facilities proposed by Iroquois Gas Transmission System, L.P. (Iroquois) in the above referenced docket.

The FEIS was prepared to satisfy the requirements of the National Environmental Policy Act (NEPA). The staff concludes that approval of the proposed project, with the mitigation measures recommended in the DEIS, would have limited adverse environmental impact.

The FEIS addresses the potential environmental effects of the project proposed by Iroquois to convey natural gas from Northport, Long Island, to the Bronx, New York and evaluates alternatives to the proposed project. The pipeline would be constructed across Long Island Sound and be comprised of the following facilities:

32.8 miles of 24-inch diameter pipe;

Pipeline maintenance facilities constructed in Northport and the Bronx;

Gas meter, regulator, heater, and mainline valve at the terminus in the Bronx;

Two new compressor stations along the existing Iroquois pipeline;

Additions and modifications to three existing compressor stations; and

Work space and access roads to construct, operate, and maintain the above facilities.

The purpose of the proposed facilities would be to provide natural gas for electric generation and to serve residential, industrial, and commercial customers in New York City. The proposed project would serve:

Consolidated Edison Energy, Inc. (Dth/day)—30,000 dekatherms per day

Keyspan Ravenswood, Inc.—60,000 Dth/day

Orion Power Holdings, Inc.—60,000 Dth/day

Miriant New York Management, Inc—60,000 Dth/day

Virginia Power Energy Marketing, Inc.—20,000 Dth/day.

Consultation

The draft environmental impact statement (DEIS) was issued on August 2, 2001 and distributed to the U.S. Fish and Wildlife Service (USFWS) and to the National Marine Fisheries Service (NMFS) as our biological assessment under the Endangered Species Act (ESA). Written concurrence that the project, with the recommendations proposed by staff, would not likely affect listed species or critical habitat are anticipated from both FWS and NMFS.

Pursuant to section 305(b) of the Magnuson-Stevens Fishery Conservation and Management Act, federal agencies are required to consult with the NMFS on any action that may result in adverse effects to essential fish habitat (EFH). Our DEIS, containing an EFH assessment, was provided to NMFS. No Conservation Recommendations have been received from NMFS.

Availability

The FEIS has been placed in the public files of the FERC and is available for public inspection at: Federal Energy Regulatory Commission, Public Reference and Files Maintenance Branch, 888 First Street, NE, Room 2A, Washington, DC 20426, (202) 208–1371.

Copies of the FEIS have been mailed to federal, state and local agencies, public interest groups, individuals who have requested the FEIS, newspapers, and parties to this proceeding. It has also been distributed to the commentors and libraries listed in Appendix A of the FEIS. Those individuals who filed form letters were sent copies of this cover letter and the executive summary.

On October 11, 2001, the Commission issued a policy statement in Docket No. PL02–1, regarding previously public documents. The Commission advised the public that documents that were previously available through the Public Reference Room, the Internet, and RIMS were no longer to be considered public, and that anyone wishing to obtain these documents were to file a request under the Freedom of Information Act (FOIA). Several figures in the FEIS are subject to the new Commission policy including: Figures 2.13.1, 2.13.2, and B–3 through B–12. Accordingly, these figures are not included in the public version of the FEIS. Anyone wishing to obtain these documents should file a request under the Freedom of Information Act (FOIA) and the Commission's regulations at 18 CFR 388.108. Further guidance may be obtained at the FERC Internet website (*www.ferc.gov*).

In accordance with Council on Environmental Quality (CEQ) regulations implementing NEPA, no agency decision on a proposed action may be made until 30 days after the Environmental Protection Agency publishes a notice of availability of an FEIS. However, the CEQ regulations provide an exception to this rule when an agency decision is subject to a formal internal appeal process that allows agencies or the public to make their views known. In such cases, the agency decision may be made at the same time the notice of the FEIS is published, allowing both periods to run concurrently. The Commission decision for this proposed action is subject to a 30-day rehearing period.

Additional information about the proposed project is available from the Commission's Office of External Affairs, at (202) 208–1088 or on the FERC Internet website (*www.ferc.gov*) using the ''RIMS'' link, select ''Docket #'' from the RIMS Menu, and follow the instructions. For assistance with access to RIMS, the RIMS helpline can be reached at (202) 208–2222.

Similarly, the ''CIPS'' link on the FERC Internet website provides access to the text of formal documents issued by the Commission, such as orders, notices, and rulemakings. From the FERC Internet website, click on the ''CIPS'' link, select ''Docket #'' from the CIPS menu, and follow the instructions. For assistance with access to CIPS, the

CIPS helpline can be reached at (202) 208–2474.

Linwood A. Watson Jr.,

Acting Secretary.

[FR Doc. 01–31309 Filed 12–19–01; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP02–31–000]

Iroquois Gas Transmission System, L.P.; Notice of Intent To Prepare an Environmental Assessment and Request for Comments

December 14, 2001.

On November 20, 2001, Iroquois Gas Transmission System, L.P., (Iroquois) filed an application to construct and to operate a new compressor station at Brookfield, Connecticut. Iroquois' application was filed with the Commission under Section 7 of the Natural Gas Act and Part 157 of the Commission's regulations. The application was noticed on November 29, 2001. On December 5, 2001, Commission staff conducted a site visit and met with numerous Brookfield property owners. Based on review of the application, the site visit, and comments received during the site visit, we have decided to prepare an environmental assessment (EA) to evaluate the environmental impacts of the proposed project. Comments received in response to this notice will be used in a scoping process to identify the issues to be evaluated in the EA. The Commission will consider the EA prior to taking any final action on the application.

Summary of the Proposed Project

Iroquois requests authorization to construct and to operate a compressor station near an existing meter station on High Meadow Road, in the county of Fairfield, in Brookfield , Connecticut. Iroquois has an option to purchase a 65 acre parcel bounded by High Meadow Road, an existing meter station, residential property, Whisconier Middle School, railroad tracks, and a pond. On that parcel, Iroquois would install or construct:

- a new 10,000 horsepower compressor;
- a turbo-compressor building and 3 additional control/monitoring/maintenance buildings;
- a 500-foot long access road;
- security fence;
- water well; and septic system.

All proposed construction would occur either on the 65-acre parcel described above or on the existing 3.3 acre meter station, owned by Iroquois.

The EA Process

The National Environmental Policy Act (NEPA) requires the Commission to take into account the environmental impacts that could result from an action whenever it considers the issuance of a Certificate of Public Convenience and Necessity. NEPA also requires Commission staff to discover and address concerns the public may have about proposals. This is called ''scoping''. The main goal of the scoping process is to focus the analysis in the EA on the important environmental issues. By this Notice of Intent, the Commission requests public comments on the scope of the issues to be addressed in the EA. All comments received are considered during the preparation of the EA. State and local government representatives are encouraged to notify their constituents of this proposed action and to encourage them to comment on their areas of concern.

We have already identified several issues that we think deserve attention based on our preliminary review. This list may change based on receipt of additional information and comments.

- Any potential threat of operation of the compressor station to life, health, and property at Whisconier Middle School and adjoining properties.
- Noise from compressor operation and system blow downs.
- Visual compatibility of existing and proposed structures with local architecture and visual setting.
- Visual screening of existing and proposed facilities.
- Degradation of local air quality and the potential for formation of a steam plume from the cooling vents.
- Design constraints that limit the potential location of alternative sites.
- Impacts of construction and operation to property values in the adjoining community.

By this notice, Iroquois is encouraged to provide any additional information regarding the above issues to supplement its application by the close of the comment period described in the public participation section.

The EA will also evaluate possible alternatives to the proposed project and make recommendations on how to lessen or avoid impacts. An independent analysis of issues will be in the EA. Depending on the comments received during the scoping process, the EA may be published and mailed to federal, state, and local agencies, public groups, interested individuals, affected landowners, newspapers, libraries, and the Commission's official service list for this proceeding. A comment period will be allotted for review if the EA is published. We will consider all comments on the EA before we make our recommendations to the Commission.

To ensure your comments are considered, please carefully follow the instructions in the section that follows.

Public Participation

Your comments are requested. To ensure that your comments are addressed in the EA, we request that you file your environmental comments with the Commission as directed below:

- Send an original and two copies of your letter to Linwood Watson, Jr., Acting Secretary, Federal Energy Regulatory Commission, 888 First Street, NE, Room 1A Washington, DC 20426.
- Label one copy for the attention of GHG.
- Reference Docket No. CP02–31–000 in the cover letter.
- Mail your comments so that they are received on or before January 18, 2002.

Comments may also be filed electronically via the Internet in lieu of paper. See 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site at *http://www.ferc.gov* under the ''efiling'' link and the link to the User's Guide.

Becoming an Intervenor

In addition to involvement in the EA scoping process, you may want to become a party to the proceeding known as an ''intervenor''. Intervenors have the right to receive copies of material filed with the Commission and any case-related issuances by the Commission. Further, an intervenor also has the right to request rehearing on the Commission's decision. An intervenor has certain responsibilities including, providing 14 copies of its filings to the Secretary of the Commission and must send a copy of its filings to the applicant and all other parties that intervened in the proceeding (Commission's service list). If you want to become an intervenor, you must file a motion to intervene according to Rule 214 of the Commission's Rules of Practices and Procedure (18 CFR 385.214). Requests to intervene may also be filed electronically.

Affected landowners and parties with environmental concerns may be granted intervenor status upon showing clear and direct interest in this proceeding which would not be adequately represented by any other parties. You do not need to be an intervenor to have

your environmental comments considered.

Additional Information

Additional information about the proposed project may be available from the Commission's Office of External Affairs at (202) 208–1088. Copies of the application and any case-specific filings or issuances are available on the FERC website (*www.ferc.gov*) at the RIMS [1] or CIPS [2] links, using Docket No. CP02–31.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 01–31310 Filed 12–19–01; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Application for Surrender of Exemption and Soliciting Comments, Motions To Intervene, and Protests

December 14, 2001.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. *Application Type:* Surrender of Exemption.

b. *Project No.:* 7662–016.

c. *Date Filed:* April 6, 2001.

d. *Applicant:* Reading Area Water Authority (RAWA or Authority).

e. *Name and Description of Project:* The existing Ontelaunee Hydroelectric Project consists of: (1) a 550-foot-long and 56-foot-high concrete gravity ogee spillway, Ontelaunee Dam, and adjoining 3,200-foot-long earth embankment; (2) 1,350-acre Ontelaunee Lake with a normal water elevation of 304 feet (City of Reading Datum) and a storage capacity of 11,600 acre-feet; (3) a 110-foot-long and 4-foot-diameter steel penstock , a 90-foot-long and 6-foot-diameter penstock, and a 7,920-foot-long and 6.75-foot-diameter concrete tunnel; (4) a reinforced concrete powerhouse, located at the spillway toe adjacent to the right abutment, with no installed capacity; (5) a 300-foot-long tailrace channel; (6) a generating unit with an installed capacity of 37 kW located within the exemptee's Maidencreek filter plant; and (7) other appurtenances.

The Commission's Division of Dam Safety and Inspections (D2SI) has determined that there are no outstanding dam safety issues or any outstanding compliance issues involving dam safety matters pending before the Commission at the subject project. Consequently, D2SI concludes that it does not have any dam safety related requirements. After the issuance of any Commission order approving the proposed surrender, the State of Pennsylvania Department of Environmental Protection, Bureau of Waterways Engineering, Division of Dam Safety would be responsible for regulating the project.

RAWA proposes: (1) to decommission the 40-kilowatt unit within its Maidencreek Filter Plant; (2) to avoid entrainment of fish into the municipal water system by continuing to maintain and inspect annually the existing fish net at the intake; (3) to provide recreational opportunities by continuing to maintain the Authority's two existing picnic areas, which provide, in total, parking for approximately 75 vehicles, 15 large tables, and 12 cooking grills; and (4) to maintain the project's current conservation releases (minimum flows) from Ontelaunee Dam to Maiden Creek. These releases are provided as follows: 51 cubic feet per second (cfs) if the level of the reservoir is greater than 302 feet; 36 cfs if the reservoir level is between 300 and 302 feet; and 27 cfs if the level of the reservoir is under 300 feet. To ensure proper maintenance of these conservation releases, the Authority intends to install accurate measuring and recording devices.

f. *Location:* The project is located on Lake Ontelaunee and Maiden Creek in Berks County, Pennsylvania.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. *Applicant's Contact:* Mr. Anthony J. Consentino, Executive Director, Reading Area Water Authority, 815 Washington Street, Reading, PA 19601; Telephone (610) 655–6253.

i. *FERC Contact:* James Haimes at (202) 219–2780; or e-mail at james.haimes@ferc.fed.us j. Deadline for filing comments and or motions: 30 days from the issuance date of this notice.

The Commission's Rules of Practice and Procedure require all interveners filing documents with the Commission to serve a copy of that document on the official service list for the project. Further, if an intervener files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, the intervener also must serve a copy of the document on that resource agency.

All documents (original and eight copies) should be filed with: Linwood A. Watson, Jr., Acting 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.

Please include the project number (P–7662–016) on any comments or motions filed.

k. *Description of Proposed Action:* RAWA proposes to decommission its entire exempted project, and to cease power production at its Maidencreek Filter Plant, located 1.5 miles downstream from Lake Ontelaunee.

l. *Locations of the Application:* A copy of the application is available for inspection and reproduction at the Commission's Public Reference Room, located at 888 First Street NE, Room 2A, Washington, DC 20426, or by calling (202) 208–1371. 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 ''Docketı'' 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.

m. Individuals desiring to be included on the Commission's mailing list for the Ontelaunee Hydroelectric Project, No. 7662, should so indicate by writing to the Secretary of the Commission.

n. 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 subject application.

o. Filing and Service of Responsive Documents—Any filings must bear in all capital letters the title ''COMMENTS'', ''PROTEST'', OR ''MOTION TO INTERVENE'', as applicable, and the project name and number, ''Ontelaunee Hydroelectric Project Surrender of Exemption, No. 7662–016''. 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.

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[1] For assistance call (202) 208–2222.

[2] For assistance call (202) 208–2474.

A copy of any motion to intervene must also be served upon the representative of the RAWA specified in item h, above.

p. Agency Comments—Federal, state, and local agencies are invited to file comments on the subject application for surrender of exemption. 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 representative listed in item h, above.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 01–31311 Filed 12–19–01; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Western Area Power Administration

Los Banos-Gates Transmission Project

AGENCY: Western Area Power Administration, DOE.

ACTION: Record of decision.

SUMMARY: The Department of Energy (DOE), Western Area Power Administration (Western), has decided to construct the Los Banos-Gates Transmission Project (Project) through a public/private partnership. Electric power transmission constraints along this path have contributed to blackouts in California. The Project will relieve these constraints.

This Record of Decision (ROD) is based on the information, analysis, and public comment received on the Final Environmental Impact Statement (EIS) for the California-Oregon Transmission Project (DOE/EIS–0128, 1988) (Final EIS), its associated Draft EIS, and the Supplement Analysis (SA) for the Project (DOE/EIS–0128–SA–01, August 24, 2001). Based on the findings on the SA, Western has determined that further National Environmental Policy Act (NEPA) documentation is not required.

The Project, also known as Path 15, consists of approximately 84 miles of new 500-kilovolt (kV) transmission line in California's western San Joaquin Valley, starting at the existing Los Banos Substation near Los Banos in Merced County and extending generally south southeastward to the existing Gates Substation near Coalinga in Fresno County. The Project will also require modifications to some existing high-voltage transmission equipment.

Copies of the pertinent volumes of the Draft EIS (DOE/EIS–0128, 1986) and the SA can be reviewed on Western's Web site *http://www.wapa.gov/SN/path15links* or obtained by calling toll free (866) 290–9686. A Mitigation Action Plan (MAP) will be developed and when completed, will be available on the Web site or by calling the same toll free number.

FOR FURTHER INFORMATION CONTACT: Mr. Thomas R. Boyko, The Project Manager, Sierra Nevada Customer Service Region, Western Area Power Administration, 114 Parkshore Drive, Folsom, CA 95630, telephone (866) 290–9686, E-mail *Path15@wapa.gov.* For information about the Department of Energy NEPA process, contact Ms. Carol M. Borgstrom, Director, NEPA Policy and Compliance, EH–42, U.S. Department of Energy, 1000 Independence Avenue SW., Washington, DC 20585, telephone (202) 586–4600 or (800) 472–2756.

SUPPLEMENTARY INFORMATION: Title III of the Energy and Water Development Appropriations Act for Fiscal Year 1985 (Pub. L 98–380) authorized the Secretary of Energy (Secretary), through Western, to construct or participate in the construction of additional facilities as the Secretary deems necessary to allow mutually beneficial power sales between the Pacific Northwest and California. In 1985, a group of California public and private utilities and Western developed a Memorandum of Understanding (MOU) that provided a framework for the proposed development of the California-Oregon Transmission Project (COTP) and the Los Banos-Gates Transmission Project. The Final EIS for the California-Oregon Transmission Project and the Los Banos-Gates Transmission Project (DOE/EIS–0128, 1988) (Final EIS) was issued in 1988. A ROD for construction of the COTP was issued in 1988 (53 FR 17749, May 18, 1988), and the COTP was built and placed into service in 1993. The Project was not built at that time because, as stated in the COTP ROD, Pacific Gas and Electric Company (PG&E) could meet its obligations in the MOU without construction of the Project. Now, due to the need for additional operational flexibility and capacity between Northern and Southern California, and with increasing energy demands in Northern California, the Project has been reconsidered.

In May 2001, Secretary of Energy Spencer Abraham directed Western to take the first steps, including the preparation of environmental studies, toward developing the Project. This directive was issued based on a recommendation in the National Energy Policy, issued on May 17, 2001 (*http://www.whitehouse.gov/energy*). Western issued a Request for Statements of Interest in the **Federal Register** on June 13, 2001, to solicit interest from parties to help finance, construct, and co-own the system additions. Thirteen statements of interest were received by the deadline established in the **Federal Register** notice and evaluated. The Secretary announced on October 18, 2001, that Western would enter into a MOU with qualified private and public parties to finance, construct, and co-own the system additions. These companies are Kinder Morgan Power Company, PG&E, PG&E National Energy Group, Inc., Transmission Agency of Northern California, Trans-Elect, Western's Sierra Nevada Region Marketing function, and the Williams Energy Marketing and Trading Company.

Western and PG&E have been exploring the construction of the Project under separate processes. At the request of the California Public Utilities Commission (CPUC), PG&E submitted a conditional Certificate of Public Convenience and Necessity (CPCN) application to construct the Project on April 13, 2001. The CPCN process examines the environmental impacts of the the Project under the California Environmental Quality Act and will determine if it is economically feasible for PG&E ratepayers to pay for the construction, operation, and maintenance of the Project. The Draft Supplemental Environmental Impact Report (SEIR) was released on October 5, 2001. A final decision is expected by the CPUC in March 2002.

Since the Final EIS was prepared back in 1988, Western chose to prepare an SA for the Project (DOE/EIS–0128–SA–01, August 24, 2001) to determine whether a supplemental EIS was required. The purpose of the SA was to determine if there are any substantial changes in the proposed action that are relevant to environmental concerns or if there are significant new circumstances or information relevant to environmental concerns and bearing on the proposed action or its impacts (10 CFR 1021.314(c) and 40 CFR 1502.9 (c)(1)(i) and (ii)). The SA was based on a review of the Draft and Final EIS environmental analysis and supporting documents, and an update of the information using current data available for the Project, the Project area, and its resources.

The SA did not identify any significant new circumstances or information relevant to environmental concerns identified in the Final EIS. Based on the findings of the SA, Western has determined that further NEPA documentation is not required before making a decision on the Project. Full implementation of this ROD is contingent upon: (1) Completion of

Endangered Species Act Section 7 consultation with the U.S. Fish and Wildlife Service, (2) completion of National Historic Preservation Act Section 106 consultation with the California Historic Preservation Office, and (3) consultation with Native American tribes.

Completion of these processes may result in additional conditions or restrictions on the Project, and/or additional binding mitigation measures. Once the Section 106 and Section 7 processes and Native American consultations are completed, Western will issue an amended ROD if it changes its selected alternative or makes additional mitigation commitments as a result of the above processes. This ROD has been prepared under the Council on Environmental Quality regulations for Implementing NEPA (40 CFR parts 1500–1508) and DOE Procedures for Implementing NEPA (10 CFR part 1021).

Western has adopted the mitigation measures for the Project identified in the Final EIS and the SA, and will prepare a MAP that will ensure that the measures are integrated into the Project. The MAP will also include additional mitigation required after the completion of consultations with Federal, State, and local agencies and will be made available to the public when issued. It may also include specific mitigation measures as agreed upon with landowners. In addition, Western will coordinate with the appropriate Federal, State, and local land management and resource agencies on any unforeseen site-specific mitigation requirements identified during the Project construction phase.

Selected and Environmentally Preferred Alternative

The EIS analyzed two alternative corridors for the Project, the East and the West. The West corridor was identified as being environmentally preferred. The Supplement Analysis reconfirmed that the West corridor is still environmentally preferred. Western selected the West corridor as its preferred alternative, and a detailed description of the Project follows.

Los Banos-Gates 500-kV Transmission Line (new)

Construct approximately 84 miles of single-circuit, overhead 500-kV transmission line from Los Banos Substation, near Los Banos and three miles south of Santa Nella Village in Merced County generally south southeastward to Gates Substation, 12 miles east of Coalinga in Fresno County. The West corridor lies between Interstate 5 and the foothills of the Coastal Mountains in the western San Joaquin Valley. The corridor can be generally described as non-cultivated and non-irrigated hilly land used primarily for livestock grazing. Only a small amount of agricultural land (approximately 15 percent) is crossed by the corridor. Vegetation within the corridor is nearly all grassland or shrub. Other than the Los Banos Reservoir and intermittent streams, no surface water is crossed. The corridor, which comes near oil fields, will cross California Highway 198 about 10 miles northeast of Coalinga and Interstate 5 about 8 miles east of Coalinga. The corridor roughly parallels two existing PG&E 500-kV transmission lines that are a portion of the Pacific Northwest-Pacific Southwest Intertie. The transmission line will be installed on self-supporting square or rectangular lattice steel structures that will vary in height from approximately 100 to 160 feet. An average of only five structures per mile will be necessary, supporting bundled or triple conductors.

Contracts for the new right-of-way (ROW) within the corridor will be negotiated with individual landowners. A new 200-foot ROW or easement will be needed for construction, operation, and maintenance of the new 84-mile transmission line. New 15–30 foot-wide access road easements will also be needed for construction and permanent access to the transmission line structures for maintenance purposes. Additional temporary construction easements will be needed for construction sites such as staging areas and conductor pulling sites.

Connected Actions

The Final EIS discussed additional system modifications that will be needed to incorporate the Project into the integrated power system. As these system components belong to others, Western will not be making decisions about conducting this work, but these actions will have to be closely coordinated with the construction of the Los Banos-Gates Transmission Line. This additional work is not related to the selection of a corridor for the Los Banos-Gates Transmission Line. These connected actions include the following:

Los Banos Substation

Modify the existing PG&E Los Banos 500-kV Substation by adding a new bay, two new circuit breakers, shunt capacitors, miscellaneous electrical equipment, and possibly a new capacitor bank. Construction will be within the existing boundaries of the substation.

Gates Substation

Modify the existing PG&E Gates 500-kV Substation by adding a new bay, two new circuit breakers, new series capacitor bank, shunt capacitors, and miscellaneous electrical equipment. Construction will be within the existing boundaries of the substation.

Midway Substation

Modify the existing PG&E Midway 500-kV Substation, located in Kern County, by adding new shunt capacitors, and miscellaneous electrical equipment. Construction will be within the existing boundaries of the substation.

Los Banos-Midway No. 2 500-kV Transmission Line

Realign the existing PG&E Los Banos-Midway 500-kV No. 2 Transmission Line to loop into the Gates Substation. This realignment of 7,000 feet of existing line will result in the removal of seven towers and the construction of six towers adjacent to the existing Los Banos-Midway 500-kV No. 1 Transmission Line. The realignment will be done within PG&E's existing right-of-way.

Gates-Arco-Midway 230-kV Transmission Line

Reconductor/reconfigure 24.4 miles of the existing PG&E 70-mile transmission lines between Gates Substation and Midway Substation, which presently consists of one 230-kV and one 115-kV transmission line. The 115-kV transmission line could be reconfigured to a 230-kV line to establish two 230-kV circuits between these substations. The reconductoring will be done by bucket truck within PG&E's existing right-of-way on existing access roads.

Mitigation

The mitigation measures adopted are listed in the Draft EIS issued in 1986 and the SA. They are too extensive to be listed here in their entirety, but can be reviewed on the web site provided above, or obtained from the contact given above. In general, many mitigation measures take the form of avoidance through careful siting of the Project centerline and individual structures and access roads. Some mitigation measures identify specific potential impacts and provide strategies for minimizing or eliminating the potential for impact. Others commit to coordination with resource agencies or landowners to site structures and access roads away from sensitive resources. Construction activities will be excluded from some sensitive resource locations to prevent any disturbance.

Another set of specific mitigation measures address construction practices designed to minimize potential impacts. These measures detail culvert installation, wetting of disturbed areas for dust abatement, re-seeding, soil compaction, debris removal, and similar topics. A final set of measures addresses potential long-term impacts like closing access roads and correcting any radio or television interference problems.

These mitigation measures will be incorporated into the Project through a MAP that Western will develop prior to construction. Western will prepare the MAP during the project design phase so as to include engineering designs and construction plans. It will be developed through additional consultation with Federal, State, Tribal, and local agencies. Western will utilize best construction practices and applicable industry standards.

Implementation of the MAP will be assured through several measures. First, Western will ensure that the applicable mitigation measures are included in all construction contracts. The construction inspectors will verify that mitigation measures are implemented and inspectors will have the authority to enforce the measures by redirecting activities of the construction contractor to the extent necessary to meet the mitigation requirements included in the construction specifications. Second, Western will monitor the implementation of the mitigation measures. Third, cooperating and responsible Federal, State, Tribal, and local agencies may also monitor the implementation of the mitigation measures under their jurisdiction. Details of the coordination and reporting mechanisms for this monitoring will be included in the MAP. When completed, the MAP will be available on Western's web site or by calling the toll free number provided above.

Alternatives Considered But Not Selected

1. No Action

Selection of the no-action alternative would mean that the Project would not be constructed. The no-action alternative would have fewer environmental impacts than the selected alternative in the short term. By not constructing the Project, the short-term impacts would be continued congestion on Path 15, which could lead to additional blackouts in Northern California. The State of California has licensed several peaking generation plants that would operate to help meet the electrical demands in Northern California. Longer-term impacts of not constructing the Project include primarily air quality impacts from operating these peaking plants once built, and direct impacts to other resources such as vegetation, wildlife, visual, or archaeological due to the construction of these plants. Selecting the no-action alternative would mean that 1,500 MW of generation resources and associated transmission facilities would need to be constructed in Northern California to meet electrical load, resulting in negative environmental impacts.

The no-action alternative was not selected because it does not meet the recommendations in the National Energy Policy and the directive from the Secretary to relieve the transmission bottleneck on Path 15 and may impact California's ability to meet growing electrical demands in Northern California.

2. Transmission Alternatives

Selection of the West corridor for the Project was part of a systematic siting process that began in 1985. The process reduced a large geographic study area to alternative transmission corridors (2 to 5 miles wide) to alternative routes within these corridors (approximately 1,500 feet wide) to a preferred route made up of selected route segments. Because the SA focused on verifying and updating existing information at the project level, this ROD discusses corridors, but it is important to note that the original work to develop the overall impact levels for the two corridors involved collecting data at a much finer detail. The process included public workshops, agency coordination, and field studies over a 12-month period. The primary objective in refining the alternatives was to avoid, to the extent possible, environmental and land use impacts and constraints during the planning phases of the Project.

The Final EIS considered East and West corridors for the Project. The West corridor runs to the west of Interstate 5 and is primarily in grazing lands, with about 15 percent of the corridor crossing irrigated cropland or orchards. While approximately 3 percent of the West corridor has been converted to agriculture and crops since 1988, the predominant land uses remain the same as when the Final EIS was issued.

The East corridor runs to the east of Interstate 5 and parallel to PG&E's existing 230-kV transmission line for 68 miles. The Final EIS identifies greater than 84 percent of the East corridor as crossing irrigated cropland, which is of high economic value to the region. This intensively managed cropland is less valuable as wildlife habitat since it supports far less natural vegetation than is found further west.

The West corridor was selected over the East corridor because crossing undeveloped grazing lands would have less impact than crossing agricultural lands. The potential impact on the farming community is reduced by minimizing the disruption to existing agricultural practices, including loss of productive land, aerial seeding and spraying, field irrigation, and soil cultivation and preparation. Additionally, there are reduced visual impacts to residents and travelers on Interstate 5 as compared with the more populated East corridor. The CPUC examined the same corridors, and identified the West corridor as the environmentally superior alternative in their SEIR.

None of the alternatives are expected to result in substantial impacts to earth resources, water resources and fisheries, socioeconomics, or corona, electric field, and safety considerations.

Western examined environmental justice concerns and found that impacts are not disproportional to any minority or low-income populations.

Economic impacts would be greatest where the most agriculture is affected. Locating the Project in the East corridor would lead to loss of productive farmland, restricted agricultural development in the ROW, and interference with agricultural practices. In the West corridor, development may also be somewhat restricted in the areas between the transmission line and the existing Intertie lines. There is significantly less agricultural land located in the West corridor.

Surveys have found threatened and endangered vegetation and wildlife in the study area. Because there is less development in the West corridor, more of these species are expected in the West corridor than in the East corridor. The West corridor has, in general, a more diverse collection of vegetation. However, the Final EIS and the SA have found that most impacts can be avoided with careful placement of structures and access roads, and further reduced by mitigation measures. Up to 153 acres of vegetation are subject to disruption in building the Project in either corridor. Wildlife may be temporarily displaced during active construction, but will return to the corridor area once construction activities cease. An average of only five structures per mile helps to minimize long-term impacts.

Cultural resources have been identified in both corridors; however, field inventories have not been conducted to identify specific cultural

resources that could potentially be impacted by construction of the Project. These intensive surveys are undertaken once the initial centerline location is determined, and can lead to adjustments in the centerline to avoid potential impacts. More cultural sites have been identified in the West corridor because of its more varied topography and undeveloped nature. Western's Programmatic Agreement is under review with the California Office of Historic Preservation and other affected parties. The Agreement will address inventory strategies, consultation, eligibility and effect, and treatment plans, and will be referenced in the MAP.

Transmission structures located in either the East and West corridors would be visible from Interstate 5; however, they would be more visible in the East corridor. Structures in the West corridor would be more visible from recreation areas in the foothills and at reservoirs.

Transmission line construction in either corridor could affect roadways during construction by causing congested traffic or by damaging road surfaces.

Construction of the Project in either corridor would require similar commitments of conductor wire, structure steel, concrete, and energy resources. Locating the transmission line at least 2,000 feet away from PG&E's two 500-kV Intertie lines is preferred since it increases power system reliability by reducing the possibility of a single event loss of all three lines (fire, aircraft crash, earthquake, etc.). This separation of these important large transmission lines is consistent with standard utility industry practice and Western Systems Coordinating Council and North American Electric Reliability Council criteria and guidelines.

Public Comment Summary

Western issued newsletters in June and August 2001 and conducted two public workshops on the Project on August 27 and 28, 2001. The landowners attending the public workshops voiced concerns over land values, future land use restrictions, and agricultural impacts to operations and productivity. Written comments were received from several landowners and the CPUC during the public review period.

In their written comments, landowners expressed concerns about locating the transmission line on their property and their desire to reduce impacts to their land and farming operations. Other concerns included potential impacts on the economic development of a proposed housing development near the Los Banos Substation, San Joaquin kit fox habitat and mitigation areas being evaluated within the Western corridor, established habitat areas, and electromagnetic fields. Western will work with landowners to address their concerns during the transmission line siting and land acquisition processes.

Comments from the CPUC centered on including additional information from its environmental analysis. The CPUC's major comments included impacts to air quality, endangered species, water quality, increases in agricultural and other land uses, visual resources, seismic activity, socioeconomics, cultural resources, and mitigation measures. Western will also work with the CPUC, PG&E, and other Federal, State, and local agencies to assure that potential impacts are minimized.

Comments received and Western's specific responses are available on Western's web site or by calling the toll free number.

Dated: December 7, 2001.

Michael S. Hacskaylo,

Administrator.

[FR Doc. 01–31346 Filed 12–19–01; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Western Area Power Administration

Havre-Rainbow Transmission Line Rebuild Project

AGENCY: Western Area Power Administration, DOE.

ACTION: Notice of floodplain/wetlands involvement.

SUMMARY: The Western Area Power Administration (Western) intends to rebuild the Havre-Rainbow 161 kilovolt (kV) Transmission Line in central Montana. This will initially require replacement of structures. Eventually, conductors will be replaced and overhead groundwires and fiber optic cable may be added. The line lies north and west of the Missouri River and crosses the Marias and Teton Rivers near Loma, Montana, and the Big Sandy Creek near Big Sandy, Montana.

In accordance with the U.S. Department of Energy (DOE) Floodplain/Wetland Review Requirements (10 CFR part 1022), Western will prepare a floodplain assessment and will perform the proposed actions in a manner so as to avoid or minimize potential harm to or within the affected floodplain. The floodplain assessment will be included in the Environmental Assessment being prepared by Western, in accordance with the provisions of the DOE National Environmental Policy Act Implementing Procedures (10 CFR part 1021).

DATES: Comments on the proposed floodplain action are due to the address below no later than January 22, 2002.

FOR FURTHER INFORMATION CONTACT: Comments should be addressed to Mr. Theodore Anderson, Environmental Specialist, Upper Great Plains Customer Service Region, Western Area Power Administration, P.O. Box 35800, Billings, Montana 59107–5800, e-mail *tanderso@wapa.gov.* For further information on DOE Floodplain/Wetlands Environmental Review Requirements, contact Ms. Carol M. Borgstrom, Director, NEPA Policy and Compliance, EH–42, U.S. Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585, telephone (202) 586–4600 or (800) 472–2756.

SUPPLEMENTARY INFORMATION: The existing Havre-Rainbow Transmission Line is approximately 103 miles long and approximately 60 years old. The action will entail the removal of the existing structures and reinstalling the new structures. At some time in the future Western may reconductor the line to 230-kV and install overhead groundwires and fiber optic cable. Most ground disturbances will take place where the structures are replaced, at the splice points, and at pulling sites of the possible future installation of conductor, overhead groundwire, and fiber optic cable. Access roads for the line exist and may need to be improved. There may also be a need for additional access trails or roads to individual structure locations. The work will take place over a 10-year period by an in-house workforce.

The line crosses the Marias and Teton Rivers, at their confluence with the Missouri River near Loma, Montana, and Big Sandy Creek near Big Sandy, Montana. The line will affect lands mostly in private ownership (grazing and cultivated lands), but will also cross Indian allotted lands on the Rocky Boys Indian Reservation. There may also be lands managed by the Bureau of Land Management and lands belonging to the State of Montana along the route.

Issued: December 12, 2001.

Michael S. Hacskaylo,

Administrator.

[FR Doc. 01–31352 Filed 12–19–01; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Western Area Power Administration

Energy Imbalance Service

AGENCY: Western Area Power Administration, DOE.

ACTION: Notice of proposed rate.

SUMMARY: The Western Area Power Administration (Western) is proposing a revision to the current rate schedule for Energy Imbalance Service for the Western Area Colorado Missouri control area (WACM).

The Department of Energy (DOE) Deputy Secretary approved rates for Transmission and Ancillary Services, including Energy Imbalance Service, on March 23, 1998 (Rate Order No. WAPA–80, published in the **Federal Register** on April 6, 1998). The Federal Energy Regulatory Commission (FERC) confirmed and approved the rate schedule on July 21, 1998, under FERC Docket No. EF98–5181–000. Rate Schedule L–AS4, the rate schedule for Energy Imbalance Service, was contained within Rate Order No. WAPA–80 and became effective on April 1, 1998, for the period ending March 31, 2003.

The proposed rate is a revision to L–AS4 and provides sufficient revenue to pay annual costs incurred in WACM's management of control area resources and obligations. The proposed rate is scheduled to go into effect on April 1, 2002, and will remain in effect through March 31, 2003. This **Federal Register** notice begins the formal process for the proposed rate.

DATES: The consultation and comment period begins with the publication of this notice and ends on January 31, 2002. An informal public information meeting will be held on January 15, 2002. No public comment forum will be held.

ADDRESSES: If you wish to submit comments, please do so in writing and address them to: Mr. Joel K. Bladow, Regional Manager, Rocky Mountain Customer Service Region, Western Area Power Administration, 5555 East Crossroads Boulevard, Loveland, CO 80538–8986. Western must receive written comments by January 31, 2002, to be assured consideration.

FOR FURTHER INFORMATION CONTACT: Mr. Daniel T. Payton, Rates Manager, Rocky Mountain Customer Service Region, Western Area Power Administration, 5555 East Crossroads Boulevard, Loveland, CO 80538–8986, telephone (970) 461–7442, e-mail *dpayton@wapa.gov.*

SUPPLEMENTARY INFORMATION: The proposed rate is needed to adequately recover the cost of energy purchased when entities conducting business within WACM are unable to match their resources and obligations accurately.

The current rate schedule L–AS4 provides for the ability to charge 100 mills per kilowatt-hour for under deliveries occurring more than five times per month outside of a bandwidth of ±1.5%. Within the bandwidth, the customer returns energy to Western. For over deliveries, the current rate schedule provides for the Transmission Customer to be credited up to 50 percent of the regional average monthly price for non-firm purchases.

WACM has experienced a great deal of price volatility over the last year, with prices ranging from a high of $575 per megawatt (MW) on-peak to a low of $22 per MW on-peak. WACM, as a control area operator, has final responsibility for balancing resources against obligations. As such, in times of deficit energy, WACM is required to purchase energy to keep the control area in balance. The existing 100-mill charge is inadequate to repay the costs of balancing energy in a high-cost market. At other times, it may be excessive. This proposed pass-through cost methodology will result in an equitable recovery of expenses.

Any change to Energy Imbalance Service will be as set forth in a revision to this schedule pursuant to applicable Federal laws, regulations, and policies and made part of the applicable service agreement.

Formula Rate

Western provides Energy Imbalance Service when there is a difference between a customer's resources and obligations. Energy Imbalance is calculated as resources minus obligations (adjusted for losses) for any combination of scheduled transfers/transactions located within WACM over each hour. Resources are defined as the quantity of actual generation plus scheduled resources, imports, or receipts. Obligations are defined as the quantity of actual deliveries plus scheduled obligations, exports or deliveries plus losses not accounted for separately. Some deviation from zero is expected, and a bandwidth is established to accommodate reasonable variations from an exact match of obligations and resources. Deviation beyond that bandwidth is not considered to be prudent utility practice.

WACM will establish a bandwidth of ±4 percent (8 percent bandwidth), with a minimum deviation of 2 megawatts (MW) to be applied hourly to any energy imbalance that occurs as a result of a difference in the customers' resources and obligations. WACM has proposed this increase in the bandwidth because the original rate schedule's bandwidth of ±1.5 percent was not reasonable with regard to current industry instrumentation accuracy, which is approximately 1 percent. WACM proposes to increase the bandwidth to ±4 percent to accommodate a wider range of customers' imbalances in a non-punitive manner, while still recovering WACM's expenses to balance energy. Four percent was determined to be the maximum capacity risk that WACM was willing to consider. With an estimated average control area load of 2,900 MW, the selection of a 4 percent bandwidth creates a capacity risk of 116 MW for WACM. The 2 MW minimum deviation accommodates a situation where entities with smaller loads are not harmed by the industry standard of scheduling in whole megawatts.

All Energy Imbalance Service provided, both inside and outside the bandwidth, will be handled through financial settlement, accounted for hourly, at the end of each month.

Within the established bandwidth, charges for under deliveries or compensation for over deliveries will be aggregated and distributed to customers on a pass-through cost basis. The intent is to keep the control area whole within this range. Prices inside the bandwidth will be based on WACM's weighted average of nonfirm purchases and sales.

Outside the bandwidth, WACM will provide disincentives for those exceeding the established limits. These disincentives will be in the form of higher charges for under deliveries and lower compensation for over deliveries. Prices outside the bandwidth will be based on WACM's marginal nonfirm purchases or sales.

Within the Bandwidth

Within the bandwidth, the gross energy imbalance for each applicable entity within WACM shall be totaled and netted to determine an aggregate energy imbalance for WACM. The sign of the net amount will determine which of the following pricing mechanisms will apply:

For excursions by individual customers during hours of WACM *net over-delivery,* WACM will provide the customer with a financial charge for under deliveries or credit for over deliveries, as applicable, equal to 100 percent of the weighted average of nonfirm Loveland Area Projects (LAP) energy sale prices for that hour made by Western's Energy Management and

Marketing Office (EMMO) in Montrose. If during the hour in question, there are no LAP sales by EMMO, WACM will use the daily on-or off-peak weighted average nonfirm energy LAP sale prices. If there were no LAP sales made by EMMO during the day in question, then the Palo Verde nonfirm index will be used for on- and off-peak hours.

For excursions by individual customers during hours of *WACM net under-delivery,* for each hour, WACM will provide the customer with a financial charge for under deliveries or credit for over deliveries, as applicable, equal to 100 percent of the weighted average of nonfirm energy LAP purchase prices for that hour made by EMMO. If during the hour in question, there are no LAP purchases by EMMO, WACM will use the daily on-or off-peak weighted average of nonfirm LAP purchase prices. If there were no LAP purchases made by EMMO during the day in question, then the Palo Verde nonfirm index will be used for on- and off-peak hours.

Transmission expenses incurred in the sale or purchase of balancing energy will be factored in the sale and purchase prices.

Outside the Bandwidth

Outside the bandwidth, aggregated WACM energy imbalance will not be taken into account. Each entity within WACM will be charged or credited independently for energy imbalance service taken.

For *positive* excursions (over deliveries) outside the bandwidth, WACM will credit the customer for 90 percent of the weighted average of the lowest marginal nonfirm energy LAP sale prices for that hour made by EMMO. If during the hour in question, there are no LAP sales, WACM will use 90 percent of the weighted average of the lowest marginal nonfirm energy LAP sale prices for the day. If there were no LAP sales made by EMMO during the day in question, WACM will use 90 percent of the Palo Verde nonfirm index for on- and off-peak hours.

For *negative* excursions (under deliveries) outside the bandwidth, WACM will charge the customer 110 percent of the weighted average of the highest marginal nonfirm energy LAP purchase prices for that hour made by EMMO. If during the hour in question, there are no LAP purchases, WACM will use 110 percent of the weighted average of the highest marginal nonfirm LAP purchase prices for the day. If there were no LAP purchases made by EMMO during the day in question, WACM will use 110 percent of the Palo Verde nonfirm index for on- and off-peak hours.

Transmission expenses incurred in the sale or purchase of balancing energy will be factored in the sale and purchase prices.

WACM reserves the right to offer no financial credit during periods when control area operations are compromised by over-delivery; *e.g.*, during periods of high water or other operating constraints.

WACM will keep hourly records of Energy Imbalance Service amounts by customer and will produce a monthly report showing such amounts.

In the case of a generator imbalance where the generator is jointly owned, the charges/credits for Energy Imbalance Service will be assigned to the operating agent of the generator, unless WACM has been provided with a signed agreement from the generator owners designating a specific methodology used to allocate among owners and entitlees, the amount of aggregate energy imbalance due to the generator(s). Western reserves the right to refuse a designation that does not provide for the full and accurate recovery of all energy imbalance existing among owners/entitlees.

Physical Resource Loss

Western recognizes that the loss of a physical resource/generator, by virtue of an uncontrollable event (forced outage), can represent a significant percentage of an entity's resource, and may result in an out-of-bandwidth condition. Western proposes to lessen the impact of such instances by widening the bandwidth an additional amount to accommodate the amount of time required for an emergency response. This would be equivalent to the entity's resource loss in MW, divided by 8. The divisor of 8 is justified by the 15-minute response requirement, divided in half. The period immediately preceding the resource loss should have production on-schedule and the period after the loss should have the group response on-schedule.

The 15-minute period immediately following the trip would begin with an out-of-balance condition in the amount of the entity's schedule/allocation from the off-line unit and end with a balanced condition due to the group response. Thus, the amount of imbalance in the 15-minute period would be one-half of the energy in that period, for a total of one-eighth of the schedule from the tripped unit for that hour. The standard bandwidth would be extended by that one-eighth amount for either the hour of the trip or the hour of the trip and the next hour, depending on whether or not the 15-minute period rested entirely within an hour or overlapped into the following hour.

Western would also apply this expanded bandwidth to those cases where there is the loss of a resource (either internal to or scheduled into WACM) by virtue of an uncontrollable event, which is replaced for 1 or 2 hours by a coordinated response from a Western-recognized reserve-sharing group.

Western would provide a similarly expanded bandwidth of 1 to 2 hours for those members of a bona fide reserve-sharing group whose calculation of energy imbalance is pushed out of balance by virtue of a response to another member's loss of a unit during a reserve group activation. In this case, the expanded bandwidth would be the supplying members' response level for the trip, divided by 8. Again, the divisor of 8 is justified by the 15-minute response requirement, divided in half.

Sample Calculations

Within the Bandwidth

Within the bandwidth, credits and charges will be based on the weighted average of all nonfirm energy sales or purchases made within the hour or day, as depicted in Table 1:

TABLE 1

Credits for Over Deliveries: Weighted Average Nonfirm *Sale Price (WANSP)*	Charges for Under Deliveries: Weighted Average Nonfirm *Purchase Price (WANPP)*
Scenario: Aggregate over delivery Sale #1 25 MW @ $200 ($5,000) Sale #2 25 MW @ $100 ($2,500) Sale #3 25 MW @ $ 43 ($1,075) Sale #4 25 MW @ $ 25 ($ 625) Calculation: ($5,000+$2,500+$1,075+$625) = $9,200	Scenario: Aggregate under delivery Purchase #1 100 MW @ $200 ($20,000) Purchase #2 50 MW @ $100 ($5,000) Purchase #3 100 MW @ $ 65 ($6,500) Purchase #4 50 MW @ $ 35 ($1,750) Calculation: ($20,000+$5,000+$6,500+$1,750) = $33,250

TABLE 1—Continued

Credits for Over Deliveries: Weighted Average Nonfirm *Sale Price (WANSP)*	Charges for Under Deliveries: Weighted Average Nonfirm *Purchase Price (WANPP)*
$9,200/100 MW = $92 WANSP: $92/MW Or Palo Verde posted rate, if no sales (Applicable transmission cost deducted)	$33,250/300 MW = $110.83 WANPP: $110.83/MW Or Palo Verde posted rate, if no purchases (Applicable transmission cost added)

Outside the Bandwidth

Reference is made above to the weighted average of the lowest and highest marginal nonfirm sale and purchase price(s) for the hour or day that a sale or purchase is made by EMMO. These prices will apply only to imbalances outside the bandwidth. The weighted average of the lowest and highest marginal nonfirm energy sale and purchase prices will be derived as depicted in Table 2:

TABLE 2

Credits for Over Deliveries: Weighted Average Lowest Marginal Nonfirm Sale Price (WALMNSP)	Charges for Under Deliveries: Weighted Average Highest Marginal Nonfirm Purchase Price (WAHMNPP)
Scenario: Customer surplus 35 MW Sale #1 25 MW @ $25 ($625) Sale #2 25 MW @ $43 ($1,075) Sale #3 25 MW @ $100 ($2,500) Sale #4 25 MW @ $200 ($5,000) Calculation keys off of surplus of 35 MW: ($625)+(10 MW × $43) = $1,055 $1,055 / 35 MW = $30.14 WALMNSP: $30.14/MW × 90 percent = $27.13/MW Or Palo Verde posted rate, if no sales (Applicable transmission cost deducted)	Scenario: Customer deficit 175 MW Purchase #1 100 MW @ $200 ($20,000) Purchase #2 50 MW @ $100 ($5,000) Purchase #3 100 MW @ $65 ($6,500) Purchase #4 50 MW @ $35 ($1,750) Calculation keys off deficit of 175 MW: ($20,000)+($5,000)+(25 MW × $65) = $26,625 $26,625 / 175 MW = $152.14 WAHMNPP: $152.14/MW × 110 percent = $167.36/MW Or Palo Verde posted rate, if no purchases (Applicable transmission cost added)

Procedural Requirements

The proposed rate will result in a minor rate adjustment as defined at 10 CFR 903.2. A minor rate adjustment is one that will not increase annual revenue of the power system by more than 1 percent. The proposed rate will accomplish a pass-through of costs incurred to purchase energy to balance the control area, resulting in only incidental changes in net revenue. An informal public information meeting will be held on January 15, 2002, at the Rocky Mountain Customer Service Region Office. No public comment forum will be held. The comment period will end on January 31, 2002. All comments must be sent to the address listed in the Addresses section. Western will review written comments received during the comment period and will recommend that the proposed rate or a revised proposed rate be approved on an interim basis by the DOE Deputy Secretary.

The proposed rate for Energy Imbalance Service is being established pursuant to the Department of Energy Organization Act, 42 U.S.C. 7101–7352; the Reclamation Act of 1902, ch. 1093, 32 Stat. 388, as amended and supplemented by subsequent enactments, particularly section 9(c) of the Reclamation Project Act of 1939, 43, U.S.C. 485h(c); and other acts specifically applicable to the projects involved.

By Amendment No. 3 to Delegation Order No. 0204–108, published November 10, 1993 (58 FR 59716), the Secretary of DOE delegated (1) the authority to develop long-term power and transmission rates on a nonexclusive basis to Western's Administrator; and (2) the authority to confirm, approve, and place into effect on a final basis, to remand, or to disapprove such rates to FERC. In Delegation Order No. 0204–172, effective November 24, 1999, the Secretary of Energy delegated the authority to confirm, approve, and place such rates into effect on an interim basis to the Deputy Secretary. Existing DOE procedures for public participation in power rate adjustments are found at 10 CFR part 903.

Availability of Information

Comments, letters, memorandums, or other documents made or kept by Western in developing the proposed rate will be made available for inspection and copying at the Rocky Mountain Customer Service Region, located at 5555 East Crossroads Boulevard, Loveland, CO 80538–8986.

Regulatory Procedural Requirements

Regulatory Flexibility Analysis

The Regulatory Flexibility Act of 1980 (5 U.S.C. 601, *et seq.*) requires Federal agencies to perform a regulatory flexibility analysis if a final rule is likely to have a significant economic impact on a substantial number of small entities and there is a legal requirement to issue a general notice of proposed rulemaking. Western has determined that this action does not require a regulatory flexibility analysis since it is a rulemaking of particular applicability involving rates or services applicable to public property.

Environmental Compliance

In compliance with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321, *et seq.*); Council on Environmental Quality Regulations (40 CFR parts 1500–1508); and DOE NEPA Regulations (10 CFR part 1021), Western determined that this action is categorically excluded from the preparation of an environmental assessment or an environmental impact statement.

Determination Under Executive Order 12866

Western has an exemption from centralized regulatory review under Executive Order 12866; accordingly, no

clearance of this notice by the Office of Management and Budget is required.

Small Business Regulatory Enforcement Fairness Act

Western has determined that this rule is exempt from Congressional notification requirements under 5 U.S.C. 801 because the action is a rulemaking of particular applicability relating to rates or services and involves matters of procedure.

Dated: December 5, 2001.

Michael S. Hacskaylo,

Administrator.

[FR Doc. 01–31347 Filed 12–19–01; 8:45 am]

BILLING CODE 6450–01–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–7120–4]

Agency Information Collection Activities: Proposed Collection; Comment Request; Servicing of Motor Vehicle Air Conditioners

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this document announces that EPA is planning to submit the following renewal of the Information Collection Request (ICR) to the Office of Management and Budget (OMB): Servicing of Motor Vehicle Air Conditioners, OMB Control Number 2060–0247, EPA Number 1617.04, which will expire on May 31, 2002. Before submitting the ICR to OMB for review and approval, EPA is soliciting comments on specific aspects of the proposed information collection as described below.

DATES: Comments must be submitted on or before February 19, 2002.

ADDRESSES: Global Programs Division, (6205–J), 1200 Pennsylvania Avenue, NW., Washington, DC 20460. To obtain a copy of the ICR, free of charge, you may contact the Stratospheric Ozone Hotline at 1/800–296–1996.

FOR FURTHER INFORMATION CONTACT: Nancy Smagin 202–564–9126 202–564–2156 *smagin.nancy.epa.gov.*

SUPPLEMENTARY INFORMATION:

Affected entities: Entities potentially affected by this action are those that service motor vehicle air conditioners. Entities that service motor vehicle air conditioners must send a one-time recovery/recycle equipment certification to EPA. New technical colleges seeking EPA authorization to certify technicians to service motor vehicle air conditioners. Additional laboratories, although highly unlikely, seeking to become EPA certified to test refrigerant, which has been reclaimed to the industry standard.

Title: ''Servicing of Motor Vehicle Air Conditioners''

OMB Control No.: 2060–0247; EPA ICR No. 1617.04, expiring on May 31, 2002.

Abstract: Section 609(d)(3)–(4) of the Act requires that all entities that service motor vehicle air conditioners acquire approved refrigerant recycling equipment. Proposed automotive technician certification programs are required to be approved by EPA in section 609(b)(4). Under section 609(b)(2)(A), independent laboratories must seek EPA approval to assure that they meet an industry accepted standard of quality. Owners may show that they possess substantially identical equipment as addressed in section 609(b)(2)(B), and obtain certification from EPA. The recordkeeping requirements for motor vehicle recycling programs are derived from section 114 of the Act. Responses collected or recorded are required to ensure that EPA standards are met, and are consistent with the least stringent of the Society of Automotive Engineers (SAE) J standards.

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

The EPA would like to solicit comments to:

(i) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(ii) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(iii) Enhance the quality, utility, and clarity of the information to be collected; and

(iv) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Burden Statement: The estimated annual burden associated with recordkeeping is 5,320 hours, and the total annual costs are estimated at $266,000. The estimated annual reporting burden is estimated at 3,562 hours, and the total annual costs are estimated at $178,100. The total annual public burden of capital/start-up and total burden hours is 8,882, and the summary total of all capital/start-up costs and total annual costs is $444,100.

Dated: December 12, 2001.

Paul Stolpman,

Director, Office of Atmospheric Programs.

[FR Doc. 01–31345 Filed 12–19–01; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–7120–7]

Agency Information Collection Activities: Submission for OMB Review; Renewal; Federal Plan Recordkeeping and Reporting Requirements for Large Municipal Waste Combustors Constructed on or Before September 20, 1994 (Subpart FFF)

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this document announces that the following Information Collection Request (ICR) has been forwarded to the Office of Management and Budget (OMB) for review and approval: Federal Plan Recordkeeping and Reporting Requirements for Large Municipal Waste Combustors Constructed on or Before September 20, 1994 (subpart FFF), ICR Number, 1847.02, OMB Control Number, 2060–0390, expiration date, December 31, 2001. The ICR describes the nature of the information collection and its expected burden and cost; where appropriate, it includes the actual data collection instrument.

DATES: Comments must be submitted on or before January 22, 2002.

FOR FURTHER INFORMATION CONTACT: For a copy of the ICR contact Susan Auby at EPA by phone at (202) 260–4901, by E-mail at *auby.susan@epamail.epa.gov,* or download off the Internet at *http://www.epa.gov/icr* and refer to EPA ICR No. 1847.20.For technical questions about the ICR contact Carolyn Young, 202–564–7062, Office of Compliance, *young.carolyn@epa.gov.*

SUPPLEMENTARY INFORMATION:

Title: Federal Plan Recordkeeping and Reporting Requirements for Large Municipal Waste Combustors Constructed on or before September 20, 1994 (subpart FFF); OMB Control Number 2060–0390, EPA ICR Number 1847.02, expiration date December 31, 2001. This is a renewal notice.

Abstract: This information collection is required as a result of a Federal plan to implement and enforce the Clean Air Act (CAA) emission guidelines (40 CFR part 60, subpart Cb) for large municipal waste combustors (MWC's) that were promulgated under the authority of CAA sections 111 and 129. The emission guidelines are not federally enforceable. Under the CAA section 129(b)(2), States were required to submit State plans to the Environmental Protection Agency (EPA) for approval by December 19, 1996 that implement and enforce the guidelines. Section 129(b)(3) requires EPA to promulgate a Federal plan to implement and enforce the guidelines in those States that have not submitted an approvable plan to EPA by December 19, 1997. Reporting and recordkeeping requirements would apply to MWC units with capacities to combust greater than 250 tons per day (tpd) (large MWC's). The EPA Regional Offices will collect the required information (after promulgation of the MWC Federal plan) to ensure that the subpart FFF Federal plan is being implemented and enforced for affected facilities in States that have not submitted an approvable State plan by December 19, 1997.

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. Respondents are owners or operators of municipal waste combustors with a capacity to combust greater than 250 tons per day located in States that do not have EPA-approved State plans. All respondents must submit notification of five increments of progress and emission rates. The information will be used to ensure that the MWC Federal plan requirements are being achieved on a continuous basis. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations are listed in 40 CFR part 9 and 48 CFR Chapter 15. The **Federal Register** document required under 5 CFR 1320.8(d), soliciting comments on this collection of information was published on August 17, 2001. A comment was received from Mark Strohfus, Great River Energy, 17845 E. Hwy 10, PO Box 800 Elk River, MN 55330–0800.

Burden Statement: The annual public reporting and recordkeeping burden for this collection of information is estimated to average 3,218 hours per response. Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

Respondents/Affected Entities: Owners/Operators Municipal Waste Combustors (MWC).

Estimated Number of Respondents: 56.

Frequency of Response: one-time, quarterly, semi-annual and annual.

Estimated Total Annual Hour Burden: 58,915 hours.

Estimated Total Annualized Capital and Operating & Maintenance Cost Burden: $3,218.

Send comments on the Agency's need for this information, the accuracy of the provided burden estimates, and any suggested methods for minimizing respondent burden, including through the use of automated collection techniques to the following addresses. Please refer to EPA ICR No.1847.02 and OMB Control No. 2060–0390 in any correspondence.

Send comments on the Agency's need for this information, the accuracy of the provided burden estimates, and any suggested methods for minimizing respondent burden, including through the use of automated collection techniques to the addresses listed above. Please refer to EPA ICR No. 1847.02 and OMB Control No. 2060–0390 in any correspondence.

Dated: December 12, 2001.

Oscar Morales,

Director, Collection Strategies Division.

[FR Doc. 01–31343 Filed 12–19–01; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–7120–6]

Agency Information Collection Activities: Submission for OMB Review; Comment Request; Application for Reference and Equivalent Method Determination

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this document announces that the following Information Collection Request (ICR) has been forwarded to the Office of Management and Budget (OMB) for review and approval: Application for Reference and Equivalent Method Determination, OMB Control Number 2080–0005, expiration date December 31, 2001. The ICR describes the nature of the information collection and its expected burden and cost; where appropriate, it includes the actual data collection instrument.

DATES: Comments must be submitted on or before January 22, 2002.

ADDRESSES: Send comments, referencing EPA ICR No. 0559.07 and OMB Control No. 2080–0005, to the following addresses: Susan Auby, U.S. Environmental Protection Agency, Collection Strategies Division (Mail Code 2822), 1200 Pennsylvania Avenue, NW., Washington, DC 20460–0001; and to Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), Attention: Desk Officer for EPA, 725 17th Street, NW., Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: For a copy of the ICR, contact Susan Auby at EPA by phone at (202) 260–4901, by e-mail at *auby.susan@epamail.epa.gov*, or download off the Internet at *http://www.epa.gov/icr* and refer to EPA ICR No. 0559.07. For technical questions about the ICR, contact Elizabeth T. Hunike on 919–541–3737; facsimile number: 919–541–1153; e-mail: *Hunike.Elizabeth@epa.gov*.

SUPPLEMENTARY INFORMATION:

Title: Application for Reference and Equivalent Method Determination, OMB Control Number 2080–0005, EPA ICR No. 0559.07, expiring December 31, 2001. This is a request for extension of a currently approved collection.

Abstract: State air monitoring agencies are required to use EPA-designated reference or equivalent methods in their air monitoring networks to determine compliance with the national ambient air quality

standards (NAAQS). A manufacturer or seller of an air monitoring method (more specifically, an air monitoring sampler or analyzer that is the basis of the method) which seeks EPA designation of the method must carry out prescribed tests of the method. The test results along with other information must then be submitted to the EPA in the form of an application for a reference or equivalent method determination in accordance with 40 CFR part 53. The EPA uses this information to determine whether the particular method should be designated as either a reference or equivalent method. After designation of a method, the applicant must also maintain records of the names and mailing addresses of all ultimate purchasers of all analyzers or samplers sold as designated methods under the method designation. Following designation of a method for $PM_{2.5,}$ the applicant must also maintain its manufacturing facility as a ISO 0991-registered facility and annually submit a checklist signed by an ISO-certified auditor to verify adherence to specific quality assurance requirements in the manufacture of the samplers or analyzers sold as part of a designated method.

Responses to the collection of information are voluntary but are required to obtain the benefit of EPA-designation of a method or product as a reference or equivalent method (40 CFR part 53). Submission of information that is claimed by the applicant to be confidential business information may be necessary to make a reference or equivalent method determination. The confidentiality of any submitted information identified as such will be protected in full accordance with 40 CFR 53.15 and all applicable provisions of 40 CFR part 2.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations are listed in 40 CFR part 9 and 48 CFR Chapter 15. The **Federal Register** document required under 5 CFR 1320.8(d), soliciting comments on this collection of information was published on June 25, 2001 (66 FR 33681); no comments were received.

Burden Statement: The annual public reporting and recordkeeping burden for this collection of information is estimated to be 860 hours per response. Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

Respondents/Affected Entities: Business or other for-profit, Federal Government, or State, Local or Tribal Government.

Estimated Number of Respondents: 5.

Frequency of Response: As needed.

Estimated Total Annual Hour Burden: 4,718.

Estimated Total Annualized Capital, O&M and Cost Burden: $89,000.

Send comments on the Agency's need for this information, the accuracy of the provided burden estimates, and any suggested methods for minimizing respondent burden, including through the use of automated collection techniques to the addresses listed above. Please refer to EPA ICR No. 0559.07 and OMB Control No. 2080–0005 in any correspondence.

Dated: December 12, 2001.

Oscar Morales,

Director, Collection Strategies Division.

[FR Doc. 01–31344 Filed 12–19–01; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL ELECTION COMMISSION

[Notice 2001–19]

Voluntary Standards for Computerized Voting Systems

AGENCY: Federal Election Commission.

ACTION: Notice with request for comments.

SUMMARY: The Federal Election Commission (the ''FEC'') requests comments on the second draft of the revisions to the 1990 national voluntary performance standards for computerized voting systems and the first draft of the revisions to the 1990 national test standards. Please note that these drafts do not represent a final decision by the Commission. The FEC will publish a **Federal Register** notice when both volumes of the final revised standards are issued. Note also that the text of the final documents will not become part of the Code of Federal Regulations because they are intended only as guidelines for states and voting system vendors. States may mandate the specifications and procedures through their own statutes, regulations, or administrative rules. Voting system vendors may voluntarily adhere to the standards to ensure the reliability, accuracy, and integrity of their products. Further information is provided in the **SUPPLEMENTARY INFORMATION** that follows.

DATES: Comments must be received on or before February 1, 2002.

ADDRESSES: Copies of the draft revised performance and test standards may be found on the Federal Election Commission's Web site at *www.fec.gov/elections.html,* or may be requested by contacting the Office of Election Administration, Federal Election Commission, 999 E. Street, NW., Washington, DC 20463. They may also be requested in person at the Office of Election Administration, 800 N. Capital St., NW., Washington, DC, Suite 600.

All comments should be addressed to Ms. Penelope Bonsall, Director, Office of Election Administration, and must be submitted in either written or electronic form. Because no anonymous submissions will be considered, all submissions must include the commenter's full name, postal mail address, and electronic mail address if submitted by e-mail. Written comments should be sent to the Office of Election Administration, Federal Election Commission, 999 E. Street, NW., Washington, DC 20463. Faxed comments should be sent to (202) 219–8500, although it is advisable to send a printed copy to ensure legibility. Comments can be submitted electronically to *vss@fec.gov.* It is suggested that electronic comments that are submitted as attachments use Microsoft Word and that all comments avoid the use of special characters or encryption. Comments can be submitted through the close of business on February 1, 2002

FOR FURTHER INFORMATION CONTACT: Ms. Penelope Bonsall, Director, Office of Election Administration, 999 E. Street, NW., Washington, DC 20463; Telephone: (202) 694–1095; Toll free (800) 424–9530, extension 1095.

SUPPLEMENTARY INFORMATION: In 1990, the FEC and its Office of Election Administration promulgated standards for computerized election equipment pursuant to its responsibilities under 2 U.S.C 438(a)(10), which requires the FEC to ''serve as a national clearinghouse for the compilation and review of procedures with respect to the administration of Federal elections.'' The resulting product is the Voting System Standards (the ''Standards'').

Although voluntary, the Standards have been adopted in 38 states in whole or in part and are used to design systems and procure equipment to meet the needs of diverse jurisdictions serving a wide variety of voting populations and election formats.

The Standards are designed to provide technical specifications and documentation requirements to vendors that intend to sell systems in the states that require compliance with the Standards. In order to show compliance, a vendor must submit its system for qualification testing. The qualification testing is done through an Independent Testing Authority (''ITA'') that has been certified by the National Association of State Election Directors (''NASED''). Once a system has completed the ITA process, it receives a NASED Qualified identification number. In order to maintain its status as a NASED qualified system, the hardware and software must be identical to the hardware and software tested by the ITA.

The Standards are designed to guide development of computerized voting systems. To this extent, the only voting systems that are addressed in the Standards are electronic DRE systems and paper-based systems that utilize electronic technology to count ballots. The Standards do not address lever machines systems, as there are currently no manufacturers that design systems using such machines.

Periodic revisions to the Standards are necessary to reflect the development of emerging technology in voting systems and design innovations. Increasingly, voting system vendors are designing systems that use electronic and telecommunications components not addressed in the original standards. As a result, proposed revisions have been developed by the FEC that reflect the technologies contemplated by the voting system industry. Also, the Standards acknowledge the impact of the Americans with Disabilities Act and provide specifications so that voting system vendors can design systems that allow a voter with a disability to exercise his or her democratically protected right to vote.

Additionally, the revised Standards incorporate a broadened understanding of what constitutes a voting system by including not just the machine used by voters to cast ballots, but also certain components of the Election Management System (EMS), the telecommunications system (where applicable), and the ballot counting system. The revised Standards augment the requirements for the EMS, addressing preparation of the ballot, election-specific coding of software, and vote consolidation and reporting processes. The Standards do not provide guidance to computerized election database systems that are not part of the voting system itself. Such systems include voter registration databases and other consolidated databases used by election officials. The FEC's Office of Election Administration has produced other documents, available upon request, that can assist election officials and other interested parties in developing and maintaining such systems.

The FEC recognizes that human interface considerations are an integral part of developing an accurate, reliable voting system. The FEC has allocated funds to investigate human factors issues and is developing specifications that can be used in conjunction with both the Standards and other FEC operational and management guidelines to ensure that human factors considerations are given an important place in the development and procurement of voting systems.

The 1990 Standards were released as a single volume. However, the new Standards are divided into two volumes, both included in this release. Volume I provides functional and technical requirements for a number of system types and configurations. Volume II provides testing specifications for the requirements of Volume I.

On July 10, 2001, the Commission published a **Federal Register** notice requesting comments on the first draft of Volume I of the revised Standards. 66 FR 35978. Public comment was significant in both volume and content. Over 350 comments from over 40 commentators provided ideas and approaches to the Standards that greatly enhance their use by vendors, election officials, and voters. Because of this feedback, substantive changes were made to Volume I and a second draft of this document is being released for additional public comment. Although many of the comments on Volume I were helpful in devising the content of Volume II, this will be the first opportunity for the public to comment on its specific content.

The documents released with this notice include an Overview document, Volume I of the Standards (containing nine sections and three appendices), and Volume II of the Standards (containing seven sections and four appendices). The overview document explains in detail the history of the Standards project, provides a description of how the Standards fit into the election vending process, and gives an explanation of the reasoning behind the inclusions and exclusions of various systems, requirements, and test methods. Volume I of the Standards contains functional requirements (Section 2) that outline system benchmarks. The Standards also anticipate an increased demand for equipment that meets the needs of people with disabilities. In order to address these needs, the FEC consulted with the Access Board, the federal agency that developed access guidelines for federal information technology, to produce specific requirements to help guide vendors in the development of systems that increase accessibility to voters with disabilities (Section 2.6).

The Standards provide specific requirements for system software (Section 3) and hardware (Section 4). Additionally, the Standards anticipate that voting systems will move increasingly towards the use of telecommunications to cast ballots, consolidate vote data, and report results. As such, two sections of Volume I of the Standards outline requirements to guide selection of proper telecommunications equipment (Section 5) and ensure that the introduction of telecommunications equipment does not compromise the security and secrecy demanded by the election process (Section 6). Section 6 also addresses security and secrecy requirements for a voting system's software, hardware, and administrative procedures (as specified by the vendor).

Volume I of the Standards also provides information on quality assurance (Section 7) and configuration management issues (Section 8). These sections are tailored towards the unique needs of the election system industry, and are designed to provide guidance in sound management practices without posing an undue burden on small companies that have traditionally formed the backbone of the election system industry.

Section 9 of Volume I of the Standards provides an introduction and overview to the testing process necessary for a system to be qualified. The testing processes and specifications themselves are found in the body of Volume II.

Ultimately, the Standards are only a component of the necessary steps to ensure reliable, accurate, and secure elections. A qualified system has passed certain benchmarks for accuracy and reliability, but this is not sufficient to ensure overall system reliability unless jurisdictions who purchase the system use sound procurement and management practices to ensure that the system's security, accuracy, and reliability are protected during the election cycle itself. Because such practices are related to the actions of

voting officials rather than vendors, they are clearly outside the scope of the Standards. However, the Standards mandate a significant amount of disclosure from vendors in order to provide a clear understanding to election officials of how the system can be optimally operated.

The FEC invites all interested parties to submit comments. It is requested that each commenter indicate if he or she is willing to appear before the Commission. The FEC asks that, where appropriate, submitted comments reference the specific sections of the Standards that are germane to the submitted comment. Additionally, the FEC requests that comments regarding specific content be accompanied by specific suggestions for alterations to language or technical specifications, so that the Commission may consider changes that best reflect the intent of the commenter. Comments suggesting the use of alternate industry standards should provide the standard industry reference.

Dated: December 14, 2001.

Karl Sandstrom,

Commissioner, Federal Election Commission.

[FR Doc. 01–31293 Filed 12–19–01; 8:45 am]

BILLING CODE 6715–01–P

FEDERAL EMERGENCY MANAGEMENT AGENCY

[FEMA–1399–DR]

Alabama; Amendment No. 1 to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster declaration for the State of Alabama, (FEMA–1399–DR), dated December 7, 2001, and related determinations.

EFFECTIVE DATE: December 12, 2001.

FOR FURTHER INFORMATION CONTACT: Madge Dale, Readiness, Response and Recovery and Directorate, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–2705 or *madge.dale@fema.gov*.

SUPPLEMENTARY INFORMATION: The notice of a major disaster declaration for the State of Alabama is hereby amended to include the following areas among those areas determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of December 7, 2001:

Blount, Butler, Cherokee, Dale, Etowah, Fayette, Lamar, St. Clair, and Winston Counties for Public Assistance (already designated for Individual Assistance).

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 83.537, Community Disaster Loans; 83.538, Cora Brown Fund Program; 83.539, Crisis Counseling; 83.540, Disaster Legal Services Program; 83.541, Disaster Unemployment Assistance (DUA); 83.542, Fire Suppression Assistance; 83.543, Individual and Family Grant (IFG) Program; 83.544, Public Assistance Grants; 83.545, Disaster Housing Program; 83.548, Hazard Mitigation Grant Program.)

Joe M. Allbaugh,

Director.

[FR Doc. 01–31374 Filed 12–19–01; 8:45 am]

BILLING CODE 6718–02–P

FEDERAL EMERGENCY MANAGEMENT AGENCY

[FEMA–1396–DR]

Puerto Rico; Amendment No. 2 to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster declaration for the Commonwealth of Puerto Rico, (FEMA–1396–DR), dated November 28, 2001, and related determinations.

EFFECTIVE DATE: December 12, 2001.

FOR FURTHER INFORMATION CONTACT: Madge Dale, Readiness, Response and Recovery and Directorate, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–2705 or madge.dale@fema.gov.

SUPPLEMENTARY INFORMATION: The notice of a major disaster declaration for the Commonwealth of Puerto Rico is hereby amended to include the following areas among those areas determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of November 28, 2001:

Aguas Buenas, Orocovis, and Vega Alta Municipalities for Public Assistance.

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 83.537, Community Disaster Loans; 83.538, Cora Brown Fund Program; 83.539, Crisis Counseling; 83.540, Disaster Legal Services Program; 83.541, Disaster Unemployment Assistance (DUA); 83.542, Fire Suppression Assistance; 83.543, Individual and Family Grant (IFG) Program; 83.544, Public Assistance Grants; 83.545, Disaster Housing Program; 83.548, Hazard Mitigation Grant Program.)

Joe M. Allbaugh,

Director.

[FR Doc. 01–31373 Filed 12–19–01; 8:45 am]

BILLING CODE 6718–02–P

FEDERAL MARITIME COMMISSION

Ocean Transportation Intermediary License Applicants

Notice is hereby given that the following applicants have been filed with the Federal Maritime Commission an application for license 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 part 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 Applicant:

LOA Int'l (USA) Transport Co., Inc., dba LOA Container Line, 721 Brea Canyon Road, Suite 3, Walnut, CA 91789, Officer: Charster Lou, President (Qualifying Individual).

Non-Vessel Operating Common Carrier and Ocean Freight Forwarder Transportation Intermediary Applicant:

Orion Logistics Inc., 9688 Fontainebleau Blvd., ι509, Miami, FL 33172, Officer: Jose Alejandro Carbonell, President (Qualifying Individual).

Ocean Freight Forwarder—Ocean Transportation Intermediary Applicant:

Sunjin Shipping (U.S.A.), Inc., 145–63 226th Street, Springfield Gardens, NY 11413, Officers: Key Y. Chung, President (Qualifying Individual), Soon Kim, Secretary.

Dated: December 14, 2001.

Bryant L. VanBrakle,

Secretary.

[FR Doc. 01–31291 Filed 12–19–01; 8:45 am]

BILLING CODE 6730–01–P

FEDERAL TRADE COMMISSION

[File No. 011 0247]

Koninklijke Ahold N.V. and Bruno's Supermarkets, Inc.; Analysis To Aid Public Comment

AGENCY: Federal Trade Commission.

ACTION: Proposed Consent Agreement.

SUMMARY: The consent agreement in this matter settles alleged violations of federal law prohibiting unfair or deceptive acts or practices or unfair methods of competition. The attached Analysis to Aid Public Comment describes both the allegations in the draft complaint that accompanies the consent agreement and the terms of the consent order—embodied in the consent agreement—that would settle these allegations.

DATES: Comments must be received on or before January 7, 2002.

ADDRESSES: Comments filed in paper form should be directed to: FTC/Office of the Secretary, Room 159–H, 600 Pennsylvania Avenue, NW, Washington, DC 20580. Comments filed in electronic form should be directed to: *consentagreement@ftc.gov,* as prescribed below.

FOR FURTHER INFORMATION CONTACT: Susan Huber, Bureau of Competition, 600 Pennsylvania Avenue, NW, Washington, DC 20580, (202) 326–3331.

SUPPLEMENTARY INFORMATION: Pursuant to section 6(f) of the Federal Trade Commission Act, 38 Stat. 721, 15 U.S.C. 46(f), and § 2.34 of the Commission's rules of practice, 16 CFR § 12.34, notice is hereby given that the above-captioned consent agreement containing a consent order to cease and desist, having been filed with and accepted, subject to final approval, by the Commission, has been placed on the public record for a period of thirty (30) days. The following Analysis to Aid Public Comment describes the terms of the consent agreement, and the allegations in the complaint. An electronic copy of the full text of the consent agreement package can be obtained from the FTC Home Page (for December 7, 2001), on the World Wide Web, at ''http://www.ftc.gov/os/2001/12/index.htm.'' A paper copy can be obtained from the FTC Public Reference Room, Room 130-H, 600 Pennsylvania Avenue, NW, Washington, DC 20580, either in person or by calling (202) 326–2222.

Public comments are invited, and may be filed with the Commission in either paper or electronic form. Comments filed in paper form should be directed to: FTC/Office of the Secretary, Room 159–H, 600 Pennsylvania Avenue, NW, Washington, DC 20580. If a comment contains nonpublic information, it must be filed in paper form, and the first page of the document must be clearly labeled ''confidential.'' Comments that do not contain any nonpublic information may instead be filed in electronic form (in ASCII format, WordPerfect, or Microsoft Word) as part of or as an attachment to email messages directed to the following email box: *consentagreement@ftc.gov*. Such comments will be considered by the Commission and will be available for inspection and copying at its principal office in accordance with § 4.9(b)(6)(ii) of the Commission's rules of practice, 16 CFR 4.9(b)(6)(ii)).

Analysis of the Draft Complaint and Proposed Decision Order To Aid Public Comment

I. Introduction

The Federal Trade Commission (''Commission) has accepted for public comment from Koninklijke Ahold NV, (''Ahold''), and Bruno's Supermarkets Inc., (''Bruno's'') (collectively ''the Proposed Respondents'') an Agreement Containing Consent Orders (''the proposed consent order''). The Proposed Respondents have also reviewed a draft complaint contemplated by the Commission. The proposed consent order is designed to remedy likely anticompetitive effects arising from Ahold's proposed acquisition of all of the outstanding voting stock of Bruno's.

II. Description of the Parties and the Proposed Acquisition

Ahold is a global food service and food retailer headquartered in the Netherlands. The company operates or services approximately 8,500 stores in the United States, Europe, Latin America and Asia and had sales of over $49 billion in 2000. In the United States, Ahold, through its U.S. subsidiary Ahold U.S.A., Inc., operates over 1,300 retail food stores, including supermarkets under the Giant, Stop & Shop, Tops and BI–LO trade names. In the southeastern United States, Ahold owns and operates 294 BI–LO supermarkets as well as a number of Golden Gallon convenience stores.

Bruno's, headquartered in Birmingham, is the largest supermarket chain in the state of Alabama. With annual sales in 2000 of over $1.5 billion, Bruno's operates 169 supermarkets in Alabama (123), Georgia (25), Florida (16) and Mississippi (2) as well as 13 liquor stores and two gas stations. Bruno's operates supermarkets under the trade names Bruno's Fine Foods, Food World, FoodMax, Food Fair and Fresh Value.

On September 4, 2001, Ahold and Bruno's signed an agreement whereby Ahold will purchase all of the outstanding voting securities of Bruno's through the merger of New Bronco Acquisition Corp., an indirect wholly owned subsidiary of Ahold, with and into Bruno's Supermarkets. Bruno's Supermarkets will continue as the surviving corporation. The value of the transaction is approximately $500 million.

III. The Draft Complaint

The draft complaint alleges that the relevant line of commerce (i.e., the product market) is the retail sale of food and grocery items in supermarkets. Supermarkets provide a distinct set of products and services for consumers who desire one-stop shopping for food and grocery products. Supermarkets carry a full line and wide selection of both food and nonfood products (typically more than 10,000 different stock-keeping units (''SKUs'')), as well as an extensive inventory of those SKUs in a variety of brand names and sizes. In order to accommodate the large number of nonfood products necessary for one-stop shopping, supermarkets are large stores that typically have at least 10,000 square feet of selling space.

Supermarkets compete primarily with other supermarkets that provide one-stop shopping for food and grocery products. Supermarkets base their food and grocery prices primarily on the prices of food and grocery products sold at nearby supermarkets. Most consumers shopping for food and grocery products at supermarkets are not likely to shop elsewhere in response to a small price increase by supermarkets.

Retail stores other than supermarkets that sell food and grocery products, such as neighborhood ''mom & pop'' grocery stores, limited assortment stores, convenience stores, specialty food stores (*e.g.*, seafood markets, bakeries, etc.), club stores, military commissaries, and mass merchants, do not effectively constrain prices at supermarkets. The retail format and variety of items sold at these other stores are significantly different from that of supermarkets. None of these other retailers offer a sufficient quantity and variety of products to enable consumers to one-stop shop for food and grocery products.

The draft complaint alleges that the relevant sections of the country (*i.e.*, the geographic markets) in which to analyze the acquisition are the areas in or near the towns of Milledgeville and Sandersville, Georgia. Ahold and Bruno's are direct competitors in both of

the relevant markets. The draft complaint alleges that the post-merger markets would each be highly concentrated, whether measured by the Herfindahl-Hirschman Index (commonly referred to as ''HHI'') or four-firm concentration ratios. The acquisition would substantially increase concentration in each market. The post-acquisition HHI in each of the geographic markets would be above 5400.

The draft complaint further alleges that entry would not be timely, likely, or sufficient to prevent anticompetitive effects in the relevant geographic markets.

The draft complaint also alleges that Ahold's acquisition of all of the outstanding voting securities of Bruno's, if consummated, may substantially lessen competition in the relevant line of commerce in the relevant markets in violation of Section 7 of the Clayton Act, as amended, 15 U.S.C. 18, and section 5 of the Federal Trade Commission Act, as amended, 15 U.S.C. 45, by eliminating direct competition between supermarkets owned or controlled by Ahold and supermarkets owned and controlled by Bruno's; by increasing the likelihood that Ahold will unilaterally exercise market power; and by increasing the likelihood of, or facilitating, collusion or coordinated interaction among the remaining supermarket firms. Each of these effects increases the likelihood that the prices of food, groceries or services will increase, and that the quality and selection of food, groceries or services will decrease, in the geographic markets alleged in the complaint.

IV. The Terms of the Agreement Containing Consent Orders

The Agreement Containing Consent Orders (''proposed consent order'') will remedy the Commission's competitive concerns about the proposed acquisition. Under the terms of the proposed consent order, Ahold must divest two BI–LO supermarkets, one in Milledgeville and one in Sandersville, Georgia. In each community, Ahold owns only one supermarket. Both of the divestitures are to experienced up-front buyers who would be new entrants in the relevant geographic markets and who the Commission has pre-evaluated for competitive and financial viability. The Commission's evaluation process consisted of analyzing the financial condition of the proposed acquirers and the locations of their current supermarkets to ensure that divestitures to them would not increase concentration or decrease competition in the relevant markets and to determine that these purchasers are well qualified to operate the divested stores.

In Milledgeville, Ahold will sell its BI-LO to The Kroger Co. (''Kroger''), which is headquartered in Cincinnati, Ohio. Kroger operates supermarkets in southeastern Georgia and throughout the United States. Ahold will sell its BI–LO in Sandersville to Winn-Dixie Stores, Inc. (''Winn-Dixie''), headquartered in Jacksonville, Florida. Winn-Dixie also operates supermarkets in southeastern Georgia and throughout the U.S.

Paragraph II.A. of the proposed consent order requires that the divestitures must occur no later than 10 business days after the merger is consummated. However, if Ahold consummates the divestitures to Kroger and Winn-Dixie during the public comment period, and if, at the time the Commission decides to make the order final, the Commission notifies Ahold that Kroger or Winn-Dixie is not an acceptable acquirer or that the asset purchase agreement with Kroger or Winn-Dixie is not an acceptable manner of divestiture, then Ahold must immediately rescind the transaction in question and divest those assets to another buyer within three months of the date the order becomes final. At that time, Ahold must divest those assets only to an acquirer that receives the prior approval of the Commission and only in a manner that receives the prior approval of the Commission. In the event that any Commission-approved buyer is unable to take or keep possession of any of the supermarkets identified for divestiture the Commission may appoint a trustee with the power to divest any assets that have not been divested to satisfy the requirements of the proposed consent order.

The proposed consent order also enables the Commission to appoint a trustee to divest any supermarkets or sites identified in the order that Ahold has not divested to satisfy the requirements of the proposed consent order. In addition, the proposed order enables the Commission to seek civil penalties against Ahold for non-compliance with the proposed consent order.

The proposed consent also requires Proposed Respondents to maintain the viability, marketability and competitiveness of the supermarkets identified for divestitures. Among other requirements related to maintaining operations at these supermarkets, the proposed consent order also specifically requires the Proposed Respondents to: (1) Maintain the viability, competitiveness and marketability of the assets to be divested; (2) not cause the wasting or deterioration of the assets to be divested; (3) not sell, transfer, encumber, or otherwise impair their marketability or viability; (4) maintain the supermarkets consistent with past practices; (5) use best efforts to preserve existing relationships with suppliers, customers, and employees; and (6) keep the supermarkets open for business and maintain the inventory at levels consistent with past practices.

The proposed consent order also prohibits Ahold from acquiring, without providing the Commission with prior notice, any supermarkets, or any interest in any supermarkets, located in the counties that include Milledgeville and Sandersville, Georgia for ten years. These are the areas from which the supermarkets to be divested draw customers. The provisions regarding prior notice are consistent with the terms used in prior Orders. The proposed consent order does not, however, restrict the Proposed Respondents from constructing new supermarkets in the above areas; nor does it restrict the Proposed Respondents from leasing facilities not operated as supermarkets within the previous six months.

The proposed consent also prohibits Ahold, for a period of ten years, from entering into or enforcing any agreement that restricts the ability of any person acquiring any location used as a supermarket, or interest in any location used as a supermarket on or after January 1, 2001, to operate a supermarket at that site if that site was formerly owned or operated by Ahold or Bruno's in any of the above areas. In addition, the Proposed Respondents are prohibited from removing fixtures or equipment from a store or property owned or leased by Ahold or Bruno's in Sandersville or Milledgeville, Georgia, that is no longer operated as a supermarket, except (1) prior to a sale, sublease, assignment, or change in occupancy or (2) to relocate such fixtures or equipment in the ordinary course of business to any other supermarket owned or operated by the Proposed Respondents.

The Proposed Respondents are required to file compliance reports with the Commission, the first of which is due within thirty days of the date on which Proposed Respondents signed the proposed consent, and every thirty days thereafter until the divestitures are completed, and annually for ten years.

V. Opportunity for Public Comment

The proposed consent order has been placed on the public record for 30 days for receipt of comments by interested

persons. Comments received during this period will become part of the public record. After 30 days, the Commission will again review the proposed consent order and the comments received and will decide whether it should withdraw from the agreement or make the proposed consent order final.

By accepting the proposed consent order subject to final approval, the Commission anticipates that the competitive problems alleged in the complaint will be resolved. The purpose of this analysis is to invite public comment on the proposed consent order, including the proposed sale of supermarkets to Kroger and Winn-Dixie, in order to aid the Commission in its determination of whether to make the proposed consent order final. This analysis is not intended to constitute an official interpretation of the proposed consent order nor is it intended to modify the terms of the proposed consent order in any way.

By direction of the Commission.

Donald S. Clark,

Secretary.

[FR Doc. 01–31338 Filed 12–19–01; 8:45 am]

BILLING CODE 6750–01–P

FEDERAL TRADE COMMISSION

[File No. 011 0083]

Nestle Holdings, Inc. and Ralston Purina Co.; Analysis To Aid Public Comment

AGENCY: Federal Trade Commission.

ACTION: Proposed consent agreement.

SUMMARY: The consent agreement in this matter settles alleged violations of federal law prohibiting unfair or deceptive acts or practices or unfair methods of competition. The attached Analysis to Aid Public Comment describes both the allegations in the draft complaint that accompanies the consent agreement and the terms of the consent order—embodied in the consent agreement—that would settle these allegations.

DATES: Comments must be received on or before January 11, 2002.

ADDRESSES: Comments filed in paper form should be directed to: FTC/Office of the Secretary, Room 159-H, 600 Pennsylvania Avenue, NW., Washington, DC 20580. Comments filed in electronic form should be directed to: *consentagreement@ftc.gov,* as prescribed below.

FOR FURTHER INFORMATION CONTACT: Phillip L. Broyles, Bureau of Competition, 600 Pennsylvania Avenue, NW., Washington, DC 20580, (202) 326–2805.

SUPPLEMENTARY INFORMATION: Pursuant to section 6(f) of the Federal Trade Commission Act, 38 Stat. 721, 15 U.S.C. 46(f), and § 2.34 of the Commission's rules of practice, 16 CFR 2.34, notice is hereby given that the above-captioned consent agreement containing a consent order to cease and desist, having been filed with and accepted, subject to final approval, by the Commission, has been placed on the public record for a period of thirty (30) days. The following Analysis to Aid Public Comment describes the terms of the consent agreement, and the allegations in the complaint. An electronic copy of the full text of the consent agreement package can be obtained from the FTC Home Page (for December 11, 2001), on the World Wide Web, at *http://www.ftc.gov/os/2001/12/index.htm.* A paper copy can be obtained from the FTC Public Reference Room, Room 130-H, 600 Pennsylvania Avenue, NW., Washington, DC 20580, either in person or by calling (202) 326–2222.

Public comments are invited, and may be filed with the Commission in either paper or electronic form. Comments filed in paper form should be directed to: FTC/Office of the Secretary, Room 159–H, 600 Pennsylvania Avenue, NW., Washington, DC 20580. If a comment contains nonpublic information, it must be filed in paper form, and the first page of the document must be clearly labeled ''confidential.'' Comments that do not contain any nonpublic information may instead be filed in electronic form (in ASCII format, WordPerfect, or Microsoft Word) as part of or as an attachment to email messages directed to the following email box: *consentagreement@ftc.gov.* Such comments will be considered by the Commission and will be available for inspection and copying at its principal office in accordance with § 4.9(b)(6)(ii) of the Commission's rules of practice, 16 CFR 4.9(b)(6)(ii)).

Analysis of Proposed Consent Order To Aid Public Comment

I. Introduction

The Federal Trade Commission (''Commission'') has issued a complaint (''Complaint'') alleging that the proposed merger of Nestle Holdings, Inc. (''Nestle''), and Ralston Purina Company (''Ralston'') (collectively ''Proposed Respondents'') would violate section 7 of the Clayton Act, as amended, 15 U.S.C. 18, and section 5 of the Federal Trade Commission Act, as amended, 15 U.S.C. 45, and has entered into an agreement containing consent orders (''Agreement Containing Consent Orders'') pursuant to which Respondents agree to be bound by a proposed consent order that requires divestiture of certain assets (''Proposed Consent Order'') and an order that requires Proposed Respondents to maintain certain assets pending divestiture (''Asset Maintenance Order''). The Proposed Order remedies the likely anticompetitive effects arising from Proposed Respondents' proposed merger, as alleged in the Complaint. The Asset Maintenance Order preserves competition pending divestiture.

II. Description of the Parties and the Transaction

Nestle Holdings, Inc., is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Delaware. This subsidiary of Nestle S.A. is the U.S. corporation that will be purchasing all of the outstanding Ralston shares. Nestle SA, the largest food corporation in the world, manufactures, distributes, and sells dairy products, soluble coffee, roast and ground coffee, mineral water, beverages, breakfast cereals, coffee creamers, infant foods and dietetic products, culinary products (seasonings, canned foods, pasta, sauces, etc.), frozen foods, ice cream, refrigerated products (*e.g.*, yogurt, desserts, pasta, sauces), chocolate, food services, ophthalmological products, cosmetics, and pet foods. Nestle sells its pet food products in the U.S. through its Friskies division, including Alpo, Come ''N Get It, Mighty Dog, Friskies, Fancy Feast, Jim Dandy, and Chef's Blend. Nestle had worldwide sales of approximately 81.4 billion Swiss francs and United States sales of approximately $7.8 billion for all products in 2000.

Ralston is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Missouri. Ralston is the world's leading producer of dry dog and dry and soft-moist cat foods. The brands that Ralston manufacturers, distributes, and sells include Dog Chow, Puppy Chow, Cat Chow, Kitten Chow, Purina Special Care, Meow Mix, Purina O.N.E., Purina Pro Plan, Fit & Trim, Clinical Nutrition Management, Alley Cat, Deli-Cat, Thrive, Tender Vittles, Happy Cat, Chuck Wagon Stampede, and Main Stay. Ralston had worldwide sales of approximately $3 billion and United States sales of approximately $2.36 billion for all products for fiscal year 2000.

Pursuant to a merger agreement dated January 15, 2001, Nestle agreed to purchase all of Ralston's outstanding shares of common stock in a transaction valued at $ 10.3 billion. Nestle intends

to call the merged entity Nestle Purina Pet Care.

III. The Complaint

The complaint alleges that the market in which to analyze the competitive effects of the proposed transaction is the sale of dry cat food in the United States. Wet and dry cat foods constitute separate product markets. Wet cat food differs from dry cat food in production, ingredients, appearance, packaging, aroma, price, and convenience. Ralston's share of the dry cat food market across all channels of distribution is approximately 34%. Nestle has a market share of approximately 11% of the dry cat food market across all channels of distribution. The dry cat food market in the United States is moderately concentrated. The merger of Nestle and Ralston would substantially increase concentration in this market, raising the HHI level to more than 2400, an increase of more than 750 points. Entry would not be timely, likely, or sufficient to prevent anti-competitive effects in the relevant market.

The Complaint alleges that the merger of Nestle and Ralston would substantially lessen competition in the dry cat food market in violation of section 7 of the Clayton Act, as amended, 15 U.S.C. 18, and section 5 of the Federal Trade Commission Act, as amended, 15 U.S.C. 45, in the following ways, among others: (a) By eliminating direct competition in the sale of dry cat food between Nestle and Ralston; and (b) by increasing the likelihood that the combination of Nestle and Ralston will unilaterally exercise market power; each of which increases the likelihood that prices will be higher with the acquisition than they would be absent the acquisition.

The Proposed Consent Order requires Proposed Respondents to divest the Meow Mix and Alley Cat brands of dry cat food to an up-front buyer, J.W. Childs Equity Partners II, L.P. (''Childs''), no later than 20 days after the Commission accepts the Proposed Consent Agreement for public comment or January 31, 2002, whichever is later, to remedy the Commission's concerns. Childs is a Boston-based investment firm founded in 1995. Structured as a limited partnership, Childs has total committed capital of $982 million. The Commission is satisfied that Childs' acquisition of the divested assets will restore the competition lost as a result of the proposed merger of Nestle and Ralston. Childs has a past history of successfully developing the business of consumer products companies. The designated CEO of the businesses that will produce and sell the brands to be divested has expertise in manufacturing dry pet foods. Childs also owns the Hartz Mountain Corporation (''Hartz''), a leading manufacturer and distributor of pet supplies in the United States. Hartz sells its pet supplies and treats in the same retail outlets as the brands to be divested.

IV. Terms of the Proposed Order

The Proposed Order resolves the Commission's antitrust concerns with the merger as discussed below.

A. Divestiture Provisions

Paragraph II.A. of the Proposed Order requires Proposed Respondents to divest to Childs all of Proposed Respondents' rights, titles, and interests in and to all assets relating to the Meow Mix and Alley Cat brands. The Meow Mix brand includes the original Meow Mix product and Meow Mix Seafood Middles. Specifically, Proposed Respondents must divest all interests in the research, development, manufacture, distribution, marketing, and sales of the Meow Mix and Alley Cat brands of dry cat food products anywhere in the United States and Canada. Proposed Respondents also must divest any and all trademarks, service marks, trademark and service mark registrations, and pending trademark and service mark registrations that relate exclusively to the Meow Mix or Alley Cat brand of dry cat food products outside of the United States and Canada. Proposed Respondents must further divest all inventories and supplies held by, or under their control; all intellectual property owned by or licensed to Proposed Respondents; copies of all customer lists and supplier lists; all rights of Proposed Respondents under any contract; all governmental approvals, consents, licenses, permits, waivers, or other authorizations held by Proposed Respondents, to the extent transferable; all rights of Proposed Respondents under any warranty and guarantee, express or implied; and copies of all relevant portions of books, records, and files held by, or under the control of, Proposed Respondents.

Paragraph II.C. further provides that if the Commission determines that Childs is not an acceptable purchaser of the assets to be divested, Proposed Respondents shall immediately terminate or rescind the sale of the assets to be divested to Childs and divest these assets at no minimum price to another purchaser that receives the prior approval of the Commission no later than 180 days from the date that this Proposed Order becomes final.

Paragraph II.D. of the Proposed Order requires that Proposed Respondents grant a patent license to Childs for the coating applied to Meow Mix products. The license covers current Meow Mix products as well as any pet product Childs chooses to manufacture in the future. Paragraph II.F. of the Proposed Order requires Proposed Respondents to provide Childs with a supply of Meow Mix and Alley Cat products for a period of up to two years from the date of the divestiture. Paragraph II.G. requires Proposed Respondents to provide technical assistance to Childs, as needed, for a period of up to two years from the date of divestiture, which includes expert advice, assistance, and training relating to the manufacture of the Meow Mix and Alley Cat brands.

Paragraph VI of the Proposed Order requires Childs, for a period of 5 years, to obtain the Commission's approval before selling all or substantially all of the United States assets acquired in the divestiture. The Commission does not routinely require acquirers of divested assets to obtain approval before subsequent sales. In cases, however, where the proposed acquirer's current plans indicate that there is a high probability that the assets will be resold, possibly within two-five years, it is appropriate for the Commission to include such a provision. *C.f., e.g.,* the Commission's final order in *Albertson's, Inc.,* Docket No. C–3986.

B. Monitor Trustee Provisions

Paragraph IV of the Proposed Order appoints a Monitor Trustee to monitor compliance with the terms of the Order. The Proposed Consent Order provides the Monitor Trustee with the power and authority to monitor the Proposed Respondents' compliance with the terms of the Proposed Consent Order, and full and complete access to personnel, books, records, documents, and facilities of the Proposed Respondents to fulfill that responsibility. In addition, the Monitor Trustee may request any other relevant information that relates to the Proposed Respondents' obligations under the Proposed Consent Order. The Proposed Consent Order precludes Proposed Respondents from taking any action to interfere with or impede the Monitor Trustee's ability to perform his or her responsibilities or to monitor compliance with the Proposed Consent Order.

The Monitor Trustee may hire such consultants, accountants, attorneys, and other assistants as are reasonably necessary to carry out the Monitor Trustee's duties and responsibilities. The Proposed Consent Order requires

the Proposed Respondents to bear the cost and expense of hiring these assistants.

C. Other Terms

Paragraphs V and VII–X of the Proposed Consent Order detail certain general provisions. Paragraph V authorizes the Commission appoint a divestiture trustee in the event Nestle fails to divest the assets as required by the Proposed Consent Order. Paragraph VII requires Respondents to provide a copy of the Proposed Consent Order to each of their officers, employees, and agents with managerial responsibilities for any obligation under the Proposed Order. Paragraph VIII requires Proposed Respondents to provide the Commission with periodic reports of compliance with the Proposed Consent Order. Paragraph IX provides for notification to the Commission in the event of any changes in the corporate Proposed Respondents. Paragraph X requires Proposed Respondents to grant access to any authorized Commission representative for the purpose of determining or securing compliance with the Proposed Consent Order. Paragraph XI terminates the Proposed Consent Order after ten years from the date the Proposed Consent Order becomes final.

V. Opportunity for Public Comment

The Proposed Consent Order has been placed on the public record for thirty (30) days for receipt of comments by interested persons. The Commission has also issued its Complaint in this matter as well as the Asset Maintenance Order. Comments received during this thirty day comment period will become part of the public record. After thirty days, the Commission will again review the Proposed Consent Order and the comments received and will decide whether it should withdraw from the Proposed Consent Order or make final the agreement's Proposed Consent Order.

By accepting the Proposed Consent Order subject to final approval, the Commission anticipates that the competitive problems alleged in the complaint will be resolved. The purpose of this analysis is to invite public comment on the Proposed Consent Agreement, to aid the Commission in its determination of whether it should make final the Proposed Order contained in the agreement. This analysis is not intended to constitute an official interpretation of the Proposed Order, nor is it intended to modify the terms of the Proposed Order in any way.

By direction of the Commission, Chairman Muris recused.

Donald S. Clark,
Secretary.

Statement of Commissioner Sheila F. Anthony

Yesterday, the Commission accepted for public comment a proposed consent agreement in this case. The evidence developed during the Commission's investigation unequivocally demonstrates that, absent the proposed relief, the acquisition by Nestle of Ralston would violate the antitrust laws and likely would result in harm to consumers of dry cat food. The parties have agreed to divest Ralston's Meow Mix and Alley Cat brands to J.W. Childs, a private equity investment firm. While I have concurred in the Commission's decision, I write separately to express my concerns about some aspects of the divestiture proposal.

The assets to be divested consist of two proven cat food brands and little else. Standing alone, these brands do not constitute a complete, ongoing business. Rather, J.W. Childs will have to create a new competitor largely from whole cloth. In order to turn the divested assets into a viable business entity, J.W. Childs will need to develop, among other things, its own research and development program, manufacturing facilities, distribution system, and sales and marketing operations. Such a prospect is daunting even when the purchaser is a participant in the same or a closely related business—which is why divestitures of stand-alone businesses present the most successful formula for restoring competition.[1]

The risk to consumers is further heightened where, as here, the proposed purchaser is a financial buyer. When compared to dedicated industry participants, investment firms may have quite different incentives and goals in operating a business. For example, a financial buyer's business plan often involves selling the acquired business within a relatively short period of time.

In the end, I am convinced that this is a rather unique situation and that consumers will be adequately protected by the proposed relief. Manufacturing and distribution in this industry segment is routinely and economically contracted out through ''co-packing'' arrangements. Moreover, this particular financial buyer, J.W. Childs, is financially strong, has a proven track record of good management and growth of acquired firms, and has some experience in the pet industry with its Hartz Mountain line of pet care products. These factors have led me to conclude that J.W. Childs is very likely to restore lost competition and preserve choices for dry cat food consumers.

I wish to make it clear, however, that I remain skeptical of divestiture plans that require a purchaser to take brands alone, then build a competitive company from scratch. In addition, I will closely examine divestiture proposals where the buyer is a financial company. In most cases, I would prefer to see divested assets go to a company with a stronger likelihood of operating the business for the long term.

Concurring Statement of Commissioner Mozelle W. Thompson

The Commission today has voted to accept a Consent Order that remedies competitive concerns in the dry cat food market stemming from Nestle S.A.''s (''Nestle'') proposed acquisition of Ralston Purina Co. (''Ralston''). Pursuant to the proposed Consent Agreement and Order, Ralston would divest its top-selling Meow Mix brand and its Alley Cat brand to investment firm J.W. Childs Equity Partners II, L.P. (''Childs''), owners of the Hartz Mountain line of specialty pet care products. For me, this decision was difficult because the continued competitiveness of these brands is so important to consumers.

As always, the key issue facing the Commission in its analysis of the proposed remedy is whether or not the remedy will restore competition that would be lost as a result of the proposed merger. This is at its essence a factual inquiry, involving consideration of a multitude of factors, including the extent of the prospective buyer's industry know-how, its financial viability, its future marketing plans, and its capacity to research, develop, and make innovations to the relevant products.

Our analysis here was made all the more difficult in that we were presented with a buyer that does not have a record of experience in the market in question, therefore, historical indicia of market competitiveness were not available for the Commission's review. As such, the Commission undertook an extraordinarily rigorous analysis of Childs and its ability to be competitive with the assets in question. Ultimately, my primary reservation was not about Childs' ability to be competitive in the dry cat food marketplace, but rather that Childs, as a financial buyer, might in the near term re-sell the assets in question to a buyer who will operate the business

[1] See, e.g., Federal Trade Commission Bureau of Competition Staff, A Study of the Commission's Divestiture Process (1999).

poorly or not at all, thus defeating the purpose of the Commission's Order.

These concerns are addressed in Section VI of the proposed Order, which provides that Childs' will not sell the acquired assets within five years of the date of the Order without prior approval of the Commission. While generally I am cautious about including lengthy oversight provisions in such orders, it is appropriate in this case because these provisions ensure that in the event of a resale by Childs, the Commission will be able to assure that the prospective buyer is committed to enhancing the assets in question, thus maintaining the integrity of the Commission's Order.

Concurring Statement of Commissioner Orson Swindle

The Commission has accepted for public comment a consent agreement to resolve complaint allegations that the effect of Nestle S.A.''s (''Nestle'') acquisition of Ralston Purina Co. (''Ralston'') may be to substantially lessen competition in the market for the sale of dry cat food in the United States. To remedy these competitive concerns, the merging parties have entered into a consent agreement under which Ralston would divest its Meow Mix and Alley Cat brands to J.W. Childs Equity Partners II, L.P. (''J.W. Childs''), an investment firm that owns the Hartz line of pet care products. Because the divestiture to J.W. Childs is likely to replace the competition in the market for dry cat food that otherwise would have been lost due to the Nestle/Ralston merger, I have voted to accept the consent agreement for public comment.

One provision in the proposed consent agreement is unusual and may raise concerns, however. Paragraph VI of the Proposed Consent Order requires J.W. Childs, for a period of five years, to obtain Commission approval before selling all or substantially all of the assets acquired in the divestiture. The Analysis to Aid Public Comment explains that the Commission does not routinely impose such prior approval requirements, but it is appropriate to do so ''where the proposed acquirer's current plans indicate that there is a high probability that the assets will be resold, possibly within 2–5 years.'' The purpose of the prior approval requirement is to make certain that whoever buys the resold assets from J.W. Childs would be a sufficient competitor to remedy the lessening of competition from the Nestle/Ralston transaction alleged in the complaint. See Paragraph VI.F. of the Proposed Consent Order.

I agree that J.W. Childs warranted a hard look as a prospective buyer because it might resell the divested assets in the near future. It is possible that this close scrutiny would go for naught if J.W. Childs were promptly to resell the assets to a less qualified buyer. On the other hand, this risk is always present—even had the assets remained in Ralston's hands. I think that our approval of J.W. Childs as the buyer means that we have determined that, in spite of any possible resale plans, the company will develop and employ the assets as vigorously as Ralston would have done. Once we have made this determination, I question the need for imposing a prior approval requirement on J.W. Childs that we would not have imposed on a buyer that was less likely to resell the assets.

I also think that the prior approval requirement may require that the Commission make a difficult determination. For example, assume that J.W. Childs seeks prior approval to resell the assets four years after the Nestle/Ralston merger has been consummated. The Commission presumably will have to determine whether the prospective buyer of the resold assets will compete as effectively as Ralston would have competed in the absence of the Nestle/Ralston merger. Given the passage of four years since the merger and the dynamic nature of markets, it may be difficult for the Commission to make this determination with a high degree of confidence.

I welcome public comments on the prior approval provision included in Paragraph VI of the Proposed Consent Order, including any suggestions for distinguishing between situations where the additional relief may be justified and those where it is not.

[FR Doc. 01–31339 Filed 12–19–01; 8:45 am]

BILLING CODE 6750–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the Assistant Secretary for Planning and Evaluation

Secretary's Advisory Committee on Regulatory Reform; Notice of Meeting

ACTION: Notice of meeting.

SUMMARY: Notice is hereby given of a meeting by the Department of Health and Human Services (HHS) Secretary's Advisory Committee on Regulatory Reform. As governed by the Federal Advisory Committee Act in accordance with section 10(a)(2), the Secretary's Advisory Committee on Regulatory Reform is seeking guidance for the Department's efforts to streamline regulatory requirements. The Advisory Committee will advise and make recommendations for changes that would be beneficial in four broad areas: health care delivery, health systems operations, biomedical and health research, and the development of pharmaceuticals and other products.

All meetings and hearings of the Committee are open to the general public. During each meeting, invited witnesses will address how regulations affect health-related issues. Meeting agendas will also allow time for public comment. Additional information on each meeting's agenda and list of participating witnesses will be posted on the Committee's Web site prior to the meetings *(http://www.regreform.hhs.gov).*

DATES: The first meeting of the Secretary's Advisory Committee on Regulatory Reform will be held on Monday, January 7, 2002, from 9 a.m. to 5:30 p.m. and on Tuesday, January 8, 2002, from 8 a.m. to 1 p.m.

ADDRESSES: The Secretary's Advisory Committee on Regulatory Reform will meet on Monday, January 7, in the Ross Auditorium at Providence Hospital, 1150 Varnum Street NE., Washington, DC 20017. On Tuesday, January 8, the Committee will meet in Room 800 of the Hubert H. Humphrey Building, 200 Independence Avenue SW., Washington, DC 20201.

FOR FURTHER INFORMATION CONTACT: Christy Schmidt, Executive Coordinator, Secretary's Advisory Committee on Regulatory Reform, Office of the Assistant Secretary for Planning and Evaluation, 200 Independence Avenue, SW., Room 801, Washington, DC 20201, (202) 401–5182.

SUPPLEMENTARY INFORMATION: Providence Hospital and the Hubert H. Humphrey Building are in compliance with the Americans with Disabilities Act. Anyone planning to attend the meeting who requires special disability-related arrangements such as sign-language interpretation should provide notice of their need by Friday, December 31, 2001. Please make any request to Michael Starkweather '' phone: 301–628–3141; fax: 301–628–3101; email: *mstarkweather@s-3.com.*

On June 8, 2001, HHS Secretary Thompson announced a Department-wide initiative to reduce regulatory burdens in health care, to improve patient care, and to respond to the concerns of health care providers and industry, State and local Governments, and individual Americans who are affected by HHS rules. As part of this initiative, the Department is establishing the Secretary's Advisory Committee on

Regulatory Reform to provide findings and recommendations regarding potential regulatory changes. These changes would enable HHS to reduce burdens and costs associated with departmental regulations and paperwork, while at the same time maintaining or enhancing the effectiveness, efficiency, impact, and access of HHS programs.

Dated: December 13, 2001.

Dr. William F. Raub,

Deputy Assistant Secretary for Planning and Evaluation.

[FR Doc. 01–31319 Filed 12–19–01; 8:45 am]

BILLING CODE 4151–05–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Proposed Information Collection Activity; Comment Request

Proposed Projects

Title: Child Care and Development Fund Tribal Plan (Form ACF–118–A).

OMB No.: 0970–0198.

Description: The Child Care and Development fund (CCDF) Tribal Plan serves as the agreement between the applicant (Indian Tribes, tribal consortia and tribal organizations) and the Federal government that describes how tribal applicants will operate CCDF Block Grant programs. The Tribal Plan provides assurances that the CCDF funds will be administered in conformance with legislative requirements, federal regulations at 45 CFR parts 98 and 99 and other applicable instructions or guidelines issued by the Administration for Children and Families (ACF). Tribes must submit a new CCDF Tribal plan every two years in accordance with 45 CFR 98.17.

Respondents: Tribal CCDF Programs (262 in total).

ANNUAL BURDEN ESTIMATES

Instrument	Number of respondents	Number of responses per respondent	Average burden hours per response	Total burden hours
CCDF Tribal Plan	262	1	17.5	4,585
CCDF Tribal Plan Amendments	262	1	1.5	393

Estimated Total Annual Burden Hours: 4,978.

Note: CCDF Tribal Plans are submitted biannually. This collection burden has been calculated to reflect an annual burden.

In compliance with the requirements of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Administration for Children and Families is soliciting public comment on the specific aspects of the information collection described above. Copies of the proposed collection of information can be obtained and comments may be forwarded by writing to the administration for Children and Families, Office of Information Services, 370 L'Enfant Promenade, SW., Washington, DC 20447, Attn: ACF Reports Clearance Officer. All requests should be identified by the title of the information collection.

The Department specifically requests comments on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Consideration will be given to comments and suggestions submitted within 60 days of this publication.

Dated: December 14, 2001.

Bob Sargis,

Reports Clearance Officer.

[FR Doc. 01–31376 Filed 12–19–01; 8:45 am]

BILLING CODE 4184–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

[Program Announcement No. OCS 02–03]

Fiscal Year 2002 Family Violence Prevention and Services Discretionary Funds Program, Availability of Funds and Request for Applications

AGENCY: Office of Community Services (OCS), ACF, DHHS.

ACTION: Notice; correction.

SUMMARY: This notice corrects the announcement of Family Violence Prevention and Service Program, Availability of Funds and Request for Applications published on December 13, 2001 (66 FR 64437).

FOR FURTHER INFORMATION CONTACT: Administration for Children and Families, Office of Community Services, Division of State Assistance, 370 L'Enfant Promenade, SW., Washington DC 20447. Telephone William Riley, (202) 401–5529, James Gray, (202) 401–5705, Sunni Knight, (202) 401–5319 or Shena Williams, (202) 205–5932.

Correction

In the **Federal Register** issued December 13, 2001 (66 FR 64437), make the following correction. On page 64444, in the second column, under Lists of Attachments, please add the following language:

''Attachment F–1–SF 424 Application for Federal Assistance''

''Attachment F–2–SF 424 Budget Information—Non-Construction Programs''

Also, please add the attachments.

(Catalog of Federal Domestic Assistance number 93.592, Family Violence Prevention and Services)

Dated: December 13, 2001.

Robert Mott,

Deputy Director.

BILLING CODE 4184–01–M

Attachment F-1, Page 1

OMB Approval No. 0348-0043

APPLICATION FOR FEDERAL ASSISTANCE

2. DATE SUBMITTED	Applicant Identifier	
3. DATE RECEIVED BY STATE	State Application Identifier	
4. DATE RECEIVED BY FEDERAL AGENCY	Federal Identifier	

1. TYPE OF SUBMISSION:

Application
- ☐ Construction
- ☐ Non-Construction

Preapplication
- ☐ Construction
- ☐ Non-Construction

5. APPLICANT INFORMATION

Legal Name:

Organizational Unit:

Address *(give city, county, State, and zip code)*:

Name and telephone number of person to be contacted on matters involving this application *(give area code)*

6. EMPLOYER IDENTIFICATION NUMBER *(EIN)*:

☐☐ – ☐☐☐☐☐☐☐

7. TYPE OF APPLICANT: *(enter appropriate letter in box)* ☐

A. State
B. County
C. Municipal
D. Township
E. Interstate
F. Intermunicipal
G. Special District
H. Independent School Dist.
I. State Controlled Institution of Higher Learning
J. Private University
K. Indian Tribe
L. Individual
M. Profit Organization
N. Other (Specify) _____

8. TYPE OF APPLICATION:

☐ New ☐ Continuation ☐ Revision

If Revision, enter appropriate letter(s) in box(es) ☐ ☐

A. Increase Award B. Decrease Award C. Increase Duration
D. Decrease Duration Other*(specify)*:

_____

9. NAME OF FEDERAL AGENCY:

10. CATALOG OF FEDERAL DOMESTIC ASSISTANCE NUMBER:

☐☐ – ☐☐☐

TITLE:

11. DESCRIPTIVE TITLE OF APPLICANT'S PROJECT:

12. AREAS AFFECTED BY PROJECT *(Cities, Counties, States, etc.)*:

13. PROPOSED PROJECT

Start Date	Ending Date

14. CONGRESSIONAL DISTRICTS OF:

a. Applicant	b. Project

15. ESTIMATED FUNDING:

a. Federal	$ .00
b. Applicant	$ .00
c. State	$ .00
d. Local	$ .00
e. Other	$ .00
f. Program Income	$ .00
g. TOTAL	$ .00

16. IS APPLICATION SUBJECT TO REVIEW BY STATE EXECUTIVE ORDER 12372 PROCESS?

a. YES. THIS PREAPPLICATION/APPLICATION WAS MADE AVAILABLE TO THE STATE EXECUTIVE ORDER 12372 PROCESS FOR REVIEW ON:

DATE _____

b. No. ☐ PROGRAM IS NOT COVERED BY E. O. 12372
☐ OR PROGRAM HAS NOT BEEN SELECTED BY STATE FOR REVIEW

17. IS THE APPLICANT DELINQUENT ON ANY FEDERAL DEBT?

☐ **Yes** **If "Yes," attach an explanation.** ☐ **No**

18. TO THE BEST OF MY KNOWLEDGE AND BELIEF, ALL DATA IN THIS APPLICATION/PREAPPLICATION ARE TRUE AND CORRECT, THE DOCUMENT HAS BEEN DULY AUTHORIZED BY THE GOVERNING BODY OF THE APPLICANT AND THE APPLICANT WILL COMPLY WITH THE ATTACHED ASSURANCES IF THE ASSISTANCE IS AWARDED.

a. Type Name of Authorized Representative	b. Title	c. Telephone Number

d. Signature of Authorized Representative	e. Date Signed

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Standard Form 424 (Rev. 7-97)
Prescribed by OMB Circular A-102

Attachment F–1, Page 2

Instructions for the SF–424

Public reporting burden for this collection of information is estimated to average 45 minutes per response, including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding the burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the Office of Management and Budget, Paperwork Reduction Project (0348–0043), Washington, DC 20503.

Please do not return your completed form to the Office of Management and Budget. Send it to the address provided by the sponsoring agency.

This is a standard form used by applicants as a required facesheet for preapplications and applications submitted for Federal assistance. It will be used by Federal agencies to obtain applicant certification that States which have established a review and comment procedure in response to Executive Order 12372 and have selected the program to be included in their process, have been given an opportunity to review the applicant's submission.

Item and Entry

1. Self-explanatory.
2. Date application submitted to Federal agency (or State if applicable) and applicant's control number (if applicable).
3. State use only (if applicable).
4. If this application is to continue or revise an existing award, enter present Federal identifier number. If for a new project, leave blank.
5. Legal name of applicant, name of primary organizational unit which will undertake the assistance activity, complete address of the applicant, and name and telephone number of the person to contact on matters related to this application.
6. Enter Employer Identification Number (EIN) as assigned by the Internal Revenue Service.
7. Enter the appropriate letter in the space provided.
8. Check appropriate box and enter appropriate letter(s) in the space(s) provided:

—''New'' means a new assistance award.

—''Continuation'' means an extension for an additional funding/budget period for a project with a projected completion date.

—''Revision'' means any change in the Federal Government's financial obligation or contingent liability form an existing obligation.

9. Name of Federal agency from which assistance is being requested with this application.
10. Use the Catalog of Federal Domestic Assistance number and title of the programs under which assistance is requested.
11. Enter a brief descriptive title of the project. If more than one program is involved, you should append an explanation on a separate sheet. If appropriate (e.g., construction or real property projects), attach a map showing project location. For preapplications, use a separate sheet to provide a summary description of this project.
12. List only the largest political entities affected (e.g., State, counties, cities).
13. Self-explanatory.
14. List the applicant's Congressional District and any District(s) affected by the program or project.
15. Amount requested or to be contributed during the first funding/budget period by each contributor. Value of in-kind contributions should be included on appropriate lines as applicable. If the action will result in a dollar change to an existing award, indicate *only* the amount of the change. For decreases, enclose the amounts in parentheses. If both basic and supplemental amounts are included, show breakdown on an attached sheet. For multiple program funding, use totals and show breakdown using same categories as item 15.
16. Applicants should contact the State Single Point of Contact (SPOC) for Federal Executive Order 12372 to determine whether the application is subject to the State intergovernmental review process.
17. This question applies to the applicant organization, not the person who signs as the authorized representative. Categories of debt include delinquent audit disallowances, loans and taxes.
18. To be signed by the authorized representative of the applicant. A copy of the governing body's authorization for you to sign this application as official representative must be on file in the applicant's office (Certain Federal agencies may require that this authorization be submitted as part of the application.)

BUDGET INFORMATION - Non-Construction Programs

OMB Approval No. 0348-0044

SECTION A - BUDGET SUMMARY

Grant Program Function or Activity (a)	Catalog of Federal Domestic Assistance Number (b)	Estimated Unobligated Funds		New or Revised Budget		
		Federal (c)	Non-Federal (d)	Federal (e)	Non-Federal (f)	Total (g)
1.		$	$	$	$	$
2.						
3.						
4.						
5. Totals		$	$	$	$	$

SECTION B - BUDGET CATEGORIES

6. Object Class Categories	GRANT PROGRAM, FUNCTION OR ACTIVITY				Total
	(1)	(2)	(3)	(4)	(5)
a. Personnel	$	$	$	$	$
b. Fringe Benefits					
c. Travel					
d. Equipment					
e. Supplies					
f. Contractual					
g. Construction					
h. Other					
i. Total Direct Charges *(sum of 6a-6h)*					
j. Indirect Charges					
k. TOTALS *(sum of 6i and 6j)*	$	$	$	$	$
7. Program Income	$	$	$	$	$

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Prescribed by OMB Circular A-10

Attachment F-2, Page 1

Attachment F-2, Page 2

SECTION C - NON-FEDERAL RESOURCES				
(a) Grant Program	(b) Applicant	(c) State	(d) Other Sources	(e) TOTALS
8.	$	$	$	$
9.				
10.				
11.				
12. TOTAL *(sum of lines 8-11)*	$	$	$	$

SECTION D - FORECASTED CASH NEEDS					
	Total for 1st Year	1st Quarter	2nd Quarter	3rd Quarter	4th Quarter
13. Federal	$	$	$	$	$
14. Non-Federal					
15. TOTAL *(sum of lines 13 and 14)*	$	$	$	$	$

SECTION E - BUDGET ESTIMATES OF FEDERAL FUNDS NEEDED FOR BALANCE OF THE PROJECT				
(a) Grant Program	FUTURE FUNDING PERIODS (Years)			
	(b) First	(c) Second	(d) Third	(e) Fourth
16.	$	$	$	$
17.				
18.				
19.				
20. TOTAL *(sum of lines 16-19)*	$	$	$	$

SECTION F - OTHER BUDGET INFORMATION	
21. Direct Charges:	22. Indirect Charges:
23. Remarks:	

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BILLING CODE 4184–01–C

Attachment F–2, Page 3

Instructions for the SF–424A

Public reporting burden for this collection of information is estimated to average 180 minutes per response, including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding the burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the Office of Management and Budget, Paperwork Reduction Project (0348–0044), Washington, DC 20503.

Please do not return your completed form to the Office of Management and Budget. Send to the address provided by the sponsoring agency.

General Instructions

This form is designed so that application can be made for funds from one or more grant programs. In preparing the budget, adhere to any existing Federal grantor agency guidelines which prescribe now and whether budgeted amounts should be separately shown for different functions or activities within the program. For some programs, grantor agencies may require budgets to be separately shown by function or activity. For other programs, grantor agencies may require a breakdown by function or activity. Sections A, B, C, and D should include budget estimates for the whole project except when applying for assistance which requires Federal authorization in annual or other funding period increments. In the latter case, Sections A, B, C, and D should provide the budget for the first budget period (usually a year) and Section E should present the need for Federal assistance in the subsequent budget periods. All applications should contain a breakdown by the object class categories shown in Lines a–k of Section B.

Section A. Budget Summary Lines 1–4 Columns (a) and (b)

For applications pertaining to a single Federal grant program (Federal Domestic Assistance Catalog number) and not requiring a functional or activity breakdown, enter on Line 1 under Column (a) the Catalog program title and the Catalog number in Column (b).

For applications pertaining to a single program requiring budget amounts by multiple functions or activities, enter the name of each activity or function on each line in Column (a), and enter the Catalog number in Column (b). For applications pertaining to multiple programs where none of the programs require a breakdown by function or activity, enter the Catalog program title on each line in Column (a) and the respective Catalog number on each line in Column (b).

For applications pertaining to multiple programs where one or more programs require a breakdown by function or activity, prepare a separate sheet for each program requiring the breakdown. Additional sheets should be used when one form does not provide adequate space for all breakdown of data required. However, when more than one sheet is used, the first page should provide the summary totals by programs.

Lines 1–4, Columns (c) through (g)

For new applications, leave Column (c) and (d) blank. For each line entry in Columns (a) and (b), enter in Columns (e), (f), and (g) the appropriate amounts of funds needed to support the project for the first funding period usually a year).

For continuing grant program applications, submit these forms before the end of each funding period as required by the grantor agency. Enter in Columns (c) and (d) the estimated amounts of funds which will remain unobligated at the end of the grant funding period only if the Federal grantor agency instructions provide for this. Otherwise, leave these columns blank. Enter in columns (e) and (f) the amounts of funds needed for the upcoming period. The amount(s) in Column (g) should be the sum of amounts in Columns (e) and (f).

For supplemental grants and changes to existing grants, do not use Columns (c) and (d). Enter in Column (e) the amount of the increase or decrease of Federal funds and enter in Column (f) the amount of the increase or decrease of non-Federal funds. In Column (g) enter the new total budgeted amount (Federal and non-Federal) which includes the total previous authorized budgeted amounts plus or minus, as appropriate, the amounts shown in Columns (e) and (f). The amount(s) in Column (g) should not equal the sum of amounts in Columns (e) and (f).

Line 5—Show the total for all columns used.

Section B. Budget Categories

In the column headings (1) through (4), enter the titles of the same programs, functions, and activities shown on Lines 1–4, Column (a), Section A. When additional sheets are prepared for Section A, provide similar column headings on each sheet. For each program, function or activity, fill in the total requirements for funds (both Federal and non-Federal) by object class categories.

Lines 6a–j—Show the totals of Lines 6a to 6h in each column.

Line 6j—Show the amount of indirect cost.

Line 6k—Enter the total amounts on lines 6i and 6j. For all applications for new grants and continuation grants the total amount in column (5), Line 6k, should be the same as the total amount shown in Section A, Column (g), Line 5. For supplemental grants and changes to grants, the total amount of the increase or decrease as shown in Columns (1)–(4), Line 6k should be the same as the sum of the amounts in Section A, Columns (e) and (f) on Line 5.

Line 7—Enter the estimated amount of income, if any, expected to be generated from this project. Do not add or subtract this amount from the total project amount. Show under the program narrative statement the nature and source of income. The estimated amount of program income may be considered by the Federal grantor agency in determining the total amount of the grant.

Section C. Non-Federal Resources

Lines 8–11 Enter amounts of non-Federal resources that will be used on the grant. If in-kind contributions are included, provide a brief explanation on a separate sheet.

Column (a)—Enter the program titles identical to Column (a), Section A. A breakdown by function or activity is not necessary.

Column (b)—Enter the contribution to be made by the applicant.

Column (c)—Enter the amount of the State's cash and in-kind contribution if the applicant is not a State or State agency. Applicants which are a State or State agencies should leave this column blank.

Column (d)—Enter the amount of cash and in-kind contributions to be made from all other sources.

Column (e)—Enter total of Columns (b), (c), and (d).

Line 12—Enter the total for each of Columns (b)–(e). The amount in Column (e) should be equal to the amount on Line 5, Column (f), Section A.

Section D. Forecasted Cash Needs

Line 13—Enter the amount of cash needed by quarter from the grantor agency during the first year.

Line 14—Enter the amount of cash from all other sources needed by quarter during the first year.

Line 15—Enter the totals of amounts on Lines 13 and 14.

Section E. Budget Estimates of Federal Funds Needed for Balance of the Project

Lines 16–19—Enter in Column (a) the same grant program titles shown in Column (a), Section A. A breakdown by function or activity is not necessary. For new applications and continuation grant applications, enter in the proper columns amounts of Federal funds which will be needed to complete the program or project over the succeeding funding periods (usually in years). This section need not be completed for revisions (amendments, changes, or supplements) to funds for the current year of existing grants.

If more than four lines are needed to list the program titles, submit additional schedules as necessary.

Line 20—Enter the total for each of the Columns (b)–(3). When additional schedules are prepared for this Section, annotate accordingly and show the overall totals on this line.

Section F. Other Budget Information

Line 21—Use this space to explain amounts for individual direct object class cost categories that may appear to be out of the ordinary or to explain the details as required by the Federal grantor agency.

Line 22—Enter the type of indirect rate (provisions, predetermined, final or fixed) that will be in effect during the funding period, the estimated amount of the base to which the rate is applied, and the total indirect expense.

Line 23—Provide any other explanations or comments deemed necessary.

[FR Doc. 01–31375 Filed 12–19–01; 8:45 am]

BILLING CODE 4184–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 01N–0301]

Agency Information Collection Activities; Submission for OMB Review; Comment Request; Customer/Partner Service Surveys

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that the proposed collection of information listed below has been submitted to the Office of Management and Budget (OMB) for review and clearance under the Paperwork Reduction Act of 1995.

DATES: Submit written comments on the collection of information by January 22, 2002.

ADDRESSES: Submit written comments on the collection of information to the Office of Information and Regulatory Affairs, OMB, New Executive Office Bldg., 725 17th St. NW., rm. 10235, Washington, DC 20503, Attn: Stuart Shapiro, Desk Officer for FDA.

FOR FURTHER INFORMATION CONTACT: JonnaLynn P. Capezzuto, Office of Information Resources Management (HFA–250), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–4659.

SUPPLEMENTARY INFORMATION: In compliance with 44 U.S.C. 3507, FDA has submitted the following proposed collection of information to OMB for review and clearance.

Customer/Partner Service Surveys (OMB Control No. 0910–0360)—Extension

Under section 903 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 393), FDA is authorized to conduct research and public information programs about regulated products and responsibilities of the agency. Executive Order 12862, entitled ''Setting Customer Service Standards,'' directs Federal agencies that ''provide significant services directly to the public'' to ''survey customers to determine the kind and quality of services they want and their level of satisfaction with existing services.'' FDA is seeking OMB clearance to conduct a series of surveys to implement Executive Order 12862. Participation in the surveys is voluntary. This request covers customer/partner service surveys of regulated entities, such as: Food processors; cosmetic, drug, biologic and medical device manufacturers; consumers; and health professionals. The request also covers ''partner'' (State and local governments) customer service surveys. FDA will use the information from these surveys to identify strengths and weaknesses in service to customers/partners and to make improvements. The surveys will measure timeliness, appropriateness and accuracy of information, courtesy, and problem resolution in the context of individual programs. FDA projects 25 customer/partner service surveys per year, with a sample of between 50 and 6,000 customers each, requiring an average of 18 minutes for review/completion per survey. Some of these surveys will be repeats of earlier surveys, for purposes of monitoring customer/ partner service and developing long-term data.

In the **Federal Register** of July 25, 2001 (66 FR 38711), FDA published a 60-day notice requesting public comment on the information collection provisions. No comments were received.

FDA estimates the burden of this collection of information as follows:

TABLE 1.—ESTIMATED ANNUAL REPORTING BURDEN[1]

Type of Survey	No. of Respondents	Annual Frequency per Response	Total Annual Responses	Hours per Response	Total Hours
Mail/telephone/fax/web-based	20,000	1	20,000	.30	6,000

[1] There are no capital costs or operating and maintenance costs associated with this collection of information.

Dated: December 13, 2001.

Margaret M. Dotzel,

Associate Commissioner for Policy.

[FR Doc. 01–31335 Filed 12–19–01; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 01D–0514]

Medical Devices; Guidance on Labeling of Reprocessed Single Use Devices; Request for Comments and Information

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is providing an opportunity for interested persons to submit comments and suggestions on the contents of a guidance document that FDA is considering drafting on the labeling of reprocessed single use devices (SUDs) with respect to the name of the original equipment manufacturer (OEM) and the remanufacturer (i.e., reprocessor). FDA is publishing this notice in order to gather informed comment before drafting the guidance.

DATES: Submit written or electronic comments or suggestions by March 20, 2002.

ADDRESSES: Submit written comments and information to the Dockets Management Branch (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. Submit electronic comments to http://www.fda.gov/dockets/ecomments.

FOR FURTHER INFORMATION CONTACT: Larry Spears, Center for Devices and Radiological Health (HFZ–300), Food and Drug Administration, 2094 Gaither Rd., Rockville, MD 20850, 301–594–4692.

SUPPLEMENTARY INFORMATION:

I. Background

In a citizen petition, dated March 22, 2001, the Association of Disposable Device Manufacturers (ADDM) requested that FDA: (1) Require reprocessors of SUDs (hereinafter referred to as reprocessed devices) to remove the OEM trademark from the devices and any references to the OEM in the label of devices; (2) take actions to identify and enforce this requirement; and (3) refuse to approve premarket submissions unless the applicant represents that the device will meet this requirement.

On September 17, 2001, FDA issued a response to this petition. FDA denied the petition because FDA believed that misleading implications from representations concerning the OEM may be remedied by the disclosure of

additional facts about the remanufacturer. Specifically, FDA stated:

FDA, however, does believe that representations concerning the OEM may be misleading unless the reprocessor of a single use device provides additional information that would indicate that the reprocessor is the manufacturer responsible for product problems. As you note in your petition, hospitals and other user facilities must alert FDA or the manufacturer whenever there is information that ''reasonably suggests that a device has or may have caused or contributed to the death ... [or] serious injury to a patient ...'' 21 CFR 803.30(a). Moreover, the user or FDA may need to know the identity of the manufacturer, not only for the purposes of reporting adverse events to FDA, but to assure that the responsible manufacturer or FDA can investigate the problem to determine if additional steps should be taken, including distribution of safety information to the users, or product recalls. Accordingly, FDA believes that when a reprocessed product's labeling makes representations that suggest the OEM should be notified of product problems, additional information that provides the correct identity of the reprocessor as the remanufacturer who is responsible for adverse event reporting, recalls, or other corrective actions, is ''material'' information within the meaning of section 201(n) of the Act because such information is necessary to enable FDA's postmarket reporting procedures under section 519 of the Act to function effectively.

In the response to the petition, FDA also said that it would publish a guidance document that will recommend more specific language and direction to regulated industry on this matter. Before it develops this guidance document, FDA is inviting interested persons to submit comments and suggestions on the contents of such a guidance.

The ADDM petition and FDA's response are available from the Dockets Management Branch (address above). Please reference Docket No. 01P–0148.

II. Comments

Interested persons may submit to the Dockets Management Branch (address above) written or electronic comments or suggestions regarding this issue by March 20, 2002. Two copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. Received comments may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

Dated: November 28, 2001.

Linda S. Kahan,

Deputy Director, Center for Devices and Radiological Health.

[FR Doc. 01–31334 Filed 12–19–01; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

Submission of Information Collection to the Office of Management Budget for Review Under the Paperwork Reduction Act

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Notice of renewal of a current approved information collection.

SUMMARY: In compliance with the Paperwork Reduction Act of 1995, this notice announces that the Bureau of Indian Affairs is submitting an information collection request to the Office of Management and Budget for clearance and extension. The information collection request for the Indian Child Welfare Act Annual Report is cleared under OMB Control Number 1076–0131 through December 31, 2001.

DATES: Submit comments on or before January 22, 2002.

ADDRESSES: Written comments should be sent directly to the Office of Management and Budget, Office of Information and Regulatory Affairs, Attention: Desk Officer for the Department of Interior, Room 10102, 725 17th Street NW, Washington, DC 20503.

Send a copy of your comments to Larry Blair, Bureau of Indian Affairs, Branch of Tribal Government, Division of Social Services, 1849 C Street NW (MS–4660–MIB), Washington, DC 20240.

FOR FURTHER INFORMATION CONTACT: Interested persons may obtain copies of the information collection requests without charge by contacting Mr. Larry Blair, (202) 208–2479 (this is not a toll free number). Facsimile number (202) 208–2648.

SUPPLEMENTARY INFORMATION:

I. Abstract

The Department has issued regulations prescribing procedures by which an Indian tribe may receive funding to provide ICWA services. Funding is authorized by the Indian Child Welfare Act, Public Law 95–608, 92 Stat. 3069, 25 U.S.C. 1918.

A **Federal Register** notice soliciting comments from interested parties to renew this information collection was published on October 2, 2001 (66 FR 50201). No comments were received. Upon review of ICWA program information previously collected, we realized that a change was needed to more accurately reflect the public burden. Therefore, we are submitting this information collection for revision and renewal. 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.

II. Request for Comments

The Department invites comments on:

(1) Whether the collection of information is necessary for the proper performance of the functions of the Bureau, including whether the information will have practical utility;

(2) The accuracy of the Bureau's estimate of the burden of the information collection, including the validity of the methodology and assumptions used;

(3) Ways to enhance the quality, utility, and clarity of the information to be collected; and,

(4) Ways to minimize the burden of the information collection on those who are to respond, including through the use of appropriate automated electronic, mechanical, or other collection techniques or forms of information technology.

III. Data

Title of the Information Collection: ICWA of 1978.

OMB: 1076–0131; Expiration date: December 31, 2001.

Type of Review: Revision and renewal of a current approved information collection.

Summary of Collection of Information: The collection of information will ensure that the provisions of Public Law 95–608 are met.

Affected Entities: Federally recognized tribes who receive grant funding to provide ICWA services.

Frequency of Response: Quarterly.

Estimated Number of Annual Responses: One annual and four quarterly reports (the fourth quarter report is also the annual report).

Estimated Time Per Response: One-half hour for each of 4 reports from 536 grantees.

Estimated Total Annual Burden Hours: 1,072 hours.

This notice is published in accordance with the authority delegated by the Secretary of the Interior to the Assistant Secretary—Indian Affairs by 209 Departmental Manual 8.1.

Dated: December 11, 2001.

Neal A. McCaleb,

Assistant Secretary—Indian Affairs.

[FR Doc. 01–31336 Filed 12–19–01; 8:45 am]

BILLING CODE 4310–02–P

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

Indian Child Welfare Act; Receipt of Designated Tribal Agents for Service of Notice

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Notice.

SUMMARY: The Bureau of Indian Affairs is publishing the current list of Designated Tribal Agents for service of notice, including the listings of designated tribal agents received by the Secretary of the Interior prior to the date of this publication.

The regulations implementing the Indian Child Welfare Act provide that Indian tribes may designate an agent other than the tribal chairman for service of notice proceedings under the Act, 25 CFR 23.12. The Secretary of the Interior shall publish in the **Federal Register** on an annual basis the names and addresses of the designated agents.

FOR FURTHER INFORMATION CONTACT: Chet Eagleman, Indian Child Welfare Specialist, Bureau of Indian Affairs, Division of Social Services, 1849 C Street, NW., MS–4660-MIB, Washington, DC 20240; Phone: (202) 208–7776.

This notice is published in exercise of authority delegated by the Secretary of the Interior to the Assistant Secretary—Indian Affairs by 209 Departmental Manual 8.1.

Dated: December 11, 2001.

Neal A. McCaleb,

Assistant Secretary—Indian Affairs.

Indian Child Welfare Designated Agents

Alaska Region

Niles Cesar, Regional Director, Alaska Regional Office, P.O. Box 25520, 709 W. 9th, 3rd Floor, Federal Building, Juneau, AK 99802–5520; Phone: (800) 645–8397; Fax: (907) 586–7252.

Gloria Kate Gorman, M.S.W., Social Services Director, P.O. Box 25520, 709 W. 9th, 3rd Floor, Federal Building, Juneau, AK 99802–5520; Phone: (800) 645–8397 Ext. 2; Fax: (907) 586–7057; Email: *gloriagorman@bia.gov.*

A

Native Village of Afognak, Sharon Olson, P.O. Box 968, Kodiak, AK 99615; Phone: (907) 486–6357; Fax: (907) 486–6529.

Agdaagux Tribe of King Cove, Grace Smith, Aleutian/Pribilof Islands Assoc., 201 E. 3rd Ave., Anchorage, AK 99501; Phone: (907) 222–4237/2700; Fax: (907) 279–4351.

Native Village of Akhiok, Melissa Borton, Kodiak Area Native Association, 3449 E. Rezanof Drive, Kodiak, AK 99615; Phone: (907) 486–9800; Fax: (907) 486–9886.

Native Community of Akiachak, Fritz George, P.O. Box 51070, Akiachak, AK 99551–0070; Phone: (907) 825–4626; Fax: (907) 825–4029.

Akiak Native Community, Debra M. Jackson or Ivan M. Ivan, P.O. Box 52127, Akiak, AK 99552; Phone: (907) 765–7118; Fax: (907) 765–7120.

Native Village of Akutan, Grace Smith, Aleutian/Pribilof Islands Association, 201 E. 3rd Ave., Anchorage, AK 99501; Phone: (907) 222–4237/2700; Fax: (907) 279–4351.

Native Village of Alakanuk, Agnes Phillip, P.O. Box 149, Alakanuk AK, 99554–0103; Phone: (907) 238–3704; Fax: (907) 238–3429 also Joan Dewey, ICWA Social Worker, Association of Village Council Presidents, P.O. Box 219, Bethel, AK 99559; Phone: (907) 543–7367; Fax: (907) 543–7319.

Alatna Village, Harding Sam, Chief, P.O. Box 70, Allakaket, AK 99720; Phone: (907) 968–2304; Fax: (907) 968–2305 and Director of Social Services, Tanana Chiefs Conference, Inc., 122 First Avenue, Suite 600, Fairbanks, AK 99701; Phone: (907) 452–8251; Fax: (907) 459–3883/3851.

Native Village of Aleknagik, Tribal President, P.O. Box 115, Aleknagik, AK 99555, Phone: (907) 842–2080; Fax: (907) 842–2081 and Lou Johnson, Social Services Director, Bristol Bay Native Association, P.O. Box 310, Dillingham, AK 99576; Phone: (907) 842–4139; Fax: (907) 842–4106.

Native Village of Algaaciq (St. Mary's), Esther Tyson, P.O. Box 48, St. Mary's, AK 99658–0048; Phone: (907) 438–2335; Fax: (907) 438–2227 and Joan Dewey, ICWA Social Worker, Association of Village Council Presidents, P.O. Box 219, Bethel, AK 99559; Phone: (907) 543–7367; Fax: (907) 543–7319.

Allakaket Village, Director of Social Services, Tanana Chiefs Conference, Inc., 122 First Avenue, Suite 600, Fairbanks, AK 99701; Phone: (907) 452–8251; Fax: (907) 459–3883/3851.

Native Village of Ambler, ICWA Coordinator, Box 47, Ambler, AK 99786–0047; Phone: (907) 445–2180; Fax: (907) 445–2181.

Village of Anaktuvuk Pass, Sharon Thompson, Arctic Slope Native Assoc., Social Services, P.O. Box 1232, Barrow, AK 99723; Phone: (907) 852–2762; Fax: (907) 852–2105.

Yupiit of Andreafski, Elizabeth M. Joe, P.O. Box 88, St. Mary's, AK 99658–0088; Phone: (907) 438–2572; Fax: (907) 438–2512.

Angoon Community Association, Marlene Zuboff, P.O. Box 190, Angoon, AK 99820; Phone: (907) 788–3411; Fax: (907) 788–3412.

Native Village of Aniak, Ruth Birky, Box 349, Aniak, AK 99557; Phone: (907) 675–4349; Fax (907) 675–4513.

Native Village of Anvik, Director of Social Services, Tanana Chiefs Conference, Inc., 122 First Avenue, Suite 600, Fairbanks, AK 99701; Phone: (907) 452–8251; Fax: (907) 459–3883/3851.

Native Village of Arctic Village, (See Native Village of Venetie Tribal Government).

Asa'Carsarmiut Tribe (formerly Mt. Village), Mel Lawrence, P.O. Box 32249, Mountain Village, AK 99632–2249; Phone: (907) 591–2814; Fax: (907) 591–2811.

Native Village of Atka, Grace Smith, Aleutian/Pribilof Islands Assoc., 201 E. 3rd Avenue, Anchorage, AK 99501; Phone: (907) 222–4237; Fax: (907) 279–4351.

Atmautluak Traditional Council, Josephine Frye, P.O. Box 6568, Atmautluak, AK 99559; Phone: (907) 553–5610; Fax: (907) 553–5216.

Native Village of Atqasuk Village, Sharon Thompson, Arctic Slope Native Assoc., Social Services, P.O. Box 1232, Barrow, AK 99723; Phone: (907) 852–2762; Fax: (907) 852–2105.

B

Native Village of Barrow, ICWA Program, P.O. Box 1130, Barrow, AK 99723; Phone: (907) 852–8906/4411; Fax: (907) 852–8844.

Native Village of Beaver Village, Director of Social Services, Tanana Chiefs Conference, Inc., 122 First Avenue, Suite 600, Fairbanks, AK 99701; Phone (907) 452–8251; Fax: (907) 452–3883/3851.

Native Village of Belkosfski, Grace Smith, Aleutian/Pribilof Islands Assoc., 201 E. 3rd Avenue, Anchorage, AK 99501; Phone: (907) 222–4237; Fax: (907) 279–4351.

Bethel Village, (See Orutsararmuit).

Village of Bill Moore's Slough, Nancy Andrews, P.O. Box 20288, Kotlik, AK 99620; Phone: (907) 899–4236; Fax: (907) 899–4461.

Village of Birch Creek, Director of Social Services, Tanana Chiefs Conference, Inc., 122 First Avenue, Suite 600, Fairbanks, AK 99701; Phone: (907) 452–8251; Fax: (907) 459–3883/3851.

Native Village of Brevig Mission, Dick Kugzruk, President, P.O. Box 85039, Brevig Mission, AK 99785; Phone: (907) 642–4301; Fax: (907) 642–2099.

Native Village of Buckland, Flora Dorcas Swan, ICWA Coordinator, P.O.

Box 67, Buckland, AK 99727–0067; Phone: (907) 494–2169; Fax: (907) 494–2217.

C

Native Village of Cantwell, Angel Craig, Copper River Native Assoc., P.O. Box H, Copper Center, AK 99573; Phone: (907) 822–5241 x 243; Fax: (907) 822–8801.

Chalkyitsik Village Council, Director of Social Services, Tanana Chiefs Conference, Inc., 122 First Avenue, Suite 600, Fairbanks, AK 99701; Phone: (907) 452–8251; Fax: (907) 459–3883/3851.

Chefornak Traditional Council, Edward Kinegak, P.O. Box 110, Chefornak, AK 99561–0110; (907) 867–8808; Fax: (907) 867–8711 and Joan Dewey, ICWA Social Worker, Association of Village Council Presidents, P.O. Box 219, Bethel, AK 99559; Phone: (907) 543–7367; Fax: (907) 543–7319.

Native Village of Chenega, Michael Vigil, P.O. Box 8079, Chenega Bay, AK 99574; Phone: (907) 573–5132 and Paula Pinder, Chugachmiut, Inc., 4201 Tudor Centre Drive, Suite 210, Anchorage, AK 99508; Phone: (907) 562–4155; Fax: (907) 563–2891.

Native Village of Chevak (AKA Kashunamiut Tribe), Esther Friday, ICWA Worker, P.O. Box 140, Chevak, AK 99563–0140; Phone: (907) 858–7252; Fax: (907) 858–7812.

Native Village of Chickaloon, Delia R. Commander, P.O. Box 1105, Chickaloon, AK 99674–1105; Phone: (907) 745–0707; Fax: (907) 745–7154.

Native Village of Chignik, Tribal President, P.O. Box 11, Chignik Bay, AK 99564; Phone: (07) 749–2245; Fax: (907) 749–2423 and Lou Johnson, Bristol Bay Native Association, Social Services, P.O. Box 310, Dillingham, AK 99576; Phone: (907) 842–4139; Fax: (907) 842–4106.

Native Village of Chignik Lagoon, Tribal President, P.O. Box 57, Chignik Lagoon, AK 99565, Phone: (907) 840–2281; Fax: (907) 840–2217 and Lou Johnson, Bristol Bay Native Association, Social Services, P.O. Box 310, Dillingham, AK 99576; Phone: (907) 842–4139; Fax: (907) 842–4106.

Chignik Lake Village, Tribal President, P.O. Box 33, Chignik Lake, AK 99548; Phone: (907) 845–2212; Fax: (907) 845–2217 and Lou Johnson, Bristol Bay Native Association, Social Services, P.O. Box 310, Dillingham, AK 99576; Phone: (907) 842–4139; Fax: (907) 842–4106.

Chilkat Indian Village (Klukwan), Denise Kahklen or Anna Stevens, P.O. Box 210, Haines, AK 99827–0210; Phone: (907) 767–5517; Fax: (907) 767–5408.

Chilkoot Indian Association (Haines), Jan Hill, P.O. Box 490, Haines AK 99827; Phone: (907) 776–2323; Fax: (907) 776–2365.

Chinik Eskimo Community (Golovin), Sherri Lewis-Amaktoolik, Tribal Family Coordinator, P.O. Box 62020, Golovin, AK 99762; Phone: (907) 779–2214/2238; Fax: (907) 779–2829.

Native Village of Chistochina, Lotha Wolf, P.O. Box 241, Gakona, AK 99586–0241; Phone: (907) 822–3503; Fax: (907) 822–5179.

Native Village of Chitina, Arleen Leonard, Social Services, P.O. Box 31, Chitina, AK 99566–0031; Phone: (907) 823–2215; Fax: (907) 823–2233.

Native Village of Chuathbaluk, Sophie B. Alexie, ICWA Coordinator, P.O. Box CHU, Chuathbaluk, AK 99557; Phone: (907) 467–4323; Fax: (907) 467–4113.

Native Village of Chuloonawick, Stan Jimmy, Box 126, Emmonak, AK 99581; Phone: (907) 949–1345; Fax: (907) 949–1346.

Circle Native Community, Director of Social Services, Tanana Chiefs Conference, Inc., 122 First Avenue, Suite 600, Fairbanks, AK 99701; Phone: (907) 452–8251; Fax: (907) 459–3883/459–3851.

Village of Clarks Point, Betty Gardiner Wassily, P.O. Box 70, Clarks Point, AK 99569; Phone: (907) 236–1286; Fax: (907) 236–1449 and Lou Johnson, Bristol Bay Native Association, Social Services, P.O. Box 310, Dillingham, AK 99576; Phone: (907) 842–4139; Fax: (907) 842–4106.

Native Village of Council, President, P.O. Box 2050, Nome, AK 99762; Phone: (907) 443–7649; Fax: (907) 443–5965.

Craig Community Association, Family Caseworker, P.O. Box 828, Craig AK 99921; Phone: (907) 826–3948; Fax: (907) 826–5526.

Village of Crooked Creek, Bedusha Thomas, P.O. Box 69, Crooked Creek, AK 99575; Phone: (907) 432–2261; Fax: (907) 432–2247 and Joan Dewey, ICWA Social Worker, Association of Village Presidents, P.O. Box 219, Bethel, AK 99559; Phone: (907) 543–7367; Fax: (907) 543–7319.

Curyung Tribal Council (formerly, Native Village of Dillingham), Anna Mae Miller or Chris Itumulria, Tribal Children Service Worker, P.O. Box 216, Dillingham, AK 99576; Phone: (907) 842–2384/4508; Fax: (907) 842–4510 and Lou Johnson, Bristol Bay Native Association, Social Services, P.O. Box 310, Dillingham, AK 99576; Phone: (907) 842–4139; Fax: (907) 842–4106.

D

Native Village of Deering, Roberta Moto, ICWA Coordinator, P.O. 89, Deering, AK 99736–0089; Phone: (907) 363–2138; Fax: (907) 363–2195.

Dillingham, (See Curyung).

Native Village of Diomede, Charles Menadelook, P.O. Box 7079, Diomede, AK 99762; Phone: (907) 686–2202; Fax: (907) 686–2255.

Village of Dot Lake, William Miller, P.O. Box 2279, Dot Lake, AK 99737–2275; Phone: (907) 882–2695; Fax: (907) 882–5558.

Douglas Indian Association, Jocelyn K. Marks, Human Services Director, P.O. Box 240541, Douglas, AK 99824; Phone: (907) 364–2916; Fax: (907) 364–2917.

E

Native Village of Eagle, Joann Beck, P.O. Box 159, Eagle, AK 99738; Phone: (907) 547–2281; Fax: (907) 547–2318.

Native Village of Eek, Maryann Hawk, P.O. Box 63, Eek, AK 99578–0063; Phone: (907) 536–5572; Fax: (907) 536–5711 and Joan Dewey, ICWA Social Worker, Association of Village Council Presidents, P.O. Box 219, Bethel, AK 99559; Phone: (907) 543–7367; Fax: (907) 543–7319.

Egegik Village, Tribal President, P.O. Box 29, Egegik, AK 99579; Phone: (907) 233–2211; Fax: (907) 233–2312 and Lou Johnson, Bristol Bay Native Assoc., Social Services, P.O. Box 310, Dillingham, AK 99576; Phone: (907) 842–4139; Fax: (907) 842–4106.

Native Village of Eklutna, Mary Paniyak, 26339 Eklutna Village Rd., Chugiak, AK 99567; Phone: (907) 688–6020; Fax: (907) 688–6021.

Native Village of Ekuk, Tribal President, 300 Main St. Dillingham, AK 99576; Phone: (907) 842–3842; Fax: (907) 842–3843 and Lou Johnson, Bristol Bay Native Assoc., Social Services, P.O. Box 310, Dillingham, AK 99576; Phone: (907) 842–4139; Fax: (907) 842–4106.

Ekwok Village, Tribal President, P.O. Box 70, Ekwok, AK 99580; Phone: (907) 464–3336; Fax: (907) 464–3378 and Lou Johnson, Bristol Bay Native Association, Social Services, P.O. Box 310, Dillingham, AK 99576; Phone: (907) 842–4139; Fax: (907) 842–4106.

Native Village of Elim, Frederick Murray, P.O. Box 39070, Elim, AK 99739; Phone: (907) 890–3737; Fax: (907) 890–3738.

Emmonak Village, Priscilla Kameroff, ICWA Coordinator, P.O. Box 126, Emmonak, AK 99581–0126; Phone: (907) 949–1820; Fax: (907) 949–1384.

Evansville Village, Director of Social Services, Tanana Chiefs Conference, Inc., 122 First Avenue, Suite 600, Fairbanks, AK 99701; Phone: (907) 452–8251; Fax: (907) 459–3883/3851.

Native Village of Eyak (Cordova), Wendi Smith, P.O. Box 1388, Cordova,

AK 99574; Phone: (907) 424–7738; Fax: (907) 424–7739.

F

Native Village of False Pass, Grace Smith, Aleutian/Pribilof Islands, 201 E. 3rd Avenue, Anchorage, AK 99501; Phone: (907) 222–4237; Fax: (907) 279–4351.

Native Village of Fort Yukon, Director of Social Services, Tanana Chiefs Conference, Inc., 122 First Avenue, Suite 600, Fairbanks, AK 99701; Phone: (907) 452–8251; Fax: (907) 452–3883/3851.

G

Native Village of Gakona, Angel Craig, Social Services, Copper River Native Assoc., P.O. Box H, Copper Center, AK 99573; (907) 822–5241 x243; Fax: (907) 822–8801.

Galena Village (Louden), Ragine Ahla, Tribal Administrator, P.O. Box 244, Galena, AK 99741; Phone: (907) 656–1711; Fax: (907) 656–1716.

Native Village of Gambell, Charlene Apangalook, ICWA Coordinator, P.O. Box 90, Gambell, AK 99742; Phone: (907) 985–5346: Fax: (907) 985–5014.

Native Village of Georgetown, Glenn Fredericks, President, 1400 Virginia Ct., Anchorage, AK 99501; Phone: (907) 274–2195; Fax: (907) 274–2196.

Native Village of Goodnews Bay, Karen Martin, P.O. Box 138, Goodnews Bay, AK 99589–0050; Phone: (907) 967–8050; Fax: (907) 967–8051 and Joan Dewey, ICWA Social Worker, Association of Village Council Presidents, P.O. Box 219, Bethel, AK 99559; Phone: (907) 543–7367; Fax: (907) 543–7319.

Organized Village of Grayling, Director of Social Services, Tanana Chiefs Conference, Inc., 122 First Avenue, Suite 600, Fairbanks, AK 99701; Phone: (907) 452–8251; Fax: (907) 459–3883/3851.

Gulkana Village, LaMonica Claw, P.O. Box 254, Gakona, AK 99586–0254; Phone: (907) 822–3746; Fax: (907) 822–3976.

H

Native Village of Hamilton, Henrietta Teeluk, P.O. Box 20248, Kotlik, AK 99620; Phone: (907) 899–4252; Fax: (907) 899–4202 and Joan Dewey, ICWA Social Worker, Association of Village Council Presidents P.O. Box 219, Bethel, AK 99559; Phone: (907) 543–7367 Fax: (907) 543–7319.

Healy Lake Village, Director of Social Services, Tanana Chiefs Conference, Inc., 122 First Avenue, Suite 600, Fairbanks, AK 99701; Phone: (907) 452–8251; Fax: (907) 459–3883/3851.

Holy Cross Village, Debbie Turner, P.O. Box 191, Holy Cross, AK 99602; Phone: (907) 476–7169; Fax: (907) 476–7169/7132 and Director of Social Services, Tanana Chiefs Conference, Inc., 122 First Avenue, Suite 600, Fairbanks, AK 99701; Phone: (907) 452–8251; Fax: (907) 459–3883/3851.

Hoonah Indian Association, Leona Santiago, Director, Human Services, P.O. Box 602, Hoonah, AK 99829–0602; Phone: (907) 945–3545; Fax: (907) 945–3703.

Native Village of Hooper Bay, Ruth Pingayak, P.O. Box 62, Hooper Bay, AK 99620 Phone: (907) 758–7918; Fax: (907) 758–4606 and Joan Dewey, ICWA Social Worker, Association of Village Council Presidents, P.O. Box 219, Bethel, AK 99559; Phone: (907) 543–7367; Fax: (907) 543–7319.

Hughes Village, Director of Social Services, Tanana Chiefs Conference, Inc., 122 First Avenue, Suite 600, Fairbanks, AK 99701; Phone: (907) 452–8251; Fax: (907) 459–3883/3851.

Huslia Village, Jack Wholecheese, First Chief, P.O. Box 70, Huslia, AK 99746; Phone: (907) 829–2202; Fax: (907) 829–2214 and Director of Social Services, Tanana Chiefs Conference, Inc., 122 First Avenue, Suite 600, Fairbanks, AK 99701; Phone: (907) 452–8251; Fax: (907) 459–3883/3851.

Hydaburg Cooperative Association, Human Services Director, P.O. Box 206, Hydaburg AK 99922–0305; Phone: (907) 285–3666; Fax: (907) 285–3470.

I

Igiugig Village, Bernadette Andrew, P.O. Box 4008, Igiugig, AK 99613; Phone: (907) 533–3211; Fax: (907) 533–3217.

Village of Iliamna, Gerald Anelon, Tribal Administrator or Martha Anelon, Social Services P.O. Box 286, Iliamna, AK 99606–0286; Phone: (907) 571–1246; Fax: (907) 571–1256.

Inupiat Community of Arctic Slope, Tribal President, P.O. Box 1232, Barrow, AK 99723–1232; Phone: (907) 852–4227; Fax: (907) 852–4246.

Iqurmuit Traditional Council (Russian Mission), Darcy Kameroff, P.O. Box 09, Russian Mission, AK 99657–0009; Phone: (907) 584–5511; Fax: (907) 584–5593.

Ivanoff Bay Village, Tribal President, P.O. Box KIB, Ivanof Bay AK, 99695; Phone: (907) 669–2200; Fax: (907) 669–2207 and Lou Johnson, Bristol Bay Native Association, Social Services, P.O. Box 310, Dillingham, AK 99576; Phone: (907) 842–4139; Fax: (907) 842–4106.

K

Kaguyak Village, ICWA Coordinator, 1400 West Benson Blvd, Suite 350, Anchorage, AK 99503; Phone: (907) 561–0604; Fax: (907) 561–0608.

Organized Village of Kake, Anne Jackson or Carrie Davis, P.O. Box 316, Kake, AK 99830–0316; Phone: (907) 785–6471; Fax: (907) 785–4902.

Kaktovik Village, Sharon Thompson, Arctic Slope Native Association, Social Services, P.O. Box 1232, Barrow, AK 99723; Phone: (907) 852–2762; Fax: (907) 852–2105.

Native Village of Kalskag, (AKA Upper Kalskag), Bernice Hetherington, P.O. Box 50, Upper Kalskag, AK 99607; Phone: (907) 471–2418; Fax: (907) 471–2207.

Native Village of Lower Kalskag, Flora Howard, P.O. Box 27, Lower Kalskag, AK 99626; Phone: (907) 471–2412; Fax: (907) 471–2378 and Joan Dewey, ICWA Social Worker, Association of Village Council Presidents, P.O. Box 219, Bethel, AK 99559; Phone: (907) 543–7367; Fax: (907) 543–7319.

Native Village of Kaltag, Abigail Ambrose, P.O. Box 129, Kaltag, AK 99748; Phone: (907) 534–2224; Fax: (907) 534–2299.

Native Village of Kanatak, Tribal President, P.O. Box 875910, Wasilla, AK 99687; Phone: (907) 376–7271; Fax: (907) 376–7203 and Lou Johnson, Bristol Bay Native Association, Social Services, P.O. Box 310, Dillingham, AK 99576; Phone: (907) 842–4139; Fax: (907) 842–4106.

Native Village of Karluk, Alicia Lyn Reft, P.O. Box 22, Karluk, AK 99603–0000; Phone: (907) 241–2218; Fax: (907) 421–2208.

Organized Village of Kasaan, Richard Peterson, President, P.O. Box KXA-Kasaan, Ketchikan, AK 99950–0340; Phone: (907) 542–2230; Fax: (907) 542–3006.

Kashunamiut Tribe, (See Chevak).

Native Village of Kasigluk, Olinka Nicholas, ICWA Program, P.O. Box 19, Kasigluk, AK 99609; Phone: (907) 477–6405; Fax: (907) 477–6212.

Kenaitze Indian Tribe, Rita Smagge, Executive Director, and Linda Perry, ICWA Program Director, P.O. Box 988, Kenai, AK 99611–0988; Phone: (907) 283–3633/6423; Fax: (907) 283–3052/7088.

Ketchikan Indian Corporation, Debbie Fredericksen, M.S.W., 2960 Tongass Avenue, 5th Floor, Ketchikan, AK 99901; Phone: (907) 225–4061; Fax: (907) 247–4061.

Native Village of Kiana, Charles Curtis, President, P.O. Box 69, Kiana, AK 99749–0069; Phone: (907) 475–2109; Fax: (907) 475–2180.

King Cove, (See Agdaagux).

King Island Native Community, Renee L. Carlisle, ICWA Coordinator, P.O. Box 992, Nome, AK 99762; Phone: (907) 443–5494; Fax: (907) 443–3620.

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Native Village of Kluti-Kaah (Copper Center), Carl Pete, President, P.O. Box 68, Copper Center, AK 99573–0068; Phone: (907) 822–5541; Fax: (907) 822–5130.

Knik Tribe, Carol M. Theodore, P.O. Box 871565, Wasilla, AK 99687–1565; Phone: (907) 373–7991; Fax: (907) 373–2161.

Kobuk Traditional Council, Shayne Schaeffer, P.O. Box 51039, Kobuk, AK 99751–0039; Phone: (907) 948–2255; Fax: (907) 948–2123.

Kodiak Tribal Council, (See Shoonaq Tribe of Kodiak).

Kokhanok Tribe, Roy Andrews, President, P.O. Box 1007, Kokhanok, AK 99606; Phone: (907) 282–2203; Fax: (907) 282–2264 and Lou Johnson, Bristol Bay Native Association, Social Services, P.O. Box 310, Dillingham, AK 99559; Phone: (907) 842–4139; Fax: (907) 842–4106.

New Koliganek Village Council, Tribal President, P.O. Box 5057, Koliganek AK 99576; Phone: (907) 596–3434; Fax: (907) 596–3462 and Lou Johnson, Bristol Bay Native Association, Social Services, P.O. Box 310, Dillingham, AK 99559; Phone: (907) 842–4139; Fax: (907) 842–4106.

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Organized Village of Kwethluk, Chariton A. Epchook, P.O. Box 97, Kwethluk, AK 99621–0097; Phone: (907) 757–6023/6043/6053; Fax: (907) 757–6073.

Native Village of Kwigillingok, Andrew Beaver, P.O. Box 54, Kwigillingok, AK 99622–0049; Phone: (907) 588–8705; Fax: (907) 588–8228.

Native Village of Kwinhagak, (A.K.A. Quinkagak), President, P.O. Box 149, Quinhagak, AK 99655–0149; Phone: (907) 556–8165; Fax: (907) 556–8166.

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Lesnoi Village (A.K.A, Woody Island), Andy Teuber Jr., P.O. Box 9009, Kodiak, AK 99615; Phone: (907) 486–2821; Fax: (907) 486–2738.

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Louden, (See Galena).

M

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Native Village of Mary's Igloo, Dolly Kugzruk, P.O. Box 630, Teller, AK 99778; Phone: (907) 642–2185; Fax: (907) 642–3000.

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Mekoryuk IRA Council, Lillian Shavings, ICWA Director, P.O. Box 66, Mekoryuk, AK 99630; Phone: (907) 827–8827; Fax: (907) 827–8133.

Mentasta Tribal Council, Lotha Wolf or Kathryn Martin, P.O. Box 6019, Mentasta, AK 99780; Phone: (907) 291–2328; Fax: (907) 291–2305.

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Mountain Village, (See Asa'Carsarmiut Tribe).

N

Naknek Native Village, Wendy Hansen or Tanya Hansen, Box 106, Naknek, AK 99633; Phone: (907) 246–4210; Fax: (907) 246–3563.

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Native Village of Napaimute, Mark Leary, Box 1301, Bethel, AK 99559; Phone: (907) 543–2887; Fax: (907) 543–2892 and Joan Dewey, ICWA Social Worker, Association of Village Council Presidents, P.O. Box 219, Bethel, AK 99559; Phone: (907) 543–7367; Fax: (907) 543–7319.

Native Village of Napakiak, Freda Andrew, P.O. Box 34013, Napakiak, AK 99634; Phone: (907) 589–2815; Fax: (907) 589–2815/2136 and Joan Dewey, ICWA Social Worker, Association of Village Council Presidents, P.O. Box 219, Bethel, AK 99559; Phone: (907) 543–7367; Fax: (907) 543–7319.

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Newtok Village, Molly Kassauili, P.O. Box 5545, Newtok, AK 99559–5545; Phone: (907) 237–2314; Fax: (907) 237–2428.

Native Village of Nightmute, Janet Lawrence, P.O. Box 90021, Nightmute, AK 99690; Phone: (907) 647–6386; Fax: (907) 647–6387.

Native Village of Nikolai, (Edenzo), Peter A. Tony, P.O. Box 9105, Nikolai, AK 99691; Phone: (907) 293–2310; Fax: (907) 293–2481.

Native Village of Nikolski, Grace Smith, Aleutian/Pribilof Islands Association, 201 E. 3rd Avenue, Anchorage, AK 99501; Phone: (907) 222–4237; Fax: (907) 279–4351.

Ninilchik Traditional Council, Susan Welsh-Smith or Jeffrey Smith, ICWA/Social Service Coordinator, P.O. Box 39070, Ninilchik, AK 99639; Phone: (907) 567–3313; Fax: (907) 567–3308.

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Nome Eskimo Community, Denise Barengo or Lorlie Shield, P.O. Box 1090, Nome, AK 99762–1090; Phone: (907) 443–2246; Fax: (907) 443–3539.

Nondalton Village, Susan Bobby or Brenda Trefon, Social Services, P.O. Box 49, Nondalton, AK 99640–0049; Phone: (907) 294–2220; Fax: (907) 294–2234.

Noorvik Native Community, Nellie Ballot, ICWA Coordinator, P.O. Box 131, Noorvik, AK 99763; Phone: (907) 636–2258/2144; Fax: (907) 636–2268.

Northway Village, Daisy Northway or Crystalena Sam, P.O. Box 516, Northway, AK 99764; Phone: (907) 778–2311; Fax: (907) 778–2220.

Native Village of Nuiqsut, Sharon Thompson, Arctic Slope Native Association, Social Services, P.O. Box 1232, Barrow, AK 99723; Phone: (907) 852–2762; Fax: (907) 852–2105.

Nulato Village, Kathleen Sam, P.O. Box 65049, Nulato, AK 99765; Phone: (907) 898–2329; Fax: (907) 898–2207.

Nunakauyarmiut Tribe (formerly, Toksook Bay), Pauline Asuluk, P.O. Box 37048; Toksook Bay, AK 99637–0108; Phone: (907) 427–7914; Fax: (907) 427–7206.

Nunam Iqua, (See Sheldon Point).

Native Village of Nunapitchuk, Moses Tobeluk, P.O. Box 104, Nunapitchuk, AK 99641–0130; Phone: (907) 527–5731/5705; Fax: (907) 527–5711 and Joan Dewey, ICWA Social Worker, Association of Village Council Presidents, P.O. Box 219, Bethel, AK 99559; Phone: (907) 543–7367; Fax: (907) 543–7319.

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Native Village of Orutsararmuit, (A.K.A. Bethel), ICWA, Program, P.O. Box 927, Bethel, AK 99559–0927; Phone: (907) 543–2608; Fax: (907) 543–2639.

Oscarville Traditional Village, Jimmy Larsen, Jr., ICWA Program, P.O. Box 6129, Oscarville, AK 99559; Phone: (907) 737–7099; Fax: (907) 737–7428 and Joan Dewey, ICWA Social Worker, Association of Village Council Presidents, P.O. Box 219, Bethel, AK 99559; Phone: (907) 543–7367; Fax: (907) 543–7319.

Ouzinkie Tribal Council, Sharon Boskofsky, ICWA Program, P.O. Box 130, Ouzinkie, AK 99644–0130; Phone: (907) 680–2259/2359; Fax: (907) 680–2214.

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Native Village of Pitka's Point, Carol Alstrom, P.O. Box 127, St. Mary's, AK 99658; Phone: (907) 438–2551; Fax: (907) 438–2569 and Joan Dewey, ICWA Social Worker, Association of Village Council Presidents, P.O. Box 219, Bethel, AK 99559; Phone: (907) 543–7367; Fax: (907) 543–7319.

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Native Village of Point Hope, Mae R. Hank, P.O. Box 109, Point Hope, AK 99766; Phone: (907) 368–2330; Fax: (907) 368–2332.

Native Village of Point Lay, Amos Agnasayga, Box 59031, Pt. Lay, AK 99757; Phone: (907) 833–2575; and Sharon Thompson, Arctic Slope Native Association, Social Services, P.O. Box 1232, Barrow, AK 99723; Phone: (907) 852–2762; Fax: (907) 852–2105.

Port Graham Village Council, Elenore McMullen, Chief or Mary Malchoff, Tribal ICWA Worker, P.O. Box 5510, Port Graham, AK 99603; Phone: (907) 284–2227; Fax: (907) 284–2222.

Native Village of Port Heiden, Toni Lind, Tribal Children Service Worker, P.O. Box 49007, Port Heiden, AK 99549; Phone: (907) 837–2296; Fax: (907) 837–2297.

Native Village of Port Lions, Tribal Council, P.O. Box 69, Port Lions, AK 99550–0069; Phone: (907) 454–2234; Fax: (907) 454–2434.

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Quinhagak, (See Kwinhagak).

R

Rampart Village, Tanana Chiefs Conference, Inc., Director Human Services, 122 First Avenue, Suite 600, Fairbanks, AK 99701; Phone: (907) 452–8251 Ext. 3229; Fax: (907) 459–3851.

Red Devil Traditional Council, Theodore E. Gordon, Sr., Tribal Administrator, P.O. Box 91, Red Devil, AK 99656; Phone: (907) 447–3223; Fax: (907) 447–3224 and Joan Dewey, ICWA Social Worker, Association of Village Council Presidents, P.O. Box 219, Bethel, AK 99559; Phone: (907) 543–7367; Fax: (907) 543–7319.

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Russian Mission, (See Iqurmuit).

S

Native Village of Salamatoff, Rita Smagge, Kenaitze Indian Tribe, P.O. Box 988, Kenai, AK 99611; Phone: (907) 283–3633; Fax: (907) 283–3052.

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Organized Village of Saxman, Family Caseworker, Route 2, Box 2, Ketchikan, AK 99901; Phone: (907) 225–2518; Fax: (907) 247–2912.

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St. Mary's, (See Algaaciq).

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Toksook Bay, (See Nunakauyarmiut Tribe).

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Unalaska, (See Qawalangin Tribe of Unalaska).

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Hopland Reservation, Lorraine Laiwa, ICWA Coordinator, Indian Child Preservation Program, 684 S. Orchard Ave., Ukiah, CA 95482; Phone: (707) 463–2644.

I

Inaja & Cosmit Band of Mission Indians, ICWA Coordinator, Human Service Department, Indian Health Council, Inc., P.O. Box 406, Pauma Valley, CA 92061; Phone: (760) 749–1410.

Ione Band of Miwok Indians, Chairperson, P.O. Box 1190, Ione, CA 95640; Phone: (209) 274–6753; Fax: (209) 274–6636.

J

Jackson Rancheria, ICWA Manager, Tuolumne Indian Child & Family Services, P.O. Box 615, Tuolumne, CA 95379; Phone: (209) 223–1935; Fax: (209) 223–5366.

Jamul Indian Village, Program Director, Indian Child Social Service Department, Southern Indian Health Council, P.O. Box 2128, Alpine, CA 91903; Phone: (619) 445–1188.

K

Karuk Tribe of California, Director, Social Services, ICWA Social Worker, 1519 S. Oregon Street, Yreka, CA 96097; Phone: (530) 493–5305 or (530) 842–9228.

L

La Jolla Band of Luiseno Indians, ICWA Coordinator, Human Service Department, Indian Health Council, Inc., P.O. Box 406, Pauma Valley, CA 92061; Phone: (760) 749–1410.

La Posta Band of Mission Indians, Program Director, Indian Child Social Services Department, Southern Indian Health Council, P.O. Box 2128, Alpine, CA 91903–2128; Phone: (619) 445–1188.

Laytonville Rancheria, Deborah Sanders, ICWA Director, P.O. Box 1239, Laytonville, CA 95454; Phone: (707) 984–6197.

Lone Pine Reservation, Margaret Romero, Family Services Coordinator, Toiyabe Indian Health Project, 52 Tu Su Lane, Bishop, CA 93514; Phone: (760) 873–6394.

Lower Lake Rancheria, Chairperson, 1083 Vine Street #137, Healdsburg, CA 95448; Phone: (707) 431–1908.

Los Coyotes Band of Mission Indians, ICWA Coordinator, Human Services Department, Indian Health Council, Inc., P.O. Box 406, Pauma Valley, CA 92061; Phone: (760) 749–1410.

Lytton Rancheria, Margie Mejia, Chairperson, 1250 Coddingtown Center, Suite 1, Santa Rosa, CA 95401–3515; Phone: (707) 575–5917; Fax: (707) 575–6974.

M

Manchester-Point Arena Rancheria, Lorraine Laiwa, ICWA Coordinator, Indian Child Preservation Program, 684 S. Orchard Avenue, Ukiah, CA 95482; Phone: (707) 463–2644.

Manzanita Band of Mission Indians, Chairperson, P.O. Box 1302, Boulevard, CA 91905; Phone: (619) 766–4930.

Mechoopda Indian Tribe of the Chico Rancheria, Cindy Phillips, Tribal Administrator, 1907–F Mangrove Avenue, Chico, CA 95926; Phone: (530) 899–8922; Fax: (530) 899–8517.

Mesa Grande Band of Mission Indians, ICWA Coordinator, Human Services Department, Indian Health Council, Inc., P.O. Box 460, Pauma Valley, CA 92061; Phone: (760) 749–1410.

Middletown Rancheria, Chairperson, P.O. Box 1035, Middletown, CA 95461; Phone: (707) 987–3670.

Mooretown Rancheria, Francine Mckinley, ICWA Coordinator, 1 Alverda Drive, Oroville, CA 95966; Phone: (530) 533–3625; Fax: (530) 533–3680.

Morongo Band of Mission Indians, ICWA Representative, 11581 Potrero Road, Banning, CA 92220; Phone: (909) 849–4697.

N

North Fork Rancheria, Delores Roberts, Chairperson, P.O. Box 929, North Fork, CA 93643; Phone: (559) 877–2461; Fax: (559) 877–2467.

P

Pala Band of Mission Indians, Robert Smith, Chairperson, P.O. Box 50, Pala, CA 92059; Phone: (760) 742–3784.

Paskenta Band of Nomlaki Indians, Everett Freeman, Chair, P.O. Box 398, Orland, CA 95963; Phone: (530) 865–3119; Fax: (530) 865–2345.

Pauma & Yuima Band of Mission Indians, ICWA Coordinator, Human Services Department, Indian Health Council, Inc., P.O. Box 406, Pauma Valley, CA 92061; Phone: (760) 749–1410.

Pechanga Band of Mission Indians, Mark Macarro, Spokesman, P.O. Box 1477, Temecula, CA 92593; Phone: (909) 676–2768.

Picayune Rancheria of Chukchansi Indians, Chairperson, 46575 Road 417, Coarsegold, CA 93614; Phone: (559) 683–6633.

Pinoleville Reservation, Chairperson, 367 North State Street, Suite 204, Ukiah, CA 95482; Phone: (707) 463–1454.

Pit River Reservation, ICWA Director, 37014 Main Street, Burney, CA 96013; Phone: (530) 335–5421 or 866–335–5530; Fax: (530) 335–3966.

Potter Valley Rancheria, Chairperson, Tribal Council, 417 D Talmage Road, Ukiah, CA 95482; Phone: (707) 468–7494.

Q

Quartz Valley Indian Reservation, ICWA Director, P.O. Box 24, Fort Jones, CA 96032; Phone: (530) 468–5937; Fax: (530) 468–2491.

R

Ramona Band of Mission Indians, Executive Director, Indian Child & Family Services, P.O. Box 2269, Temecula, CA 92590; Phone: (909) 676–8832.

Redding Rancheria, Robin Bailey-Boyle, Director, Social Services, 2000 Rancheria Road, Redding, CA 96001–5528; Phone: (530) 225–8979.

Redwood Valley Reservation, Mary Navarez, ICWA Coordinator, 3250 Road 1, Redwood Valley, CA 95470; Phone: (707) 485–0361; Fax: (707) 485–5726.

Resighini Rancheria, Chairperson, P.O. Box 529, Klamath, CA 95548; Phone: (707) 482–2431; Fax: (707) 482–3425.

Rincon Band of Mission Indians, ICWA Coordinator, Human Services Department, Indian Health Council, P.O. Box 406, Pauma Valley, CA 92061; Phone: (760) 749–1410.

Robinson Rancheria, Chairperson, 1545 E. Highway 20, Nice, CA 95464; Phone: (707) 275–0527.

Round Valley Reservation, Chairperson, P.O. Box 448, Covelo, CA 95428; Phone: (707) 983–6126; Fax: (707) 983–6128.

Rumsey Rancheria, Paula Lorenzo, Chairperson, P.O. Box 18, Brooks, CA 95606; Phone: (530) 796–3400.

S

San Manuel Band of Mission Indians, Chairperson, P.O. Box 266, Patton, CA 92369; Phone: (909) 864–8933.

San Pasqual Band of Diegueno Indians, ICWA Coordinator, Human Services Department, Indian Health Council, Inc., P.O. Box 406, Pauma Valley, CA 92061; Phone: (760) 749–1410.

Santa Rosa Band of Mission Indians, ICWA Representative, P.O. Box 390611, Anza, CA 92539; Phone: (909) 763–5140.

Santa Rosa Rancheria, Susan Weese, ICWA Coordinator, P.O. Box 8, Lemoore, CA 93245–0008; Phone: (209) 924–1278.

Santa Ynez Band of Mission Indians, ICWA Coordinator, P.O. Box 909, Santa Ynez, CA 93460; Phone: (805) 688–7070.

Santa Ysabel Band of Mission Indians, ICWA Coordinator, Human Services Department, Indian Health Council, Inc., P.O. Box 406, Pauma Valley, CA 92061; Phone: (760) 749–1410.

Scotts Valley Rancheria, Chairperson, 149 N Main Street, Suite 200, Lakeport, CA 95453; (707) 263–4771; Fax: (707) 263–4773.

Sherwood Valley Rancheria, Chairperson, 190 Sherwood Hill Drive, Willits, CA 95490; Phone: (707) 459–9690; Fax: (707) 459–6936.

Shingle Springs Rancheria, Chairperson, P.O. Box 1340, Shingle Springs, CA 95682; Phone: (530) 676–8010.

Smith River Rancheria, Elvira Rodriquez, ICWA Director, 250 N Indian Road, Smith River, CA 95567–9525; Phone: (707) 487–9255; Fax: (707) 487–0930.

Soboba Band of Luiseno Indians, Project Manager, P.O. Box 487, San Jacinto, CA 92581; Phone: (909) 654–2765.

Stewarts Point Rancheria, Liz DeRouen, Indian Child and Family Preservation Program, 1420 C. Guernville Road, Suite 4, Santa Rosa, CA 95401; Phone: (707) 591–0580 Ext. 203; Fax: (707) 591–0583.

Susanville Indian Rancheria, Chairperson, ICWA Director, P.O. Drawer U, Susanville, CA 96130; Phone: (530) 251–5205.

Sycuan Band of Mission Indians, Program Director, Indian Child Social Services Department, Southern Indian Health Council, P.O. Box 2128, Alpine, CA 91903–2128; Phone: (619) 445–1188.

T

Table Bluff Reservation, Elsie McLaughlin-Feliz, Director, Social Services, 1000 Wiyot Drive, Loleta, CA 95551; Phone: (707) 733–5055; Fax: (707) 733–5601.

Table Mountain Rancheria, Chairperson, P.O. Box 410, Friant, CA 93626–0410; Phone: (559) 822–2587; Fax: (559) 822–2693.

Timbi-sha Shoshone Tribe, Margaret Romero, Family Services Coordinator, Toiyabe Indian Health Project, 52 Tu Su Lane, Bishop, CA 93514; Phone: (760) 786–2374.

Torres-Martinez Desert Cahuilla Indians, ICWA Representative, P.O. Box 1160, Thermal, CA 92274; Phone: (760) 397–0300.

Trinidad Rancheria, Chairperson, P.O. Box 630, Trinidad, CA 95570; Phone: (707) 677–0211; Fax: (707) 677–3921.

Tule River Reservation, Louise Cornell, ICWA Director, P.O. Box 589, Porterville, CA 93258; Phone: (559) 781–4271.

Tuolumne Rancheria, Chairperson, P.O. Box 699, Tuolumne, CA 95379; Phone: (209) 928–3475.

Twenty-Nine Palms Band of Mission Indians, Executive Director, Indian Child & Family Services, P.O. Box 2269, Temecula, CA 92590; Phone: (909) 676–8832.

U

Upper Lake Rancheria, Chairperson, P.O. Box 516, Upper Lake, CA 95485; Phone: (707) 275–0737.

V

Viejas (Baron Long) Band of Mission Indians, Program Director, Indian Child Social Services Department, Southern Indian Health Council, P.O. Box 2128, Alpine, CA 91903–2128; Phone: (619) 445–1188.

Y

Yurok Tribe, Director, Social Services, ICWA Coordinator, 1034 Sixth Street,

Eureka, CA 95501; Phone: (707) 444–0433; Fax: (707) 444–0437.

[FR Doc. 01–31337 Filed 12–19–01; 8:45 am]

BILLING CODE 4310–02–P

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

Indian Gaming; Notice

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Notice of approved Tribal-State Compact.

SUMMARY: Pursuant to section 11 of the Indian Gaming Regulatory Act of 1988 (IGRA), Pub. L. 100–497, 25 U.S.C. 2710, the Secretary of the Interior shall publish, in the **Federal Register**, notice of approved Tribal-State Compacts for the purpose of engaging in Class III gaming activities on Indian lands. The Assistant Secretary—Indian Affairs, Department of the Interior, through his delegated authority, has approved the Tribal-State Compact between the Pueblo of Taos and the State of New Mexico, which was executed on October 22, 2001.

DATES: This action is effective upon date of publication.

FOR FURTHER INFORMATION CONTACT: George T. Skibine, Director, Office of Indian Gaming Management, Bureau of Indian Affairs, Washington, DC 20240, (202) 219–4066.

Dated: December 11, 2001.

Neal A. McCaleb,

Assistant Secretary—Indian Affairs.

[FR Doc. 01–31292 Filed 12–19–01; 8:45 am]

BILLING CODE 4310–02–M

INTERNATIONAL TRADE COMMISSION

[Investigation No. 701–TA–427 (Preliminary)]

Film and Television Productions From Canada

AGENCY: United States International Trade Commission.

ACTION: Revised schedule for the subject investigation.

EFFECTIVE DATE: December 17, 2001.

FOR FURTHER INFORMATION CONTACT: Diane J. Mazur (202–205–3184), 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*). The public record for this investigation may be viewed on the Commission's electronic docket (EDIS–ON–LINE) at *http://dockets.usitc.gov/eol/public.*

SUPPLEMENTARY INFORMATION: On December 4, 2001, the Commission established a schedule for the conduct of the preliminary phase of the subject investigation (**Federal Register** 66 FR 64057, December 11, 2001). Subsequently, the Department of Commerce extended the date for its initiation in the investigation to January 14, 2002 (December 14, 2001, Commerce memorandum). The Commission, therefore, is revising its schedule to conform with Commerce's new schedule.

The Commission's new schedule for the investigation is as follows: Persons wishing to participate in the investigation as parties must file an entry of appearance with the Secretary to the Commission not later than seven days after publication of this notice in the **Federal Register**; parties wishing to participate in the conference should contact Diane Mazur (202–205–3184) not later than January 14, 2002, to arrange for their appearance; the conference will be held at the U.S. International Trade Commission Building at 9:30 a.m. on January 18, 2002; and the deadline for filing postconference briefs is January 24, 2002.

For further information concerning the conduct of this investigation 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 and B (19 CFR part 207).

Authority: This investigation is being conducted under authority of title VII of the Tariff Act of 1930; this notice is published pursuant to section 207.12 of the Commission's rules.

Issued: December 17, 2001.

By order of the Commission.

Donna R. Koehnke,

Secretary.

[FR Doc. 01–31384 Filed 12–19–01; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

Gray Portland Cement and Cement Clinker From Mexico; Dismissal of Request for Institution of a Section 751(b) Review Investigation

AGENCY: United States International Trade Commission.

ACTION: Dismissal of a request to institute a section 751(b) investigation concerning the Commission's affirmative determination in investigation No. 731–TA–451 (Final): Gray Portland Cement and Cement Clinker from Mexico.

SUMMARY: The Commission determines,[1] pursuant to section 751(b) of the Tariff Act of 1930 (the Act)[2] and Commission rule 207.45,[3] that the subject request does not show changed circumstances sufficient to warrant institution of an investigation to review the Commission's affirmative determination in investigation No. 731–TA–451 (Final): Gray Portland Cement and Cement Clinker from Mexico. Gray portland cement is classifiable under subheading 2523.29.00 of the Harmonized Tariff Schedule of the United States (HTS) and cement clinker is classifiable under HTS subheading 2523.10.00.[4] Pursuant to Commission rule 201.4(b), the Commission determined that there was good cause to extend the deadline for this determination as set forth in Commission rule 207.45(c).

FOR FURTHER INFORMATION CONTACT: Debra Baker (202–205–3180) or Robert Carpenter (202–205–3172), 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*). The public record for this matter may be viewed on the Commission's electronic docket (EDIS–ON–LINE) at *http://dockets.usitc.gov/eol/public.*

[1] Commissioner Bragg did not participate in the deliberations in this request.

[2] 19 U.S.C. 1675(b).

[3] 19 CFR 207.45.

[4] Gray portland cement has also been entered under HTS subheading 2523.90.00 as ''other hydraulic cements.''

Background Information

On September 19, 2001, the Commission received a request to review its affirmative determination concerning gray portland cement and cement clinker from Mexico (the request), in light of changed circumstances pursuant to section 751(b) of the Act.[5] The request was filed by counsel on behalf of CEMEX, S.A. de C.V. (CEMEX), a manufacturer of cement in Mexico. Gray portland cement is a hydraulic cement and the primary component of concrete. Clinker, an intermediate material produced when manufacturing cement, has no use other than that of being ground into finished cement.

Pursuant to section 207.45(b) of the Commission's Rules of Practice and Procedure,[6] the Commission published a notice in the **Federal Register** on October 10, 2001,[7] requesting comments as to whether the alleged changed circumstances warranted the institution of a review investigation. The Commission received comments in support of the request from (1) counsel on behalf of Cementos Apasco, S.A. de C.V. and (2) counsel on behalf of GCC Cemento, S.A. de C.V. and its U.S. affiliate, Rio Grande Portland Cement Corp., which both imported cement from Mexico during the original investigation and produce cement in Mexico. Additional comments in support of a changed circumstances review were also received from a number of community officials and cement customers, including: (1) Kenneth A. Mayfield, Dallas County Commissioner, Dallas, TX; (2) Elizabeth G. Flores, Mayor, City of Laredo, TX; (3) Robert J. Schlegel, Pavestone Co.; (4) The Honorable Robert Eckles, County Judge, Harris County, TX; (5) Robert Cutter, CEMEX USA; (6) Richard D. Steinke, Port of Long Beach, CA; (7) Cameron Klein, Oldcastle APG West; (8) David A. Schwab, Schwab Ready Mix, Inc.; and (9) Gerald M. Howard, National Association of Home Builders. In addition, Senator John McCain forwarded a letter to the Commission from Robert Cutter, CEMEX, who supports the initiation of a changed circumstances review. Letters in support of the initiation of a changed circumstances review were also received from a number of members of Congress. Comments received in opposition to the request were filed by counsel on behalf of the Committee for Fairly Traded Mexican Cement (Committee); the International Brotherhood of Boilermakers, Iron Ship Builders, Blacksmiths, Forgers & Helpers; the Paper, Allied-Industrial, Chemical & Energy Workers International Union; and the International Union of Operating Engineers (collectively, the domestic industry). The 22 members of the Committee have 28 cement plants located in the Southern Tier region; the 3 labor unions identified above represent workers at 17 plants operated by 13 companies in the Southern Tier.

Analysis

In considering whether to institute a review investigation under section 751(b), the Commission will not institute such an investigation unless it is persuaded there is sufficient information demonstrating:

(1) That there have been significant changed circumstances from those in existence at the time of the original investigation;

(2) That those changed circumstances are not the natural and direct result of the imposition of the antidumping and/or countervailing duty order, and

(3) That the changed circumstances, allegedly indicating that revocation of the order would not be likely to lead to continuation or recurrence of material injury to the domestic industry, warrant full investigation.[8]

After consideration of the request for review and the response to the notice inviting comments, the Commission has determined, pursuant to section 751(b) of the Act and Commission rule 207.45, that the information available to the Commission does not show changed circumstances sufficient to warrant institution of an investigation to review the Commission's affirmative determination in investigation No. 731–TA–451 (Final): Gray Portland Cement and Cement Clinker from Mexico.

The alleged changed circumstance consists of CEMEX's acquisition of U.S. cement producer, Southdown, Inc. CEMEX alleges that the acquisition, which was finalized on November 16, 2000, ''eliminates any perceived incentive for CEMEX to import cement from Mexico into the Southern Tier in quantities or at prices that would cause material injury to all or almost all Southern Tier cement producers in the reasonably foreseeable future.''

The information available, including the request and the comments received in response to the notice, does not persuade us that an investigation is warranted. In particular:

The decision to undertake a review is ''a threshold question, * * *. [which] may be made only when it reasonably appears that positive evidence adduced by the petitioner together with other evidence gathered by the Commission leads the ITC to believe that there are changed circumstances sufficient to warrant review.''[9] CEMEX's allegation that the acquisition is a sufficient change focuses on the amount invested in the acquisition and the argument that ''their economic self-interest precludes them from harming the Southern Tier industry and markets.'' CEMEX, however, has not provided evidence that the acquisition has changed the effect of the subject imports on the Southern Tier regional industry.[10] The increase in regional market share resulting from CEMEX's acquisition alone does not demonstrate a change without evidence of an actual change in imports or ability to supply imports, prices, or competitive conditions in the industry.[11] CEMEX has not presented adequate and specific facts, such as the volume and value of imports from Mexico since the acquisition, that would provide support for its claims and allegations that the acquisition prevents it from engaging ''in import practices that undermine the pricing structure of its Southern Tier (and U.S.) markets.''

CEMEX has not met its burden of persuading the Commission that the acquisition has affected the quantity of Mexican imports. Moreover, the information available to the Commission is clearly inconsistent with CEMEX's claims. U.S. imports of cement from Mexico have not fallen or even remained steady, but have instead increased since CEMEX's acquisition of Southdown in November 2000. The volume of imports of Mexican cement was 29.2 percent higher for the January-September 2001 period compared with the same period in 2000. Moreover, the unit values of imports of cement from Mexico have declined since the acquisition. Neither the increases in volume nor declines in value of imports

[5] 19 U.S.C. 1675(b).

[6] 19 CFR 207.45(b).

[7] 66 FR 51685.

[8] *See Heavy Forged Handtools from the People's Republic of China,* 62 FR 36305 (July 7, 1997); *Certain Cold-Rolled Carbon Steel Plate Products from Germany and the Netherlands,* 61 FR 17319 (April 19, 1996); see generally, A. Hirsh, Inc. v. United States, 737 F. Supp. 1186 (CIT 1990); Avesta AB v. United States, 724 F. Supp. 974 (CIT 1989), aff'd 914 F.2d 233 (Fed. Cir. 1990); and Avesta AB v. United States, 689 F. Supp. 1173 (CIT 1988).

[9] Avesta, 689 F. Supp. at 1181 (CIT 1988); *A Hirsh, Inc.* v. *United States,* 729 F. Supp. 1360, 1363 (CIT 1990), aff'd following remand, 737 F. Supp. at 1188 (CIT 1990).

[10] CEMEX made similar arguments in the five-year review completed in October 2000 regarding its single domestic operation and the Commission rejected it on the basis that it was not supported by the evidence. USITC Pub. 3361 at 39, n.234, and 41.

[11] *See Avesta,* 689 F. Supp. at 1181–1183; Avesta, 724 F. Supp. at 978–980.

of Mexican cement provide evidence of a change in importing strategy by CEMEX resulting from the acquisition that would warrant a full review to consider the issue of revocation. In not presenting adequate facts to demonstrate a sufficient change in circumstances, CEMEX has not met its burden at the initial stage.[12]

Finally, CEMEX raises a number of arguments that address the merits of whether the order should be revoked and are ''of little consequence as an isolated fact in terms of whether the review is warranted.''[13]

In order to obtain a review, a requester ''must present facts which when weighed against the other facts presented, would convince a reasonable decision-maker that a full investigation is necessary to establish whether or not changed circumstances have obviated the need for the order in its present form.''[14] CEMEX has made various allegations but provided virtually no evidence, and certainly not adequate facts, to support its claim that the acquisition of Southdown is a changed circumstance sufficient to warrant review of the order. Moreover, the available Commerce import data provide clear and convincing contrary evidence that imports of cement from Mexico have increased, and their value has declined, since the acquisition. Finally, CEMEX has not made it clear why the Commission should not find that a shift of production to the U.S. market would be anything other than the natural consequence of the outstanding antidumping duty order.

In light of the above analysis, the Commission determines that institution of a review investigation under section 751(b) of the Act concerning the Commission's affirmative determination in investigation No. 731–TA–451 (Final): Gray Portland Cement and Cement Clinker from Mexico, is not warranted.

Issued: December 17, 2001.

By order of the Commission.

Donna R. Koehnke,

Secretary.

[FR Doc. 01–31385 Filed 12–19–01; 8:45 am]

BILLING CODE 7020–02–P

[12] *See Hirsh,* 737 F. Supp. at 1188.

[13] *Hirsh,* 737 F. Supp. at 1188 (''improved health of the domestic industry and avoidance of an injured condition is the hoped-for outcome of an unfair trade order * * * [and] is of little consequence as an isolated fact in terms of whether review is warranted.'').

[14] Hirsh, 729 F. Supp. at 1363 (CIT 1990), citing, Avesta, 689 F. Supp. at 1181 (CIT 1988).

INTERNATIONAL TRADE COMMISSION

Forum on Issues Relating to Electronic Filing and Maintenance of Documents

AGENCY: United States International Trade Commission.

ACTION: Notice to assess public interest in the agency's holding a forum.

SUMMARY: The United States International Trade Commission wishes to ascertain the extent to which members of the public would be interested in attending and making statements at a forum on issues relating to electronic filing and maintenance of documents. If such a forum were to be held, it would provide members of the public with the opportunity to provide input that the Commission can use to develop effective processes for electronic document filing and maintenance. The Commission anticipates that any such forum, if held, likely would be held in January 2002.

ADDRESSES: A person wishing to appear at the forum and make a statement should file a request to do so directed to the Secretary to the Commission. A request to appear should indicate the following information: (1) The name of the person desiring to make a statement; (2) the organization or organizations represented by that person, if any; (3) contact information (address, telephone, and e-mail); and (4) information on the specific focus or interest of the person (or his or her organization) and any questions or issues the person would like to raise. A request may be sent by e-mail to *''dockets@usitc.gov,''* or by mail or hand delivery to the Secretary, United States International Trade Commission, 500 E Street, SW., Washington, DC 20436. The deadline for receipt of requests is Friday, December 28, 2001.

FOR FURTHER INFORMATION CONTACT: Paul R. Bardos, Esq. (202–205–3102), Office of the General Counsel, 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 (at URL *http://www.usitc.gov*).

SUPPLEMENTARY INFORMATION: The Commission is contemplating holding a forum on issues relating to electronic filing and maintenance of documents, and wishes to ascertain the extent of public interest in appearing at such a forum.

In 1996, the Commission established the Electronic Document Imaging System (EDIS), which stores and provides access to docket records in agency investigations. The Commission now is contemplating replacing EDIS with a new document management system that would provide better functionality. In particular, the Commission is seeking as part of the new system the capability to accept documents electronically.

The Commission's Rules of Practice and Procedure currently provide for the filing of documents with the agency in paper form. Consistent with the Government Paperwork Elimination Act (GPEA) (Div. C, Title XVII, Public Law 105–277), the Commission is considering permitting parties and other persons to file some documents with the agency electronically. The Commission contemplates obtaining the capability to, inter alia: (1) Permit a person to make a filing by uploading it electronically to a Commission Web site; (2) provide security to protect confidential business and business proprietary information from unauthorized disclosure; (3) verify the identity of the submitter through a password, electronic signature, or other security system; (4) acknowledge receipt of the submission by an electronic message to establish when filing occurred; and (5) alert in-house users of new submissions. A new Commission document management system might also permit faster searches for and retrieval of documents in the Commission's docket files than currently permitted by EDIS.

The Commission held a public forum on June 20, 2001, to solicit public views on (1) what features of an electronic system might be helpful to users, (2) what technical difficulties might arise in connection with such a system, and (3) how the agency might implement such a system. The agency has taken into account the views expressed at the forum, as well as those expressed in written comments, in its planning for the new system.

Now that the Commission has done further work on defining how the agency may implement such a system, the agency is considering holding another forum to solicit further input from the public on issues relating to electronic document filing and maintenance. Before scheduling such a forum, the Commission wishes to gauge the level of public interest in attending such an event.

Any person may attend the forum and make a statement concerning the issues listed above. A person wishing to do so must file a request with the Secretary. Once all requests have been received, the Commission will decide on whether to hold the forum. The Commission will inform each person whose request to appear has been granted of the date, time, location, and agenda of the forum.

By order of the Commission.

Issued: December 17, 2001.

Donna R. Koehnke,

Secretary.

[FR Doc. 01–31449 Filed 12–19–01; 8:45 am]

BILLING CODE 7020–02–P

JUDICIAL CONFERENCE OF THE UNITED STATES

Hearings of the Judicial Conference Advisory Committees on Rules of Bankruptcy and Criminal Procedure

AGENCY: Judicial Conference of the United States, Advisory Committees on Rules of Bankruptcy and Criminal Procedure.

ACTION: Notice of cancellation of open hearings.

SUMMARY: The following public hearings have been canceled:

- Bankruptcy Rules in Washington, DC on January 4, 2002; and
- Criminal Rules in Atlanta, Georgia on January 7, 2002.

(Original notice of hearings appeared in the **Federal Register** of August 29, 2001 (66 FR 45693)).

FOR FURTHER INFORMATION CONTACT: John K. Rabiej, Chief, Rules Committee Support Office, Administrative Office of the United States Courts, Washington, DC 20544, telephone (202) 502–1820.

Dated: December 13, 2001.

John K. Rabiej,

Chief, Rules Committee Support Office.

[FR Doc. 01–31277 Filed 12–19–01; 8:45 am]

BILLING CODE 2210–55–M

DEPARTMENT OF JUSTICE

Notice of Lodging of Supplement to the Consent Decree Pursuant to the Safe Drinking Water Act

In accordance with 28 CFR 50.7, notice is hereby given that a proposed Supplement to the Consent Decree in *United States and State of New York, et al.* v. *City of New York, et al.,* Civil Action No. CV 97–2154 (Gershon J.) (Gold, M.J.), was lodged with the United States District Court for the Eastern District of New York on December 12, 2001. In this action, the United States and the State of New York sought to court order requiring the City of New York to come into compliance with the Safe Drinking Water Act, 42 U.S.C. 300f, et seq., and the Surface Water Treatment Rule, a National Primary Drinking Water Regulation, by installing filtration treatment for its Croton water supply system.

On November 24, 1998, the Court entered a Consent Decree in this action which required the City, among other obligations, to select a site for, design, and contruct the filtration plant. The City selected a site for the plant at the Mosholu Golf Course in Van Cortlandt Park in the Bronx. However, on February 8, 2001, the New York State Court of Appeals held that the City could not construct the plant at the Mosholu Golf Course Site without first obtaining approve from the New York State Legislature. The City has sought, but to date has not obtained, legislative approve to construct the plant at the Mosholu Golf Course Site, though the City represents that it is continuing to seek such approval.

In view of the lack of legislative approval for the Mosholu Golf Course Site, the Parties negotiated a Supplement to the Consent Decree, which, among other things, requires the City to select a new site and modifies the deadlines for construction of the filtration plant. The City has identified two alternative sites for construction of the filtration plant, a site in the Town of Mount Pleasant in Westchester Country, denominated the Eastview Site, and a site adjacent to the Harlem River in Bronx County, denominated the Harlem River Site. However, the City wishes to conduct additional study regarding these sites prior to selecting a preferred site for the plant. Accordingly, the Supplement tot he Consent Decree provides that the City will conduct some initial study and design work relating to the Eastview Site and the Harlem River Site and will identify its preferred Site in a draft environmental impact statement to be submitted on April 30, 2003. The City is to select one of these two sites or, if legislative approval for the Mosholu Golf Course Site is obtained by April 15, 2003 and other requirements are met, the City may instead reselect the Mosholu Golf Course Site.

The Supplement to the Consent Decree provides that, if the Eastview Site is selected, the City is to complete construction of the plant by March 31, 2010, with full operation to commence no later than September 30, 2010, and, if the Harlem River Site is selected, the City is to complete construction of the plant by April 30, 2011, with full operation to commence by October 31, 2011. The Supplement also provides that, if the United States, State, or the City determines during the course of implementation of the Supplement that the City cannot complete the plant at the selected site within the schedule set forth in the Supplement or within a reasonable time period agreed to by the parties, the City shall construct the plant at the alternate site.

The Supplement to the Consent Decree also provides for a supplemental Interim Measure. This Interim Measure requires the City to implement a project to improve, enhance and/or secure the Croton Water Supply System and/or the Croton Watershed. The City is to submit a proposal to the United States and the State for such a project by September 30, 2002, and to implement the approved project between May 31, 2003 and May 31, 2006, at a cost of $2,000,000.

The Department of Justice will receive comments relating to the proposed Supplement to the Consent Decree for a period of thirty (30) days from the date of this publication. Comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, Department of Justice, c/o Deborah B. Zwany, Assistant U.S. Attorney, Eastern District of New York, One Pierrepont Plaza, 14th Floor, Brooklyn, New York 11201, and should refer to *United States and State of New York* v. *City of New York*, D.J. Ref. 90–5–1–1–4429. A copy of the comments should also be sent to Chief, Environmental Enforcement Section, U.S. Department of Justice, P.O. Box 7611, Washington, DC 20044.

The proposed Supplement to the Consent Decree may be examined at the office of the United States Attorney for the Eastern District of New York, One Pierrepont Plaza, 14th Floor, Brooklyn, New York 11201, and at the Region II office of the Environmental Protection Agency, 290 Broadway, New York, New York 10007. A copy of the proposed Supplement to the Consent Decree may also be obtained by faxing a request to Tonia Fleetwood, Department of Justice Consent Decree Library, fax no. (202) 353–0296. There is a charge for the copy (25 cent per page reproduction cost). When requesting a copy, please mail a check payable to the ''Consent Decree Library'', in the amount of $15.00, to: Consent Decree Library, U.S.

Department of Justice, P.O. Box 7611, Washington, DC 20044.

Karen S. Dworkin,

Assistant Chief, Environmental Enforcement Section, Environmental & Natural Resources Division.

[FR Doc. 01–31278 Filed 12–19–01; 8:45 am]

BILLING CODE 4410–15–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 September 4, 2001, Cedarburg Pharmaceuticals, LLC, 870 Badger Circle, Grafton, Wisconsin 53024, 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
Tetrahydrocannabinols (7370)	I
Oxycodone	II
Hydromorphone (9150)	II
Hydrocodone (9193)	II

The firm will manufacture these controlled substances for another firm.

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 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 February 19, 2002.

Dated: November 26, 2001.

Laura M. Nagel,

Deputy Assistant Administrator, Office of Diversion Control Drug Enforcement Administration.

[FR Doc. 01–31279 Filed 12–19–01; 8:45 am]

BILLING CODE 4410–09–M

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Manufacturer of Controlled Substances; Notice of Registration

By Notice dated August 20, 2001, and published in the **Federal Register** on August 28, 2001, (66 FR 45340), Cedarburg Pharmaceuticals LLC, 870 Badger Circle, Grafton, Wisconsin 53024, made application by letter to the Drug Enforcement Administration (DEA) to be registered as a bulk manufacturer of tetrahydrocannabinols (7370), a basic class of controlled substance listed in Schedule I.

The firm will manufacture tetrahydrocannabinols for another firm.

No comments or objections have been received. DEA has considered the factors in Title 21, United States Code, Section 823(a) and determined that the registration of Cedarburg Pharmaceuticals, LLC to manufacture tetrahydrocannabinols is consistent with the public interest at this time. DEA has investigated the company to ensure that the company's registration is consistent with the public interest. These investigations have included inspection and testing of the company's physical security systems, verification of the company's compliance with state and local laws, and a review of the company's background and history. Therefore, pursuant to 21 U.S.C. 823 and 28 CFR 0.100 and 0.104, the Deputy Assistant Administrator, Office of Diversion Control, hereby orders that the application submitted by the above firm for registration as a bulk manufacturer of the basic class of controlled substance listed above is granted.

Dated: November 20, 2001.

Laura M. Nagel,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 01–31282 Filed 12–19–01; 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 August 17, 2001, Cerilliant Corporation, 14050 Summit Drive #121, P.O. Box 201088, Austin, Texas 78708–0189, made application by renewal to the Drug Enforcement Administration (DEA) for registration as bulk manufacturer of the basic classes of controlled substances listed below:

Drug	Schedule
Cathinone (1235)	I
Methcathinone (1237)	I
N-Ethylamphetamine (1475)	I
N, N-Dimethylamphetamine (1480)	I
Aminorex (1585)	I
4-Methylaminorex (cis isomer) (1590)	I
Gamma hydroxybutyric acid (2010)	I
Methaqualone (2565)	I
Alpha-Ethyltryptamine (7249)	I
Lysergic acid diethylamide (7315)	I
Tetrahydrocannabinols (7370)	I
Mescaline (7381)	I
3, 4, 5-Trimethoxyamphetamine (7390)	I
4-Bromo-2, 5-dimethoxyaphetamine (7391)	I
4-Bromo-2, 5-dimethoxphenethylamine (7392)	I
4-Methyl-2, 5-dimethoxyamphetamine (7395)	I
2, 5-Dimethoxyamphetamine (7396)	I
2, 5-Dimethoxy-4-ethylamphetamie (7399)	I
3, 4-Methylenedioxyamphetamine (7400)	I
5-Methoxy-3, 4-methylenedioxyamphetamine (7401)	I
N-Hydroxy-3, 4-methylenedioxyamphetamine (7402)	I
3, 4-Methylenedioxy-N-ethylamphetamine (7404)	I
3, 4-Methylenedioxymethamphetamine (7405)	I
4-Methoxyamphetamine (7411)	I

Drug	Schedule
Bufotenine (7433)	I
Diethyltryptamine (7434)	I
Dimethyltryptamine (7435)	I
Psilocybin (7437)	I
Psilocyn (7438)	I
Acetyldihydrocodeine (9051)	I
Benzylmorphine (9052)	I
Codeine-N-oxide (9053)	I
Dihydromorphine (9145)	I
Heroin (9200)	I
Hydromorphinol (9301)	I
Methyldihydromorphine (9304)	I
Morphone-N-oxide (9307)	I
Normorphine (9313)	I
Pholcodine (9314)	I
Acetylmethadol (9601)	I
Allyprodine (9602)	I
Alphacetylmethadol except Levo-Alphacetylmethadol (9603)	I
Alphameprodine (9604)	I
Alphamethadol (9605)	I
Betacetylmethadol (9607)	I
Betameprodine (9608)	I
Betamethadol (9609)	I
Betaprodine (9611)	I
Hydromorphinol (9627)	I
Noracymethadol (9633)	I
Norlevorphanol (9634)	I
Normethadone (9635)	I
Trimeperidine (9646)	I
Phenomorphan (9647)	I
Para-Fluorofentanyl (9812)	I
3-Methylfentanyl (9813)	I
Alpha-methylfentanyl (9814)	I
Acetyl-alpha-methylfentanyl (9815)	I
Beta-hydroxyfentanyl (9830)	I
Beta-hydroxy-3-methylfentanyl (9831)	I
Alpha-Methylthiofentianyl (9832)	I
3-Methylthiofentanyl (9833)	I
Thiofentanyl (9835)	I
Amphetamine (1100)	II
Methamphetamine (1105)	II
Phenmetrazine (1631)	II
Methylphenidate (1724)	II
Amobarbital (2125)	II
Pentobarbital (2270)	II
Secobarbital (2315)	II
Glutethimide (2550)	II
Nabilone (7379)	II
1-Phenylcyclohexylamine (7460)	II
Phencyclidine (7471)	II
1-Piperidinocyclohexanecarbonitrile (8603)	II
Alphaprodine (9010)	II
Cocaine (9041)	II
Codeine (9050)	II
Dihydrocodeine (9220)	II
Oxycodone (9143)	II
Hydromorphone (9150)	II
DIphenoxylate (9170)	II
Benzoylecgonine (9180)	II
Ethylmorphine (9190)	II
Hydrocodone (9193)	II
Levomethorphan (9210)	II
Levorphanol (9200)	II
Isomethadone (9226)	II
Meperidine (9230)	II
Methadone (9250)	II
Methadone-intermediate (9254)	II
Dextropropoxyphene, bulk (non-dosage forms) (9273)	II
Morphine (9300)	II
Thebaine (9333)	II
Levo-alphacetylmethadol (9648)	II
Oxymorphone (9652)	II
Noroxymorphone (9668)	II
Racemethorphane (9732)	II

Drug	Schedule
Alfentanil (9737)	II
Sufentanil (9740)	II
Fentanyl (9801)	II

The firm plans to manufacture small quantities of the listed controlled substances to make deuterated and non-deuterated drug reference standards which will be distributed to analytical and forensic laboratories for drug testing programs.

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 February 19, 2002.

Dated: November 16, 2001.

Laura M. Nagel,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 01–31280 Filed 12–19–01; 8:45 am]

BILLING CODE 4410–09–M

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Manufacturer of Controlled Substances; Notice of Registration

By Notice dated March 29, 2001, and published in the **Federal Register** on April 6, 2001, (66 FR 18310), Isotec Inc., 3858 Benner Road, Miamisburg, Ohio 45342, made application by renewal to the Drug Enforcement Administration (DEA) to be registered as a bulk manufacturer of the basic classes of controlled substances listed below:

Drug	Schedule
Cathinone (1235)	I
Methcathinone (1237)	I
N-Ethylamphetamine (1475)	I
N,N-Dimethylamphetamine (1480)	I
Aminorex (1585)	I
Methaqualone (2565)	I
Lysergic acid diethylamide (7315)	I
Tetrahydrocannabinols (7370)	I
Mescaline (7381)	I
2,5-Dimethoxyamphetamine (7396)	I
3,4-Methylenedioxyamphetamine (7400)	I
3,4-Methylenedioxy-N-ethylamphetamine (7404)	I
3,4-Methylenedioxymethamphetamine (7405)	I
4-Methoxyamphetamine (7411)	I
Psilocybin (7437)	I
Psilocyn (7438)	I
N-Ethyl-1-phenylcyclohexylamine (7455)	I
Dihydromorphine (9145)	I
Normorphine (9313)	I
Acetylmethadol (9601)	I
Alphacetylmethadol Except Levo-Alphacetylmethadol (9603)	I
Normethadone (9635)	I
3-Methylfentanyl (9813)	I
Amphetamine (1100)	II
Methamphetamine (1105)	II
Methylphenidate (1724)	II
Amobarbital (2125)	II
Pentobarbital (2270)	II
Secobarbital (2315)	II
1-Phenylcyclohexylamine (7460)	II
Phencyclidine (7471)	II
Phenylacetone (8501)	II
1-Piperidinocyclohexanecarbonitrile (8603)	II
Codeine (9050)	II
Dihydrocodeine (9120)	II
Oxycodone (9143)	II
Hydromorphone (9150)	II
Benzoylecgonine (9180)	II
Ethylmorphine (9190)	II
Hydrocodone (9193)	II
Isomethadone (9226)	II
Meperidine (9230)	II
Methadone (9250)	II
Methadone intermediate (9254)	II
Dextropropoxyphene, bulk (non-dosage forms) (9273)	II
Morphine (9300)	II
Thebaine (9333)	II
Levo-Alphacetylmethadol (9648)	II

Drug	Schedule
Oxymorphone (9652)	II
Fentanyl (9801)	II

The firm plans to manufacture small quantities of the listed controlled substances to produce standards for analytical laboratories.

No comments or objections have been received. DEA has considered the factors in Title 21, United States Code, section 823(a) and determined that the registration of Isotec, Inc. to manufacture the listed controlled substances is consistent with the public interest at this time. DEA has investigated the company on a regular basis to ensure that its continued registration is consistent with the public interest. These investigations have included inspection and testing of the company's physical security systems, audits of the company's records, verification of the company's compliance with state and local laws, and a review of the company's background and history. Therefore, pursuant to 21 U.S.C. 823 and 28 CFR 0.100 and 0.104, the Deputy Assistant Administrator, Office of Diversion Control, hereby orders that the application submitted by the above firm for registration as a bulk manufacturer of the basic classes of controlled substances listed above is granted.

Dated: November 15, 2001.

Laura M. Nagel,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 01–31281 Filed 12–19–01; 8:45 am]

BILLING CODE 4410–09–M

NATIONAL ARCHIVES AND RECORDS ADMINISTRATION

Report on Current Recordkeeping Practices in the Federal Government; Request for Comment

AGENCY: National Archives and Records Administration (NARA).

ACTION: Notice of availability of report; request for comment.

SUMMARY: NARA is seeking public comment on the Report on Current Recordkeeping Practices within the Federal Government. The report is an analysis of two significant data collections that were conducted by NARA and SRA International, Inc. (SRA) to assess the state of recordkeeping and records use in the Federal Government. This is an important step in NARA's efforts to review and, if necessary, revise records management policies and guidance to fit the changing office environment.

The report is available electronically at *http://www.nara.gov/records/rmi.html.* For a paper copy of the report, contact the person listed in **FOR FURTHER INFORMATION CONTACT.**

DATES: Comments must be received by January 31, 2002.

ADDRESSES: Please send comments to *comments@nara.gov,* or fax them to 301–713–7270, or mail them to NARA (NPOL), 8601 Adelphi Rd. Rm. 4100, College Park, MD 20740–6001

FOR FURTHER INFORMATION CONTACT: Susan Cummings at 301–713–7360 x238.

SUPPLEMENTARY INFORMATION: NARA has undertaken three initiatives to document the current recordkeeping and records use environment in Federal agencies, to use that information to analyze NARA's records management policies, and to redesign, if necessary, the scheduling and appraisal process. This report is the result of the first initiative.

SRA used individual interviews, focus groups, and an Internet survey to find out how agency officials and staff viewed records management and what they perceived its role to be in today's modern office. More than 40 Federal agencies participated in the interviews and focus groups, and more than 475 individuals replied to the Internet survey. Additionally, using a process called Records Systems Analyses, or RSAs, NARA teams examined selected business processes in Federal agencies to determine how records are actually being created and managed. The report identifies patterns in records management, suggests situational models to explain those patterns, and identifies points where NARA could effectively intervene to improve records management.

Dated: December 14, 2001.

Nancy Allard,

Federal Register Liaison.

[FR Doc. 01–31341 Filed 12–19–01; 8:45 am]

BILLING CODE 7515–01–P

NATIONAL CREDIT UNION ADMINISTRATION

Community Development Revolving Loan Program for Credit Unions

AGENCY: National Credit Union Administration.

ACTION: Notice of application period.

SUMMARY: The National Credit Union Administration (NCUA) will accept applications for participation in the Community Development Revolving Loan Fund's Loan Program throughout calendar year 2002, subject to availability of funds. Application procedures for qualified low-income credit unions are in NCUA Rules and Regulations.

ADDRESSES: Applications for participation may be obtained from and should be submitted to: NCUA, Office of Credit Union Development, 1775 Duke Street, Alexandria, VA 22314–3428.

DATES: Applications may be submitted throughout calendar year 2002.

FOR FURTHER INFORMATION CONTACT: The Office of Credit Union Development at the above address or telephone (703) 518–6610.

SUPPLEMENTARY INFORMATION: Part 705 of the NCUA rules and regulations implements the Community Development Revolving Loan Program for Credit Unions. The purpose of the Program is to assist officially designated ''low-income'' credit unions in providing basic financial services to residents in their communities that result in increased income, ownership and employment. The Program makes available low interest loans in amounts up to $300,000 in the aggregate to qualified participating ''low-income'' credit unions. Program participation is limited to existing credit unions with an official ''low-income'' designation. Student credit unions are not eligible to participate in this program.

This notice is published pursuant to section 705.9 of the NCUA rules and regulations that states NCUA will provide notice in the **Federal Register** when funds in the program are available.

By the National Credit Union Administration Board on December 13, 2001.

Becky Baker,

Secretary of the Board.

[FR Doc. 01–31289 Filed 12–19–01; 8:45 am]

BILLING CODE 7535–01–P

NATIONAL SCIENCE FOUNDATION

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: National Science Foundation.

ACTION: Notice.

SUMMARY: The National Science Foundation (NSF) is announcing plans to request clearance of this collection. In accordance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, we are providing opportunity for public comment on this section. After obtaining and considering public comment, NSF will prepare the submission requesting OMB clearance of this collection for no longer than 3 years.

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 of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information on respondents, including through the use of automated collection techniques or other forms of information technology; 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.

DATES: Written comments should be received by February 19, 2002, to be assured of consideration. Comments received after that date would be considered to the extent practicable.

ADDRESSES: Written comments regarding the information collection and requests for copies of the proposed information collection request should be addressed to Suzanne Plimpton, Reports Clearance Officer, National Science Foundation, 4201 Wilson Blvd., Rm. 295, Arlington, VA 22230, or by e-mail to *splimpto@nsf.gov.*

FOR FURTHER INFORMATION CONTACT: Suzanne Plimpton on (703) 292–7556 or send e-mail to *splimpto@nsf.gov.* Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m., Eastern time, Monday through Friday.

SUPPLEMENTARY INFORMATION:

Title of Collection: The Evaluation of the Preparing Future Faculty (PFF) Program.

OMB Control No.: 3145–0183.

Expiration Date of Approval: May 31, 2002.

Abstract: This document has been prepared to support the clearance of data collection instruments to be used in the evaluation of the Preparing Future Faculty (PFF) Program, funded since 1993 by The PEW Charitable Trust, the National Science Foundation, and an anonymous donor. PFF is designed to change the culture of graduate education in order to produce faculty for colleges and universities who are fully prepared for teaching and service responsibilities as well as the research role.

Data will be collected using Web-based surveys and conducting institutional site visits for six selected case studies. Titles of the survey instruments and interview protocol for the PFF Evaluation are as follows:

- PFF Partner Faculty Survey
- PFF Graduate Faculty Survey
- PFF Participant Survey (Graduate Students)
- PFF Site Visit Protocol (for case studies)

NSF will use this collection to evaluate the impact and effectiveness of the Preparing Future Faculty Program on graduate education and the development of future professors.

Expected Respondents: The expected respondents are project directors, deans, and graduate student participants at PFF grantee institutions as well as faculty associated directly with the PFF program at both graduate institutions and partner institutions.

Burden on the Public: The remaining elements for this collection represent 734 burden hours for a maximum of 3840 participants over two years, assuming an 80–100% response rate. The burden on the public is negligible; the study is limited to project participants that have directly received funding from or otherwise have benefited from participation in the PFF program.

Dated: December 14, 2001.

Suzanne H. Plimpton,

NSF Reports Clearance Officer.

[FR Doc. 01–31283 Filed 12–19–01; 8:45 am]

BILLING CODE 7555–01–M

NATIONAL SCIENCE FOUNDATION

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: National Science Foundation.

ACTION: Notice.

SUMMARY: The National Science Foundation (NSF) is announcing plans to request clearance of this collection. In accordance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, we are providing opportunity for public comment on this action. After obtaining and considering public comment, NSF will prepare the submission requesting OMB clearance of this collection for no longer than 3 years.

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 of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information on respondents, including through the use of automated collection techniques or other forms of information technology; 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.

DATES: Written comments should be received by February 19, 2002, to be assured of consideration. Comments received after that date would be considered to the extent practicable.

ADDRESSES: Written comments regarding the information collection and requests for copies of the proposed information collection request should be addressed to Suzanne Plimpton, Reports Clearance Officer, National Science Foundation, 4201 Wilson Blvd., Rm. 295, Arlington, VA 22230, or by e-mail to *splimpto@nsf.gov.*

FOR FURTHER INFORMATION CONTACT: Suzanne Plimpton on (703) 292–7556 or send e-mail to *splimpto@nsf.gov.* Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m., Eastern time, Monday through Friday.

SUPPLEMENTARY INFORMATION: *Title of Collection:* The Evaluation of the Preparing Future Faculty (PFF) Program.

OMB Control No.: 3145–0183.

Expiration Date of Approval: May 31, 2002.

Abstract: This document has been prepared to support the clearance of data collection instruments to be used in the evaluation of the Preparing Future Faculty (PFF) Program, funded since 1993 by The PEW Charitable Trust, the National Science Foundation, and an anonymous donor. PFF is designed to change the culture of graduate education in order to produce faculty for colleges and universities who are fully prepared for teaching and

service responsibilities as well as the research role.

Data will be collected using Web-based surveys and conducting institutional site visits for six selected case studies. Titles of the survey instruments and interview protocol for the PFF Evaluation are as follows:

- PFF Partner Faculty Survey.
- PFF Graduate Faculty Survey.
- PFF Participant Survey (Graduate Students)
- PFF Site Visit Protocol (for case studies).

NSF will use this collection to evaluate the impact and effectiveness of the Preparing Future Faculty Program on graduate education and the development of future professors.

Expected Respondents: The expected respondents are project directors, deans, and graduate student participants at PFF grantee institutions as well as faculty associated directly with the PFF program at both graduate institutions and partner institutions.

Burden on the Public: The remaining elements for this collection represent 734 burden hours for a maximum of 3840 participants over two years, assuming an 80–100% response rate. The burden on the public is neligible; the study is limited to project participants that have directly received funding from or otherwise have benefited from participation in the PFF program.

Dated: December 14, 2001.

Suzanne H. Plimpton,

NSF Reports Clearance Officer.

[FR Doc. 01–31284 Filed 12–19–01; 8:45 am]

BILLING CODE 7555–01–M

NUCLEAR REGULATORY COMMISSION

[Docket No. 50–219]

Amergen Energy Company, LLC; Notice of Consideration of Issuance of Amendment to Facility Operating License, Proposed No Significant Hazards Consideration Determination, and Opportunity for a Hearing

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an amendment to Facility Operating License No. DPR–16 issued to AmerGen Energy Company, LLC (the licensee) for operation of the Oyster Creek Nuclear Generating Station located in Ocean County, New Jersey.

The proposed license amendment request is to revise Technical Specification (TS) 3.5.A.5.b to change the number of allowed inoperable suppression chamber to drywell vacuum breakers from two to five. This change decreases the required number of operable vacuum breakers for opening from twelve to nine.

Before issuance of the proposed license amendment, the Commission will have made findings required by the Atomic Energy Act of 1954, as amended (the Act) and the Commission's regulations.

The Commission has made a proposed determination that the amendment request involves 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. 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 amendment would not involve a significant increase in the probability or consequences of an accident previously evaluated.

The proposed change reduces the number of vacuum breakers required to be operable from twelve to nine, allows continued operation for 72 hours with one required vacuum breaker inoperable, and allows a vacuum breaker to remain operable with one position alarm circuit inoperable. The proposed change does not increase the probability of an accident. The number of vacuum breakers required to be operable is not assumed to be an accident initator of any analyzed event.

[...] The change does not allow continuous operation with only eight vacuum breakers operable. Therefore, the consequences of an accident are not increased. This change does not alter assumptions relative to the mitigation of an accident or transient event. The position alarm circuits only provide indication of valve position prior to an event and do not perform any accident mitigation functions. Additional surveillance of an operable vacuum breaker with an inoperable position alarm circuit will provide adequate assurance of vacuum breaker status and operability of the remaining redundant position alarm circuit.

Therefore, this change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Operation of the facility in accordance with the proposed amendment would not create the possibility of a new or different kind of accident from any accident previously evaluated.

The proposed change reduces the number of vacuum breakers required to be operable from twelve to nine, allows continued operation for 72 hours with one required vacuum breaker inoperable, and allows a vacuum breaker to remain operable with one position alarm circuit inoperable. This change will not physically alter the plant since [because] no new or different type of equipment will be installed. The change in analytical methods used to establish the proposed Technical Specification limits for normal plant operation preserves the current safety analysis assumptions and acceptable criteria. The proposed 72 hour allowed outage time for a required operable vacuum breaker is consistent with NRC Standard Technical Specifications, NUREG–1433, and is considered acceptable due to the low probability of an event in which the remaining vacuum breaker capability would not be adequate assuming a single failure to open. Additional surveillance of an operable vacuum breaker with an inoperable position alarm circuit will provide adequate assurance of vacuum breaker status and operability of the remaining redundant position alarm circuit.

Therefore, this change does 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 amendment would not involve a significant reduction in a margin of safety.

This proposed change reduces the number of vacuum breakers required to be operable from twelve to nine, allows continued operation for 72 hours with one required vacuum breaker inoperable, and allows a vacuum breaker to remain operable with one position alarm circuit inoperable. Reducing the number of required vacuum breakers from twelve to nine is consistent with the analysis that shows eight vacuum breakers are sufficient to maintain containment differential pressures and downcomer water column height below acceptable limits. Therefore, the margin of safety is not affected. The safety analysis assumptions and acceptance criteria are maintained. In addition, with one required vacuum breaker inoperable for 72 hours, the margin of safety is not significantly reduced considering the remaining vacuum breakers are still available and sufficient to mitigate an event, and the low probability of an accident occurring during this time period requiring vacuum breaker operation. Additional surveillance of an operable vacuum breaker with an inoperable position alarm circuit will provide adequate assurance of vacuum breaker status and operability of the remaining redundant position alarm circuit.

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 request involves no significant hazards consideration.

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. 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 6D59, Two White Flint North, 11545 Rockville Pike, Rockville, Maryland, from 7:30 a.m. to 4:15 p.m. Federal workdays. Documents may be examined, and/or copied for a fee, at the NRC's Public Document Room, located at One White Flint North, 11555 Rockville Pike (first floor), Rockville, Maryland.

The filing of requests for hearing and petitions for leave to intervene is discussed below.

By January 22, 2002, 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, or electronically on the Internet at the NRC Web site *http://www.nrc.gov/NRC/CFR/index.html.* If there are problems in accessing the document, contact the Public Document Room Reference staff at 1–800–397–4209, 301–415–4737, or by e-mail to pdr@nrc.gov. 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 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 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: 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, 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 Kevin P. Gallen, Morgan, Lewis & Bockius, LLP, 1800 M Street, NW., Washington, DC 20036–5869, attorney for the licensee.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for hearing will not be entertained absent a determination by the Commission, the presiding officer or the presiding 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).

Further details with respect to this action, see the application for amendment dated September 19, 2001, 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 Access and Management Systems (ADAMS) Public Electronic Reading Room on the Internet at the NRC Web site, *http://www.nrc.gov/NRC/ADAMS/index.html.* Persons who do not have access to ADAMS or who encounter problems in accessing the documents located in ADAMS, should contact the NRC Public Document Room Reference staff by telephone at 1–800–397–4209, 301–415–4737 or by e-mail to pdr@nrc.gov.

Dated at Rockville, Maryland, this 13th day of December 2001.

For the Nuclear Regulatory Commission.

Helen N. Pastis,

Senior Project Manager, Section 1, Project Directorate I, Division of Licensing Project Management, Office of Nuclear Reactor Regulation.

[FR Doc. 01–31333 Filed 12–19–01; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 03000001]

Mallinckrodt, Inc.; Notice of Consideration of Request for Temporary Exemption

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of consideration of request for temporary exemption.

SUMMARY: The Nuclear Regulatory Commission (Commission) is considering the issuance of a temporary exemption from the requirement to perform an emergency preparedness (EP) exercise every 2 years for Mallinckrodt, Inc. The request for temporary exemption is necessary because the licensee had to postpone the required scheduled EP exercise due to the terrorist attacks on the United States, lack of availability of State and local agencies, and the current heightened alert status of the plant. Mallinckrodt expects to conduct the EP exercise by July 30, 2002. The NRC has prepared an environmental assessment with a finding of no significant impact on the request.

FOR FURTHER INFORMATION CONTACT: Kevin G. Null, Senior Health Physicist, Nuclear Materials Licensing Branch, Division of Nuclear Materials Safety, U.S. Nuclear Regulatory Commission, Region III, Lisle, Illinois. Telephone: (630) 829–9854, e-mail kgn@nrc.gov.

SUPPLEMENTARY INFORMATION: The Commission is considering the issuance of a temporary exemption from the requirement to perform an emergency preparedness exercise every 2 years, pursuant to 10 CFR part 30, for Mallinckrodt, Inc., located in Maryland Heights, Missouri. The facility is authorized to use byproduct material for research and development, manufacturing, processing, and packaging of radiopharmaceuticals and/or radiochemicals.

Mallinckrodt was scheduled to conduct an EP exercise on September 11, 2001. This exercise was postponed because of the terrorist attacks on the United States that occurred on September 11. Because of the ongoing high alert status of the plant and the need to coordinate with several offsite agencies and groups, the exercise will not be performed this calendar year. Mallinckrodt expects to conduct the exercise no later than July 30, 2002.

The last EP exercise conducted at the Mallinckrodt facility was held on September 9, 1999. Mallinckrodt's Emergency Plan, in accordance with 10 CFR 30.32(i)(3)(xii), requires that plant personnel plan and conduct biennial EP exercises. Because the next exercise will not be conducted during calendar year 2001, the licensee has requested a temporary exemption from the requirement to conduct biennial EP exercises. The NRC staff has prepared an environmental assessment of the proposed action and reached a finding of no significant impact.

Environmental Assessment

Identification of the Proposed Action

The proposed action would grant temporary relief from the requirement pursuant to 10 CFR 30.32(i)(3)(xii) to perform a biennial EP exercise during calendar year 2001. The proposed action would allow Mallinckrodt to conduct their 2001 biennial exercise as late as July 30, 2002. The proposed action is in accordance with Mallinckrodt's request for exemption dated November 26, 2001.

Need for the Proposed Action

Due to the heightened state of security alert that the plant is under and the unavailability of State and local agencies to participate, Mallinckrodt has determined that it would not be prudent to hold the 2001 biennial EP exercise during calendar year 2001. Allowing the delay would avoid overlap with the current state of high alert and allow fuller participation by other agencies and groups.

Environmental Impacts of the Proposed Action

The proposed action would not materially affect the emergency response capabilities of the Mallinckrodt facility. The last exercise was conducted on September 9, 1999. Direct observation of the exercise by NRC inspectors noted deficiencies that did not require immediate corrective action. On November 17, 1999, Mallinckrodt identified an inadvertent release of xenon-133, declared an alert and implemented their Emergency Plan (EP). NRC conducted a special inspection to review the circumstances of the event and the effectiveness of Malinckrodt's implementation of their EP. With the exception of 1 violation that was identified, NRC review of real time activation of the EP indicated that Mallinckrodt has addressed the issues identified during the September 9, 1999 exercise. In addition, NRC license reviews and inspections conducted since November 17, 1999, have not identified a decline in the effectiveness of Mallinckrodt's emergency response capability. The postponement should have no impact on the effectiveness of Mallinckrodt's emergency response capability. The proposed action will not increase the probability or consequences of accidents; no changes are being made in the amounts or types of any effluents that could be released offsite, and there is no increase in individual or cumulative radiation exposure. Accordingly, the Commission concludes that there are no significant radiological impacts associated with the proposed action.

With regard to potential nonradiological impacts, the proposed action does not affect nonradiological plant effluents and has no other environmental impact. Accordingly, the Commission concludes that there are no significant nonradiological impacts associated with the proposed action.

Alternatives to the Proposed Action

Since the Commission has concluded that there is no discernible environmental impact associated with the proposed action, any alternatives with equal or lesser impact need not be evaluated. As an alternative to the proposed action, the staff considered denial of the proposed action. Denial of the proposed action would result in no change in environmental impacts but would result in hardship to Mallinckrodt, and perhaps other

participants. The environmental impacts of the proposed action and the alternative action are similar.

Alternative Use of Resources

The proposed action does not involve the use of any resources beyond those already necessary to conduct the EP exercise during 2001, and would merely delay the exercise.

Agencies and Persons Consulted

In accordance with its stated policy, the NRC staff consulted with the following officials regarding the environmental impact of the proposed action: William Brandes, Chair, Local Emergency Planning Committee, St. Louis, Missouri; Nick Granani, Deputy Director, Office of Emergency Management, Chesterfield, Missouri; Keith Henke, State Emergency Management Agency, Jefferson City, Missouri; Charles Hooper, Missouri Department of Health, Jefferson City, Missouri; and Tom Lange, Sr. Planner, Office of the Director, Missouri Department of Natural Resources. No objections were received.

Finding of No Significant Impact

Based on the environmental assessment, the Commission concludes that the proposed action will not have a significant affect on the quality of the human environment. Accordingly, the Commission has determined not to prepare an environmental impact statement for the proposed action.

List of Preparers

This document was prepared by Kevin G. Null, Senior Health Physicist, Nuclear Materials Licensing Branch, Division of Nuclear Materials Safety, U.S. Nuclear Regulatory Commission, Region III, Lisle, Illinois. Mr. Null is the Licensing Project Manager for the Nuclear Materials License issued to Mallinckrodt, Inc.

For further details with respect to the proposed action, see the Mallinckrodt letter dated November 26, 2001, available for public inspection at the Commission's Public Document Room at One White Flint North, 11555 Rockville Pike, Rockville, MD, and accessible electronically through the ADAMS Public Electronic Reading Room link at the NRC Web Site *(http://www.nrc.gov).*

Dated at Rockville, Maryland this 13th day of December, 2001.

For the Nuclear Regulatory Commission.

John W. Hickey,

Chief, Materials Safety and Inspection Branch, Division of Industrial and Medical Nuclear Safety, Office of Nuclear Material Safety and Safeguards.

[FR Doc. 01–31332 Filed 12–19;–01; 8:45 am]

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NUCLEAR REGULATORY COMMISSION

[Docket Nos. 50–237 and 50–249]

Exelon Generation Company, LLC, Dresden Nuclear Power Station, Units 2 and 3; Environmental Assessment and Finding of No Significant Impact Related to a Proposed License Amendment to Increase the Maximum Thermal Power Level

The U. S. Nuclear Regulatory Commission (NRC) is considering issuance of an amendment to Facility Operating Licenses Nos. DPR–19 and DPR–25, issued to Exelon for the operation of the Dresden Nuclear Power Station, Units 2 and 3 (DNPS), located on the Illinois River in Grundy County, Illinois. Therefore, 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 Exelon, the operator of DNPS, to increase its electrical generating capacity at DNPS by raising the maximum reactor core power level from 2527 MWt to 2957 MWt. This change is approximately 17 percent above the current licensed maximum power level for DNPS. The change is considered an extended power uprate (EPU) because it would raise the reactor core power level more than 7 percent above the original licensed maximum power level. DNPS has not submitted a previous power uprate application. A power uprate increases the heat output of the reactor to support increased turbine inlet steam flow requirements and increases the heat dissipated by the condenser to support increased turbine exhaust steam flow requirements.

The proposed action is in accordance with the licensee's application for amendments dated December 27, 2000, and supplemental information dated February 12, April 6 and 13, May 3, 18, and 29, June 5, 7, and 15, July 6 and 23, August 7, 8, 9, 13 (two letters), 14 (two letters), 29, and 31 (two letters), September 5 (two letters), 14, 19, 25, 26, and 27 (two letters), November 2, 16, and 30, and December 10, 2001. The original amendment request was submitted by Commonwealth Edison Company (ComEd), the former licensee. ComEd subsequently transferred the licenses to Exelon Generation Company, LLC (Exelon, the licensee). By letter dated February 7, 2001, Exelon informed the NRC that it assumed responsibility for all pending NRC actions that were requested by ComEd.

The Need for the Proposed Action

Exelon evaluated its resource needs for the period 2000–2014 and forecast a 28-percent increase in electrical demand by 2014 within its Illinois service area. The proposed EPU would provide approximately 0.66 percent additional generating capacity per unit at DNPS. Exelon stated that in order to stay competitive, it must be able to fulfill not only customer power demands, but it also must sell power to other providers. In Illinois, approximately 40 gas turbine plants of various sizes are proposed to be built. The proposed additional generating capacity at DNPS would eliminate the need to build approximately two 100-MWe gas turbines.

Environmental Impacts of the Proposed Action

At the time of the issuance of the operating licenses for DNPS, the NRC staff noted that any activity authorized by the licenses would be encompassed by the overall action evaluated in the Final Environmental Statement (FES) for the operation of DNPS, which was issued in November 1973. The original operating licenses for DNPS allowed a maximum reactor power level of 2527 MWt. On December 27, 2000, Exelon submitted a supplement to its Environmental Report supporting the proposed EPU and provided a summary of its conclusions concerning the environmental impacts of the EPU at DNPS. Based on the staff's independent analyses and the evaluation performed by the licensee, the staff concludes that the environmental impacts of the EPU are bounded by the environmental impacts previously evaluated in the FES, because the EPU would involve no extensive changes to plant systems that directly or indirectly interface with the environment. Additionally, no changes to any State permit limits would be necessary. This environmental assessment first discusses the non-radiological and then the radiological environmental impacts of the proposed EPU at DNPS.

Non-Radiological Impacts at DNPS

The following is the NRC staff's evaluation of the non-radiological environmental impacts of the proposed EPU on land use, water use, waste discharges, terrestrial and aquatic biota, transmission facilities, and social and economic conditions at DNPS.

Land Use Impacts

The proposed EPU at DNPS would result in some modifications to current land use at DNPS, due to the proposed addition of 6–8 new cooling tower cells. The proposed addition of new mechanical draft cooling tower cells to the existing 48 cells would handle the additional heat load resulting from the EPU. The additional cooling tower cells would require approximately 0.5 acres of land for siting. Access roads and pipe bridge installations, necessary to support the proposed cooling tower cells, might cause additional land disturbances; however, the new cells would be in an area that has been previously disturbed. The construction impacts would be temporary. Due to the small area (0.5 acres) disturbed, and the fact that the area has been previously disturbed, impacts to terrestrial biota will be minimal. Based on a previous archeological and history survey, the licensee has determined that the proposed cooling tower cells would not disturb lands with historic or archaeological significance. There would be minor changes to visual and aesthetic resources; however, the proposed cooling tower cells would not be visible from any major highway or block the view of any historic site or picture scape. The cooling tower cells would be built in accordance with the appropriate safety standards and any deviation from the standards would be evaluated in the staff's safety evaluation report.

Apart from the proposed change detailed above, the licensee indicated that it has no plans to construct new facilities or alter the land around existing facilities, including buildings, access roads, parking facilities, laydown areas, or onsite transmission and distribution equipment, including power line rights-of-way, in conjunction with the uprate or operation after uprate. The EPU would not significantly affect the storage of materials, including chemicals, fuels, and other materials stored above or under the ground. Therefore, the staff's conclusions in the FES on land use would remain valid under the proposed EPU conditions.

Water Use Impacts

The steam produced by the DNPS turbines is condensed in the condensers, demineralized, and pumped back to the reactor vessel. Cooling water used in the condensers is pumped from the Kankakee and Des Plaines Rivers and does not come in contact with the steam from the turbines. The original design called for a once-through cooling water system in which all the heated water used in the condensers was returned to the Illinois River downstream of the intake. A number of configuration changes have been made in the cooling system at DNPS since the original design. These include the construction of a cooling pond and associated cooling canals, installation of spray modules in the cooling canals, installation of temporary mechanical draft cooling towers, and the construction of mechanical draft cooling towers.

DNPS operates in the indirect open-cycle mode from June 15 through September 30. In this operating mode, a maximum of 940,000 gallons per minute (gpm) may be withdrawn from the Kankakee and Des Plaines Rivers for condenser cooling water. After the water circulates through the condensers, the water is discharged into a 2-mile-long cooling canal, called the hot canal. As water travels through the hot canal, it may be withdrawn and circulated through a bank of 36 mechanical draft cooling tower cells and then discharged back into the hot canal at a lower temperature. The cooling towers operate, as needed, to maintain water temperatures within the National Pollutant Discharge Elimination System (NPDES) permit limits and have a maximum water withdrawal capacity of 630,000 gpm. From the hot canal, a lift station pumps the water into a 1275-acre cooling pond. The cooling pond consists of 5 areas through which the water is circulated for approximately 2.5 days. After circulating through the cooling pond, the water is discharged via a spillway into another 2-mile-long canal, called the cold canal. The water may then be circulated through a bank of 12 mechanical draft cooling tower cells at a maximum rate of approximately 213,000 gpm, as needed, to maintain water temperature within the NPDES permit limits. The water is returned to the cold canal at a lower temperature and is then discharged into the Illinois River.

DNPS normally operates in the closed-cycle mode from October 1 to June 14. Typically, the mechanical draft cooling tower cells are utilized during this period. Water is drawn into the intake structure, circulated through the condensers for Units 2 and 3, passed through the hot canal, the cooling pond, the cold canal, and is then routed back to the intake structure via the flow regulating station gates. A small amount of condenser cooling water (70,000 gpm) is withdrawn from the Kankakee and Des Plaines Rivers to make up evaporative and seepage losses in the cooling pond. Additionally, approximately 50,000 gpm of the cooling water is permitted to be discharged into the Illinois River to prevent an increase in the dissolved solids concentrations in the cooling pond.

DNPS has approval from the Grundy County Emergency Management Agency to operate a de-icing project on the Kankakee River using heated water from the DNPS cooling pond. Heated water from the cooling pond is transported through a permanent pipe by siphon to the Kankakee River, where it is used to prevent river ice from damaging docks and other structures.

The staff evaluated surface water use and groundwater use as environmental impacts of water usage at DNPS. The licensee stated that the surface water intake amounts would not be changed by the proposed EPU. The licensee also stated that it would not seek to change permit requirements for thermal or flow limits or conditions for the proposed EPU. Therefore, the staff's conclusions in the FES on water use would remain valid under the proposed EPU conditions.

Groundwater is withdrawn from two wells at DNPS and is used for domestic and industrial purposes. Groundwater is not used for condenser cooling. The proposed EPU would not affect the groundwater use at DNPS; therefore, the staff's conclusions in the FES on groundwater would remain valid under the proposed EPU conditions.

Discharge Impacts

The staff evaluated environmental impacts such as cooling tower emissions, drift, icing, fog, noise, chemical and wastewater discharge, cold shock to an aquatic biota, and air emissions.

Cooling Tower Emission, Drift, Icing, Fog, and Noise

Environmental impacts such as air quality, fogging, icing, cooling tower drift, and noise could result from the increased heat load on the cooling towers under the EPU conditions. The FES did not include a discussion of cooling towers, but did discuss 98 spray modules, which are no longer operated, in the cooling canal. The staff

concluded in the FES that the operation of the DNPS cooling system was not harmful to the surrounding environment. No substantial changes from the conditions reported in the FES are anticipated.

The cooling tower cells are regulated by the Illinois Environmental Protection Agency (IEPA) through a Federally Enforceable State Operating Permit (FESOP). The cooling towers emit particulate matter with a diameter of 10 microns or less (PM_{10}) in the form of drift with river water sediment entrained in the droplets. The existing 48 cooling tower cells have a potential to emit 67.2 tons of PM_{10} per year. Eight additional cooling tower cells could potentially emit an additional 11.2 tons of PM_{10} per year, resulting in a total discharge of 78.4 tons of PM_{10} per year. DNPS is in an attainment area for PM_{10} in which the major source threshold is 100 tons per year. The total emissions from DNPS under the EPU conditions would be below the major threshold for PM_{10}. Emissions from all other sources governed by the FESOP are expected to remain the same.

The licensee stated that removal of the 98 spray modules mitigated some icing effects and that the cooling tower cells currently in operation at DNPS were sited in their present locations to reduce potential fogging impacts on local roads. The cooling towers minimize drift and maximize efficiency by limiting the loss of water droplets from the cells to not more than 0.008 percent of the circulating water flow, corresponding to a drift factor of 0.00008. Fog typically forms in the cold season when the cooling tower cells are not likely to be in operation. The proposed EPU would increase the temperature of the water in the hot canal by approximately 4.2 degrees Fahrenheit (°F). The proposed temperature increase would not cause an observable increase in the intensity of fog, but because the EPU increases the temperature differential between the cooling water and ambient air, fog may form at slightly higher ambient air temperatures. However, the impacts from fogging, icing, and cooling tower drift from the proposed EPU would be bounded by the conclusions of the FES.

As stated previously, the cooling system discussed in the FES did not have cooling towers cells, but the FES did include an analysis of elevated noise levels from the presently inactive 98 spray modules. Operation of the new cooling tower cells under the proposed EPU conditions and the potential extended operation of the existing cooling towers would result in intermittent increases in noise levels during periods of high ambient air temperatures. The licensee stated that noise from the cooling tower operations would be in compliance with the applicable noise requirements. The EPU would not be expected to significantly raise the noise levels above the levels assumed in the FES; therefore, the staff's conclusions in the FES on noise impacts would remain valid under the EPU conditions.

Surface Water and Wastewater Discharge

Surface water and wastewater discharge is regulated by the State of Illinois. The NPDES permit for DNPS covers the following discharges:

1. Unit 1 housing service water (inactive)
2. Unit 1 intake screen backwash (inactive)
3. Cooling pond blowdown
4. Unit 2 and 3 intake screen backwash
5. Wastewater treatment system effluent
6. Radiological waste treatment system effluent
7. Demineralizer regenerant waste
8. Northwest material access runoff
9. Sewage treatment plant effluent
10. Cooling pond discharge
11. Southeast area runoff
12. Northeast area runoff

All of the discharges are into the Illinois River except for the sewage treatment plant effluent, cooling pond discharge, Southeast area runoff, and Northeast area runoff, which discharge to the Kankakee River. As stated previously, DNPS must operate in closed-cycle mode from October 1 to June 15 and may operate in indirect open-cycle mode from June 15 through September 30. During the indirect open-cycle operation, the NPDES permit limits the temperature of the discharges not to exceed 90 °F more than 10 percent of the time and is not permitted to exceed 93 °F. DNPS may also operate in accordance with the DNPS Variable Blowdown Plan, as governed by the original July 6, 1977, Thermal Compliance Plan calculations, from June 1 to June 15, as deemed necessary by management. Under the DNPS Variable Blowdown Plan, cooling water from the condenser must be circulated through the cooling system before being discharged into the Illinois River. DNPS is allowed to discharge augmented blowdown at rates between 111 cubic feet per second (cfs) and 1115 cfs. Discharge flow rates are varied to prevent power deratings, which can be caused by heated cooling water recirculating to the condensers. Operation of the cooling towers is implicitly covered by the thermal requirements of Special Condition 4 of the NPDES permit.

Special Condition 7 of the NPDES permit states that DNPS has complied with 35 Illinois Administrative Code, Subpart B, ''General Use Water Quality Standards,'' Section 302.211(f), ''Temperature,'' and Section 316(a) of the Clean Water Act in demonstrating that the thermal discharge from the station has not caused, cannot cause, and cannot be reasonably expected to cause, significant ecological damage to the receiving water. The special condition further states that no additional monitoring or modification is required for re-issuance of the NPDES permit.

DNPS monitors wastewater streams, as required by the NPDES permit, and only uses approved chemicals for conditioning water to prevent scaling, corrosion, and biofouling. The current NPDES permit limits discharge of chlorine to the receiving waters. The licensee may also use a dispersant to limit fouling of the cooling tower fill. Exelon is not seeking to change the NPDES permit requirements for thermal or flow conditions, flow rates, water sources, or for chemical or thermal discharges, and would be subject to existing NPDES requirements. Instead, additional cooling tower cells would be installed to assure compliance with current thermal limits without derating the units during the summer. The use of chemicals and their subsequent discharge to the environment would not be expected to change significantly as a result of the proposed EPU. Furthermore, discharges into receiving waters from plant operation will be in compliance with NPDES permit requirements.

Cold Shock

Cold shock to aquatic biota occurs when the warm water discharge from a plant abruptly stops because of an unplanned shutdown, resulting in a temperature drop of the river water and a possible adverse impact on aquatic biota. The probability of an unplanned shutdown is independent of the EPU. The FES stated that cold kill (cold shock) of fish is not expected from the shutdown of DNPS during the winter because of the large heat sink in the cooling lake. Additionally, the licensee is not proposing to change permit levels to river water. Therefore, the risk of an aquatic biota being killed by cold shock would be bounded by the conclusions in the FES.

Terrestrial Biota Impacts

A study performed during the first years of indirect open-cycle operation

found no adverse impacts on waterfowl or wildlife. The FES stated that the DNPS cooling pond provides additional foraging and resting area for waterfowl and provides nesting grounds in an area of the State where natural lakes are less abundant. Implementation of the proposed EPU would not alter these conditions.

The licensee stated that no known threatened or endangered species live within the construction area of the proposed cooling tower cells. The species, Mead's milkweed (Asciepias meadii), lakeside daisy (Hymenopsis herbacea), leafy prairie clover (Dalea foliosa), eastern prairie fringed orchid (Platanthaera leucophaea), Hines emerald dragonfly (Somatochlora hineana), bald eagle (Haliaeetus leucocephalus), and Indiana bat (Myotis sodalis) are Federally-listed as threatened or endangered species and have been identified in Grundy and Will counties. The operation of the current 48 mechanical draft cooling towers have had no observed detrimental impact on the terrestrial community. The licensee stated that the additional 6–8 cooling tower cells would not be expected to impact this resource.

Therefore, the staff's conclusions in the FES on terrestrial ecology, including endangered and threatened plant or animal species, remain valid under the proposed EPU conditions.

Aquatic Biota Impacts

The ecology of the area surrounding the DNPS cooling pond and the intake and discharge structures has been studied extensively since the late 1960s. Studies of the lower trophic levels (phytoplankton, zooplankton, periphyton, and benthic invertebrates), and the fish community, indicated that operation of the DNPS has not had a measurable detrimental impact on the ecology of the Illinois River system. Surveys of the fish community in the vicinity of the DNPS have been conducted annually since 1971. These studies have monitored the fish population near the confluence of the Kankakee and Des Plaines Rivers and in the waters directly behind the Dresden Island Lock and Dam, called the Dresden Island Pool. The Dresden Island Pool area includes sampling stations near the intake and discharge areas of DNPS. These studies have concluded that the fish community in the area of DNPS has improved since the study began. The number of species collected by the various collection methods increased from the 1970s through the early to mid-1980s and leveled off in the early 1990s. The increase in species numbers that occurred during the 1980s was primarily the result of improvements in water quality due to the implementation of the Clean Water Act, most notably, the removal of sewage discharge from the city of Chicago.

The licensee conducted impingement sampling at the traveling intake screens at DNPS from 1977 to 1987. The study concluded that the number of fish impinged at DNPS was low and that the fish in the adjacent river system were not being adversely impacted by DNPS operations. In April 1987, the Illinois Department of Conservation agreed to eliminate impingement sampling from the DNPS Aquatic Monitoring Program. No Federally-listed fish or aquatic plant species has been collected in the vicinity of DNPS. However, three Illinois endangered or threatened listed species, the pallid shiner (*Notropis amnis*), the greater redhorse (*Moxostoma valenciennesi*), and the river redhorse (*Moxostoma carinatum*), have been collected near DNPS. The pallid shiner has only been collected downstream of Dresden Island Lock and Dam and both redhorse species prefer a more complex channel substrate than is found near DNPS.

The licensee submitted information on the DNPS intake structure to the IEPA pursuant to section 316(b) of the Clean Water Act. IEPA determined that additional monitoring was not required, but further monitoring might be necessary at the time of any modification or re-issuance of the NPDES permit. Impacts on an aquatic biota from the proposed EPU conditions are not expected to change because implementation of the EPU would not alter the intake structure or significantly change intake flows at DNPS. Therefore, the staff's conclusions in the FES about impingement and entrapment, along with aquatic threatened and endangered species, would remain bounding.

Transmission Facility Impacts

Environmental impacts, such as the installation of transmission line equipment, or exposure to electromagnetic fields and shock, could result from a major modification to transmission line facilities. The licensee stated that there would be no change in operating transmission voltages, onsite transmission equipment, or power line rights-of-way to support the proposed EPU conditions. No new equipment or modification would be necessary for the offsite power system to maintain grid stability. However, an increase in onsite power would be required to support the 6–8 new cooling tower cells and other new equipment associated with the EPU. Power to service these additional energy needs would come from DNPS's existing power supplies. Therefore, no significant environmental impacts from changes in the transmission design and equipment are expected, and the conclusions in the FES would remain valid.

The electromagnetic field (EMF) created by transmission of electricity would increase linearly as a function of power; however, exposure to EMFs from the offsite transmission system would not be expected to increase significantly and any such increase would not be expected to change the staff's conclusion in the FES that there are no significant biological effects attributable to EMFs from high-voltage transmission lines.

No changes in transmission facilities would be needed for the EPU. DNPS transmission lines are designed and constructed in accordance with the applicable shock prevention provisions of the National Electric Safety Code. Therefore, the expected slight increase in current, attributable to the proposed EPU, is not expected to change the staff's conclusion in the FES that adequate protection is provided against hazards from electrical shock.

Social and Economic Impacts

The staff reviewed information provided by the licensee regarding socioeconomic impacts, including possible impacts on the DNPS workforce and the local economy. DNPS employs more than 800 people and is a major contributor to the local tax base. DNPS personnel also contribute to the tax base by paying sales and property taxes. The proposed EPU would not significantly affect the size of the DNPS workforce and would have no material effect upon the labor force required for future outages. Plant modifications needed to implement the EPU would cost approximately $26 million. Local taxing authorities would collect more property taxes and local and national businesses would receive additional revenue from EPU-related activities. The increased direct revenue from the EPU would be a one-time benefit. The increase would not be sustained once the modifications are completed. It is expected that improving the economic performance of DNPS through lower total bus bar costs per kilowatt-hour would enhance the value of DNPS as a generating asset and reduce the likelihood of early plant retirement. Early plant retirement could have a possible negative impact upon the local economy and surrounding communities by reducing public services, employment, income, business revenues, and property values. These

reductions could be mitigated by decommissioning activities in the short term. The staff expects that the conclusions in the FES regarding social and economic impacts are expected to remain valid under the EPU conditions.

The staff also considered the potential for direct physical impacts of the proposed EPU, such as vibration and dust from construction activities. The construction of the 6–8 cooling tower cells may temporarily produce dust, vibration, noise, and vehicle exhaust. However, the licensee stated that construction traffic will not be routed through residential areas and no blasting will occur. In the year 2000, 36 cooling tower cells were constructed in the same general area in which the 6–8 new cooling tower cells are proposed to be located. The licensee stated that residents did not express concerns about construction noise. The distance between the proposed location of the 6–8 new cooling tower cells and the nearest residence is at least 1000 feet. Other than the construction of the proposed 6–8 cooling tower cells, the EPU would involve only limited changes in station operation and a few modifications to the station facility. These limited modifications would be accomplished without physical changes to transmission corridors, or other offsite facilities, and without significant changes to access roads or additional project-related transportation of goods or materials. Therefore, no significant construction disturbances causing noise, odors, vehicle exhaust, dust, vibration, or shock from blasting are anticipated, and the conclusions in the FES would remain valid.

Summary

In summary, the proposed EPU at DNPS would not result in a significant change in non-radiological impacts on land use, water use, waste discharges, terrestrial and aquatic biota, transmission facilities, or social and economic factors, and would not have other non-radiological environmental impacts from those evaluated in the FES. Table 1 summarizes the non-radiological environmental effects of the EPU at DNPS.

TABLE 1.—SUMMARY OF NON-RADIOLOGICAL ENVIRONMENTAL IMPACTS OF THE EPU AT DNPS

Impacts	Impacts of the EPU at DNPS
Land Use Impacts	Construction of 6–8 additional cooling tower cells on 0.5 acre on previously disturbed land. Minor aesthetic changes. No changes to lands with historic or archeological significance.
Water Use Impacts	No changes to the intake of surface water or groundwater use.
Waste Discharge Impacts	No significant increase in fog formation; however, fog may form at higher air temperatures. Air emission of PM_{10} would increase, but would remain within the regulatory limits. No significant change to icing or cooling tower drift. Noise levels may increase due to operation of the 6–8 new cooling tower cells, but would be within regulatory limits. No changes to the hydrodynamics of the condenser cooling water system intake or discharge amounts. No changes to permit requirements for thermal or flow limits or conditions. No changes to flow rates, water sources, and thermal discharges. The risk of cold shock to aquatic biota would not increase.
Terrestrial Biota Impacts	Small numbers of wildlife would be displaced by the construction of the cooling tower cells. No federally-listed threatened or endangered species are known to exist within the area of construction.
Aquatic Biota Impacts	No change to intake or outfall structures or flows; therefore, no change in aquatic impact biota would be expected. No federally-listed threatened or endangered species have been collected in the area of surface water intake or discharge.
Transmission Facilities Impacts	No change in operating transmission voltages, onsite transmission equipment, or power line rights-of-way. Slight increase in onsite power to support the 6–8 cooling tower cells would come from existing power supplies. EMF would increase linearly with the EPU; however, no change in exposure rate would be expected.
Social and Economic Impacts	No significant change in size of DNPS workforce. The construction of the 6–8 cooling tower cells may temporarily produce dust, vibration, noise, and vehicle exhaust; however, it is not expected to be significant. No shock from blasting is expected.

Radiological Impacts at DNPS

The staff evaluated radiological environmental impacts on waste streams, dose, accident analyses, and fuel cycle and transportation factors. The following is a general description of the waste treatment streams at DNPS and an evaluation of the environmental impacts.

Radioactive Waste Stream Impacts

DNPS uses waste treatment systems designed to collect, process, and dispose of radioactive gaseous, liquid, and solid waste in accordance with the requirements of 10 CFR part 20 and Appendix I to part 50. These radioactive waste treatment systems are discussed in the FES. The proposed EPU would not affect the environmental monitoring of these waste streams or the radiological monitoring requirements contained in licensing basis documents. The proposed EPU would not result in changes in operation or design of equipment in the gaseous, liquid, or solid waste systems. The proposed EPU would not introduce new or different radiological release pathways and would not increase the probability of an operator error or equipment malfunction that would result in an uncontrolled radioactive release. The staff evaluated specific effects of the proposed EPU on changes in the gaseous, liquid, and solid waste streams as a radiological environmental impact of the proposed EPU.

Gaseous Radioactive Waste

During normal operation, the gaseous effluent systems control the release of gaseous radioactive effluents to the site environs, including small quantities of activated gases and noble gases, so that routine offsite releases are below the limits of 10 CFR part 20 and Appendix I to part 50 (10 CFR part 20 includes the requirements of 40 CFR part 190). The major sources of gaseous radioactive wastes at DNPS are the condenser air ejector effluent and the steam packing exhaust system effluent. Based on the conservative assumption of a non-negligible amount of fuel leakage due to defects, the licensee stated that radioactive release volume would increase proportionally with the 17

percent EPU conditions. The current and expected fuel defect rate is extremely small and the expected radionuclide gaseous effluents under the EPU conditions would be within Appendix I limits. Therefore, the conclusions in the FES will continue to apply under the EPU conditions.

The licensee does not expect increases in gaseous waste from new fuel designs. The licensee stated that its contract with General Electric contains a warranty section that requires General Electric to meet a specified level of fuel performance. This level is at least as stringent as that imposed on current fuel designs.

Liquid Radioactive Waste

The liquid radwaste system is designed to process, and recycle, to the extent practicable, the liquid waste collected so that annual radiation doses to individuals are maintained below the guidelines in 10 CFR part 20 and 10 CFR part 50, Appendix I. Liquid radioactive wastes at DNPS include liquids from the reactor process systems and liquids that have become contaminated with process system liquids. Increases in flow rate through the condensate demineralizer and increases of fission products and activated corrosion products are expected under the EPU conditions. This would result in additional backwashes of condensate demineralizers and reactor water cleanup filter demineralizers. These additional backwashes would be processed through the liquid radioactive waste treatment system and are expected to be suitable for reuse. Therefore, liquid effluent release volumes are not expected to increase significantly as a result of the EPU. No changes in the liquid radioactive waste treatment system are proposed. Average treatment efficiency would not change; however, radioactivity levels of liquid effluent releases may increase linearly with the 17 percent EPU. These liquid effluents from DNPS would be within the regulatory limits of 10 CFR part 50, Appendix I.

Based on information submitted by the licensee, the staff concludes that no significant dose increase in the liquid pathway would result from the proposed EPU. Therefore, the conclusions in the FES would remain valid under the EPU conditions.

Solid Radioactive Waste

Solid radioactive wastes include solids recovered from the reactor process system, solids in contact with the reactor process system liquids or gases, and solids used in the reactor process system operation. The largest volume of solid radioactive waste at DNPS is low-level radioactive waste (LLRW). Sources of LLRW at DNPS include resins, filter sludge, dry active waste, metals, and oils. The annual burial volume of LLRW generated in 1998 was 208.40 cubic meters. In 1999, the burial volume decreased to 98.44 cubic meters, and the projected burial volume of LLRW for 2000 is approximately 144 cubic meters. A one-time increase in the burial volume of LLRW would be associated with the EPU. The volume of resin is expected to increase by as much as 17 percent under the EPU conditions because of the increased amount of iron removed by the condensate system from the increased feedwater flow. Adding the 17 percent increase in resin volume to the projected year 2000 LLRW burial volume rate results in a 156-cubic-meter post-EPU LLRW burial volume per year (an increase of approximately 8 percent), which would be bounded by the FES.

The number of fuel assemblies would increase in any given core load with the proposed EPU, reducing the storage space in the spent fuel pool. At current off-load rates, four dry storage casks would be filled during each refueling outage and a fifth dry storage cask would be partially filled. DNPS plans to fill the fifth cask using the inventory of assemblies from the spent fuel pool. At the EPU conditions, each refueling outage would also fill four casks and partially fill a fifth. Fewer assemblies from the spent fuel pool would be needed to complete the fifth dry storage cask. The net effect of the EPU would be to increase the number of dry storage casks needed by three to four every 5 years.

In summary, the solid radioactive waste burial volume is estimated to increase by approximately 8 percent, the volume of radioactive liquid release would not be expected to increase, and the volume of gaseous radioactive effluent releases would be expected to increase up to 17 percent as a result of the proposed EPU. The level of radioactivity of the liquid effluent releases would also be expected to increase up to 17 percent. The proposed EPU is not expected to have a significant impact on the volume or activity of radioactive solid wastes at DNPS.

Dose Impacts

The staff evaluated in-plant and offsite radiation as part of its review of environmental impacts of the proposed EPU.

In-Plant Radiation

Radiation levels and associated doses are controlled by the as low as reasonably achievable (ALARA) program, as required by 10 CFR part 20. The DNPS ALARA program manages exposure by minimizing the time personnel spend in radiation areas, maximizing the distance between personnel and radiation areas, and maximizing shielding to minimize radiation levels in routinely occupied plant areas and in the vicinity of plant equipment requiring attention. Exelon has determined that the current shielding designs are adequate for any dose increase that may occur due to the proposed EPU. Normal operation radiation levels would increase by no more than the percentage increase of the EPU. Many aspects of the plant were originally designed for higher-than-expected radiation sources. The increase in radiation level would not affect radiation zoning or shielding in the various areas of the plant because it is offset by conservatism in the original design, source term assumptions, and analytical techniques. The licensee states that no new dose reduction programs would be implemented and the ALARA program would continue in its current form.

A potential source of increased occupational radiation is the projected increase in moisture carryover from the reactor vessel steam dryer/separator to the main steam lines. To reduce moisture content under the EPU conditions, modifications to the steam dryer/separator would be required. The modifications are expected to result in a negligible increase in occupational exposure.

On the basis of the above information, the staff concludes that the expected in-plant radiation dose at DNPS following the proposed EPU would be bounded by the dose estimates in the FES.

Offsite Dose

The slight increase in normal operational gaseous activity levels under the EPU would not affect the large margin to the offsite dose limits established by 10 CFR part 20. Offsite dose from radioactive effluents are reported in the Annual Radiological Environmental Operating Reports. For the period from 1995 to 1999, the average annual whole body dose was 4.25E–3 millirem and the average annual dose to the critical organ was 6.16E–3 millirem. The highest percentage of 10 CFR part 50, Appendix I, regulatory limits for maximum dose resulting from liquid releases to an adult for the 5 year period occurred in 1999

and was 0.07 percent of the critical organ dose limit. For the period from 1995 to 1999, the average dose was 0.02 percent of the 10 CFR part 50, Appendix I, regulatory limits. No significant change in the volume of water treated and released is expected. The offsite dose from liquid effluents is projected to increase proportionally with the EPU due to an increase in the concentration of fission products and activation products in the reactor coolant. The licensee states that offsite dose would remain below the 10 CFR 50, Appendix I, regulatory limits.

Dose to individuals from gaseous releases are also reported in the Annual Radiological Environmental Report. The average annual total body dose during the period from 1995 to 1999 was 2.9E–3 millirem and the average annual dose to the critical organ was 2.23E–2 millirem. The highest percentage of 10 CFR part 50, appendix I, regulatory limits for maximum dose resulting from airborne releases to an adult during the period from 1995 to 1999 occurred in 1995 and was 0.14 percent of the critical organ dose limit. For the period from 1995 to 1999, the average dose was 0.09 percent of the 10 CFR part 50, Appendix I regulatory limits. Conservatively assuming a non-negligible amount of fuel leakage due to defects, gaseous effluents will increase proportionally to the 17 percent EPU; however, offsite dose will remain well below 10 CFR part 50, appendix I, regulatory limits.

The calculated offsite dose resulting from direct radiation due to radiation levels in plant components, such as sky shine, will increase up to 17 percent because the Offsite Dose Calculation Manual conservatively adjusts offsite dose to power generation level. Because sky shine is the dominant contributor to total offsite dose, the calculated total offsite dose, based on calculations from the Offsite Dose Calculation Manual, will increase up to 17 percent. Actual offsite dose from sky shine is not expected to increase significantly because the decreased transit time is expected to result in a minimal change in concentration through reduced decay time and because expected activity concentration in the steam will remain constant due to the dilution effect of a 19 percent increase in steaming rate. The expected dose at the EPU conditions will remain below the limits of 10 CFR part 50, appendix I, 10 CFR part 20, and 40 CFR part 190 standards.

The EPU would not create new or different sources of offsite dose from DNPS operation, and radiation levels under the proposed EPU conditions would be within the regulatory limits. The staff concludes that the estimated offsite doses under the EPU conditions would meet the design objectives specified by 10 CFR part 50, Appendix I, and be within the limits of 10 CFR part 20.

Accident Analysis Impacts

The staff reviewed the assumptions, inputs, and methods used by Exelon to assess the radiological impacts of the proposed EPU at DNPS. In doing this review, the staff relied upon information placed on the docket by Exelon, staff experience in doing similar reviews, and the staff-accepted ELTR1 and ELTR2 topical reports. The staff finds that Exelon used analysis methods and assumptions consistent with the conservative guidance of ELTR1 and ELTR2. The staff compared the doses estimated by Exelon to the applicable criteria. The staff finds, with reasonable assurance, that the licensee's estimates of the EAB, LPZ, and control room doses will continue to comply with 10 CFR part 100 and 10 CFR part 50, Appendix A, GDC–19, as clarified in NUREG–0800 Sections 6.4 and 15. Therefore, DNPS operation at the proposed EPU rated thermal power is acceptable with regard to the radiological consequences of postulated design basis accidents.

Fuel Cycle and Transportation Impacts

The environmental impact of the uranium fuel cycle has been generically evaluated by the staff for a 1000 MWe reference reactor and is described by Table S–3 of 10 CFR 51.51. The DNPS reactors are 912 MWe and Table S–3 reasonably bounds the environmental impacts of the uranium fuel cycle for each DNPS reactor. The radiological effects presented in Table S–3 are small and would not be expected to change due to the implementation of the EPU.

The environmental impacts of the transportation of nuclear fuel and wastes are described in Table S–4 of 10 CFR 51.52. The table lists heat and weight per irradiated fuel cask in transit, traffic density, and individual and cumulative dose to workers and the general population under normal circumstances. The regulations require that environmental reports contain either (a) a statement that the reactor meets specified criteria, in which case its environmental effects would be bounded by Table S–4; or (b) further analysis of the environmental effects of transportation of fuel and waste to and from the reactor site.

The NRC published an environmental assessment and finding of no significant impact (65 FR 56604) regarding an increase in fuel enrichment at DNPS from 4 to 5 weight percent uranium-235 and an increase in burnup to 60,000 megawatt-days per metric ton of uranium. The staff concluded that the extended burnup would slightly change the mix of radionuclides that might be released in the event of an accident; however, no significant adverse environmental impacts were expected. An NRC assessment (53 FR 30355, dated August 11, 1988, as corrected by 53 FR 32322, dated August 24, 1988) evaluated the applicability of Tables S–3 and S–4 to higher burnup cycles and concluded that there would be no significant change in environmental impacts for fuel cycles with uranium enrichments up to 5 weight percent uranium-235 and burnups less than 60,000 megawatt-days per metric ton of uranium (MWd/MTU) from the parameters evaluated in Tables S–3 and S–4. Because the fuel enrichment for the EPU would not exceed 5 weight percent uranium-235 and the rod average discharge exposure would not exceed 60,000 MWd/MTU, the environmental impacts of the proposed EPU at DNPS would remain bounded by these conclusions and would not be significant.

Summary

The proposed EPU would not significantly increase the probability or consequences of accidents, would not introduce new radiological release pathways, would not result in a significant increase in occupational or public radiation exposures, and would not result in significant additional fuel cycle environmental impacts. Accordingly, the Commission concludes that there are no significant radiological environmental impacts associated with the proposed action. Table 2 summarizes the radiological environmental impacts of the EPU at DNPS.

TABLE 2.—SUMMARY OF RADIOLOGICAL ENVIRONMENTAL IMPACTS OF THE EPU AT DNPS

Impacts	Impacts of the EPU at DNPS
Radiological Waste Stream Impacts	The gaseous radioactive release volume would increase proportionally with the power increase. The liquid radioactive release volume is not expected to increase; however, activity levels would increase proportionally with the power increase. Solid radioactive waste will increase approximately 8 percent. Releases would be within regulatory limits.
Dose Impacts	In-plant radiation levels would increase by 17 percent and dose would be maintained ALARA. Offsite dose from liquid and gaseous effluents may increase up to 17 percent. Calculated dose from sky shine will increase up to 17 percent. In-plant and offsite dose would remain within the regulatory limits.
Accident Analysis Impacts	No significant increase in probability or consequences of accident.
Fuel Cycle and Transportation Impacts	No significant increase. Impacts would remain within the conclusions of Table S–3 and S–4 of 10 CFR Part 51.

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; however, in the DNPS vicinity other generating facilities using nuclear or other alternative energy sources, such as coal or gas, would be built in order to supply generating capacity and power needs. Construction and operation of a coal plant would create impacts to air quality, land use and waste management. Construction and operation of a gas plant would also impact air quality and land use. Implementation of the EPU would have less of an impact on the environment than the construction and operation of a new generating facility and does not involve new environmental impacts that are significantly different from those presented in the FES. Therefore, the staff concludes that increasing DNPS capacity is an acceptable option for increasing power supply. Furthermore, unlike fossil fuel plants, DNPS does not routinely emit sulfur dioxide, nitrogen oxides, carbon dioxide, or other atmospheric pollutants that contribute to greenhouse gases or acid rain.

Alternative Use of Resources

This action does not involve the use of any different resources than those not previously considered in the DNPS FES, dated 1973.

Agencies and Persons Consulted

In accordance with its stated policy, on November 9, 2001, prior to issuance of this environmental assessment, the staff consulted with the Illinois State official, Frank Niziolek, of the Illinois Department of Nuclear Safety, 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 application dated December 27, 2000, as supplemented by letters dated February 12, April 6 and 13, May 3, 18, and 29, June 5, 7, and 15, July 6 and 23, August 7, 8, 9, 13 (two letters), 14 (two letters), 29, and 31 (two letters), September 5 (two letters), 14, 19, 25, 26, and 27 (two letters), November 2, 16, and 30, and December 10, 2001. Documents may be examined and/or copied for a fee, at the NRC's Public Document Room, 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 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 Public Document Room (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 17th day of December 2001.

For the Nuclear Regulatory Commission

Anthony J. Mendiola,

Chief, Section 2, Project Directorate III, Division of Licensing Project Management, Office of Nuclear Reactor Regulation.

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NUCLEAR REGULATORY COMMISSION

[Docket Nos. 50–254 and 50–265]

Exelon Generation Company, LLC, Quad Cities Nuclear Power Station, Units 1 and 2; Environmental Assessment and Finding of No Significant Impact Related to a Proposed License Amendment To Increase the Maximum Thermal Power Level

The NRC is considering issuance of an amendment to Facility Operating Licenses Nos. DPR–29 and DPR–30, issued to Exelon for the operation of QCNPS, Units 1 and 2, located on the Mississippi River in Rock Island County, Illinois. Therefore, 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 Exelon, the operator of QCNPS, to increase its electrical generating capacity at QCNPS by raising the maximum reactor core power level from 2511 MWt to 2957 MWt. This change is approximately 17.8 percent above the current maximum licensed power level for QCNPS. The change is considered an extended power uprate (EPU) because it would raise the reactor core power level more than 7 percent above the original licensed maximum power level. QCNPS has not submitted a previous power uprate application. A power uprate increases the heat output of the reactor to support increased turbine inlet steam flow requirements and increases the heat dissipated by the condenser to support increased turbine exhaust steam flow requirements.

The proposed action is in accordance with the licensee's application for amendments dated December 27, 2000, and supplemental information dated

February 12, March 20, April 6 and 13, May 3, 18, and 29, June 5, 7, and 15, July 6 and 23, August 7, 8, 9, 13 (two letters), 14 (two letters), 29, and 31 (two letters), September 5, 19, 25, and 27 (two letters), October 17, November 2 (two letters), 16, and 30, and December 10, 2001. The original amendment request was submitted by Commonwealth Edison Company (ComEd), the former licensee. ComEd subsequently transferred the licenses to Exelon. By letter dated February 7, 2001, Exelon informed the NRC that it assumed responsibility for all pending NRC actions that were requested by ComEd.

The Need for the Proposed Action

Exelon evaluated its resource needs for the period 2000–2014 and forecast a 28-percent increase in electrical demand by 2014 within its Illinois service area. The proposed EPU would provide approximately 0.76 percent additional generating capacity per unit at QCNPS. Exelon stated that in order to stay competitive, it must be able to fulfill not only customer power demands, but it also must sell power to other providers. In Illinois, approximately 40 gas turbine plants of various sizes are proposed to be built. The proposed additional generating capacity at QCNPS would eliminate the need to build approximately two 100 MWe gas turbines.

Environmental Impacts of the Proposed Action

At the time of the issuance of the operating licenses for QCNPS, the NRC staff noted that any activity authorized by the licenses would be encompassed by the overall action evaluated in the Final Environmental Statement (FES) for the operation of QCNPS, which was issued in September 1972. The original operating licenses for QCNPS allowed a maximum reactor power level of 2511MWt. On December 27, 2000, Exelon submitted a supplement to its Environmental Report supporting the proposed EPU and provided a summary of its conclusions concerning the environmental impacts of the EPU at QCNPS. Based on the staff's independent analyses and the evaluation performed by the licensee, the staff concludes that the environmental impacts of the EPU are bounded by the environmental impacts previously evaluated in the FES, because the EPU would involve no extensive changes to plant systems that directly or indirectly interface with the environment. This environmental assessment first discusses the non-radiological and then the radiological environmental impacts of the proposed EPU at QCNPS.

Non-Radiological Impacts at QCNPS

The following is the NRC staff's evaluation of the non-radiological environmental impacts on land use, water use, waste discharge, terrestrial and aquatic biota, transmission facilities, and social and economic conditions at QCNPS.

Land Use Impacts

The licensee has no plans to construct any new facilities or alter the land around existing facilities, including buildings, access roads, parking facilities, laydown areas, or onsite transmission and distribution equipment, including power line rights-of-way, in conjunction with the uprate or operation after the EPU. The EPU would not significantly affect the storage of materials, including chemicals, fuels, and other materials stored above or under ground. Therefore, the FES conclusions on the impacts on land use would be valid under the EPU conditions.

Water Use Impacts

The steam produced by the QCNPS turbines is condensed in the condensers, demineralized, and pumped back to the reactor vessel. Approximately 2094 cubic feet per second (cfs) of cooling water used in the condensers is pumped from the Mississippi River and does not come in contact with the steam from the turbines. The original design called for a once-through cooling water system in which the heated water used in the condensers was combined with other water discharges and returned to the river downstream of the intake. Under this system, the FES stated that full power operation of both generating units at a total of 5022 MWt will cause a 23 °F temperature rise in 2270 cfs (2100 cfs through the condensers and 170 cfs through the service water) of Mississippi River water, the maximum flow through QCNPS. The cooling system has had several configurations due to concerns over thermal effects on the river biota. The original design called for open-cycle discharge of heated effluent along a straight wing dam into the deeper, higher velocity portion of the river. This system was replaced with a diffuser system consisting of 2 diffuser pipes laid across the bottom of the main river channel with regularly spaced jets that directed heated water into the river. A closed-cycle condenser cooling system was installed next, which included a spray canal with blow-down directed into a third diffuser pipe in the river. The spray canal was less efficient than anticipated and partial open-cycle operation of the condenser cooling system was implemented next. Finally, an extensive study concluded that QCNPS could operate at full load in the open-cycle mode while meeting National Pollutant Discharge Elimination System (NPDES) permit limits under most river flow conditions. QCNPS presently operates in this open-cycle mode.

Cooling water is withdrawn from the Mississippi River through a canal that is perpendicular to the river flow. The canal is 235 feet long, 180 feet wide, and 12 feet deep. Intake velocity at the mouth of the canal is about one foot per second. A floating boom extending to a depth of 33 inches covers the mouth of the canal to deflect floating material.

Beyond the boom is a series of vertical metal bars spaced 2.5 inches apart (trash racks) that screen large pieces of debris from the intake. Travel screens with a ⅜ inch mesh further protect the circulating water pumps.

The staff evaluated surface water use and groundwater use as environmental impacts of water usage at QCNPS. Current flow conditions, based on equipment capacity constraints and operating history, is 2192 cfs. The licensee stated that the EPU would not change the hydrodynamics of the condenser cooling and that surface water withdrawal rates or the maximum flow of river water through QCNPS would not be affected by the proposed EPU. Therefore, the conclusions in the FES regarding surface water use are expected to remain valid.

Groundwater is drawn from five wells at QCNPS and is used for domestic purposes, for raising fish in the former spray canals, and for a variety of other industrial applications. Groundwater is not used for condenser cooling. The licensee stated that the proposed EPU would not involve an increase in the consumptive use of groundwater. The EPU would not impact the well water system flow path and does not require any additional cooling capacity from the groundwater in order to shed heat loads. Therefore, the staff's conclusions in the FES relative to groundwater use would remain valid for the proposed EPU.

Waste Discharge Impacts

The staff considered chemical discharges to surface water and sanitary sewer systems, cold shock to an aquatic biota, and air emission, as waste discharge impacts.

Surface Water and Sanitary Sewer System Discharges:

QCNPS operates under a NPDES permit issued by the State of Illinois which covers discharges to the open-cycle diffusers, wastewater treatment system, sanitary waste treatment plant, and radwaste treatment system blowdown. Special Condition 6 of the NPDES permit gives thermal limitations at the downstream boundary of the mixing zone, including a maximum temperature rise above natural temperature of 5 °F and maximum temperature limits for each month of the year. The permit also requires that the mixing zone not exceed 26 acres of the Mississippi River. To demonstrate compliance at low river flow conditions while operating under the open-cycle mode (the present mode of operation), a temperature monitoring curve was developed that allows calculations of permissible plant load as a function of river water. The temperature monitoring curve was modified in 1990, based on measurements taken during the drought years of 1988 and 1989. Based on this temperature monitoring curve, Special Condition 6 of the NPDES permit states that compliance is demonstrated when river flows are greater than 16,000 cfs and ambient river temperature is 5 °F or more below the maximum monthly limit. For river flows between 11,000 cfs and 16,000 cfs, compliance is demonstrated by either adjusting plant load based on the correlation in the temperature monitoring curve, or by actual monitoring of river temperatures at the downstream boundary of the mixing zone. At river flows less than 11, 000 cfs, the permit requires temperature monitoring at the downstream boundary of the mixing zone. The licensee proposes to modify the temperature monitoring curve to account for the increase in temperature of the discharged river water resulting from the EPU condition. Under EPU conditions, the maximum condenser-water temperature rise will be 28 °F; 5 °F higher than the current total maximum (condenser and service water) temperature rise of 23 °F. The revised temperature monitoring curve would raise the minimum river flows required for demonstrating compliance using river temperature monitoring at the downstream boundary of the mixing zone or adjusting plant load in accordance with the temperature monitoring curve correlation. The flow at which the actual river temperature monitoring must be performed or plant load adjustment must be made increases from 16,000 cfs to 21,100 cfs under the proposed revised temperature monitoring curve. The licensee discussed the proposed monitoring curve change on July 28, 2000, with the Illinois Environmental Protection Agency (IEPA). A second meeting was held on December 15, 2000. The licensee made a formal request to revise the NPDES permit by letter dated March 14, 2001. Subsequent discussions between the licensee and the staff occurred on March 29, 2001, and October 17, 2001. The licensee stated that the IEPA would consult with and obtain the Iowa Department of Natural Resources (IDNR) concurrence before issuing a permit revision, in accordance with 40 CFR 123.10, ''Public notice of permit actions and public comment period.'' The licensee stated that the IEPA issued the draft NPDES permit revision on October 15, 2001, for a 30-day public comment period. Full implementation of the EPU will not be accomplished until the IEPA and IDNR have given their concurrence to change the monitoring curve. Contingent on the concurrence of the IEPA and IDNR, it is the staff's conclusion that the FES would remain bounding under the EPU conditions.

QCNPS monitors wastewater streams as required by the NPDES permit, and only uses approved chemicals for conditioning water to prevent scaling, corrosion, and biofouling. Because an increase in the design capacity to withdraw water from the Mississippi River is not proposed for the EPU, the licensee stated that the current practices would not be altered.

Cold Shock

Cold shock to aquatic biota results when the warm water discharge from a plant abruptly stops due to an unplanned shutdown, resulting in a river water temperature drop and the death of aquatic biota. The increased temperature of the QCNPS discharge is not expected to create cold shock to aquatic biota because of the extended period of time required to remove heat from the reactor and the rapid heat dissipation in the mixing zone from the diffuser's outfall. The probability of an unplanned shutdown is independent of power uprate. Therefore, the risk of fish being killed by cold shock would continue to be bounded by the FES.

Air Emissions

Other waste sources at QCNPS include emissions from the plant heating boiler and diesel generators. Effluents from these pathways are controlled as required by the Clean Air Act. The EPU does not have a significant impact on the quality or quantity of effluents from these sources, and operation under power uprate conditions would not reduce the margin to the limits established by the regulations. Therefore, the conclusions in the FES would remain valid.

Terrestrial Biota Impacts

A relatively small number of threatened and endangered terrestrial species have been recorded in Rock Island County, Illinois, and across the river in Muscatine and Scott counties, Iowa. The western prairie fringed orchid (*Platanthera praceclara*), eastern prairie fringed orchid (*Platanthaera leucophaea*), Indiana bat (*Myotis sodalis*), and bald eagle (*Haliaeetus leucocephalus*) are Federally-listed threatened or endangered terrestrial species and were identified in 1999 in either Rock Island, Muscatine, or Scott counties. The proposed EPU would not disturb the habitat of these species and would not affect their distribution. The FES stated that the operation of QCNPS is not expected to have any further adverse effect on the terrestrial flora or fauna, except to the extent that traffic on access roads and human activities related to station operation may force some wildlife away from the heavily used areas. Implementation of the EPU would not alter these conditions.

Therefore, the conclusions reached by the staff in the FES relative to impact on terrestrial ecology, including endangered and threatened plant and animal species, remain valid for the proposed EPU.

Aquatic Biota Impacts

The staff evaluated the impingement, entrapment, and the rise in water discharge temperature on aquatic biota. The Mississippi River is a large and productive ecosystem. Effects on river biota, such as the phytoplankton, zooplankton, periphyton, benthic invertebrate, gizzard shad, freshwater drum, emerald shiner, river shiner, carp, bluegill, fish eggs, and larvae, from QCNPS have been investigated by the licensee. Local effects on lower trophic levels were apparent from these studies, but overall population levels in the vicinity of the QCNPS were not adversely affected. Effects on the abundance of fish eggs and larvae by QCNPS operation have been minimal. No verifiable effects on the fish biota from QCNPS operation have been found. Exelon, along with Southern Illinois University, carries out a stocking program. Fish, such as walleye and hybrid striped bass, are raised in QCNPS's inactive cooling canal and then released to the Mississippi River. Increases in the populations of these species have been found in the vicinity

of QCNPS due to the river stocking program. Additionally, freshwater drum, channel catfish, flathead catfish, and white bass have also increased in abundance, while white and black crappie (backwater fish) have decreased in abundance as sedimentation associated with maintenance of the navigation channel has degraded backwater area and sloughs.

The EPU would cause temperature in the condenser cooling system to be higher than those associated with previous studies of thermal effects. The EPU would raise river water temperature in the condenser cooling system to a maximum of 28 °F above ambient, rather than the current maximum of 23 °F. The higher temperature is expected to cause a higher mortality rate for organisms entrained in the system. The entrainment of fish eggs and larvae may affect more species, with the possible exception of fish that spawn early in the year. The fish egg and larva entrainment rate, which historically is 0.5 to 1 percent of the total drifting by QCNPS, would not change because water withdrawals would remain the same. The overall effect of an increase in entrained plankton mortality would not be significant for the local populations involved.

Higher effluent temperatures at the EPU conditions may also have an increased effect on non-motile biota in the discharge mixing zone. Drifting fish eggs and larvae mortality may increase in the mixing zone because fish eggs and larvae are more likely to succumb to upper lethal temperatures as opposed to a particular temperature increase. This is only expected to affect species that spawn late, after the peak period of larval drift, when ambient river temperatures are high and river flow may be lower. Fish eggs and larvae losses at low river flows are expected to be fairly small in total, and based on an approximate low river flow return frequency of once in 10 years, it is expected that these losses would not negatively affect recruitment to the fish community of Pool 14, which is the body of water directly behind Lock 14 on the Mississippi River.

A preliminary study of Federally-listed aquatic threatened and endangered species in the vicinity of QCNPS (within 32 kilometers) performed in 1996 by the Pacific Northwest National Laboratory listed the fanshell (*cyprogenia stegaria*), Higgin's eye pearly mussel (*lampsilis higginsi*), and fat pocketbook (*potamilus capax*). The Federally-endangered clams are not expected to be exposed to the high temperatures associated with the uprate because its preferred habitat does not include the main channel of the Mississippi River at this location. Some alteration in the timing of life cycles stages of other mussel species could occur. Adult and juvenile fish would be expected to avoid the increased temperature in the mixing zone and not be harmed. The FES notes the existence of the paddlefish (*polyodon spathula*); however, the paddlefish has not been collected near QCNPS recently.

Eight fish species listed by the States of Illinois and Iowa have been collected in the general vicinity of the diffusers. Of these, the grass pickerel (*Esox americanus*) and the western sand darter (*Ammocrypta clara*) are the most frequently collected. Grass pickerel is the only Illinois State-listed species in Pool 14 that may have a sustainable population. Individuals collected from other species appear only as transient in Pool 14. The grass pickerel is mainly taken in littoral and backwater areas and it is not expected to be in the main channel where elevated temperatures would occur. The western sand darter is occasionally collected in the main channel (10 specimens over a 25 year period) and could be exposed to high temperatures in the mixing zone area. Other than the pearly mussel and the fish mentioned above, no rare species are expected to occur in the vicinity of QCNPS.

Fish may become impinged on the intake structures protecting the condenser cooling water pumps because of water velocities leading into the structures and the diminished physical condition of the fish. Impingement has not had a deleterious effect on fish populations in the vicinity of QCNPS because sampling indicated that impingement affects mostly dead and moribund fish. There is no change in cooling water flow proposed for the EPU. Therefore, no differences in impingement rates are expected.

Based on the above, the staff expects that the conclusions in the FES about aquatic biota, including impingement and entrainment, and threatened and endangered species, would remain bounding under the proposed EPU conditions.

Transmission Facility Impacts

Environmental impacts, such as the installation of transmission line equipment, or exposure to electromagnetic fields and shock, could result from a major modification to transmission line facilities. The licensee stated that there would be no change in operating transmission voltages, onsite transmission equipment, or power line rights-of-way to support the proposed EPU conditions. No new equipment or modification would be necessary for the offsite power system to maintain grid stability. However, an increase in onsite power would be required to support new equipment associated with the EPU. Power to service these additional energy needs would come from QCNPS'' existing power supplies. Therefore, no significant environmental impacts from changes in the transmission design and equipment are expected, and the conclusions in the FES would remain valid.

The electromagnetic field (EMF) created by the transmission of electricity would increase linearly as a function of power. However, exposure to EMFs from the offsite transmission system would not be expected to increase significantly and any such increase would not be expected to change the staff's conclusions in the FES that there are no significant biological effects attributable to EMFs from high-voltage transmission lines.

No changes in transmission facilities would be needed for the EPU. QCNPS transmission lines are designed and constructed in accordance with the applicable shock prevention provisions of the National Electric Safety Code. Therefore, the expected slight increase in current, attributable to the proposed EPU, is not expected to change the staff's conclusion in the FES that adequate protection is provided against hazards from electrical shock.

Social and Economic Impacts

The staff has reviewed information provided by the licensee regarding socioeconomic impacts, including possible impacts to the QCNPS workforce and local economy. QCNPS employs more than 800 people and is a major contributor to the local tax base. QCNPS personnel also contribute to the tax base by payment of sales and property tax. The proposed EPU would not significantly affect the size of the QCNPS workforce and would have no material effect upon the labor force required for future outages. Because the plant modifications needed to implement the EPU would be minor, any increase in sales tax and additional revenues to local and national business would be negligible relative to the large tax revenues generated by QCNPS. It is expected that improving the economic performance of QCNPS through lower total bus bar costs per kilowatt-hour would enhance the value of QCNPS as a generating asset and reduce the likelihood of early plant retirement. Early plant retirement could have a possible negative impact upon the local economy and the surrounding

communities by reducing public services, employment, income, business revenues, and property values. These reductions could be mitigated by decommissioning activities in the short term. The staff expects that the conclusions in the FES regarding social and economic impacts are expected to remain valid under the EPU conditions.

The staff also considered the potential for direct physical impacts of the proposed EPU, such as vibration and dust from construction activities. The proposed EPU would be accomplished primarily by changes in station operation and a few modifications to the station facility. These limited modifications can be accomplished without physical changes to transmission corridors, access roads, other offsite facilities, or additional projects related to the transportation of goods or materials. Therefore, no significant additional construction disturbances causing noise, odors, vehicle exhaust, dust, vibration, or shock from blasting are expected, and the conclusions in the FES would remain valid.

Summary

In summary, the proposed EPU at QCNPS would not result in a significant change in non-radiological impacts, on land use, water use, waste discharges, terrestrial and aquatic biota, transmission facilities, or socioeconomic factors, and would not have other non-radiological environmental impacts from those evaluated in the FES. Table 1 summarizes the non-radiological environmental impacts of the EPU at QCNPS.

TABLE 1.—SUMMARY OF NON-RADIOLOGICAL ENVIRONMENTAL IMPACTS OF THE EPU AT QCNPS

Impacts	Impacts of the EPU at QCNPS
Land Use Impacts	No significant changes to land use or construction of any new facilities that would impact land use are needed.
Water Use Impacts	No changes are required to the rate of intake of surface water or groundwater to accomplish the EPU.
Waste Discharge Impacts	Temperature monitoring curve would be adjusted to reflect higher river flow conditions where physical measurement or load management occurs. Change to the hydrodynamics of the cooling system would not be significant. Equipment modifications or changes in operation in air emissions are insignificant and would not reduce the margin to the limits established in the regulations. The risk of cold shock to aquatic biota would not increase.
Terrestrial Biota Impacts	Federally-listed threatened or endangered species are known to exist within the land area, but no land area disturbance is needed.
Aquatic Biota Impacts	No changes to intake or outfall structures or flows; no significant impingement or entrainment impacts on aquatic biota would be expected. Rise in river water temperature could affect fish larvae and eggs, but impacts would be insignificant. No Federally-listed threatened or endangered species would be significantly affected.
Transmission Facilities Impacts	No change in operating transmission voltages, onsite transmission equipment or power line rights-of-way. Slight increase in onsite power would be required to support the additional EPU equipment which would come from existing power supplies. EMF would increase linearly with the EPU; however, no significant change in exposure rate would be expected.
Social and Economic Impacts	No significant change in size of QCNPS workforce. No significant disturbances from noise, odor, vehicle exhaust, dust, vibration, or shock would be anticipated.

Radiological Impacts at QCNPS

The staff evaluated radiological environmental impacts on waste streams, dose, accident analyses, and fuel cycle and transportation factors. The following is a general description of the waste treatment streams at QCNPS and an evaluation of the environmental impacts.

Radioactive Waste Stream Impacts

QCNPS uses waste treatment systems designed to collect, process, and dispose of radioactive gaseous, liquid, and solid waste in accordance with the requirements of 10 CFR Part 20 and Appendix I to Part 50. These radioactive waste treatment systems are discussed in the FES. The proposed EPU would not affect the environmental monitoring of these waste streams or the radiological monitoring requirements contained in licensing basis documents. The proposed EPU would not result in changes in operation or design of equipment in the gaseous, liquid, or solid waste systems. The proposed EPU would not introduce new or different radiological release pathways and would not increase the probability of an operator error or equipment malfunction that would result in an uncontrolled radioactive release. The staff evaluated specific effects of the proposed EPU on changes in the gaseous, liquid, and solid waste streams as a radiological environmental impact to the proposed EPU.

Gaseous Radioactive Waste

During normal operation, the gaseous effluent systems control the release of gaseous radioactive effluents to the site environs, including small quantities of activation gases and noble gases, so that routine offsite releases are below the limits of 10 CFR part 20 and Appendix I to Part 50 (10 CFR part 20 includes the requirements of 40 CFR part 190). The major sources of gaseous radioactive wastes at QCNPS are the condenser air ejector effluent and the steam packing exhaust system effluent. Based on the conservative assumption of a non-negligible amount of fuel leakage due to defects, the licensee stated that radioactive release volumes would increase proportionally with the EPU conditions. The current and expected fuel defect rate is extremely small and the expected radioactive gaseous effluents under the EPU conditions would be within the Appendix I limits. Therefore, the conclusions in the FES will continue to apply under the EPU conditions.

The licensee does not expect increases in gaseous waste from new fuel designs. The licensee's contract with General Electric contains a warranty section that requires General Electric to meet a specified level of fuel performance. This level is at least as stringent as that imposed on current fuel designs.

Liquid Radioactive Waste

The liquid radwaste system is designed to process and recycle, to the extent practicable, the liquid waste collected so that annual radiation doses to individuals are maintained below the guidelines in 10 CFR part 20 and 10

CFR part 50, Appendix I. Liquid radioactive wastes at QCNPS include liquids from the reactor process systems and liquids that have become contaminated with process system liquids. Increases in flow rate through the condensate demineralizer and increase of fission products and activated corrosion products are expected under the EPU conditions. This would result in additional backwashes of condensate demineralizers and reactor water cleanup filter demineralizers. These additional backwashes would be processed through the liquid radioactive waste treatment system and are expected to be suitable for reuse. Therefore, liquid effluent release volumes are not expected to increase significantly as a result of the EPU. No changes in the liquid radioactive waste treatment system are proposed. Average treatment efficiency would not change; however radioactivity level of liquid effluent releases may increase with the EPU. These liquid effluents from QCNPS would be within the regulatory limits of 10 CFR part 50, Appendix I.

Based on information submitted by the licensee, the staff concludes that no significant dose increase in the liquid pathway would result from the proposed EPU. Therefore, the conclusions in the FES would remain valid under the EPU conditions.

Solid Radioactive Waste Impacts

Solid radioactive wastes include solids recovered from the reactor process system, solids in contact with the reactor process system liquids or gases, and solids used in the reactor process system operation. The largest volume of solid radioactive waste at QCNPS is low-level radioactive waste (LLRW). Sources of LLRW at QCNPS include resins, filter sludge, dry active waste, metals, and oils. The annual burial volume of LLRW generated in 1998 was 228.61 cubic meters. In 1999, the burial volume decreased to 82.93 cubic meters, and the projected burial volume of LLRW for 2000 is approximately 140 cubic meters. A one-time increase in the burial volume of LLRW would be associated with the EPU. The volume of resin is expected to increase by as much as 18 percent under the EPU conditions, because of the increased amount in iron removed by the condensate system from the increased feedwater flow. Adding the 18 percent increase in the resin volume to the projected year 2000 LLRW burial volume results in a 154-cubic-meter EPU LLRW burial volume per year (an increase in approximately 10 percent), which would be bounded by the FES.

The number of fuel assemblies would increase in any given core load with the proposed EPU, reducing the storage space in the spent fuel pool. At current off-load rates, four dry storage casks would be filled during each refueling outage and a fifth dry storage cask would be partially filled. QCNPS plans to fill the fifth cask using the inventory of assemblies from the spent fuel pool. At the EPU conditions, each refueling outage would also fill four casks and partially fill a fifth. Fewer assemblies from the spent fuel pool would be needed to fill the fifth dry storage cask. The net effect of the EPU would be to increase the number of dry storage casks needed by three to four every 5 years.

Summary

In summary, the solid radioactive waste burial volume is estimated to increase by approximately 10 percent, the volume of liquid radioactive releases would not be expected to increase, and the volume of gaseous radioactive effluents would be expected to increase up to 18 percent as a result of the proposed EPU. The level of radioactivity of the liquid effluent releases would also increase up to 18-percent. The proposed EPU is not expected to have a significant impact on the volume or activity of radioactive solid wastes at QCNPS.

Dose Impacts

The staff evaluated in-plant and offsite radiation as part of its review of environmental impacts of the proposed EPU.

In-Plant Radiation

Radiation levels and associated doses are controlled by the as low as reasonably achievable (ALARA) program, as required by 10 CFR Part 20. The QCNPS ALARA program manages exposure by minimizing the time personnel spend in radiation areas, maximizing the distance between personnel and radiation areas, and maximizing shielding to minimize radiation levels in routinely occupied plant areas and in the vicinity of plant equipment requiring attention. Exelon has determined that the current shielding designs are adequate for any dose increase that may occur due to the proposed EPU. Normal operation radiation levels would increase by no more than the percentage increase of the EPU. Many aspects of the plant were originally designed for higher-than-expected radiation sources. The increase in radiation level does not affect radiation zoning or shielding in the various areas of the plant because it is offset by conservatism in the original design, source terms assumptions, and analytical techniques. The licensee states that no new dose reduction programs would be implemented and the ALARA program would continue in its current form.

A potential source of increased occupational radiation is the projected increase in moisture carryover from the reactor vessel steam dryer/separator to the main steam lines. To reduce moisture content under the EPU conditions, modifications to the steam dryer/separator would be required. The modifications are expected to result in a negligible increase in occupational exposure.

On the basis of the above information, the staff concludes that the occupational (in-plant) dose for QCNPS following the proposed EPU would be bounded by the dose estimates in the FES.

Offsite Dose

The slight increase in normal operational gaseous activity levels under the EPU would not affect the large margin to the offsite dose limits established by 10 CFR part 20. Offsite dose from radioactive effluents are reported in the Annual Radiological Environmental Operating Reports. For the period from 1995 to 1999, the average annual whole body dose was 5.23E–4 millirem and the average annual dose to the critical organ was 8.17E–4 millirem. The highest percentage of 10 CFR part 50, Appendix I, regulatory limits for maximum dose resulting from liquid releases to an adult for the 5 year period occurred in 1998 and was 0.005 percent of the critical organ dose limit. For the 1995–1999 period, the average dose was 0.003 percent of the 10 CFR part 50, Appendix I, regulatory limits. No significant change in the volume of water treated and released is expected. The offsite dose from liquid effluents is projected to increase proportionally with the EPU due to an increase in the concentration of fission products and activation products in the reactor coolant. The licensee states that offsite dose would remain below the 10 CFR 50, Appendix I, regulatory limits.

Dose to individuals from gaseous releases are also reported in the Annual Radiological Environmental Report. The average annual total body dose during the period of 1995 to 1999 was 7.08E–4 millirem and the average annual dose to the critical organ was 3.9E–2 millirem. The highest percentage of 10 CFR part 50, Appendix I, regulatory limits for maximum dose resulting from airborne releases to an adult during the period of 1995 to 1999 occurred in 1997 and was 0.23 percent of the critical

organ dose limit. From the period of 1995 to 1999, the average dose was 0.16 percent of the Appendix I regulatory limits. Conservatively assuming a non-negligible amount of fuel leakage due to defects, gaseous effluents will increase proportionally to the EPU. However, offsite dose will remain well below 10 CFR part 50, Appendix I, regulatory limits.

The calculated offsite dose resulting from direct radiation due to radiation levels in plant components, such as sky shine, will increase up to 18 percent because the Offsite Dose Calculation Manual conservatively adjusts offsite dose to power generation level. Because sky shine is the dominant contributor to total offsite dose, the calculated total offsite dose, based on calculations from the Offsite Dose Calculation Manual, will increase up to 18 percent. Actual offsite dose from sky shine is not expected to increase significantly because the decreased transit time is expected to result in a minimal change in concentration through reduced decay time and because expected activity concentration in the steam will remain constant due to the dilution effect of a 19 percent increase in steaming rate. The expected dose at the EPU conditions would remain below the limits of 10 CFR part 50, Appendix I, 10 CFR part 20, and 40 CFR part 190 standards.

The EPU would not create new or different sources of an offsite dose from QCNPS operation, and radiation levels under the proposed EPU conditions would be within the regulatory limits. The staff concludes that the estimated offsite doses under the EPU conditions would meet the design objectives specified by 10 CFR part 50, Appendix I, and be within the limits of 10 CFR part 20.

Accident Analysis Impacts

The staff reviewed the assumptions, inputs, and methods used by Exelon to assess the radiological impacts of the proposed EPU at QCNPS. In doing this review, the staff relied upon information placed on the docket by Exelon, staff experience in doing similar reviews, and the staff-accepted licensing topical reports NEDC–32424P-A (Proprietary), ''Generic Guidelines for General Electric Boiling Water Reactor (BWR) Extended EPU,'' February 1999 (known as ELTR1), and NEDC–32523P-A (Proprietary), ''Generic Evaluation of General Electric Boiling Water Reactor Extended EPU,'' February 2000 (known as ELTR2). The staff finds that Exelon used analysis methods and assumptions consistent with the conservative guidance of ELTR1 and ELTR2. The staff compared the doses estimated by Exelon to the applicable criteria. The staff finds, with reasonable assurance, that the licensee's estimates of the exclusion area boundary (EAB), low-population zone (LPZ), and control room doses will continue to comply with 10 CFR part 100 and 10 CFR part 50, Appendix A, GDC–19, as clarified in NUREG–0800, Sections 6.4 and 15. Therefore, QCNPS operation at the proposed EPU rated thermal power is acceptable with regard to the radiological consequences of postulated design basis accidents.

Fuel Cycle and Transportation Impacts

The environmental impact of the uranium fuel cycle has been generically evaluated by the staff for a 1000 MWe reference reactor and is described in Table S–3 of 10 CFR 51.51. The QCNPS reactors are proposed to operate at 912 MWe after the implementation of the EPU and Table S–3 reasonably bounds the environmental impacts of the uranium fuel cycle for each QCNPS reactor. The radiological effects presented in Table S–3 are small and would not be expected to change due to the implementation of the EPU.

The environmental impacts of the transportation of nuclear fuel and wastes are described by Table S–4 of 10 CFR 51.52. The table lists heat and weight per irradiated fuel cask in transit, traffic density, and individual and cumulative dose to workers and the general population under normal circumstances. The regulations require that environmental reports contain either (a) a statement that the reactor meets specified criteria, in which case its environmental effects would be bounded by Table S–4; or (b) further analysis of the environmental effects of transportation of fuel and waste to and from the reactor site.

An NRC assessment (53 FR 30355, dated August 11, 1988, as corrected by 53 FR 32322, dated August 24, 1988) evaluated the applicability of Tables S–3 and S–4 to higher burnup cycles and concluded that there would be no significant change in environmental impacts for fuel cycles with uranium enrichments up to 5 weight percent uranium-235 and burnups less than 60,000 megawatt-day per metric ton of uranium (MWd/MTU) from the parameters evaluated in Tables S–3 and S–4. Because the fuel enrichment for the EPU would not exceed 5 weight percent uranium-235 and the rod average discharge exposure would not exceed 60,000 MWd/MTU, the environmental impacts of the proposed EPU at QCNPS would remain bounded by these conclusions and would not be significant.

Summary

The proposed EPU would not significantly increase the probability or consequences of accidents, would not introduce new radiological release pathways, would not result in a significant increase in occupational or public radiation exposures, and would not result in significant additional fuel cycle environmental impacts. Accordingly, the Commission concludes that there are no significant radiological environmental impacts associated with the proposed action. Table 2 summarizes the radiological environmental impacts of the EPU at QCNPS.

TABLE 2.—SUMMARY OF RADIOLOGICAL ENVIRONMENTAL IMPACTS OF THE EPU AT QCNPS

Impacts	Impacts of the EPU at QCNPS
Radiological Waste Stream Impacts	The gaseous radioactive release volume would increase proportionally with the power increase. The liquid radioactive release volume is not expected to increase; however, activity levels would increase proportionally with the power increase. Solid radioactive waste will increase approximately 8 percent. Releases would be within regulatory limits.
Dose Impacts	In-plant radiation levels would increase by 18 percent and dose would be maintained ALARA. Offsite dose from liquid and gaseous effluents may increase up to 18 percent. Calculated dose from sky shine will increase up to 18 percent. In-plant and offsite dose would remain within the regulatory limits.
Accident Analysis Impacts	No significant increase in probability or consequences of accident.

TABLE 2.—SUMMARY OF RADIOLOGICAL ENVIRONMENTAL IMPACTS OF THE EPU AT QCNPS—Continued

Impacts	Impacts of the EPU at QCNPS
Fuel Cycle and Transportation Impacts	No significant increase. Impacts would remain with the conclusions of Table S–3 and S–4 of 10 CFR Part 51.

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 in the QCNPS vicinity; however, other generating facilities using nuclear or other alternative energy sources, such as coal or gas, would be built in order to supply generating capacity and power needs. Construction and operation of a coal plant would create impacts to air quality, land use and waste management. Construction and operation of a gas plant would also impact air quality and land use. Implementation of the EPU would have less of an impact on the environment than the construction and operation of a new generating facility and does not involve new environmental impacts that are significantly different from those presented in the FES. Therefore, the staff concludes that increasing QCNPS capacity is an acceptable option for increasing power supply. Furthermore, unlike fossil fuel plants, QCNPS does not routinely emit sulfur dioxide, nitrogen oxides, carbon dioxide, or other atmospheric pollutants that contribute to greenhouse gases or acid rain.

Alternative Use of Resources

This action does not involve the use of any different resources than those previously considered in the QCNPS FES, dated 1972.

Agencies and Persons Consulted

In accordance with its stated policy, on November 9, 2001, prior to issuance of this environmental assessment, the staff consulted with the Illinois State official, Frank Niziolek, of the Illinois Department of Nuclear Safety, 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 application dated December 27, 2000, as supplemented by letters dated February 12, March 20, April 6 and 13, May 3, 18, and 29, June 5, 7, and 15, July 6 and 23, August 7, 8, 9, 13 (two letters), 14 (two letters), 29, and 31 (two letters), September 5, 19, 25, and 27 (two letters), October 17, November 2 (two letters), 16, and 30, and December 10, 2001. Documents may be examined and/or copied for a fee, at the NRC's Public Document Room, 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 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 Public Document Room (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 17th day of December 2001.

For the Nuclear Regulatory Commission

Anthony J. Mendiola,

Chief, Section 2, Project Directorate III, Division of Licensing Project Management, Office of Nuclear Reactor Regulation.

[FR Doc. 01–31331 Filed 12–19–01; 8:45 am]

BILLING CODE 7950–01–P

NUCLEAR REGULATORY COMMISSION

Advisory Committee on Reactor Safeguards Subcommittee Meeting on Thermal-Hydraulic Phenomena; Notice of Meeting

The ACRS Subcommittee on Thermal-Hydraulic Phenomena will hold a meeting on January 16–18, 2002, Room T–2B3, 11545 Rockville Pike, Rockville, Maryland.

Portions of the meeting may be closed to public attendance to discuss GE Nuclear Energy and Framatome ANP Richland proprietary information per 5 U.S.C. 552b(c)(4).

The agenda for the subject meeting shall be as follows:

Wednesday, January 16, 2002—1 p.m. until the conclusion of business

Thursday and Friday, January 17–18, 2002—8:30 a.m. until the conclusion of business

The Subcommittee will begin review of: (1) The GE Nuclear Energy Licensing Topical Report NEDC–33004P, ''Constant Pressure Power Uprate'', Revision 2, and (2) the Framatome ANP Richland S–RELAP5 realistic thermal-hydraulic code version and its application to large-break LOCA analyses. The purpose of this meeting is to gather information, analyze relevant issues and facts, and formulate proposed positions and actions, as appropriate, for deliberation by the full Committee.

Oral statements may be presented by members of the public with the concurrence of the Subcommittee Chairman. Written statements will be accepted and made available to the Committee. Electronic recordings will be permitted only during those portions of the meeting that are open to the public, and questions may be asked only by members of the Subcommittee, its consultants, and staff. Persons desiring to make oral statements should notify the cognizant ACRS staff engineer named below five days prior to the meeting, if possible, so that appropriate arrangements can be made.

During the initial portion of the meeting, the Subcommittee, along with any of its consultants who may be present, may exchange preliminary views regarding matters to be considered during the balance of the meeting.

The Subcommittee will then hear presentations by and hold discussions with representatives of GE Nuclear Energy, Framatome ANP Richland, the NRC staff, and other interested persons regarding this review.

Further information regarding topics to be discussed, the scheduling of sessions open to the public, whether the meeting has been canceled or rescheduled, and the Chairman's ruling on requests for the opportunity to present oral statements and the time allotted therefor, can be obtained by contacting the cognizant ACRS staff engineer, Mr. Paul A. Boehnert (telephone 301–415–8065) between 7:30 a.m. and 5:00 p.m. (EST). Persons planning to attend this meeting are

urged to contact the above named individual one or two working days prior to the meeting to be advised of any potential changes to the agenda, etc., that may have occurred.

Dated: December 14, 2001.

Sher Bahadur,

Associate Director for Technical Support.

[FR Doc. 01–31329 Filed 12–19–01; 8:45 am]

BILLING CODE 7590–01–P

U.S. COMMISSION ON OCEAN POLICY

Public Meeting

AGENCY: U.S. Commission on Ocean Policy.

ACTION: Notice.

SUMMARY: The U.S. Commission on Ocean Policy will hold its first regional meeting, the Commission's third public meeting, to hear and discuss issues of concern to the Southeastern Region of the United States, covering the coastal area from Delaware to Georgia.

DATES: Meetings will be held Tuesday and Wednesday, January 15 and 16, 2002 from 9 a.m. to 5 p.m., both days.

ADDRESSES: The meeting location is the Physician's Auditorium, College of Charleston, 66 George Street, Charleston, SC, 29424.

FOR FURTHER INFORMATION CONTACT: Mr. Terry Schaff, U.S. Commission on Ocean Policy, 1120 20th Street, NW, Washington, DC, 20036, 202–418–3442, *tschaff@nsf.gov.*

SUPPLEMENTARY INFORMATION: This meeting is being held pursuant to requirements under the Oceans Act of 2000 (Public Law 106–256, section 3(e)(1)(E)). The agenda will include presentations by invited speakers representing local and regional government agencies and non-governmental organizations, comments from the public and any required administrative discussions and executive sessions. Invited speakers and members of the public are requested to submit their statements for the record electronically by January 10, 2002 to the meeting Point of Contact. Additional meeting information, including a draft agenda, will be posted as available on the Commission's web site at *http://www.oceancommission.gov.*

Dated: December 14, 2001.

Admiral James D. Watkins USN (ret.)

Chairman, U.S. Commission on Ocean Policy.

[FR Doc. 01–31325 Filed 12–19–01; 8:45 am]

BILLING CODE 6820–WM–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–45154; File No. SR–EMCC–2001–04]

Self-Regulatory Organizations; Emerging Markets Clearing Corporation; Notice of Filing of Proposed Rule Change Relating to Liability of Affiliated Entities

December 14, 2001.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934,[1] notice is hereby given that on October 29, 2001, the Emerging Markets Clearing Corporation (''EMCC'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by EMCC. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

EMCC proposes to amend its rules in order to limit its liability with respect to affiliated entities. Specifically, EMCC proposes to add a section to its rules that states that, except as otherwise provided by written agreement between EMCC and such other entity, (1) EMCC shall not be liable for any obligations of such other entity and its clearing fund and other assets shall not be available to such other entity and (2) such other entity shall not be liable for any obligations of EMCC and any assets of such other entity shall not be available to EMCC.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, EMCC included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of the statements may be examined at the places specified in Item IV below. EMCC has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.[2]

[1] 15 U.S.C. 78s(b)(1).

[2] The Commission has modified the text of the summaries prepared by EMCC.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

The proposed rule change addresses liability issues that may arise after the completion of the integration of EMCC,[3] the Government Securities Clearing Corporation (''GSCC''), and the MBS Clearing Corporation (''MBSCC'')[4] with The Depository Trust and Clearing Corporation (''DTCC''). For purposes of this notice, DTCC, GSCC, MBSCC, EMCC, The Depository Trust Company (''DTC''), and National Securities Clearing Corporation (''NSCC'') are collectively referred to as the ''Synergy Companies.''[5]

An important aspect of the integration plan is to insulate EMCC, its members, and its clearing fund from the risks and obligations that may arise from the activities of the other Synergy Companies.[6] The proposed rule change will specifically add a new EMCC Rule 9 Section 1 rules that states that EMCC will not be liable for the obligations of any other entity or member of any other entity and that such other entity or member of such other entity shall not be liable for any obligations of EMCC.

EMCC believes that the proposed rule change is consistent with the

[3] Pursuant to a separate plan for the integration of EMCC with DTCC, it is contemplated that EMCC will become an operating subsidiary of DTCC at the same time that GSCC and MBSCC become operating subsidiaries of DTCC. However, the transaction involving GSCC and MBSCC is not contingent on the transaction involving EMCC and vice versa. Securities Exchange Act Release No. 44987 (Oct. 25, 2001), 66 FR 55218 (Nov. 1, 2001). NSCC and DTC are currently wholly-owned subsidiaries of DTCC.

[4] Because of the current functional integration of operations of GSCC and MBSCC, the integration of GSCC with DTCC is contingent upon the successful integration of MBSCC with DTCC and vice versa. Securities Exchange Act Release Nos. 44989 (Oct. 25, 2001), 66 FR 55220 (Nov. 1, 2001) and 44988 (Oct. 25, 2001), 66 FR 55222 (Nov. 1, 2001).

[5] After the completion of the integration, EMCC, MBSCC, and GSCC shall each be subsidiaries of DTCC, and a single group of individuals shall serve as directors of each of the Synergy Companies. Following the integration, EMCC will continue to exist as a separate registered clearing agency. EMCC's retained earnings existing at the time of (or as of the end of the last full calendar month preceding) the integration of EMCC with DTCC will, as a matter of DTCC policy, be dedicated to supporting the business of EMCC. EMCC will be managed and operated so as to be appropriately capitalized for its activities as a clearing agency.

[6] Similarly, the integration plan attempts to insulate GSSC and MBSCC from the risks of EMCC's business. Securities Exchange Act Release Nos. 45155 (Dec. 14, 2001) (SR–GSCC–2001–14); 45153 (Dec. 14, 2001) (SR–MBSCC–2001–04). *See also* Securities Exchange Act Release Nos. 42013 (Oct. 15, 1999), 64 FR 57168 (Oct. 22, 1999) (SR–DTC–99–11) and 42014 (Oct. 15, 1999), 64 FR 57171 (Oct. 22, 1999) (SR–NSCC–99–07) (DTC an NSCC have adopted rules similar to this proposed rule as part of their 1999 integration with DTCC.)

requirements of section 17A of the Act[7] and the rules and regulations thereunder applicable to EMCC because is promotes the safeguarding of securities and funds in EMCC's custody or control or for which it is responsible.

B. Self-Regulatory Organization's Statement on Burden on Competition

EMCC does not believe that the proposed rule change will have any impact or impose any burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others

No written comments relating to the proposed rule change have been solicited or received.

III. Date of Effectiveness of the Proposed Rule change and Timing for Commission Action

Within thirty-five days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to ninety days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve such proposed rule change or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statement with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule the age 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 450 Fifth Street, NW., Washington, DC 20549. Copies of such filing will also be available for inspection and copying at EMCC's principal office. All submissions should refer to File No. SR–EMCC–2001–04 and should be submitted by January 4, 2002.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[8]

Jonathan G. Katz,

Secretary.

[FR Doc. 01–31361 Filed 12–19–01; 8:45 am]

BILLING CODE 8010–01–M

[7] 15 U.S.C. 78q–1.

[8] 17 CFR 200.30–3(a)(12)

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–45155; File No. SR–GSCC–2001–14]

Self-Regulatory Organizations; Government Securities Clearing Corporation; Notice of Filing of Proposed Rule Change Relating to Liability of Affiliated Entities

December 14, 2001.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934,[1] notice is hereby given that on October 11, 2001, the Government Securities Clearing Corporation (''GSCC'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by GSCC. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

GSCC proposes to amend its rules in order to limit its liability with respect to affiliated entities. Specifically, GSCC proposes to add a section to its rules that states that, except as otherwise provided by written agreement between GSCC and such other entity, (1) GSCC shall not be liable for any obligations of such other entity and its clearing fund and other assets shall not be available to such other entity and (2) such other entity shall not be liable for any obligations of GSCC and any assets of such other entity shall not be available to GSCC.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, GSCC included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of the statements may be examined at the places specified in Item IV below. GSCC has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.[2]

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

The proposed rule change addresses liability issues that may arise after the completion of the integration of GSCC, MBS Clearing Corporation (''MBSCC''),[3] and Emerging Markets Clearing Corporation (''EMCC'')[4] with The Depository Trust and Clearing Corporation (''DTCC''). For purposes of this notice, DTCC, GSCC, MBSCC, EMCC, The Depository Trust Company (''DTC''), and National Securities Clearing Corporation (''NSCC'')[5] are collectively referred to as the ''Synergy Companies.''[6]

An important aspect of the integration plan is to insulate GSCC, its members, and its clearing fund from the risks and obligations that may arise from the activities of the other Synergy Companies.[7] The proposed rule change will specifically add a section 2 to Rule

[1] 15 U.S.C. 78s(b)(1).

[2] The Commission has modified the text of the summaries prepared by GSCC.

[3] Because of the current functional integration of operations of GSCC and MBSCC, the integration of GSCC with DTCC is contingent upon the successful integration of MBSCC with DTCC and vice versa. Securities Exchange Act Release Nos. 44989 (Oct. 25, 2001), 66 FR 55220 (Nov. 1, 2001) and 44988 (Oct. 25, 2001), 66 FR 55222 (Nov. 1, 2001).

[4] Pursuant to a separate plan for the integration of EMCC with DTCC, it is contemplated that EMCC will become an operating subsidiary of DTCC at the same time that GSCC and MBSCC become operating subsidiaries of DTCC. However, the transaction involving GSCC and MBSCC is not contingent on the transaction involving EMCC and vice versa.

[5] DTC and NSCC are wholly-owned subsidiaries of DTCC.

[6] After the completion of the integration, GSCC, MBSCC, and EMCC shall each be a wholly-owned subsidiary of DTCC, and a single group of individuals shall serve as directors of each of the Synergy Companies. Following the integration, GSCC will continue to exist as a separate registered clearing agency. The retained earnings of GSCC existing at the time of (or as of the end of the last full calendar month preceding) the integration of GSCC with DTCC will, as a matter of DTCC policy, be dedicated to supporting the business of GSCC. GSCC will be managed and operated so as to be appropriately capitalized for its activities as a clearing agency.

[7] Similarly, the integration plan attempts to insulate MBSCC and EMCC from the risks of GSCC's business. Securities Exchange Act Release Nos. 45153 (Dec. 14, 2001) (SR–MBSCC–2001–04); 45154 (Dec. 14, 2001) (SR–EMCC–2001–04). *See also* Securities Exchange Act Release Nos. 42013 (Oct. 15, 1999), 64 FR 57168 (Oct. 22, 1999) (SR–DTC–99–11) and 42014 (Oct. 15, 1999), 64 FR 57171 (Oct. 22, 1999) (SR–NSCC–99–07) (DTC and NSCC have adopted rules similar to this proposed rule as part of their 1999 integration with DTCC.)

39 that states that GSCC will not be liable for the obligations of any other entity or member of any other entity and that such other entity or member of such other entity shall not be liable for any obligations of GSCC.

GSCC believes that the proposed rule change is consistent with the requirements of section 17A of the Act [8] and the rules and regulations thereunder applicable to GSCC because is promotes the safeguarding of securities and funds in GSCC's custody or control or for which it is responsible.

B. Self-Regulatory Organization's Statement on Burden on Competition

GSCC does not believe that the proposed rule change will have any impact or impose any burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments relating to the proposed rule change have been solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within the thirty-five days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to ninety days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve such proposed rule change or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room, 450 Fifth Street, NW., Washington, DC 20549. Copies of such filing will also be available for inspection and copying at GSCC's principal office. All submissions should refer to File No. SR–GSCC–2001–14 and should be submitted by January 4, 2002.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[9]

Jonathan G. Katz,

Secretary.

[FR Doc. 01–31359 Filed 12–19–01; 8:45 am]

BILLING CODE 8010–01–M

[8] 15 U.S.C. 78q–1.

[9] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–45153; File No. SR–MBSCC–2001–04]

Self-Regulatory Organizations; MBS Clearing Corporation; Notice of Filing of Proposed Rule Change Relating to Liability of Affiliated Entities

December 14, 2001.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934,[1] notice is hereby given that on October 11, 2001, the MBS Securities Clearing Corporation (''MBSCC'') 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 MBSCC. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

MBSCC proposes to amend its rules in order to limit its liability with respect to affiliated entities. Specifically, MBSCC proposes to add a section to its rules that states that, except as otherwise provided by written agreement between MBSCC and such other entities, (1) MBSCC shall not be liable for any obligations of such other entity and its clearing fund and other assets shall not be available to such other entity and (2) such other entity shall not be liable for any obligations of MBSCC and any assets of such other entity shall not be available to MBSCC.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, MBSCC included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of the statements may be examined at the places specified in Item IV below. MBSCC has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.[2]

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

The proposed rule change addresses liability issues that may arise after the completion of the integration of MBSCC, the Government Securities Clearing Corporation (''GSCC''),[3] and the Emerging Markets Clearing Corporation (''EMCC'') [4] with The Depository Trust and Clearing Corporation (''DTCC''). For purposes of this notice, DTCC, GSCC, MBSCC, EMCC, The Depository Trust Company (''DTC''), and National Securities Clearing Corporation (''NSCC'') [5] are collectively referred to as the ''Synergy Companies.'' [6]

[1] 15 U.S.C. 78s(b)(1).

[2] The Commission has modified the text of the summaries prepared by MBSCC.

[3] Because of the current functional integration of operations of GSCC and MBSCC, the integration of GSCC with DTCC is contingent upon the successful integration of MBSCC with DTCC and vice versa. Securities Exchange Act Release Nos. 44989 (Oct. 25, 2001), 66 FR 55220 (Nov. 1, 2001); and 44988 (Oct. 25, 2001), 66 FR 55222 (Nov. 1, 2001).

[4] Pursuant to a separate plan for the integration of EMCC with DTCC, it is contemplated that EMCC will become an operating subsidiary of DTCDC at the same time that GSCC and MBSCC become operating subsidiaries of DTCC. However, the transaction involving GSCC and MBSCC is not contingent on the transaction involving EMCC and vice versa.

[5] DTC and NSCC are wholly-owned subsidiaries of DTCC.

[6] After the completion of the integration, GSCC, MBSCC, and EMCC shall each be a wholly-owned subsidiary of DTCC, and a single group of individuals shall serve as directors of each of the Synergy Companies. Following the integration, MBSCC will continue to exist as a separate registered clearing agency. The retained earnings of MBSCC existing at the time of (or as of the end of the last full calendar month preceding) the integration of MBSCC with DTCC will, as a matter of DTCC policy, be dedicated to supporting the business of MBSCC. MBSCC will be managed and operated so as to be appropriately capitalized for its activities as a clearing agency.

An important aspect of the integration plan is to insulate MBSCC, its participants, its limited purpose participants, its Electronic Profile Network users, and its participants fund from the risks and obligations that may arise from the activities of the other Synergy Companies.[7] The proposed rule change will specifically add a new Rule 15 to Section V of MBSCC's rules that states that MBSCC will not be liable for the obligations of any other entity or member of any other entity and that such other entity or member of such other entity shall not be liable for any obligations of MBSCC.

MBSCC believes that the proposed rule change is consistent with the requirements of section 17A of the Act[8] and the rules and regulations thereunder applicable to MBSCC because it promotes the safeguarding of securities and funds in MBSCC's custody or control or for which it is responsible.

B. Self-Regulatory Organization's Statement on Burden on Competition

MBSCC does not believe that the proposed rule change will have any impact or impose any burden on competition.,

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments relating to the proposed rule change have been solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within thirty-five days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to ninety days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve such proposed rule change or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room, 450 Fifth Street, NW., Washington, DC 20549. Copies of such filing will also be available for inspection and copying at MBSCC's principal office. All submissions should refer to File No. SR–MBSCC–2001–04 and should be submitted by January 4, 2002.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[9]

Jonathan G. Katz,

Secretary.

[FR Doc. 01–31360 Filed 12–19–01; 8:45 am]

BILLING CODE 8010–01–M

[7] Similarly, the integration plan attempts to insulate GSSC and EMCC from the risks of MBSCC's business. Securities Exchange Act Release Nos. 45155 (Dec. 14, 2001) (SR–GSCC–2001–14); 45154 (Dec. 14, 2001) (SR–EMCC–2001–04). *See also* Securities Exchange Act Release Nos. 42013 (Oct. 15, 1999), 64 FR 57168 (Oct. 22, 1999)(SR–DTC–99–11) and 42014 (Oct. 15, 1999), 64 FR 57171 (Oct. 22, 1999) (SR–NSCC–99–07) (DTC and NSCC have adopted rules similar to this proposed rule as part of their 1999 integration with DTCC.)

[8] 15 U.S.C. 78q–1.

[9] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–45152; File No. SR–OCC–2001–16]

Self-Regulatory Organizations; The Options Clearing Corporation; Notice of Filing of a Proposed Rule Change Relating to Clearing Certain Commodity Futures and Options Thereon

December 12, 2001.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] notice is hereby given that on October 24, 2001, The Options Clearing Corporation (''OCC'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II, and III below, which items have been prepared primarily by OCC. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The proposed rule change amends OCC's by-laws and rules to provide for the clearance and settlement of transactions in commodity futures on broad-based stock indexes and options on such futures, both of which are subject to the exclusive jurisdiction of the Commodity Futures Trading Commission (''CFTC'').

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, OCC included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. OCC has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.[2]

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Introduction

The proposed rules would provide for the clearance and settlement of futures on broad-based stock indexes and options on such futures under the same basic rules and procedures currently applicable to the clearance and settlement of other OCC-cleared contracts, including options and security futures. Because such contracts are within the exclusive jurisdiction of the CFTC, OCC submitted to the CFTC on October 9, 2001, an application for registration as a derivatives clearing organization (''DCO'') under section 5b(c) of the Commodity Exchange Act (''CEA'') and part 39 of the CFTC's regulations. The CFTC granted OCC's application for registration on December 10, 2001.

Commodity futures would be cleared pursuant to the same basic OCC rules and procedures recently approved by the Commission for the clearance of

[1] 15 U.S.C. 78s(b)(1).

[2] The Commission has modified parts of these statements.

security futures.[3] There is not significant difference between the mechanics of the clearance and settlement of a future on a narrow-based stock index (a security future) and a future on a broad-based stock index. Accordingly, many of the changes proposed in this filing merely expand the provisions applicable to security futures to include commodity futures. Likewise, futures options are substantially similar in most respects to other options cleared by OCC. Thus, for example, procedures governing premium payments and exercise are the same. Accordingly, OCC is proposing to permit futures options to be governed by many of the same by-laws and rules applicable to other options. Where special provisions for futures options are needed, they are contained primarily in Article XII of the by-laws and Chapter XIII of the Rules, which would be amended to apply to commodity futures and futures options as well as security futures.

2. New and Amended Definitions

OCC proposes to define several additional terms applicable to commodity futures and futures options and to include those terms in Article I of the by-laws because they are used throughout the by-laws and rules. New futures terms would be adopted and defined to correspond as closely as possible to the terminology used in the existing futures markets while also being consistent with terminology in OCC's rules. Various existing security futures definitions are proposed to be amended to apply to commodity futures as well as security futures. The new definitions are mostly self-explanatory, but the following are a few terms that are of particular significance.

The term ''commodity future'' would be added to distinguish these produces from security futures and would be defined as a futures contract within the exclusive jurisdiction of the CFTC and traded on a futures market. The term ''future'' would be added to encompass both security futures and commodity futures where, as is most often the case, no distinction is needed. A ''futures market'' would be defined to mean a contract market registered as such under the CEA. OCC does not currently propose to clear commodity futures products traded on markets other than registered contract markets. The definition of an ''option'' would be amended to include a ''futures option'' which would be defined as an option traded on a futures market to buy or sell a commodity futures contract. The term ''cleared contract'' would be added to embrace all contracts cleared by OCC including securities options, security futures, and other cleared securities subject to the jurisdiction of the Commission as well as commodity futures and futures options that are not securities.[4] Proposed changes of the definitions of ''commencement time'' and ''series marker'' are discussed below.

3. Clearing Member Qualifications

Section 1 of Article V of OCC's by-laws is proposed to be amended to permit futures commission merchants (''FCMs'') that are not notice-registered as broker-dealers under section 15(b)(11)(A) of the Act to become clearing members. Interpretation and Policy .06 under section 1 was added in SR–OCC–2001–07 to provide that OCC may give expedited review and may waive certain non-financial criteria where appropriate in order to admit affiliates of existing clearing members for the purpose of clearing security futures.[5] OCC proposes in this rule change to extend the same consideration to such affiliates that become clearing members for the purpose of clearing commodity futures and futures options. As stated in SR–OCC–2001–07, OCC believes that it is appropriate to give special consideration to such affiliates to the extent that their affiliation with an existing clearing member provides access to competent and experienced personnel able to assist the affiliate, if necessary, in meeting OCC's operational requirements.

OCC's financial requirements would remain substantially the same for all clearing members whether regulated primarily or exclusively as broker-dealers or as FCMs. In the case of a clearing member regulated primarily or exclusively as an FCM, OCC would permit such FCM to compute its net capital in accordance with the CFTC's regulations. OCC Rules 301(c), 303(c), and 307 are proposed to be modified to provide appropriate references to CFTC regulations governing FCM financial requirements in order, as nearly as practicable, to provide requirements that are parallel to those applicable to clearing members regulated primarily as broker-dealers.

4. Accounts

Article VI, section 3 is proposed to be amended to clarify that commodity futures and futures options positions of futures customers may not be carried in the firm account. Additionally, Interpretation and Policy .01 would be added to require a clearing member carrying a customer account pursuant to Article VI, section 3(e) (*i.e.*, an account holding positions of securities customers) to be fully registered as a broker-dealer and to require a clearing member carrying a segregated futures account under Article VI, section 3(f) (*i.e.*, an account holding positions of futures customers) to be fully registered as an FCM. Whether a person is a futures customer or a securities customer would be determined by (i) agreement between the intermediary carrying the customer's account and the customer, subject to the provisions of the Act, the CEA, and regulations under either or both of those statutes as applicable to the particular intermediary (broker-dealer, FCM, or dual registrant), (ii) the types of cleared contracts involved (securities, security futures, or commodity futures products), and (iii) the identity of the person whose account is carried (including the nature of any affiliation such person has with the intermediary). Article VI, Section 3(a) would be modified to provide that positions in commodity futures and futures options of persons who are not futures customers (and whose accounts are therefore proprietary within the meaning of CFTC Regulation 1.3(y)) may be carried in the firm account regardless of that person's status under the Commission's hypothecation rules or Rule 15c3–3.

5. Amendments to Article XII of the By-Laws

Article XII sets out the basic provisions for security futures, including both physically-settled and cash-settled security futures. The article is proposed to be amended to apply to commodity futures and futures options as well. The major change would be the addition of subparagraph (b) to section 2, which would provide for the settlement of exercised futures options. When a futures option is exercised, OCC would (i) in the case of a call, open in the account from which the call was exercised the number of long futures

[3] See Securities Exchange Act Release Nos. 44434, (June 15, 2001), 66 FR 33283 (File No. SR–OCC–2001–05) and 44727, (August 20, 2001), 66 FR 45351 (File No. SR–OCC–2001–07).

[4] Although the present rule filing provides only for the clearing of futures on broad-based indexes and options thereon, the terms commodity future and futures option are defined more broadly to facilitate the clearance by OCC of transactions in commodity futures and futures options on other underlying interests in the event that OCC undertakes to clear additional CFTC-regulated products in the future. Of course, OCC would need to further amend its rules to set forth the particular terms of any such additional products and would need to file a proposed rule change pursuant to Section 19(b) to do so.

[5] Securities Exchange Act Release No. 44727, (August 20, 2001), 66 FR 45351 (File No. SR–OCC–2001–07).

contracts equal to the unit of trading for the option and (ii) in the case of a put, open in the account from which the put was exercised the number of short futures contracts and open in the account to which the exercise was assigned the number of long futures contracts equal to the unit of trading for the contract. Futures contracts that are opened in settlement of the exercise of a futures option contract would be deemed to have been opened on the day of exercise, and the exercise price for the futures option would be the contract price for the futures contract. After the futures contract is opened, the buyer and seller would have the same rights and obligations as the holders of other futures contracts.

6. Adjustments

As with security futures, OCC will determine adjustments to commodity futures that are required to reflect certain events affecting the underlying index. Futures on broad-based stock indexes would be subject to the same adjustment provisions in Article XII, sections 3 and 4 of the by-laws that are applicable to narrow-based stock index futures. These adjustment provisions are patterned after similar provisions in section 3 of Article XVII applicable to index options. Paragraph (b) of Article XII, section 3 would be modified in this filing, and a new paragraph (c) would be added to update the provisions to conform to changes in the adjustment provisions applicable to index options that were approved by the Commission earlier this year.[6] New paragraph (d) of Article XII, section 3 would be added in order to provide for appropriate adjustments to outstanding futures options when the underlying index future is adjusted. In that case, the futures option would be adjusted to provide for delivery of the adjusted future. Where appropriate, the exercise prices and the number of outstanding options might be adjusted. Section 6 of Article XII, which provides that the final settlement price for any security futures contract at maturity is determined by a method approved by the market listing the future would be made applicable to both security futures and commodity futures. Interpretation and Policy .01 would be added to make clear that any such method of determining final settlement prices must be consisted with applicable regulations. This interpretation is proposed in light of the rules proposed by the Commission and the CFTC,[7] which propose to requires that final settlement prices for security futures ordinarily must be based on opening prices and imposes other limits not specifically set forth in Article XII, section 6 of OCC's by-laws as approved by the Commission in SR–OCC–2001–07.

7. Trade Reporting and Matching

Trade reporting and matching would occur for commodity futures in the same manner as for security futures and for futures options in generally the same manner as for other options. As in the case of security futures, however, OCC would not require transactions in commodity futures and futures options to be identified as opening or closing. If a market elected to submit trade information without identification as to whether the transaction is opening or closing, OCC would treat all transactions as opening transactions. Each clearing member would then submit gross position adjustment information at the end of the day to reduce its positions to reflect the actual open interest in accounts carried by the clearing member. These procedures are consistent with current practice on many futures exchanges. As in the case of security futures, commodity futures and futures options might include, if a futures market so elected, a series marker to prevent contracts traded on that market from being treated as fungible with otherwise identical futures contracts traded on other markets cleared by OCC. The definition of a series marker in Article I of the by-laws would be amended to make clear that a series marker can be shared by mutual consent among more than one exchange or market. As a result, contracts might be fungible when traded on any market within the group but not fungible with contracts traded on markets outside the group. This is intended as a clarification of, rather than a change in, the existing rule.

Rule 401 would also be amended to provide that block trades and other non-competitively executed transactions, in addition to exchange-for-physicals, would be identified in the matched trade report. These provisions would apply to futures options as well as commodity futures and security futures. As defined in Article I, section 1, the commencement time for such trades would not occur until OCC has received the premium or initial variation payment on the transaction. This provision would allow OCC to reject the trade if the clearing member fails to make such payment. These trades are proposed to be treated differently from other trades because when a transaction is effected at a price other than the current market price, OCC's loss may be greater in the event of a clearing member default. In addition, the regulations of the CFTC require the identification of non-competitive trades.[8]

8. Margins

OCC Rule 602, which is applicable to narrow-based index futures, index options, and other non-equity options, would be amended to include commodity futures and futures options in the calculation of the margin required for each account of a clearing member. Margin would be calculated for these new products in exactly the same way as for other futures and options subject to OCC rule 602.

9. Clearing Fund Contributions

Broad-based index futures and futures options thereon would be covered by the same clearing fund that stands behind all options and security futures cleared by OCC. Clearing activity in commodity futures and futures options would be taken into consideration in calculating the amount of a clearing member's contribution in the same way that activity in other contracts is considered. OCC rule 1001 would provide that affiliates of existing clearing members that become clearing members of OCC solely for the purpose of clearing transactions in broad-based index futures of futures options need not put up an additional $150,000 minimum clearing fund contribution. This would merely expand the existing provision applicable to clearing member affiliates that become clearing members for purposes of clearing security futures.

10. Discipline

OCC rule 1202, regarding appeal from OCC-imposed discipline, would be amended to provide that if an OCC disciplinary proceeding relates solely to the clearing member's activities as an FCM, OCC must notify the clearing member in writing that it may have a right to appeal under section 8c of the CEA. The intent of this proposed rule change would be to subject clearing member disciplinary proceedings that relate to violations of customer segregated funds rules and other violations of the CEA or regulations thereunder to CFTC review.

[6] See Securities Exchange Act Release No. 44184, (April 16, 2001), 66 FR 20342 (File No. SR–OCC–99–12), approving changes filed in SR–OCC–99–12.

[7] Securities Exchange Act Release No. 44743, (August 24, 2001), 66 FR 45904 (File No. S7–15–01).

[8] 17 CFR 1.38(b).

11. Amendments to Chapter XIII

OCC proposed and the Commission approved a new Chapter XIII of its rules to govern security futures.[9] With the current filing, OCC is simply proposing to amend Chapter XIII to apply to commodity futures and futures options as well.

The proposed rule change is consistent with the purposes and requirements of section 17A of the Act because it fosters cooperation and coordination with persons engaged in the clearance and settlement of securities transactions, removes impediments to and perfects the mechanism of a national system for the prompt and accurate clearance and settlement of securities transactions, and, in general, protects investors and the public interest. By clearing commodity futures and futures options under the same basic rules applicable to SEC-regulated products, OCC believes that its commodity clearing activities will be consistent with the prompt and accurate settlement of securities transactions.

(B) Self-Regulatory Organization's Statement on Burden on Competition

OCC does not believe that the proposed rule change would impose any burden on competition.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments were not and are not intended to be solicited with respect to the proposed rule change, and none have been received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within thirty-five days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to ninety days of such date if it finds such longer period to be appropriate and publishes its reason for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(a) By order approve the proposed rule change or

(b) Institute proceedings to determine whether the proposed rule change should be disapproved.

VI. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street NW., Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC 20549. Copies of such filing will also be available for inspection and copying at the principal office of OCC. All submissions should refer to the File No. SR–OCC–2001–16 and should be submitted by January 4, 2002.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[10]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 01–31294 Filed 12–19–01; 8:45 am]

BILLING CODE 8010–01–M

[9] Securities Exchange Act Release No. 44727, (August 20, 2001), 66 FR 45351 (File No. SR–OCC–2001–07).

[10] 17 CFR 200.30–3(a)(12).

SMALL BUSINESS ADMINISTRATION

Reporting and Recordkeeping Requirements Under OMB Review

AGENCY: Small Business Administration.

ACTION: Notice of reporting requirements submitted for OMB review.

SUMMARY: Under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35), agencies are required to submit proposed reporting and recordkeeping requirements to OMB for review and approval, and to publish a notice in the **Federal Register** notifying the public that the agency has made such a submission.

DATES: Submit comments on or before January 22, 2002. If you intend to comment but cannot prepare comments promptly, please advise the OMB Reviewer and the Agency Clearance Officer before the deadline.

COPIES: Request for clearance (OMB 83–1), supporting statement, and other documents submitted to OMB for review may be obtained from the Agency Clearance Officer.

ADDRESSES: Address all comments concerning this notice to: Agency Clearance Officer, Jacqueline White, Small Business Administration, 409 3rd Street, SW., 5th Floor, Washington, DC 20416; and OMB Reviewer, Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Jacqueline White, Agency Clearance Officer, (202) 205–7044.

SUPPLEMENTARY INFORMATION:

Title: Settlement sheet.

No: 1050.

Frequency: On occasion.

Description of Respondents: SBA Borrower's to complete loan authorizations.

Responses: 39,988.

Annual Burden: 29,991.

Jacqueline White,

Chief, Administrative Information Branch.

[FR Doc. 01–31362 Filed 12–19–01; 8:45 am]

BILLING CODE 8025–01–P

OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

Determinations Under the African Growth and Opportunity Act

AGENCY: Office of the United States Trade Representative.

ACTION: Notice.

SUMMARY: The United States Trade Representative has determined that Zambia has adopted an effective visa system and related procedures to prevent unlawful transshipment and the use of counterfeit documents in connection with shipments of textile and apparel articles and has implemented and follows, or is making substantial progress toward implementing and following, the customs procedures required by the African Growth and Opportunity Act. Therefore, imports of eligible products from Zambia qualify for the textile and apparel benefits provided under the AGOA.

EFFECTIVE DATE: December 17, 2001.

FOR FURTHER INFORMATION CONTACT: Chris Moore, Director for African Affairs, Office of the United States Trade Representative, (202) 395–9514.

SUPPLEMENTARY INFORMATION: The African Growth and Opportunity Act (Title I of the Trade and Development Act of 2000, Pub. L. 106–200) (AGOA) provides preferential tariff treatment for imports of certain textile and apparel products of beneficiary sub-Saharan

African countries. The textile and apparel trade benefits under the AGOA are available to imports of eligible products from countries that the President designates as ''beneficiary sub-Saharan African countries,'' provided that these countries (1) have adopted an effective visa system and related procedures to prevent unlawful transshipment and the use of counterfeit documents, and (2) have implemented and follow, or are making substantial progress toward implementing and following, certain customs procedures that assist the Customs Service in verifying the origin of the products.

In Proclamation 7350 (Oct. 2, 2000), the President designated Zambia as a ''beneficiary sub-Saharan African country,'' Proclamation 7350 delegated to the United States Trade Representative (USTR) the authority to determine whether designated countries have met the two requirements described above. The President directed the USTR to announce any such determination in the **Federal Register** and to implement them through modifications of the Harmonized Tariff Schedule of the United States (HTS). Based on actions that Zambia has taken, I have determined that Zambia has satisfied these two requirements.

Accordingly, pursuant to the authority vested in the USTR by Proclamation 7350, U.S. note 7(a) to subchapter II of chapter 98 of the HTS and U.S. note 1 subchapter XIX of chapter 98 of the HTS are each modified by inserting ''Zambia'' in alphabetical sequence in the list of countries. The foregoing modifications to the HTS are effective with respect to articles entered, or withdrawn from warehouse for consumption, on or after the effective date of this notice. Importers claiming preferential tariff treatment under the AGOA for entries for textile and apparel articles should ensure that those entries meet the applicable visa requirements. *See Visa Requirements Under the African Growth and Opportunity Act,* 66 FR 7837 (2001).

Robert B. Zoellick,

United States Trade Representative.

[FR Doc. 01–31370 Filed 12–19–01; 8:45 am]

BILLING CODE 3190–01–M

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

Aviation Proceedings, Agreements Filed During the Week Ending November 30, 2001

The following Agreements were filed with the Department of Transportation under provisions of 49 U.S.C. 412 and 414. Answers may be filed within 21 days after the filing of the applications.

Docket Number: OST–2001–11046
Date Filed: November 26, 2001
Parties: Members of the International Air Transport Association
Subject:
PTC23 EUR–SWP 0057 dated 16 November 2001
Europe-South West Pacific Expedited Resolution 002c r-1
PTC23 EUR–SWP 0058 dated 23 November 2001
Europe-South West Pacific Expedited Resolutions r2-r7
Intended effective dates: 15 December 2001, 1 January 2002

Docket Number: OST–2001–11047
Date Filed: November 26, 2001
Parties: Members of the International Air Transport Association
Subject:
PTC23 ME–TC3 0129 dated 27 November 2001
Mail Vote 183—Resolution 010o
TC23 Middle East-South East Asia Special Passenger
Amending Resolution
Intended effective date: 1 December 2001

Docket Number: OST–2001–11053
Date Filed: November 27, 2001
Parties: Members of the International Air Transport Association
Subject:
PTC23 EUR–SWP 0059 dated 23 November 2001
TC23/TC123 Europe-South West Pacific Resolutions r1-r21
MINUTES—PTC23 EUR–SWP 0060 dated 23 November 2001
TABLES—PTC23 EUR–SWP FARES 0030 dated 27 November 2001
Intended effective date: 1 April 2002

Docket Number: OST–2001–11062
Date Filed: November 28, 2001
Parties: Members of the International Air Transport Association
Subject:
PTC2 EUR 0446 dated 23 November 2001
TC2 Within Europe Resolutions r1-r34
PTC2 EUR 0451 dated 27 November 2001
Technical Correction to PTC2 EUR 0446 dated 23 November 2001
PTC2 EUR 0448 dated 27 November 2001
TC2 Within Europe Resolutions r35-r37
PTC2 EUR 0449 dated 27 November 2001
TC2 Within Europe Resolution 002kk r38
PTC2 Europe-Description of Agreements
Effective 1 March, 1 April, 1 May 2002
MINUTES—PTC2 EUR 0445 dated 16 November 2001
TABLES—PTC2 EUR FARES 0060 dated 27 November 2001
Intended effective dates: 1 March, 1 April, 1 May 2002

Docket Number: OST–2001–11078
Date Filed: November 30, 2001
Parties: Members of the International Air Transport Association
Subject:
PTC23 EUR–JK 0074 dated 9 November 2001
Europe-Japan/Korea Resolutions r1-r37
MINUTES—PTC23 EUR–JK 0075 dated 30 November 2001
TABLES—PTC23 EUR–JK FARES 0034 dated 9 November 2001
Intended effective date: 1 April 2002

Dorothy Y. Beard,

Federal Register Liaison.

[FR Doc. 01–31395 Filed 12–19–01; 8:45 am]

BILLING CODE 4910–62–P

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

Notice of Applications for Certificates of Public Convenience and Necessity and Foreign Air Carrier Permits Filed Under Subpart B (Formerly Subpart Q) During the Week Ending November 30, 2001

The following Applications for Certificates of Public Convenience and Necessity and Foreign Air Carrier Permits were filed under subpart B (formerly subpart Q) of the Department of Transportation's Procedural Regulations (See 14 CFR 301.201 *et seq.*). The due date for Answers, Conforming Applications, or Motions to Modify Scope are set forth below for each application. Following the Answer period, DOT may process the application by expedited procedures. Such procedures may consist of the adoption of a show-cause order, a tentative order, or in appropriate cases a final order without further proceedings.

Docket Number: OST–2001–11058.
Date Filed: November 27, 2001.
Due Date for Answers, Conforming Applications, or Motion to Modify Scope: December 18, 2001.
Description:
Application of Challenge Air Luftverkehrs GmbH, pursuant to 49 U.S.C. section 41302, subpart B, and part 211, requesting a foreign air carrier permit to provide charter foreign air transportation of

passengers (and their accompanying baggage) and cargo, as follows: (1) Between any point or points in Germany and any point or points in the United States; (2) between any point or points in the United States and any point or points in a Third country or countries, provided that, except with respect to cargo charters, such service constitutes a part of a continuous operation, with or without a change of aircraft, that includes service to Germany for the purpose of carrying local traffic between Germany and the United States; and, (3) on other charter flights between points in the United States and points in third countries in accordance with the provisions of part 212.

Docket Number: OST–2001–11079.

Date Filed: November 30, 2001.

Due Date for Answers, Conforming Applications, or Motion to Modify Scope: December 21, 2001.

Description:

Application of Northwest Airlines, Inc., pursuant to 49 U.S.C. sections 41108 and 41102 and subpart B, requesting issuance of a Certificate of Public Convenience and Necessity to engage in scheduled foreign air transportation of persons, property and mail between a point or points in the United States via intermediate points to a point or points in Portugal and beyond.

Dorothy Y. Beard,

Federal Register Liaison.

[FR Doc. 01–31394 Filed 12–19–01; 8:45 am]

BILLING CODE 4910–62–P

DEPARTMENT OF TRANSPORTATION

Coast Guard

[CGD08–01–047]

Lower Mississippi River Waterways Safety Advisory Committee; Vacancies

AGENCY: Coast Guard, DOT.

ACTION: Request for applications.

SUMMARY: The Coast Guard seeks applications for membership on the Lower Mississippi River Waterway Safety Advisory Committee (LMRWSAC). LMRWSAC advises and makes recommendations to the Coast Guard on matters relating to the transit of vessels and products to and from ports on the Lower Mississippi River.

DATES: Application forms should be received by the Coast Guard on or before February 1, 2002.

ADDRESSES: You may request an application form by writing to U.S. Coast Guard, Marine Safety Office New Orleans, 1615 Poydras Street, New Orleans, LA 70112–2711, ATTN: Waterways Management; by calling 504–589–4222; or by faxing 504–589–4241. Send your application in written form to the above street address. This notice and the application form are also available via the internet at *http://dms.dot.gov.*

FOR FURTHER INFORMATION CONTACT: LT Ricardo Alonso, Committee Administrator of LMRWSAC, telephone (504) 589–4252, fax (504) 589–4241.

SUPPLEMENTARY INFORMATION: The Lower Mississippi River Waterways Safety Advisory Committee (LMRWSAC) is a Federal advisory committee under 5 U.S.C. App. 2. This committee provides local expertise on communication, surveillance, traffic control, anchorages, aids to navigation and other related topics dealing with navigational safety on the Lower Mississippi River. The committee normally meets twice a year at the Hale Boggs Federal Building, 501 Magazine Street, New Orleans, Louisiana.

The committee consists of 24 members who have particular expertise, knowledge, and experience regarding transportation, equipment, and techniques that are used to ship cargo and navigate vessels on the Lower Mississippi River and its connecting navigable waterways, including the Gulf of Mexico.

Each member serves a term of two years. Occasionally, some members may serve consecutive terms. All members serve at their own expense and receive no salary, reimbursement of travel expenses, or other compensation from the Federal Government.

Applications are sought for the following:

(1) Five members representing River Port Authorities between Baton Rouge, Louisiana, and the Head of Passes of the Lower Mississippi River, of which one member shall be from the Port of St. Bernard and one member from the Port of Plaquemines.

(2) Two members representing vessel owners or ship owners domiciled in the State of Louisiana.

(3) Two members representing organizations that operate harbor tugs or barge fleets in the geographical area covered by the Committee.

(4) Two members representing companies that transport cargo or passengers on the navigable waterways in the geographical area covered by the Committee.

(5) Three members representing State Commissioned Pilot organizations, with one member each representing the New Orleans/Baton Rouge Steamship Pilots Association, the Crescent River Port Pilots Association, and the Associated Branch Pilots Association.

(6) Two at-large members who utilize water transportation facilities located in the geographical area covered by the Committee.

(7) Three members representing consumers, shippers, or importers/exporters that utilize vessels which utilize the navigable waterways covered by the Committee.

(8) Two members representing those licensed merchant mariners, other than pilots, who perform shipboard duties on those vessels which utilize navigable waterways covered by the Committee.

(9) One member representing an organization that serves in a consulting or advisory capacity to the maritime industry.

(10) One member representing an environmental organization.

(11) One member representing the general public.

In support of the policy of the Department of Transportation on gender and ethnic diversity, we encourage qualified women and members of minority groups to apply.

If you are selected as a member who represents the general public, we will require you to complete a Confidential Financial Disclosure Report (OGE Form 450). We may not release the report or the information in it to the public, except under an order issued by a Federal court or as otherwise provided under the Privacy Act (5 U.S.C. 552a).

Dated: December 10, 2001.

Roy J. Casto,

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

[FR Doc. 01–31392 Filed 12–19–01; 8:45 am]

BILLING CODE 4910–15–U

DEPARTMENT OF TRANSPORTATION

Coast Guard

[CGD08–01–046]

Houston/Galveston Navigation Safety Advisory Committee Meetings

AGENCY: Coast Guard, DOT.

ACTION: Notice of meetings.

SUMMARY: The Houston/Galveston Navigation Safety Advisory Committee

(HOGANSAC) and its working groups will meet to discuss waterway improvements, aids to navigation, area projects impacting safety on the Houston Ship Channel, and various other navigation safety matters in the Galveston Bay area. All meetings will be open to the public.

DATES: The next meeting of HOGANSAC will be held on Thursday, February 7, 2002 from 9 a.m. to approximately 12 noon. The meeting of the Committee's working groups will be held on Thursday, January 10, 2002 at 9 a.m. to approximately 11 a.m. The meetings may adjourn early if all business is finished. Members of the public may present written or oral statements at either meeting.

ADDRESSES: The full Committee meeting will be held at the Port of Houston Authority Building, 111 East Loop North, Houston, Texas (713–670–2400). The working groups' meeting will be held at the offices of the Galveston-Texas City Pilots, Pelican Island, Galveston, Texas (409–740–3690).

FOR FURTHER INFORMATION CONTACT: Captain Kevin Cook, Executive Director of HOGANSAC, telephone (713) 671–5199; Commander Peter Simons, Executive Secretary of HOGANSAC, telephone (713) 671–5164; or Lieutenant Junior Grade Kelly Tobey, assistant to the Executive Secretary of HOGANSAC, telephone (713) 671–5103, e-mail *katobey@vtshouston.uscg.mil*.

SUPPLEMENTARY INFORMATION: Notice of this meeting is given pursuant to the Federal Advisory Committee Act, 5 U.S.C. App. 2.

Agendas of the Meetings

Houston/Galveston Navigation Safety Advisory Committee (HOGANSAC)

The tentative agenda includes the following:

(1) Opening remarks by the Committee Sponsor (RADM Casto) (or the Committee Sponsor's representative), Executive Director (CAPT Cook) and Chairman (Tim Leitzell).
(2) Approval of the October 17, 2001 minutes.
(3) Old Business.
(a) Dredging projects.
(b) Electronic navigation.
(c) AtoN Knockdown Working Group.
(d) Mooring subcommittee report.
(e) 2002 Harbor Safety Conference plans.
(f) Texas City Container Terminal update.
(g) Bolivar Roads anchorage areas.
(h) Recreational boating education initiative.
(4) New Business.
(a) State of the Waterway.
(b) Bayport Terminal project.
(c) Swimmers near Lynchburg.
(d) Corps of Engineers survey data reporting.

Working Groups Meeting.

The tentative agenda for the working committee meeting includes the following:

(1) Presentation by each working group of its accomplishments and plans for the future.

(2) Review and discuss the work completed by each working group.

Working groups have been formed to examine the following issues: Dredging and related issues, electronic navigation systems, AtoN knockdowns, impact of passing vessels on moored ships, recreational boater education issues, and the 2002 Harbor Safety Conference. All working groups may not necessarily report out at this session, however, working group discussions not reported out at this February meeting will be addressed at a future HOGANSAC meeting. Further, all working group reports may not necessarily include discussions on all issues within the particular working group's area of responsibility. All meetings are open to the public. Please note that the meetings may adjourn early if all business is finished. Members of the public may make presentations, oral or written, at either meeting.

Information on Services for the Handicapped

For information on facilities or services for the handicapped or to request special assistance at the meetings, contact the Executive Director, Executive Secretary, or assistant to the Executive Secretary.

Dated: December 10, 2001.

Roy J. Casto,

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

[FR Doc. 01–31393 Filed 12–19–01; 8:45 am]

BILLING CODE 4910–15–U

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Finance Docket No. 34100]

RailAmerica, Inc.—Control Exemption—ParkSierra Acquisition Corp. and ParkSierra Corp.

RailAmerica, Inc. (RailAmerica), a noncarrier holding company, has filed a verified notice of exemption to acquire control of ParkSierra Corp. (ParkSierra), a Class II railroad, and to continue in control of ParkSierra Acquisition Corp. (Acquisition), a noncarrier, upon Acquisition's purchase of ParkSierra's stock. Acquisition, a wholly owned subsidiary of RailAmerica, will acquire 100% of the outstanding stock of ParkSierra.

The transaction is scheduled to be consummated on or after January 2, 2002.

On September 18, 2001, as amended on October 3, 2001, RailAmerica also filed a motion for protective order under CFR 1104.14, and a protective order was granted.[1]

RailAmerica states that, as of its filing of the notice of exemption, it controls one Class II and 23 Class III rail common carriers operating in 23 states.

RailAmerica also states that: (i) These railroads do not connect with each other; (ii) the acquisition of control is not part of a series of anticipated transactions that would connect the railroads with each other or any railroad in their corporate family; and (iii) the transaction does not involve a Class I carrier. Therefore, the transaction is exempt from the prior approval requirements of 49 U.S.C. 11323. *See* 49 CFR 1180.2(d)(2).

Under 49 U.S.C. 10502(g), the Board may not use its exemption authority to relieve a rail carrier of its statutory obligation to protect the interests of its employees. Because the transaction involves two Class II rail carriers, the transaction will be made subject to the labor protection conditions described in *New York Dock Ry.—Control—Brooklyn Eastern Dist.*, 360 I.C.C. 60 (1979).

If the verified notice contains false or misleading information, the exemption is void *ab initio*. Petitions to revoke the exemption under 49 U.S.C. 10502(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the transaction.

An original and 10 copies of all pleadings, referring to STB Finance Docket No. 34100, must be filed with the Surface Transportation Board, Office of the Secretary, Case Control Unit, 1925 K Street, NW, Washington, DC 20423–0001. In addition, one copy of each pleading must be served on (1) Gary A. Laakso, Esq., 5300 Broken Sound Blvd. NW, Second Floor, Boca Raton, FL 33487, and (2) Louis E. Gitomer, Esq., Ball Janik LLP, 1455 F Street, N.W., Suite 225, Washington, DC 20005.

Board decisions and notices are available on our Web site at www.stb.dot.gov.

[1] See *RailAmerica, Inc.—Control Exemption—ParkSierra Acquisition Corp. and ParkSierra Corp.*, STB Finance Docket No. 34100 (STB served Oct. 1, 2001, and Oct. 15, 2001).

Decided: December 13, 2001.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. 01–31366 Filed 12–19–01; 8:45 am]

BILLING CODE 4915–00–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Docket No. AB–290 (Sub–No. 228X)]

Norfolk Southern Railway Company—Abandonment Exemption—in Mingo County, WV and Pike County, KY

Norfolk Southern Railway Company (NSR) has filed a notice of exemption under 49 CFR part 1152 Subpart F—*Exempt Abandonments* to abandon a 0.95-mile line of railroad between milepost MN–0.0 at McCarr, in Mingo County, WV, and milepost MN–0.95 at Nampa, in Pike County, WV. The line traverses United States Postal Service Zip Codes 25676 and 41501.

NSR has certified that: (1) No local traffic has moved over the line for at least 2 years; (2) any overhead traffic, if there is any, can be rerouted over other lines; (3) no formal complaint filed by a user of rail service on the line (or by a state or local government entity acting on behalf of such user) regarding cessation of service over the line either is pending with the Surface Transportation Board (Board) or with any U.S. District Court or has been decided in favor of complainant within the 2-year period; and (4) the requirements at 49 CFR 1105.7 (environmental reports), 49 CFR 1105.8 (historic reports), 49 CFR 1105.11 (transmittal letter), 49 CFR 1105.12 (newspaper publication), and 49 CFR 1152.50(d)(1) (notice to governmental agencies) have been met.

As a condition to this exemption, any employee adversely affected by the abandonment shall be protected under *Oregon Short Line R. Co.—Abandonment—Goshen,* 360 I.C.C. 91 (1979). To address whether this condition adequately protects affected employees, a petition for partial revocation under 49 U.S.C. 10502(d) must be filed. Provided no formal expression of intent to file an offer of financial assistance (OFA) has been received, this exemption will be effective on January 19, 2002, unless stayed pending reconsideration. Petitions to stay that do not involve environmental issues,[1] formal expressions of intent to file an OFA under 49 CFR 1152.27(c)(2),[2] and trail use/rail banking requests under 49 CFR 1152.29 must be filed by December 31, 2001. Petitions to reopen or requests for public use conditions under 49 CFR 1152.28 must be filed by January 9, 2002, with: Surface Transportation Board, Office of the Secretary, Case Control Unit, 1925 K Street, NW., Washington, DC 20423.

A copy of any petition filed with the Board should be sent to NSR's representative: James R. Paschall, General Attorney, Norfolk Southern Corporation, Three Commercial Place, Norfolk, VA 23510.

If the verified notice contains false or misleading information, the exemption is void *ab initio.*

NSR has filed an environmental report which addresses the abandonment's effects, if any, on the environment and historic resources. SEA will issue an environmental assessment (EA) by December 21, 2001. Interested persons may obtain a copy of the EA by writing to SEA (Room 500, Surface Transportation Board, Washington, DC 20423) or by calling SEA, at (202) 565–1552. Comments on environmental and historic preservation matters must be filed within 15 days after the EA becomes available to the public.

Environmental, historic preservation, public use, or trail use/rail banking conditions will be imposed, where appropriate, in a subsequent decision.

Pursuant to the provisions of 49 CFR 1152.29(e)(2), NSR shall file a notice of consummation with the Board to signify that it has exercised the authority granted and fully abandoned its line. If consummation has not been effected by NSR's filing of a notice of consummation by December 20, 2002, and there are no legal or regulatory barriers to consummation, the authority to abandon will automatically expire.

Board decisions and notices are available on our web site at *"WWW.STB.DOT.GOV."*

Decided: December 14 , 2001.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. 01–31367 Filed 12–19–01; 8:45 am]

BILLING CODE 4915–00–P

[1] The Board will grant a stay if an informed decision on environmental issues (whether raised by a party or by the Board's Section of Environmental Analysis (SEA) in its independent investigation) cannot be made before the exemption's effective date. *See Exemption of Out-of-Service Rail Lines,* 5 I.C.C.2d 377 (1989). Any request for a stay should be filed as soon as possible so that the Board may take appropriate action before the exemption's effective date.

[2] Each offer of financial assistance must be accompanied by the filing fee, which currently is set at $1000. *See* 49 CFR 1002.2(f)(25).

DEPARTMENT OF THE TREASURY

Customs Service

[T.D. 01–93]

Revocation of Customs Broker Licenses

AGENCY: U.S. Customs Service, Department of the Treasury.

ACTION: Customs broker license revocations.

SUMMARY: Pursuant to section 641 of the Tariff Act of 1930 as amended (19 USC 1641) and the Customs Regulations (19 CFR 111), the following Customs broker licenses are revoked. Please be aware that some of these entities may continue to provide broker services under another valid brokerage license.

Name	License	Port
Behring International, Inc.	06434	Seattle.
Consolidated Freightways Export-Import Services, Inc.	07687	Seattle.
Ingham International, Inc	05252	Seattle.
Ted L. Rauch, Inc	06656	Seattle.
Steeb Marine Services, Inc.	05768	Seattle.
Carmichael International Services.	09143	Seattle.
Emery Customs Brokers	05614	Seattle.
Kuehne & Nagel, Inc	06558	Seattle.
David K. Lindemuth Co., Inc.	07601	Seattle.
Radix Group International.	07500	Seattle.

Dated: December 17, 2001.

Bonni G. Tischler,

Assistant Commissioner, Office of Field Operations.

[FR Doc. 01–31387 Filed 12–19–01; 8:45 am]

BILLING CODE 4820–02–P

DEPARTMENT OF THE TREASURY

Customs Service

[T.D. 01–92]

Cancellation of Customs Broker Licenses

AGENCY: U.S. Customs Service, Department of the Treasury.

ACTION: Customs Broker License Cancellations.

SUMMARY: Pursuant to section 641 of the Tariff Act of 1930, as amended, (19 USC 1641) and the Customs Regulations (19 CFR 111, Subpart D), the following Customs broker licenses are cancelled. Because previous publication of these records cannot be readily verified, the records are now being published to ensure Customs compliance with administrative requirements.

Name	License	Port
Harry I. Hoskins	00193	Seattle.
John P. Hausman	00194	Seattle.
Victor D. Harlow	00200	Seattle.

Dated: December 17, 2001.

Bonni G. Tischler,

Assistant Commissioner, Office of Field Operations.

[FR Doc. 01–31388 Filed 12–19–01; 8:45 am]

BILLING CODE 4820–02–P

DEPARTMENT OF THE TREASURY

Customs Service

[T.D. 01–90]

Revocation of Customs Broker License

AGENCY: U.S. Customs Service, Department of the Treasury.

ACTION: Customs broker license revocation.

SUMMARY: Pursuant to section 641 of the Tariff Act of 1930 as amended (19 USC 1641) and the Customs Regulations [19 CFR 111.45(a)], the following Customs broker license is revoked by operation of law.

Name: The Maritime Company for Navigation.
License: 20115.
Port: Charlotte.

Dated: December 8, 2001.

Bonni G. Tischler,

Assistant Commissioner, Office of Field Operations.

[FR Doc. 01–31390 Filed 12–19–01; 8:45 am]

BILLING CODE 4820–02–P

DEPARTMENT OF THE TREASURY

Customs Service

[T.D. 01–91]

Cancellation of Customs Broker Licenses

AGENCY: U.S. Customs Service, Department of the Treasury.

ACTION: Cancellation of licenses.

SUMMARY: Notice is hereby given that, pursuant to 19 CFR 111.53(g), the following individual Customs broker licenses have been cancelled due to death of the broker. Because previous publication of these records cannot be readily verified, the records are now being published to ensure Customs compliance with administrative requirements.

Name	License	Port Name
B.A. McKenzie	00182	Seattle.
Alfred J. Stanoch	03407	Seattle.
Eugene C. Cameron	03518	Seattle.
James A. Bronson	04116	Seattle.

Dated: December 17, 2001.

Bonni G. Tischler,

Assistant Commissioner, Office of Field Operations.

[FR Doc. 01–31389 Filed 12–19–01; 8:45 am]

BILLING CODE 4820–02–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0091]

Agency Information Collection Activities Under OMB Review

AGENCY: Veterans Health Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C. 3501 *et seq.*), this notice announces that the Veterans Health Administration (VHA), Department of Veterans Affairs, has submitted the collection of information abstracted below to the Office of Management and Budget (OMB) for review and comment. The PRA submission describes the nature of the information collection and its expected cost and burden; it includes the actual data collection instrument.

DATES: Comments must be submitted on or before January 22, 2002.

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. 2900–0091.''

SUPPLEMENTARY INFORMATION:

Title: Application for Medical Benefits, VA Form 10–10EZ.

OMB Control Number: 2900–0091.

Type of Review: Extension of a currently approved collection.

Abstract: The form is used to establish a system of records on veterans applying and/or enrolling for VA medical care benefits. The information collected is used to establish basic eligibility for VA benefits; enroll veterans into the VA health care enrollment system; determine a veteran's marital status, next-of-kin and emergency contacts for care management and consent purposes; establish eligibility for cost free health care, mileage reimbursement and prescription co-payment exemption for certain veterans; identify those veterans who have third party health insurance for billing purposes to recover the cost of medical care furnished to veterans for treatment of nonservice-connected conditions; and establish an individual's eligibility for other health services, including but not limited to nursing home, dental and domiciliary care.

An agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number. The **Federal Register** Notice with a 60-day comment period soliciting comments on this collection of information was published on September 6,2001, at pages 46683–46684.

Affected Public: Individuals or households.

Estimated Annual Burden: 2,613,750 hours.

Estimated Average Burden Per Respondent: 45 minutes.

Frequency of Response: Annually.

Estimated Number of Respondents: 3,485,000.

Send comments and recommendations concerning any aspect of the information collection to VA's OMB Desk Officer, OMB Human Resources and Housing Branch, New Executive Office Building, Room 10235, Washington, DC 20503, (202) 395–7316. Please refer to ''OMB Control No. 2900–0091'' in any correspondence.

Dated: December 6, 2001.

By direction of the Secretary.

Donald L. Neilson,

Director, Information Management Service.

[FR Doc. 01–31295 Filed 12–19–01; 8:45 am]

BILLING CODE 8320–01–P

Federal Register

Thursday,
December 20, 2001

Part II

Postal Service

39 CFR Part 20

Global Express Guaranteed: Discounted Rates for Online Customers; Final Rule

POSTAL SERVICE

39 CFR Part 20

Global Express Guaranteed: Discounted Rates for Online Customers

AGENCY: Postal Service.

ACTION: Final rule.

SUMMARY: The Postal Service is offering discounted rates for online customers who purchase Global Express Guaranteed ™ service. The discounted rates are based on minimum shipping volumes which average 5 pieces per week, 12 pieces per week, and 20 pieces or more per week. The Postal Service is also offering a standard Web discount for all Global Express Guaranteed customers who prepare and pay for their shipments online but do not qualify for the volume-based discounts. Interim implementing regulations were published in the **Federal Register** on August 10, 2001, 66 FR 42112.

DATES: Effective August 9, 2001.

ADDRESSES: Services Office, U.S. Postal Service, 200 E Mansell CT, Suite 300, Roswell, GA 30076–4850.

FOR FURTHER INFORMATION CONTACT: Malcolm E. Hunt (770) 360–1104.

SUPPLEMENTARY INFORMATION: Global Express Guaranteed service is the U.S. Postal Service's premium international shipping service. It is an expedited delivery service that is offered as a result of an alliance between the U.S. Postal Service and DHL Worldwide Express. It provides date-certain delivery service from designated U.S. ZIP Code areas to locations in over 200 destination countries and territories. Global Express Guaranteed consists of two mail classifications: Global Express Guaranteed Document Service and Global Express Guaranteed Non-Document Service. Regulations for Global Express Guaranteed service are set forth in part 210 of the *International Mail Manual* (IMM) and the *Global Express Guaranteed Service Guide.*

The Postal Service is offering two types of discounted rates to customers who prepare and pay for their Global Express Guaranteed shipments online: a standard discount and a volume-based discount for customers who ship minimum volumes on a weekly basis. This discount rate structure is comparable to that offered by other shippers in the international shipping marketplace.

The discounts are limited to Global Express Guaranteed shipments prepared and paid for online because the Global Express Guaranteed online application can perform the necessary activity of automatically tracking customer activity and volume for use in calculating rates. This capability is not currently available at the retail terminals in Post Offices. There is also a cost savings for the Postal Service when customers prepare and pay for shipments online. Thus, these discounts will not apply to Global Express Guaranteed shipments that are paid for at retail acceptance Post Offices.

The standard and volume-based online discount rates will be applied automatically via the Global Express Guaranteed Web application. The volume-based discounts will be calculated at three volume levels: 5, 12, or 20 or more pieces per week, and will vary depending on shipment destination. For those online customers shipping fewer than 5 pieces per week, a standard discount of 5 percent off the non-discounted rate that would otherwise apply to the shipment will be offered. These rates are reflected in the four rate schedules in IMM 216.36.

The volume discounts are calculated as follows:

Week one: All shipments receive the standard Web discount of 5 percent off the published price.

Week two: The discount is based on how much volume was mailed in the first week.

Week three: The discount is based on the average volume of the first two weeks.

Week four: The discount is based on the average volume of the first three weeks.

This continues through a 12-week cycle. After a 12-week customer history is established, the discount is based on the average volume of the preceding 12 weeks. Comments were due on or before September 10, 2001. The Postal Service received no comments.

The Postal Service adopts the following discounted rates and amends the *International Mail Manual* (IMM), which is incorporated by reference into the Code of Federal Regulations. See 39 CFR 20.1.

List of Subjects in 39 CFR Part 20

Foreign Relations.

PART 20—[AMENDED]

1. The authority citation for 39 CFR Part 20 continues to read as follows:

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

2. Chapter 2 of the *International Mail Manual* is amended as follows to provide for the discounted rates:

2 Conditions for Mailing

210 Global Express Guaranteed

* * * * *

216 Postage

* * * * *

216.3 Discounted Rates

216.31 General

Discounted rates apply to Global Express Guaranteed customers who prepare and pay for Global Express Guaranteed shipments online using the Web application located at *http://www.usps.com/gxg.* The Global Express Guaranteed online application provides the necessary systems for tracking usage and volume, as well as verifying and protecting revenue. These discounts do not apply to Global Express Guaranteed shipments that are paid for at participating Post Offices because the necessary volume tracking capabilities are not available at retail locations.

216.32 Eligibility for Online Discounts

To be eligible for discounts for purchasing Global Express Guaranteed online, customers must register via the Global Express Guaranteed Web site, *http://www.usps.com/gxg.* Registration is accomplished by selecting the designated icon on the Global Express Guaranteed home page and following the accompanying instructions. This one-time registration will establish a shipping record and a customer history for purposes of calculating the appropriate discounts. To be eligible for online discounts, customers must prepare their shipping labels and pay for their shipments online using a credit card.

216.33 Online Discounts

216.331 General

Two types of online discounts are offered: standard discounts and volume-based discounts. The discount applies only to the postage portion of the Global Express Guaranteed rates. It does not apply to any other service charges or additional insurance coverage fees. The discounted postage rates applicable to Global Express Guaranteed are set forth in 216.36 and are separate and distinct from the postage rates set forth in 216.1 and 216.2.

216.332 Standard Web Discount

A standard discount schedule will apply to all Global Express Guaranteed items prepared and paid for on the Web that do not qualify for the volume discount schedule. The discount is automatically applied to each shipment.

216.333 Volume Discounts

If previous volume minimums are met, volume discounts will apply to registered customers who prepare and pay for shipments online. Volume is calculated on a weekly basis, with a week defined as Monday through Sunday. The Web application automatically tracks the customer's daily shipping activity and applies the appropriate discount based on delivery destination.

216.334 Determination of Volume Discounts

There are three different rate schedules for Global Express Guaranteed volume discounts. Each rate schedule reflects different rates based on previous usage averaging 5 shipments or more per week, 12 shipments or more per week, and 20 shipments or more per week.

The first week of shipping, all shipments get the standard online discount of 5 percent off the applicable non-discounted rate. The second week, the discount is based on the volume shipped the first week. The third week, the discount is based on the average volume of the first 2 weeks. The fourth week, the discount is based on the average volume of the first 3 weeks. This continues through a 12-week cycle. After a 12-week history is established, the discount is always based on the average volume of the preceding 12 weeks.

216.34 Online Postage Payment

216.341 Credit Card Payment

Customers must pay postage online using a credit card. The following credit cards are accepted for payment online: American Express, Diner's Club, Discover, MasterCard, and Visa.

216.342 Deposit Within 24 Hours

Customers paying postage online must deposit their shipment via any of the methods outlined in 216.35 within 24 hours of the time when the label is printed or the transaction will be voided.

216.343 Postage Adjustments

Use of the online service is subject to subsequent verification of the shipment upon acceptance by the U.S. Postal Service to verify that the payment, weight, and time of entry are accurate. Registration for online service constitutes an authorization to the U.S. Postal Service to make adjustments to the initial credit charge for any postage deficiencies discovered upon acceptance. Adjustments for items paid online will be made to the customer's credit card account.

216.344 Notification

An e-mail notification will be provided to each customer showing the exact postage amount applicable for the online shipment, as well as the acceptance time and date.

216.35 Shipment Preparation and Deposit

216.351 Preparation

Customers must prepare shipments following the shipping preparation instructions on the Global Express Guaranteed Web site.

216.352 Deposit

The following choices are available for depositing Global Express Guaranteed shipments prepared online:

a. On-Call and scheduled pickup services are available for an added charge of $10.25 for each pickup stop, regardless of the number of pieces picked up. Only one pickup fee will be charged if domestic Express Mail, International Express Mail, domestic Priority Mail, International Parcel Post, and/or domestic Parcel Post is picked up at the same time. No pickup fee will be charged when Global Express Guaranteed is picked up during a delivery stop or during a scheduled stop made to collect other mail not subject to a pickup fee. Pickup service is provided in accordance with DMM D010. A complete listing of participating Global Express Guaranteed Post Offices is available on the Web site at *http://www.usps.com/gxg.*

b. Customers may present their online shipments at the retail counter of any participating Global Express Guaranteed Post Office.

c. Customers using the online postage payment option may drop shipments in collection boxes served by a participating Global Express Guaranteed Post Office.

216.353 Acceptance of Online Shipments

For purposes of tracking and computing the delivery guarantee, postal acceptance of a Global Express Guaranteed item prepared online occurs when the shipment is received and scanned at a participating Global Express Guaranteed Post Office. Collection box deposit and carrier pickup do not constitute Postal Service acceptance of a Global Express Guaranteed shipment. Acceptance occurs when the shipment is brought back to the Post Office and the acceptance office performs a retail system scan to verify the weight and dimensions of the shipment. The customer will receive an e-mail verification of the acceptance date, time, and weight, as well as a verification of the amount of postage applicable for the shipment.

216.36 Discounted Rates

216.361 Document Rates With Standard Web Discount

Weight not over (lbs.)	Rate group 1	Rate group 2	Rate group 3	Rate group 4	Rate group 5	Rate group 6	Rate group 7	Rate group 8
0.5	22.80	23.75	30.40	30.40	42.75	31.35	32.30	61.75
1	31.35	32.30	37.05	42.75	49.40	44.65	43.70	71.25
2	36.10	38.00	43.70	49.40	61.75	52.25	49.40	84.55
3	38.00	43.70	50.35	56.05	75.05	58.90	57.00	95.95
4	40.85	47.50	57.00	62.70	88.35	64.60	64.60	106.40
5	43.70	52.25	63.65	69.35	100.70	71.25	71.25	117.80
6	45.60	55.10	68.40	76.00	113.05	76.00	77.90	129.20
7	48.45	57.95	72.20	81.70	124.45	81.70	84.55	140.60
8	50.35	61.75	76.00	88.35	135.85	86.45	91.20	152.00
9	52.25	64.60	80.75	95.00	148.20	91.20	97.85	163.40
10	55.10	66.50	84.55	98.80	156.75	96.90	104.50	171.00
11	57.00	69.35	87.40	103.55	166.25	99.75	110.20	181.45
12	58.90	72.20	91.20	109.25	175.75	103.55	115.90	192.85
13	61.75	75.05	94.05	114.00	185.25	107.35	120.65	204.25
14	63.65	76.95	97.85	118.75	194.75	111.15	125.40	214.70

Weight not over (lbs.)	Rate group 1	Rate group 2	Rate group 3	Rate group 4	Rate group 5	Rate group 6	Rate group 7	Rate group 8
15	65.55	79.80	100.70	123.50	203.30	114.95	130.15	226.10
16	68.40	82.65	103.55	129.20	211.85	118.75	134.90	236.55
17	70.30	84.55	107.35	133.95	219.45	122.55	139.65	247.00
18	72.20	87.40	110.20	138.70	226.10	126.35	145.35	257.45
19	75.05	90.25	114.00	143.45	233.70	130.15	151.05	267.90
20	76.95	92.15	116.85	148.20	240.35	133.95	156.75	278.35
21	78.85	95.00	119.70	152.95	247.00	136.80	162.45	286.90
22	80.75	96.90	123.50	157.70	254.60	140.60	167.20	295.45
23	82.65	99.75	126.35	162.45	261.25	144.40	171.95	302.10
24	85.50	102.60	130.15	167.20	268.85	148.20	176.70	308.75
25	87.40	104.50	133.00	171.95	275.50	152.00	181.45	316.35
26	89.30	107.35	135.85	176.70	283.10	155.80	186.20	323.00
27	91.20	109.25	139.65	180.50	289.75	159.60	190.95	329.65
28	93.10	112.10	142.50	185.25	297.35	163.40	195.70	337.25
29	95.00	114.00	145.35	190.00	304.00	167.20	200.45	343.90
30	97.85	117.80	150.10	196.65	314.45	172.90	205.20	354.35
31	99.75	120.65	153.90	201.40	321.10	176.70	209.95	361.95
32	101.65	122.55	156.75	206.15	328.70	180.50	214.70	368.60
33	103.55	124.45	160.55	210.90	335.35	184.30	219.45	376.20
34	106.40	125.40	163.40	215.65	342.95	188.10	224.20	382.85
35	108.30	127.30	166.25	220.40	350.55	191.90	228.95	390.45
36	110.20	129.20	170.05	224.20	357.20	195.70	233.70	397.10
37	112.10	131.10	172.90	228.95	364.80	199.50	238.45	404.70
38	114.00	133.00	176.70	233.70	371.45	203.30	243.20	411.35
39	115.90	134.90	179.55	238.45	378.10	207.10	247.95	418.00
40	117.80	136.80	182.40	243.20	383.80	210.90	252.70	425.60
41	119.70	138.70	186.20	247.95	390.45	214.70	257.45	432.25
42	123.50	140.60	189.05	252.70	397.10	218.50	262.20	439.85
43	125.40	142.50	192.85	257.45	403.75	222.30	266.95	446.50
44	127.30	143.45	195.70	262.20	410.40	226.10	271.70	454.10
45	130.15	145.35	199.50	266.00	417.05	229.90	276.45	460.75
46	132.05	147.25	202.35	270.75	423.70	233.70	281.20	467.40
47	133.95	148.20	205.20	275.50	429.40	237.50	285.95	475.00
48	135.85	150.10	209.00	280.25	436.05	241.30	290.70	481.65
49	138.70	152.00	211.85	285.00	442.70	245.10	295.45	489.25
50	140.60	154.85	217.55	292.60	454.10	250.80	300.20	501.60
51	144.40	156.75	220.40	297.35	460.75	250.80	304.95	515.85
52	146.30	158.65	224.20	302.10	467.40	258.40	309.70	515.85
53	148.20	160.55	227.05	306.85	474.05	262.20	314.45	531.05
54	151.05	161.50	230.85	311.60	480.70	266.00	319.20	531.05
55	152.00	163.40	233.70	316.35	487.35	268.85	323.95	543.40
56	153.90	164.35	237.50	321.10	494.00	273.60	328.70	543.40
57	154.85	166.25	240.35	325.85	500.65	276.45	333.45	554.80
58	155.80	167.20	243.20	330.60	506.35	281.20	338.20	554.80
59	157.70	169.10	247.00	335.35	513.00	284.05	342.95	567.15
60	158.65	171.00	249.85	340.10	519.65	288.80	347.70	567.15
61	160.55	171.95	253.65	344.85	526.30	291.65	352.45	581.40
62	161.50	172.90	256.50	348.65	532.00	297.35	357.20	581.40
63	162.45	174.80	260.30	353.40	539.60	299.25	361.95	595.65
64	163.40	175.75	263.15	358.15	542.45	304.95	366.70	595.65
65	164.35	177.65	266.95	362.90	552.90	306.85	371.45	609.90
66	165.30	178.60	269.80	367.65	552.90	312.55	376.20	609.90
67	166.25	180.50	272.65	372.40	563.35	314.45	380.95	624.15
68	167.20	182.40	276.45	377.15	565.25	320.15	385.70	624.15
69	168.15	183.35	279.30	381.90	573.80	322.05	390.45	638.40
70	169.10	184.30	283.10	386.65	573.80	327.75	395.20	638.40

216.362 Non-Document Rates With Standard Web Discount

Weight not over (lbs.)	Rate group 1	Rate group 2	Rate group 3	Rate group 4	Rate group 5	Rate group 6	Rate group 7	Rate group 8
0.5	.....	.....	.....	.....	.....	.....	.....	.....
1	34.20	36.10	41.80	45.60	56.05	49.40	52.25	77.90
2	38.95	42.75	48.45	52.25	68.40	57.00	55.10	91.20
3	41.80	48.45	55.10	60.80	81.70	63.65	59.85	103.55
4	44.65	52.25	61.75	67.45	95.00	69.35	66.50	114.00
5	47.50	57.00	68.40	74.10	107.35	76.00	73.15	127.30
6	49.40	59.85	73.15	80.75	119.70	80.75	79.80	138.70
7	52.25	62.70	76.95	86.45	131.10	86.45	86.45	150.10
8	54.15	67.45	81.70	93.10	142.50	91.20	93.10	161.50
9	56.05	70.30	86.45	99.75	154.85	95.95	99.75	172.90
10	58.90	73.15	90.25	105.45	168.15	101.65	106.40	180.50

Weight not over (lbs.)	Rate group 1	Rate group 2	Rate group 3	Rate group 4	Rate group 5	Rate group 6	Rate group 7	Rate group 8
11	60.80	76.00	95.00	110.20	177.65	106.40	112.10	195.70
12	62.70	78.85	98.80	115.90	187.15	110.20	116.85	207.10
13	65.55	81.70	101.65	120.65	196.65	114.00	122.55	218.50
14	67.45	83.60	105.45	125.40	206.15	117.80	127.30	228.95
15	69.35	86.45	108.30	130.15	217.55	124.45	132.05	240.35
16	72.20	89.30	111.15	135.85	226.10	128.25	136.80	250.80
17	74.10	92.15	114.95	140.60	233.70	132.05	141.55	261.25
18	76.00	95.00	117.80	145.35	240.35	135.85	147.25	271.70
19	78.85	97.85	121.60	150.10	247.95	139.65	152.95	282.15
20	82.65	101.65	124.45	156.75	254.60	143.45	158.65	292.60
21	84.55	104.50	127.30	161.50	261.25	146.30	164.35	301.15
22	86.45	106.40	131.10	166.25	268.85	150.10	169.10	309.70
23	88.35	109.25	133.95	171.00	275.50	153.90	173.85	316.35
24	91.20	112.10	137.75	175.75	283.10	157.70	178.60	323.00
25	93.10	114.00	140.60	180.50	289.75	161.50	183.35	330.60
26	95.00	115.90	145.35	185.25	297.35	165.30	188.10	337.25
27	96.90	116.85	149.15	189.05	304.00	169.10	192.85	343.90
28	98.80	119.70	152.00	193.80	311.60	172.90	197.60	351.50
29	100.70	121.60	154.85	198.55	318.25	176.70	202.35	358.15
30	103.55	125.40	159.60	205.20	328.70	182.40	207.10	368.60
31	105.45	128.25	163.40	209.95	335.35	186.20	211.85	376.20
32	107.35	130.15	166.25	214.70	342.95	190.00	216.60	382.85
33	109.25	132.05	170.05	219.45	349.60	193.80	221.35	390.45
34	112.10	133.95	172.90	224.20	357.20	197.60	226.10	397.10
35	114.00	135.85	175.75	228.95	364.80	201.40	230.85	409.45
36	115.90	137.75	179.55	232.75	371.45	205.20	235.60	416.10
37	117.80	139.65	182.40	237.50	379.05	209.00	240.35	423.70
38	119.70	141.55	186.20	242.25	385.70	212.80	245.10	430.35
39	121.60	143.45	189.05	247.00	392.35	216.60	249.85	437.00
40	123.50	145.35	191.90	254.60	398.05	220.40	254.60	444.60
41	125.40	147.25	195.70	259.35	404.70	224.20	259.35	451.25
42	129.20	149.15	198.55	264.10	411.35	228.00	264.10	458.85
43	131.10	151.05	202.35	268.85	418.00	231.80	268.85	465.50
44	133.00	152.00	205.20	273.60	424.65	235.60	273.60	473.10
45	135.85	153.90	209.00	280.25	431.30	239.40	278.35	479.75
46	137.75	155.80	211.85	285.00	437.95	243.20	283.10	481.65
47	139.65	156.75	214.70	289.75	443.65	247.00	287.85	489.25
48	141.55	158.65	218.50	294.50	450.30	250.80	292.60	495.90
49	143.45	160.55	221.35	299.25	456.95	254.60	297.35	503.50
50	144.40	163.40	227.05	304.00	468.35	260.30	302.10	515.85
51	148.20	165.30	229.90	308.75	473.10	262.20	306.85	530.10
52	150.10	167.20	233.70	313.50	479.75	267.90	311.60	530.10
53	152.00	169.10	236.55	318.25	486.40	271.70	316.35	545.30
54	154.85	170.05	240.35	323.00	493.05	275.50	321.10	545.30
55	155.80	171.95	243.20	327.75	499.70	278.35	325.85	557.65
56	157.70	172.90	247.00	332.50	506.35	283.10	330.60	557.65
57	158.65	174.80	249.85	337.25	513.00	285.95	335.35	569.05
58	159.60	175.75	252.70	342.00	518.70	290.70	340.10	569.05
59	161.50	177.65	256.50	346.75	525.35	293.55	344.85	581.40
60	161.50	179.55	259.35	351.50	532.00	298.30	349.60	581.40
61	163.40	183.35	263.15	356.25	538.65	301.15	354.35	595.65
62	164.35	184.30	266.00	360.05	544.35	306.85	359.10	595.65
63	165.30	186.20	269.80	364.80	551.95	308.75	363.85	609.90
64	166.25	187.15	272.65	369.55	554.80	314.45	368.60	609.90
65	167.20	189.05	276.45	374.30	565.25	316.35	373.35	624.15
66	168.15	190.00	279.30	379.05	565.25	322.05	378.10	624.15
67	169.10	191.90	282.15	383.80	575.70	323.95	382.85	638.40
68	170.05	193.80	285.95	388.55	577.60	329.65	387.60	638.40
69	171.00	194.75	288.80	393.30	586.15	331.55	392.35	652.65
70	171.95	195.70	292.60	398.05	586.15	337.25	397.10	652.65

216.363 Document Rates With 5-Piece Discount

Weight not over (lbs.)	Rate group 1	Rate group 2	Rate group 3	Rate group 4	Rate group 5	Rate group 6	Rate group 7	Rate group 8
0.5	20.48	20.50	23.08	23.40	31.50	27.10	30.50	45.50
1	25.41	24.80	27.91	31.50	36.40	32.90	34.50	52.50
2	29.26	28.00	31.74	36.40	45.50	38.50	39.00	62.30
3	30.80	32.20	36.57	41.30	55.30	43.40	45.00	70.70
4	33.11	35.00	41.40	46.20	65.10	47.60	51.00	78.40
5	35.42	38.50	46.23	51.10	74.20	52.50	56.25	86.80
6	36.96	40.60	49.68	56.00	83.30	56.00	61.50	95.20

Weight not over (lbs.)	Rate group 1	Rate group 2	Rate group 3	Rate group 4	Rate group 5	Rate group 6	Rate group 7	Rate group 8
7	39.27	42.70	52.44	60.20	91.70	60.20	66.75	103.60
8	40.81	45.50	55.20	65.10	100.10	63.70	72.00	112.00
9	42.35	47.60	58.65	70.00	109.20	67.20	77.25	120.40
10	44.66	49.00	61.41	72.80	115.50	71.40	82.50	126.00
11	46.20	51.10	63.48	76.30	122.50	73.50	87.00	133.70
12	47.74	53.20	66.24	80.50	129.50	76.30	91.50	142.10
13	50.05	55.30	68.31	84.00	136.50	79.10	95.25	150.50
14	51.59	56.70	71.07	87.50	143.50	81.90	99.00	158.20
15	53.13	58.80	73.14	91.00	149.80	84.70	102.75	166.60
16	55.44	60.90	75.21	95.20	156.10	87.50	106.50	174.30
17	56.98	62.30	77.97	98.70	161.70	90.30	110.25	182.00
18	58.52	64.40	80.04	102.20	166.60	93.10	114.75	189.70
19	61.83	67.50	82.80	105.70	172.20	95.90	119.25	197.40
20	63.37	68.90	85.87	109.20	177.10	98.70	123.75	205.10
21	64.91	71.00	87.94	112.70	182.00	100.80	128.25	211.40
22	66.45	72.40	90.70	116.20	187.60	103.60	132.00	217.70
23	67.99	74.50	92.77	119.70	192.50	106.40	135.75	222.60
24	70.30	76.60	95.53	123.20	198.10	109.20	139.50	227.50
25	72.84	79.00	98.60	126.70	203.00	112.00	143.25	233.10
26	74.38	81.10	100.67	130.20	208.60	114.80	147.00	238.00
27	76.92	83.50	103.43	133.00	213.50	117.60	150.75	242.90
28	78.46	85.60	105.50	136.50	219.10	120.40	154.50	248.50
29	80.00	87.00	107.57	140.00	224.00	123.20	158.25	253.40
30	82.31	89.80	111.02	144.90	231.70	127.40	162.00	261.10
31	84.85	92.90	114.78	148.40	236.60	130.20	165.75	266.70
32	86.39	94.30	116.85	151.90	242.20	133.00	169.50	271.60
33	88.93	96.70	119.61	155.40	247.10	135.80	173.25	277.20
34	91.24	97.40	121.68	158.90	252.70	138.60	177.00	282.10
35	93.78	99.80	123.75	162.40	258.30	141.40	180.75	287.70
36	95.32	101.20	127.51	165.20	263.20	144.20	184.50	292.60
37	97.86	103.60	129.58	168.70	268.80	147.00	188.25	298.20
38	99.40	105.00	132.34	172.20	273.70	149.80	192.00	303.10
39	101.94	107.40	134.41	175.70	278.60	152.60	195.75	308.00
40	103.48	108.80	136.48	179.20	282.80	155.40	199.50	313.60
41	106.02	111.20	140.24	182.70	287.70	158.20	203.25	318.50
42	109.10	112.60	142.31	186.20	292.60	161.00	207.00	324.10
43	110.64	114.00	145.07	189.70	297.50	163.80	210.75	329.00
44	112.18	114.70	148.14	193.20	302.40	166.60	214.50	334.60
45	115.49	117.10	151.90	196.00	307.30	169.40	218.25	339.50
46	117.03	118.50	154.97	199.50	312.20	172.20	222.00	344.40
47	118.57	119.20	158.04	203.00	316.40	175.00	225.75	350.00
48	121.11	121.60	161.80	206.50	321.30	177.80	229.50	354.90
49	123.42	123.00	163.87	210.00	326.20	180.60	233.25	360.50
50	125.96	126.10	168.01	215.60	334.60	184.80	237.00	369.60
51	129.04	127.50	170.08	219.10	339.50	184.80	240.75	380.10
52	130.58	129.90	172.84	222.60	344.40	190.40	244.50	380.10
53	132.12	132.30	174.91	226.10	349.30	193.20	248.25	391.30
54	134.43	134.00	177.67	229.60	354.20	196.00	252.00	391.30
55	136.20	136.40	179.74	233.10	359.10	198.10	255.75	400.40
56	137.74	138.10	182.50	236.60	364.00	201.60	259.50	400.40
57	140.51	140.50	185.57	240.10	368.90	203.70	263.25	408.80
58	142.28	142.20	188.64	243.60	373.10	207.20	267.00	408.80
59	144.82	144.60	191.40	247.10	378.00	209.30	270.75	417.90
60	146.59	147.00	194.47	250.60	382.90	212.80	274.50	417.90
61	149.13	148.70	197.23	254.10	387.80	214.90	278.25	428.40
62	150.90	150.40	199.30	256.90	392.00	219.10	282.00	428.40
63	152.67	152.80	202.06	260.40	397.60	220.50	285.75	438.90
64	154.44	154.50	206.13	263.90	399.70	224.70	289.50	438.90
65	156.21	156.90	208.89	267.40	407.40	226.10	293.25	449.40
66	157.98	158.60	210.96	270.90	407.40	230.30	297.00	449.40
67	159.75	161.00	215.03	274.40	415.10	231.70	300.75	459.90
68	161.52	163.40	217.79	277.90	416.50	235.90	304.50	459.90
69	164.29	165.10	219.86	281.40	422.80	237.30	308.25	470.40
70	166.06	166.80	222.62	284.90	422.80	241.50	312.00	470.40

216.364 Non-Document Rates With 5-Piece Discount

Weight not over (lbs.)	Rate group 1	Rate group 2	Rate group 3	Rate group 4	Rate group 5	Rate group 6	Rate group 7	Rate group 8
0.5	.....	.....	.....	.....	.....	.....	.....	.....
1	27.72	28.60	34.04	36.60	46.30	40.40	49.25	59.04
2	31.57	31.50	36.66	39.50	52.40	43.00	51.50	69.12

Weight not over (lbs.)	Rate group 1	Rate group 2	Rate group 3	Rate group 4	Rate group 5	Rate group 6	Rate group 7	Rate group 8
3	33.88	35.70	39.28	44.80	60.20	46.90	55.25	78.48
4	36.19	38.50	42.90	49.70	70.00	51.10	59.50	86.40
5	38.50	42.00	47.52	54.60	79.10	56.00	62.75	96.48
6	40.04	44.10	50.82	59.50	88.20	59.50	68.00	105.12
7	42.35	46.20	53.46	63.70	96.60	63.70	71.25	113.76
8	43.89	49.70	56.76	68.60	105.00	67.20	75.50	122.40
9	45.43	51.80	60.06	73.50	114.10	70.70	78.75	131.04
10	47.74	53.90	62.70	77.70	123.90	74.90	84.00	136.80
11	49.28	56.00	66.00	81.20	130.90	78.40	88.50	148.32
12	50.82	58.10	68.64	85.40	137.90	81.20	92.25	156.96
13	53.13	60.20	70.62	88.90	144.90	84.00	96.75	165.60
14	54.67	61.60	73.26	92.40	151.90	86.80	100.50	173.52
15	56.21	63.70	75.24	95.90	160.30	91.70	104.25	182.16
16	58.52	65.80	77.22	100.10	166.60	94.50	108.00	190.08
17	60.06	67.90	79.86	103.60	172.20	97.30	111.75	198.00
18	61.60	70.00	81.84	107.10	177.10	100.10	116.25	205.92
19	65.91	74.10	84.48	110.60	182.70	102.90	120.75	213.84
20	68.99	76.90	88.46	115.50	187.60	105.70	125.25	221.76
21	70.53	79.00	90.44	119.00	192.50	107.80	129.75	228.24
22	74.07	82.40	95.08	122.50	198.10	110.60	133.50	234.72
23	75.61	84.50	97.06	126.00	203.00	113.40	137.25	239.76
24	78.92	87.60	100.70	129.50	208.60	116.20	141.00	244.80
25	80.46	89.00	102.68	133.00	213.50	119.00	144.75	250.56
26	83.00	91.40	106.98	136.50	219.10	121.80	148.50	255.60
27	84.54	92.10	109.62	139.30	224.00	124.60	152.25	260.64
28	87.08	95.20	112.60	142.80	229.60	127.40	156.00	266.40
29	88.62	96.60	114.58	146.30	234.50	130.20	159.75	271.44
30	90.93	99.40	117.88	151.20	242.20	134.40	163.50	279.36
31	92.47	101.50	120.52	154.70	247.10	137.20	167.25	285.12
32	94.01	102.90	122.50	158.20	252.70	140.00	171.00	290.16
33	97.55	106.30	127.14	161.70	257.60	142.80	174.75	295.92
34	99.86	107.70	129.12	165.20	263.20	145.60	178.50	300.96
35	101.40	109.10	131.10	168.70	268.80	148.40	182.25	310.32
36	102.94	110.50	133.74	171.50	273.70	151.20	186.00	315.36
37	104.48	111.90	135.72	175.00	279.30	154.00	189.75	321.12
38	106.02	113.30	138.36	178.50	284.20	156.80	193.50	326.16
39	107.56	114.70	140.34	182.00	289.10	159.60	197.25	331.20
40	112.10	119.10	145.32	187.60	293.30	162.40	201.00	336.96
41	113.64	120.50	147.96	191.10	298.20	165.20	204.75	342.00
42	118.72	123.90	151.94	194.60	303.10	168.00	208.50	347.76
43	120.26	125.30	154.58	198.10	308.00	170.80	212.25	352.80
44	121.80	126.00	156.56	201.60	312.90	173.60	216.00	358.56
45	124.11	127.40	159.20	206.50	317.80	176.40	219.75	363.60
46	126.65	129.80	162.18	210.00	322.70	179.20	223.50	365.04
47	128.19	130.50	164.16	213.50	326.90	182.00	227.25	370.80
48	131.73	133.90	168.80	217.00	331.80	184.80	231.00	375.84
49	133.27	135.30	170.78	220.50	336.70	187.60	234.75	381.60
50	134.04	137.40	174.74	224.00	345.10	191.80	238.50	390.96
51	137.12	138.80	176.72	227.50	348.60	193.20	242.25	401.76
52	138.66	140.20	179.36	231.00	353.50	197.40	246.00	401.76
53	142.20	143.60	183.34	234.50	358.40	200.20	249.75	413.28
54	144.51	144.30	185.98	238.00	363.30	203.00	253.50	413.28
55	145.28	145.70	187.96	241.50	368.20	205.10	257.25	422.64
56	146.82	146.40	190.60	245.00	373.10	208.60	261.00	422.64
57	148.59	148.80	193.58	248.50	378.00	210.70	264.75	431.28
58	149.36	149.50	195.56	252.00	382.20	214.20	268.50	431.28
59	150.90	150.90	198.20	255.50	387.10	216.30	272.25	440.64
60	150.90	152.30	200.18	259.00	392.00	219.80	276.00	440.64
61	154.44	157.10	204.82	262.50	396.90	221.90	279.75	451.44
62	155.21	157.80	206.80	265.30	401.10	226.10	283.50	451.44
63	155.98	159.20	209.44	268.80	406.70	227.50	287.25	462.24
64	158.75	161.90	213.42	272.30	408.80	231.70	291.00	462.24
65	159.52	163.30	216.06	275.80	416.50	233.10	294.75	473.04
66	160.29	164.00	218.04	279.30	416.50	237.30	298.50	473.04
67	161.06	165.40	220.02	282.80	424.20	238.70	302.25	483.84
68	162.83	167.80	223.66	286.30	425.60	242.90	306.00	483.84
69	163.60	168.50	225.64	289.80	431.90	244.30	309.75	494.64
70	164.37	169.20	228.28	293.30	431.90	248.50	313.50	494.64

216.365 Document Rates With 12-Piece Discount

Weight not over (lbs.)	Rate group 1	Rate group 2	Rate group 3	Rate group 4	Rate group 5	Rate group 6	Rate group 7	Rate group 8
0.5	20.00	20.00	22.44	22.76	30.60	26.44	29.48	44.20
1	24.75	24.12	27.13	30.60	35.36	31.96	33.12	51.00
2	28.50	27.20	30.82	35.36	44.20	37.40	37.44	60.52
3	30.00	31.28	35.51	40.12	53.72	42.16	43.20	68.68
4	32.25	34.00	40.20	44.88	63.24	46.24	48.96	76.16
5	34.50	37.40	44.89	49.64	72.08	51.00	54.00	84.32
6	36.00	39.44	48.24	54.40	80.92	54.40	59.04	92.48
7	38.25	41.48	50.92	58.48	89.08	58.48	64.08	100.64
8	39.75	44.20	53.60	63.24	97.24	61.88	69.12	108.80
9	41.25	46.24	56.95	68.00	106.08	65.28	74.16	116.96
10	43.50	47.60	59.63	70.72	112.20	69.36	79.20	122.40
11	45.00	49.64	61.64	74.12	119.00	71.40	83.52	129.88
12	46.50	51.68	64.32	78.20	125.80	74.12	87.84	138.04
13	48.75	53.72	66.33	81.60	132.60	76.84	91.44	146.20
14	50.25	55.08	69.01	85.00	139.40	79.56	95.04	153.68
15	51.75	57.12	71.02	88.40	145.52	82.28	98.64	161.84
16	54.00	59.16	73.03	92.48	151.64	85.00	102.24	169.32
17	55.50	60.52	75.71	95.88	157.08	87.72	105.84	176.80
18	57.00	62.56	77.72	99.28	161.84	90.44	110.16	184.28
19	60.25	65.60	80.40	102.68	167.28	93.16	114.48	191.76
20	61.75	66.96	83.41	106.08	172.04	95.88	118.80	199.24
21	63.25	69.00	85.42	109.48	176.80	97.92	123.12	205.36
22	64.75	70.36	88.10	112.88	182.24	100.64	126.72	211.48
23	66.25	72.40	90.11	116.28	187.00	103.36	130.32	216.24
24	68.50	74.44	92.79	119.68	192.44	106.08	133.92	221.00
25	71.00	76.80	95.80	123.08	197.20	108.80	137.52	226.44
26	72.50	78.84	97.81	126.48	202.64	111.52	141.12	231.20
27	75.00	81.20	100.49	129.20	207.40	114.24	144.72	235.96
28	76.50	83.24	102.50	132.60	212.84	116.96	148.32	241.40
29	78.00	84.60	104.51	136.00	217.60	119.68	151.92	246.16
30	80.25	87.32	107.86	140.76	225.08	123.76	155.52	253.64
31	82.75	90.36	111.54	144.16	229.84	126.48	159.12	259.08
32	84.25	91.72	113.55	147.56	235.28	129.20	162.72	263.84
33	86.75	94.08	116.23	150.96	240.04	131.92	166.32	269.28
34	89.00	94.76	118.24	154.36	245.48	134.64	169.92	274.04
35	91.50	97.12	120.25	157.76	250.92	137.36	173.52	279.48
36	93.00	98.48	123.93	160.48	255.68	140.08	177.12	284.24
37	95.50	100.84	125.94	163.88	261.12	142.80	180.72	289.68
38	97.00	102.20	128.62	167.28	265.88	145.52	184.32	294.44
39	99.50	104.56	130.63	170.68	270.64	148.24	187.92	299.20
40	101.00	105.92	132.64	174.08	274.72	150.96	191.52	304.64
41	103.50	108.28	136.32	177.48	279.48	153.68	195.12	309.40
42	106.50	109.64	138.33	180.88	284.24	156.40	198.72	314.84
43	108.00	111.00	141.01	184.28	289.00	159.12	202.32	319.60
44	109.50	111.68	144.02	187.68	293.76	161.84	205.92	325.04
45	112.75	114.04	147.70	190.40	298.52	164.56	209.52	329.80
46	114.25	115.40	150.71	193.80	303.28	167.28	213.12	334.56
47	115.75	116.08	153.72	197.20	307.36	170.00	216.72	340.00
48	118.25	118.44	157.40	200.60	312.12	172.72	220.32	344.76
49	120.50	119.80	159.41	204.00	316.88	175.44	223.92	350.20
50	123.00	122.84	163.43	209.44	325.04	179.52	227.52	359.04
51	126.00	124.20	165.44	212.84	329.80	179.52	231.12	369.24
52	127.50	126.56	168.12	216.24	334.56	184.96	234.72	369.24
53	129.00	128.92	170.13	219.64	339.32	187.68	238.32	380.12
54	131.25	130.60	172.81	223.04	344.08	190.40	241.92	380.12
55	133.00	132.96	174.82	226.44	348.84	192.44	245.52	388.96
56	134.50	134.64	177.50	229.84	353.60	195.84	249.12	388.96
57	137.25	137.00	180.51	233.24	358.36	197.88	252.72	397.12
58	139.00	138.68	183.52	236.64	362.44	201.28	256.32	397.12
59	141.50	141.04	186.20	240.04	367.20	203.32	259.92	405.96
60	143.25	143.40	189.21	243.44	371.96	206.72	263.52	405.96
61	145.75	145.08	191.89	246.84	376.72	208.76	267.12	416.16
62	147.50	146.76	193.90	249.56	380.80	212.84	270.72	416.16
63	149.25	149.12	196.58	252.96	386.24	214.20	274.32	426.36
64	151.00	150.80	200.59	256.36	388.28	218.28	277.92	426.36
65	152.75	153.16	203.27	259.76	395.76	219.64	281.52	436.56
66	154.50	154.84	205.28	263.16	395.76	223.72	285.12	436.56
67	156.25	157.20	209.29	266.56	403.24	225.08	288.72	446.76
68	158.00	159.56	211.97	269.96	404.60	229.16	292.32	446.76
69	160.75	161.24	213.98	273.36	410.72	230.52	295.92	456.96
70	162.50	162.92	216.66	276.76	410.72	234.60	299.52	456.96

216.366 Non-Document Rates With 12-Piece Discount

Weight not over (lbs.)	Rate group 1	Rate group 2	Rate group 3	Rate group 4	Rate group 5	Rate group 6	Rate group 7	Rate group 8
0.5	.....	.....	.....	.....	.....	.....	.....	.....
1	27.00	27.46	33.16	34.20	43.35	37.28	45.40	55.76
2	30.75	30.15	35.64	36.75	48.80	39.40	47.44	65.28
3	33.00	34.17	38.12	41.60	55.90	42.88	50.84	74.12
4	35.25	36.85	41.60	46.15	65.00	46.72	54.60	81.60
5	37.50	40.20	46.08	50.70	73.45	51.20	57.36	91.12
6	39.00	42.21	49.28	55.25	81.90	54.40	62.12	99.28
7	41.25	44.22	51.84	59.15	89.70	58.24	64.88	107.44
8	42.75	47.57	55.04	63.70	97.50	61.44	68.64	115.60
9	44.25	49.58	58.24	68.25	105.95	64.64	71.40	123.76
10	46.50	51.59	60.80	72.15	115.05	68.48	76.16	129.20
11	48.00	53.60	64.00	75.40	121.55	71.68	80.24	140.08
12	49.50	55.61	66.56	79.30	128.05	74.24	83.64	148.24
13	51.75	57.62	68.48	82.55	134.55	76.80	87.72	156.40
14	53.25	58.96	71.04	85.80	141.05	79.36	91.12	163.88
15	54.75	60.97	72.96	89.05	148.85	83.84	94.52	172.04
16	57.00	62.98	74.88	92.95	154.70	86.40	97.92	179.52
17	58.50	64.99	77.44	96.20	159.90	88.96	101.32	187.00
18	60.00	67.00	79.36	99.45	164.45	91.52	105.40	194.48
19	64.25	71.01	81.92	102.70	169.65	94.08	109.48	201.96
20	67.25	73.69	85.84	107.25	174.20	96.64	113.56	209.44
21	68.75	75.70	87.76	110.50	178.75	98.56	117.64	215.56
22	72.25	79.04	92.32	113.75	183.95	101.12	121.04	221.68
23	73.75	81.05	94.24	117.00	188.50	103.68	124.44	226.44
24	77.00	84.06	97.80	120.25	193.70	106.24	127.84	231.20
25	78.50	85.40	99.72	123.50	198.25	108.80	131.24	236.64
26	81.00	87.74	103.92	126.75	203.45	111.36	134.64	241.40
27	82.50	88.41	106.48	129.35	208.00	113.92	138.04	246.16
28	85.00	91.42	109.40	132.60	213.20	116.48	141.44	251.60
29	86.50	92.76	111.32	135.85	217.75	119.04	144.84	256.36
30	88.75	95.44	114.52	140.40	224.90	122.88	148.24	263.84
31	90.25	97.45	117.08	143.65	229.45	125.44	151.64	269.28
32	91.75	98.79	119.00	146.90	234.65	128.00	155.04	274.04
33	95.25	102.13	123.56	150.15	239.20	130.56	158.44	279.48
34	97.50	103.47	125.48	153.40	244.40	133.12	161.84	284.24
35	99.00	104.81	127.40	156.65	249.60	135.68	165.24	293.08
36	100.50	106.15	129.96	159.25	254.15	138.24	168.64	297.84
37	102.00	107.49	131.88	162.50	259.35	140.80	172.04	303.28
38	103.50	108.83	134.44	165.75	263.90	143.36	175.44	308.04
39	105.00	110.17	136.36	169.00	268.45	145.92	178.84	312.80
40	109.50	114.51	141.28	174.20	272.35	148.48	182.24	318.24
41	111.00	115.85	143.84	177.45	276.90	151.04	185.64	323.00
42	116.00	119.19	147.76	180.70	281.45	153.60	189.04	328.44
43	117.50	120.53	150.32	183.95	286.00	156.16	192.44	333.20
44	119.00	121.20	152.24	187.20	290.55	158.72	195.84	338.64
45	121.25	122.54	154.80	191.75	295.10	161.28	199.24	343.40
46	123.75	124.88	157.72	195.00	299.65	163.84	202.64	344.76
47	125.25	125.55	159.64	198.25	303.55	166.40	206.04	350.20
48	128.75	128.89	164.20	201.50	308.10	168.96	209.44	354.96
49	130.25	130.23	166.12	204.75	312.65	171.52	212.84	360.40
50	131.00	132.24	169.96	208.00	320.45	175.36	216.24	369.24
51	134.00	133.58	171.88	211.25	323.70	176.64	219.64	379.44
52	135.50	134.92	174.44	214.50	328.25	180.48	223.04	379.44
53	139.00	138.26	178.36	217.75	332.80	183.04	226.44	390.32
54	141.25	138.93	180.92	221.00	337.35	185.60	229.84	390.32
55	142.00	140.27	182.84	224.25	341.90	187.52	233.24	399.16
56	143.50	140.94	185.40	227.50	346.45	190.72	236.64	399.16
57	145.25	143.28	188.32	230.75	351.00	192.64	240.04	407.32
58	146.00	143.95	190.24	234.00	354.90	195.84	243.44	407.32
59	147.50	145.29	192.80	237.25	359.45	197.76	246.84	416.16
60	147.50	146.63	194.72	240.50	364.00	200.96	250.24	416.16
61	151.00	151.31	199.28	243.75	368.55	202.88	253.64	426.36
62	151.75	151.98	201.20	246.35	372.45	206.72	257.04	426.36
63	152.50	153.32	203.76	249.60	377.65	208.00	260.44	436.56
64	155.25	155.99	207.68	252.85	379.60	211.84	263.84	436.56
65	156.00	157.33	210.24	256.10	386.75	213.12	267.24	446.76
66	156.75	158.00	212.16	259.35	386.75	216.96	270.64	446.76
67	157.50	159.34	214.08	262.60	393.90	218.24	274.04	456.96
68	159.25	161.68	217.64	265.85	395.20	222.08	277.44	456.96
69	160.00	162.35	219.56	269.10	401.05	223.36	280.84	467.16
70	160.75	163.02	222.12	272.35	401.05	227.20	284.24	467.16

216.367 Document Rates With 20-Piece Discount

Weight not over (lbs.)	Rate group 1	Rate group 2	Rate group 3	Rate group 4	Rate group 5	Rate group 6	Rate group 7	Rate group 8
0.5	19.52	19.25	21.80	21.80	29.25	25.45	28.80	42.25
1	24.09	23.10	26.35	29.25	33.80	30.55	32.20	48.75
2	27.74	26.00	29.90	33.80	42.25	35.75	36.40	57.85
3	29.20	29.90	34.45	38.35	51.35	40.30	42.00	65.65
4	31.39	32.50	39.00	42.90	60.45	44.20	47.60	72.80
5	33.58	35.75	43.55	47.45	68.90	48.75	52.50	80.60
6	35.04	37.70	46.80	52.00	77.35	52.00	57.40	88.40
7	37.23	39.65	49.40	55.90	85.15	55.90	62.30	96.20
8	38.69	42.25	52.00	60.45	92.95	59.15	67.20	104.00
9	40.15	44.20	55.25	65.00	101.40	62.40	72.10	111.80
10	42.34	45.50	57.85	67.60	107.25	66.30	77.00	117.00
11	43.80	47.45	59.80	70.85	113.75	68.25	81.20	124.15
12	45.26	49.40	62.40	74.75	120.25	70.85	85.40	131.95
13	47.45	51.35	64.35	78.00	126.75	73.45	88.90	139.75
14	48.91	52.65	66.95	81.25	133.25	76.05	92.40	146.90
15	50.37	54.60	68.90	84.50	139.10	78.65	95.90	154.70
16	52.56	56.55	70.85	88.40	144.95	81.25	99.40	161.85
17	54.02	57.85	73.45	91.65	150.15	83.85	102.90	169.00
18	55.48	59.80	75.40	94.90	154.70	86.45	107.10	176.15
19	58.67	62.75	78.00	98.15	159.90	89.05	111.30	183.30
20	60.13	64.05	80.95	101.40	164.45	91.65	115.50	190.45
21	61.59	66.00	82.90	104.65	169.00	93.60	119.70	196.30
22	63.05	67.30	85.50	107.90	174.20	96.20	123.20	202.15
23	64.51	69.25	87.45	111.15	178.75	98.80	126.70	206.70
24	66.70	71.20	90.05	114.40	183.95	101.40	130.20	211.25
25	69.16	73.50	93.00	117.65	188.50	104.00	133.70	216.45
26	70.62	75.45	94.95	120.90	193.70	106.60	137.20	221.00
27	73.08	77.75	97.55	123.50	198.25	109.20	140.70	225.55
28	74.54	79.70	99.50	126.75	203.45	111.80	144.20	230.75
29	76.00	81.00	101.45	130.00	208.00	114.40	147.70	235.30
30	78.19	83.60	104.70	134.55	215.15	118.30	151.20	242.45
31	80.65	86.55	108.30	137.80	219.70	120.90	154.70	247.65
32	82.11	87.85	110.25	141.05	224.90	123.50	158.20	252.20
33	84.57	90.15	112.85	144.30	229.45	126.10	161.70	257.40
34	86.76	90.80	114.80	147.55	234.65	128.70	165.20	261.95
35	89.22	93.10	116.75	150.80	239.85	131.30	168.70	267.15
36	90.68	94.40	120.35	153.40	244.40	133.90	172.20	271.70
37	93.14	96.70	122.30	156.65	249.60	136.50	175.70	276.90
38	94.60	98.00	124.90	159.90	254.15	139.10	179.20	281.45
39	97.06	100.30	126.85	163.15	258.70	141.70	182.70	286.00
40	98.52	101.60	128.80	166.40	262.60	144.30	186.20	291.20
41	100.98	103.90	132.40	169.65	267.15	146.90	189.70	295.75
42	103.90	105.20	134.35	172.90	271.70	149.50	193.20	300.95
43	105.36	106.50	136.95	176.15	276.25	152.10	196.70	305.50
44	106.82	107.15	139.90	179.40	280.80	154.70	200.20	310.70
45	110.01	109.45	143.50	182.00	285.35	157.30	203.70	315.25
46	111.47	110.75	146.45	185.25	289.90	159.90	207.20	319.80
47	112.93	111.40	149.40	188.50	293.80	162.50	210.70	325.00
48	115.39	113.70	153.00	191.75	298.35	165.10	214.20	329.55
49	117.58	115.00	154.95	195.00	302.90	167.70	217.70	334.75
50	120.04	117.95	158.85	200.20	310.70	171.60	221.20	343.20
51	122.96	119.25	160.80	203.45	315.25	171.60	224.70	352.95
52	124.42	121.55	163.40	206.70	319.80	176.80	228.20	352.95
53	125.88	123.85	165.35	209.95	324.35	179.40	231.70	363.35
54	128.07	125.50	167.95	213.20	328.90	182.00	235.20	363.35
55	129.80	127.80	169.90	216.45	333.45	183.95	238.70	371.80
56	131.26	129.45	172.50	219.70	338.00	187.20	242.20	371.80
57	133.99	131.75	175.45	222.95	342.55	189.15	245.70	379.60
58	135.72	133.40	178.40	226.20	346.45	192.40	249.20	379.60
59	138.18	135.70	181.00	229.45	351.00	194.35	252.70	388.05
60	139.91	138.00	183.95	232.70	355.55	197.60	256.20	388.05
61	142.37	139.65	186.55	235.95	360.10	199.55	259.70	397.80
62	144.10	141.30	188.50	238.55	364.00	203.45	263.20	397.80
63	145.83	143.60	191.10	241.80	369.20	204.75	266.70	407.55
64	147.56	145.25	195.05	245.05	371.15	208.65	270.20	407.55
65	149.29	147.55	197.65	248.30	378.30	209.95	273.70	417.30
66	151.02	149.20	199.60	251.55	378.30	213.85	277.20	417.30
67	152.75	151.50	203.55	254.80	385.45	215.15	280.70	427.05
68	154.48	153.80	206.15	258.05	386.75	219.05	284.20	427.05
69	157.21	155.45	208.10	261.30	392.60	220.35	287.70	436.80
70	158.94	157.10	210.70	264.55	392.60	224.25	291.20	436.80

216.368 Non-Document Rates With 20-Piece Discount

Weight not over (lbs.)	Rate group 1	Rate group 2	Rate group 3	Rate group 4	Rate group 5	Rate group 6	Rate group 7	Rate group 8
0.5	.....	.....	.....	.....	.....	.....	.....	.....
1	26.28	26.70	32.28	33.76	41.58	36.24	43.75	53.30
2	29.93	29.25	34.62	34.10	44.64	38.20	45.70	62.40
3	32.12	33.15	37.96	39.68	53.32	41.54	48.95	70.85
4	34.31	35.75	40.30	44.02	62.00	45.26	52.50	78.00
5	36.50	39.00	44.64	48.36	70.06	49.60	55.05	87.10
6	37.96	40.95	47.74	52.70	78.12	52.70	59.60	94.90
7	40.15	42.90	50.22	56.42	85.56	56.42	62.15	102.70
8	41.61	46.15	53.32	60.76	93.00	59.52	65.70	110.50
9	43.07	48.10	56.42	65.10	101.06	62.62	68.25	118.30
10	45.26	50.05	58.90	68.82	109.74	66.34	72.80	123.50
11	46.72	52.00	62.00	71.92	115.94	69.44	76.70	133.90
12	48.18	53.95	64.48	75.64	122.14	71.92	79.95	141.70
13	50.37	55.90	66.34	78.74	128.34	74.40	83.85	149.50
14	51.83	57.20	68.82	81.84	134.54	76.88	87.10	156.65
15	53.29	59.15	70.68	84.94	141.98	81.22	90.35	164.45
16	55.48	61.10	72.54	88.66	147.56	83.70	93.60	171.60
17	56.94	63.05	75.02	91.76	152.52	86.18	96.85	178.75
18	58.40	65.00	76.88	94.86	156.86	88.66	100.75	185.90
19	62.59	68.95	79.36	97.96	161.82	91.14	104.65	193.05
20	65.51	71.55	83.22	102.30	166.16	93.62	108.55	200.20
21	66.97	73.50	85.08	105.40	170.50	95.48	112.45	206.05
22	70.43	76.80	89.56	108.50	175.46	97.96	115.70	211.90
23	71.89	78.75	91.42	111.60	179.80	100.44	118.95	216.45
24	75.08	81.70	94.90	114.70	184.76	102.92	122.20	221.00
25	76.54	83.00	96.76	117.80	189.10	105.40	125.45	226.20
26	79.00	85.30	100.86	120.90	194.06	107.88	128.70	230.75
27	80.46	85.95	103.34	123.38	198.40	110.36	131.95	235.30
28	82.92	88.90	106.20	126.48	203.36	112.84	135.20	240.50
29	84.38	90.20	108.06	129.58	207.70	115.32	138.45	245.05
30	86.57	92.80	111.16	133.92	214.52	119.04	141.70	252.20
31	88.03	94.75	113.64	137.02	218.86	121.52	144.95	257.40
32	89.49	96.05	115.50	140.12	223.82	124.00	148.20	261.95
33	92.95	99.35	119.98	143.22	228.16	126.48	151.45	267.15
34	95.14	100.65	121.84	146.32	233.12	128.96	154.70	271.70
35	96.60	101.95	123.70	149.42	238.08	131.44	157.95	280.15
36	98.06	103.25	126.18	151.90	242.42	133.92	161.20	284.70
37	99.52	104.55	128.04	155.00	247.38	136.40	164.45	289.90
38	100.98	105.85	130.52	158.10	251.72	138.88	167.70	294.45
39	102.44	107.15	132.38	161.20	256.06	141.36	170.95	299.00
40	106.90	111.45	137.24	166.16	259.78	143.84	174.20	304.20
41	108.36	112.75	139.72	169.26	264.12	146.32	177.45	308.75
42	113.28	116.05	143.58	172.36	268.46	148.80	180.70	313.95
43	114.74	117.35	146.06	175.46	272.80	151.28	183.95	318.50
44	116.20	118.00	147.92	178.56	277.14	153.76	187.20	323.70
45	118.39	119.30	150.40	182.90	281.48	156.24	190.45	328.25
46	120.85	121.60	153.26	186.00	285.82	158.72	193.70	329.55
47	122.31	122.25	155.12	189.10	289.54	161.20	196.95	334.75
48	125.77	125.55	159.60	192.20	293.88	163.68	200.20	339.30
49	127.23	126.85	161.46	195.30	298.22	166.16	203.45	344.50
50	127.96	128.80	165.18	198.40	305.66	169.88	206.70	352.95
51	130.88	130.10	167.04	201.50	308.76	171.12	209.95	362.70
52	132.34	131.40	169.52	204.60	313.10	174.84	213.20	362.70
53	135.80	134.70	173.38	207.70	317.44	177.32	216.45	373.10
54	137.99	135.35	175.86	210.80	321.78	179.80	219.70	373.10
55	138.72	136.65	177.72	213.90	326.12	181.66	222.95	381.55
56	140.18	137.30	180.20	217.00	330.46	184.76	226.20	381.55
57	141.91	139.60	183.06	220.10	334.80	186.62	229.45	389.35
58	142.64	140.25	184.92	223.20	338.52	189.72	232.70	389.35
59	144.10	141.55	187.40	226.30	342.86	191.58	235.95	397.80
60	144.10	142.85	189.26	229.40	347.20	194.68	239.20	397.80
61	147.56	147.45	193.74	232.50	351.54	196.54	242.45	407.55
62	148.29	148.10	195.60	234.98	355.26	200.26	245.70	407.55
63	149.02	149.40	198.08	238.08	360.22	201.50	248.95	417.30
64	151.75	152.05	201.94	241.18	362.08	205.22	252.20	417.30
65	152.48	153.35	204.42	244.28	368.90	206.46	255.45	427.05
66	153.21	154.00	206.28	247.38	368.90	210.18	258.70	427.05
67	153.94	155.30	208.14	250.48	375.72	211.42	261.95	436.80
68	155.67	157.60	211.62	253.58	376.96	215.14	265.20	436.80
69	156.40	158.25	213.48	256.68	382.54	216.38	268.45	446.55
70	157.13	158.90	215.96	259.78	382.54	220.10	271.70	446.55

* * * * *

Stanley F. Mires,
Chief Counsel, Legislative.
[FR Doc. 01–31168 Filed 12–19–01; 8:45 am]
BILLING CODE 7710–12–P

Federal Register

Thursday,
December 20, 2001

Part III

Department of Defense

General Services Administration

National Aeronautics and Space Administration

48 CFR Parts 1, 36, and 53

Federal Acquisition Regulation; New Consolidated Form for Selection of Architect-Engineer Contractors; Proposed Rule

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Parts 1, 36, and 53

[FAR Case 2000–608 (Extension of Comment Period)]

RIN 9000–AJ15

Fedral Acquisition Regulation; New Consolidated Form for Selection of Architect-Engineer Contractors

AGENCIES: Department of Defense (DoD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Notice; extension of comment period.

SUMMARY: On October 19, 2001 66 FR 53314, the Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council (Councils) proposed to amend the Federal Acquisition Regulation (FAR) to replace SF 254, Architect-Engineer and Related Services Questionnaire, and SF 255, Architect-Engineer and Related Services Questionnaire for Specific Projects, with SF 330, Architect-Engineer Qualifications. This notice extends the comment period for the proposed rule to January 8, 2002.

DATES: Interested parties should submit comments in writing on or before January 8, 2002 to be considered in the formulation of a final rule.

ADDRESSES: Submit written comments to: General Services Administration, FAR Secretariat (MVP), 1800 F Street, NW, Room 4035, ATTN: Laurie Duarte, Washington, DC 20405.

Submit electronic comments via the Internet to: *farcase.2000–608@gsa/gov*

Please submit comments only and cite FAR case 2000–608 in all correspondence related to this case.

FOR FURTHER INFORMATION CONTACT: The FAR Secretariat, Room 4035, GS Building, Washington, DC, 20405, at (202) 501–4755 for information pertaining to status or publication schedules. For clarification of content, contract Ms. Cecelia L. Davis, Procurement Analyst, at (202) 219–0202. Please cite FAR case 2000–608.

Dated: December 14, 2001.

Gloria M. Sochon,

Acting Director, Acquisition Policy Division.

[FR Doc. 01–31304 Filed 12–19–01; 8:45 am]

BILLING CODE 6820–EP–M

Federal Register

Thursday,
December 20, 2001

Part IV

Department of Education

National Assessment of Educational Progress (NAEP), Secondary Analysis Program; Notice

DEPARTMENT OF EDUCATION

[CFDA No. 84.902B]

National Assessment of Educational Progress (NAEP), Secondary Analysis Program

ACTION: Notice inviting applications for new awards for fiscal year (FY) 2002.

Purpose of Program: To encourage the preparation of reports that would not otherwise be available and that apply new approaches to the analysis and reporting of the NAEP and NAEP High School Transcript Studies data. Analyses and reports prepared under this program should potentially be useful to the general public, parents, educators, educational researchers, or policy makers.

For FY 2002, the competition for new awards focuses on projects designed to meet the priorities we describe in the PRIORITIES section of this application notice.

Eligible Applicants: Public or private organizations and consortia of organizations.

Applications Available: December 21, 2001.

The application package for this competition is also available on line at: *http://ed.gov/GrantApps/*

Deadline for Transmittal of Applications: March 8, 2002.

Estimated Available Funds: $700,000.

The estimated amount of funds available for new awards is based on the Administration's request for NAEP for FY 2002. The actual level of funding for the secondary analysis program, if any, depends on final congressional action. However, we are inviting applications to allow enough time to complete the grant process before the end of the fiscal year, if Congress appropriates funds for this program.

Estimated Range of Awards: $15,000—$100,000.

Estimated Average Size of Awards: $85,000.

Maximum Award: We will reject any application that proposes a budget exceeding $100,000 for a single budget period of 18 months.

Estimated Number of Awards: 6–8.

Note: The Department is not bound by any estimates in this notice.

Project Period: Up to 18 months.

Page Limit: The application narrative (Part III of the application) is where you, the applicant, address the selection criteria that reviewers use to evaluate your application. You must limit Part III to the equivalent of no more than 60 pages, using the following standards:

- A page is 8.5″ x 11″, on one side only, with 1'' margins at the top, bottom, and both sides.
- You must double space (no more than three lines per vertical inch) all text in the application narrative, including titles, headings, footnotes, quotations, references, and captions, as well as all text in charts, tables, figures, and graphs.
- Use a font that is either 12-point or larger or no smaller than 10 pitch (characters per inch).

The page limit does not apply to Part I, the cover sheet; Part II, the budget section, including the narrative budget justification; Part IV, the assurances and certifications; or the one-page abstract, the resumes, the bibliography, or the letters of support. However, you must include all of the application narrative in Part III.

We will reject your application if—

- You apply these standards and exceed the page limit; or
- You apply other standards and exceed the equivalent of the page limit.

Applicable Regulations: (a) The Education Department General Administrative Regulations (EDGAR) in 34 CFR parts 74, 75 (except for those provisions of part 75 noted in 34 CFR 700.5(a)), 77, 80, 81, 82, 85, 86, 97, 98, and 99. (b) The regulations in 34 CFR part 700.

Priorities

Invitational Priorities

We are particularly interested in applications that meet one or more of the invitational priorities listed in this section of this notice. Under 34 CFR 75.105(c)(1) we do not give an application that meets one or more of the priorities a competitive or absolute preference over other applications.

Invitational Priority 1—Projects that use NAEP achievement data alone or in combination with other data sets to assist policy makers and educators who make decisions about curriculum and instruction.

Invitational Priority 2—Projects designed to assist States in analyzing, interpreting and reporting their State-level NAEP results.

Invitational Priority 3—Projects that include the development of analytic procedures that improve precision with which NAEP estimates group and subgroup performance.

Invitational Priority 4—Projects that develop improved sampling procedures for national or State-level NAEP.

Invitational Priority 5—Projects to analyze and report data using statistical software developed by the project to permit more advanced analytic techniques to be readily applied to NAEP data.

FOR APPLICATIONS AND FURTHER INFORMATION CONTACT: Alex Sedlacek, U.S. Department of Education, 1990 K Street, NW., room 8007, Washington, DC 20006. Telephone: (202) 502–7446 or via Internet: *Alex.Sedlacek@ed.gov*

If you use a telecommunications device for the deaf (TDD), you may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

Individuals with disabilities may obtain this document in an alternative format (e.g., Braille, large print, audiotape, or computer diskette) on request to the program contact person listed under **FOR APPLICATIONS AND FURTHER INFORMATION CONTACT.**

Individuals with disabilities may obtain a copy of the application package in an alternative format by contacting the program person listed under **FOR APPLICATIONS AND FURTHER INFORMATION CONTACT.** However, the Department is not able to reproduce in an alternative format the standard forms included in the application package.

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Note: The official version of this document is the document published in the **Federal Register**. Free Internet access to the official edition of the **Federal Register** and the Code of Federal Regulations is available on GPO Access at: *http://www.access.gpo.gov/nara/index.html*

Program Authority: 20 U.S.C. 9010.

Dated: December 17, 2001.

Grover J. Whitehurst,

Assistant Secretary for Educational Research and Improvement.

[FR Doc. 01–31363 Filed 12–19–01; 8:45 am]

BILLING CODE 4000–01–U

Federal Register

Thursday,
December 20, 2001

Part V

Department of Agriculture

Forest Service

Forest Transportation System Analysis; Roadless Area Protection; Notice

DEPARTMENT OF AGRICULTURE

Forest Service

RIN 0596–AB90

Forest Transportation System Analysis; Roadless Area Protection

AGENCY: Forest Service, USDA.

ACTION: Notice of interim administrative directives, request for comment.

SUMMARY: On January 12, 2001, corollary with revisions to the Forest Transportation System rules at 36 CFR part 212, the Forest Service adopted a revised administrative policy to guide transportation planning, analysis, and management, especially road management in the National Forest System. One element of that policy authorized road construction and reconstruction in inventoried roadless areas and contiguous unroaded areas only if the Regional Forester determined that the project met a compelling need, a roads analysis was conducted, and an EIS prepared. The interim requirements were to remain in effect until each unit completed a forest-scale roads analysis and forest plan review, amendment, or revision. Following extensive roads analysis implementation training and field review of the entire road management policy, new Interim Directives (ID's) to Forest Service Manual Chapters 1920 and 7710 have been issued. These ID's streamline, clarify, and consolidate, with related planning direction, the inventoried roadless area interim requirements. The new ID to FSM 7710 also clarifies the flexibility of line officers in determining the application of the roads analysis process. The intended effect is to improve the agency's ability to implement these policies consistently and to stabilize roadless area management. Comments are invited and will be considered in adoption of final revised directives.

DATES: Interim Directive Nos. 1920–2001–1 and 7710–2001–3 were effective December 14, 2001. Comments must be submitted in writing on or before February 19, 2002.

ADDRESSES: Written comments concerning these Interim Directives should be sent to USFS CAT, Attention: Road Policy, P.O. Box 221150, Salt Lake City, UT, 84122; via e-mail to *roads_id@fs.fed.us;* or via facsimile to USFS CAT, Attention: Road Policy, at 801–517–1021.

FOR FURTHER INFORMATION CONTACT: Questions about this action should be addressed to Mike Ash, Deputy Director of Engineering, 703–605–4646, or Heidi Valetkevitch, Office of Communications, 202–205–0914.

SUPPLEMENTARY INFORMATION:

Contents

- Background
- Revisions to Road Management Directives
- Regulatory Certifications
- Conclusion
- Revisions to Forest Service Road Mangement Directives
- Inventoried Roadless Areas

Background

The Forest Service Road Management Strategy adopted January 12, 2001, (66 FR 3219) consisted of revisions to the rules governing the Forest Transportation System at 36 CFR part 212 and revisions of the agency's administrative directives on the transportation system in Forest Service Manual (FSM) Chapter 7700 Zero Code and Chapter 7710, transportation atlas, records, and analysis. The rule directs the Responsible Official of each National Forest, Grassland, or other unit of the National Forest System to perform a comprehensive analysis of the road system within the unit and to document the overall forest transportation system in a transportation atlas.

Issued concurrently with the final rule, the Forest Service administrative directives to FSM Chapter 7710 established standards for creation of the road atlas and for determining the scope and scale of roads analyses needed to inform road management decisions; that is, road construction, reconstruction, or decommissioning. Additionally, the revision of Forest Service Manual Chapter 7710 included interim requirements that, rather than addressing the transportation atlas, record, or analysis, imposed a significant restriction on road construction or reconstruction in inventoried roadless areas and contiguous unroaded areas until a forest-scale roads analysis was completed and incorporated into the Forest plan.

Upon adoption of the road management rule and directives in January 2001, the Forest Service began extensive implementation training on application of the science-based roads analysis process mandated by FSM 7712.1; on creating the road atlas; and on complying with the other elements of the road management directives. Since the training began, many Forest Service transportation managers have informed the Chief's office that the deadlines for compliance are unworkable, considering the level of detail and the variety of information required and the amount of training necessary before the analysis can begin. Moreover, conducting the newly required roads analysis has, in some cases, conflicted with seasonal workload demands, especially in light of the need for restoration work after last year's devastating fire season. Additionally, pursuant to a late January memorandum from the President's Chief of Staff to cabinet members, the Secretary of Agriculture began a review of the roadless area rule, also adopted on January 12, 2001, and the Chief of the Forest Service undertook a review of the road management policy. These reviews have led the agency to initiate several Interim Directives (ID's).

The first Interim Directive (ID No. 7710–2001–1, issued May 31, 2001) reflected the Chief's goal of encouraging and relying on local expertise and authority over forest-level issues as much as possible. As adopted January 12, 2001, Forest Service Manual section 7712.15, paragraph 2a, (FSM 7712.15, para. 2a,) required, with some exceptions, all units to complete a forest-scale roads analysis by January 13, 2003. Further, under paragraph 2b, of this section, only the Chief could approve an extension. Recognizing that Regional Foresters are better informed of particular management challenges facing individual national forests and grasslands and their annual programs of work, ID No. 7710–2001–1 (May 31, 2001) delegated the authority to extend the deadline for completing the forest-scale roads analysis to Regional Foresters. Secondly, in response to field concerns about the impending July 12 deadline by which all road management decisions must be informed by a roads analysis, ID No. 7710–2001–1 extended the deadline to January 12, 2002. Notice of the May 31 ID was published in the **Federal Register** on August 24, 2001 (66 FR 44590), with a request for comment.

The Chief announced in a June 7, 2001, letter the importance of managing and protecting inventoried roadless areas as an important component of the National Forest System and that he would reserve the authority to make decisions, except in specific circumstances, regarding road management activities and timber harvesting in those areas. Two Interim Directives, ID No. 7710–2001–2 and ID No. 2400–2001–3, were issued on July 27, 2001, to implement the Chief's announcement.

In a letter to Regional Foresters dated June 12, 2001, the Deputy Chief for National Forest Systems, noting the Chief's June 7, announcement, asked Regional Foresters and Forest Supervisors to review the road management policy to identify any provisions that they believe should be revised.

Responses from field units to the Deputy Chief's June 12 letter included the following recommendations:

1. Retain the rule revisions at 36 CFR part 212 without change, as there are no burdensome or confusing provisions in the rule and FSM Chapter 7700 Zero Code or this directive;

2. Allow for decisions to be made as close to the ground as practicable;

3. Clarify the local manager's flexibility and discretion to conduct roads analysis for proposed actions (FSM Chapter 7710); and

4. Limit the scope of the interim requirements (FSM 7712.16) to inventoried roadless areas, because of the ambiguities of identifying and mapping contiguous unroaded areas as described in FSM 7712.16 and because some of the maps of inventoried roadless areas cover some contiguous unroaded lands.

In addition to these recommendations, the Forest Service recognized that the incremental issuance of directives on road management and roadless areas had caused confusion for some employees and the public alike and, therefore, that the agency needed to consolidate earlier directives in a way that clarified intent.

Revisions to Road Management Directives

The review of the road management policy has resulted in the issuance of two new Interim Directives—one to FSM Chapter 7710—Transportation Atlas, Records, and Analysis, and another to FSM Chapter 1920—Land and Resource Management Planning. The changes related to the interim requirements are explained first, followed by identification of other changes to Chapter 7710.

• *Interim Requirements (FSM 7712.16–7712.16d).* When Chapter 7710 was adopted in January 2001, it included a new section 7712.16 entitled ''Interim Requirements for Road Construction/Reconstruction in Inventoried Roadless and Contiguous Unroaded Areas.'' This section was based on a similar section, entitled ''Transition Procedures,'' in the proposed policy published March 3, 2000, in Part III of the **Federal Register** (65 FR 11676–11693). This section of the proposed policy was controversial and was substantially revised in the final directive, both to strengthen restrictions on entering these areas and to clarify the agency's intent.

As adopted, January 12, 2001, the interim requirements set out in FSM 7712.16–7712.16d provided the following:

1. Road construction or reconstruction in inventoried roadless areas and contiguous unroaded areas could not be authorized unless there was a *compelling need* for the activity; an Environmental Impact Statement was prepared; a science-based roads analysis was conducted on the proposal; and the Regional Forester served as the Responsible Official.

2. Examples of compelling needs for roads were provided. Additionally, the Regional Forester for the Alaska Region was given authority to determine that meeting market demand for timber from the Tongass National Forest constitutes a compelling need.

3. Environmental mitigation or restoration activities on unclassified roads were appropriate but not reconstruction and maintenance of unclassified roads.

4. Certain road management actions were exempted from the interim requirements:

a. Roads needed for public health and safety in cases of imminent threat of catastrophic events threatening loss of life or property;

b. Roads needed to conduct a response action under the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) or to conduct a natural resource restoration under CERCLA, the Clean Water Act, or Oil Pollution Act; and

c. Road construction needed in conjunction with the continuation, extension, or renewal of an existing mineral lease or issuance of a new lease upon expiration of an existing lease.

Based on the internal review of the road management direction (FSM 7712.16–7712.16d), the agency has made several modifications to the interim requirements.

1. *Contiguous Unroaded Areas.* Given the difficulty of identifying contiguous unroaded areas, the agency has concluded that the interim requirements of FSM 7712.16b could be interpreted as preventing the agency from undertaking *any* road management activity within proximity of an inventoried roadless area. This ambiguity would lead to confusion and inconsistencies across the agency. Moreover, the protection of unroaded values should not be determined solely on the basis of acreage, which is the approach adopted in the January directive. Instead, the boundaries of unroaded areas should be based on conditions and characteristics of the landscape and identified within the context of land and resource management planning. The agency already has a regulatory requirement to review inventoried roadless areas during the forest plan revision process. At that time, the Responsible Official determines the need to add contiguous land or to subtract from previously identified inventoried roadless areas and establishes their management direction. For all these reasons, the agency has removed ''contiguous unroaded areas'' from the interim requirements.

2. *EIS Requirement.* The agency also has dropped the requirement for an Environmental Impact Statement (EIS) for road management activities proposed in inventoried roadless areas. The National Environmental Planning Act (NEPA) rules and procedures established by the Council on Environmental Quality (CEQ) govern the level of analysis required when the agency considers proposed actions. Briefly, under the Act and CEQ regulations, it is the nature of a proposed action that determines the environmental analysis and documentation required. A blanket requirement for an EIS would result in needless expenditures of public resources in those cases where only minor surface disturbance would occur. In fact, in the course of the agency's review of the interim requirements, a number of forests reported situations where a new road or road reconstruction would traverse a quarter mile or less of roadless areas and, therefore, require preparation of an EIS, even though the effects would be so minimal as to be sufficiently disclosed in an Environmental Assessment. Several of these situations were reported to be impeding access to oil and gas leasing or other mining operations.

Removal of the EIS requirement does not reduce the agency's environmental analysis and disclosure obligation. The Forest Service has a directive provision that requires preparation of an EIS whenever any activity would substantially alter the character of an inventoried roadless area (FSH 1909.15, sec. 20.6). All projects remain subject to NEPA requirements. Involvement by the public, States, Tribes, and other interested parties will continue to help identify the issues to be addressed related to inventoried roadless areas, and issues associated with roadless values will continue to be addressed through roads analysis and compliance with regulations and procedures of NEPA, 40 CFR part 1500–1508, and Forest Service Handbook 1909.15.

3. *Relocation of Interim Requirements.* In addition to the preceding modifications, the agency has concluded that the interim requirements should be removed from Chapter 7710 because the primary focus of Chapter

7710 is on transportation records and analysis, not protection of special areas. Consequently, the modified interim requirements have been moved to a new section 1925 in the planning chapter of the Forest Service Manual (FSM Chapter 1920) to provide guidance for addressing road management activities until land management plans are amended or revised. With this change, Chapter 7710 now focuses appropriately on transportation analysis needed to make better decisions about the scope and funding of the transportation network on each National Forest, Grassland, and Prairie. This relocation of the interim requirements to Chapter 1920 remains consistent with the agency's intent in adopting the final road management directive in January 2001. As explained in the January **Federal Register** notice, the agency retained the transition procedures of the proposed policy (renamed ''interim requirements'' in the final directive) to ensure that the ''values associated with inventoried roadless and contiguous unroaded areas are fully considered within the context of forest planning'' (66 FR 3226, Col. 3).

Therefore, simultaneously with issuance of the latest ID No. 7710–2001–3, the agency has issued Interim Directive No. 1920–2001–1 to consolidate the direction on inventoried roadless areas. This ID establishes a policy of protecting the values of these areas and restricts entry for road management activities or timber harvest until a forest scale roads analysis is incorporated into the forest plan. ID No. 1920–2001–1 also incorporates the protections for roadless areas announced by the Chief on June 7, 2001, which were issued in ID Nos. 7710–2001–2 and 2400–2001–3. These previous ID's reserved to the Chief the authority to approve certain road management activities and timber harvest in inventoried roadless areas.

• *Scope and Scale of Roads Analysis.* The other substantive revision of the road management policy in FSM Chapter 7710 is to clarify the local Responsible Official's discretion and flexibility to conduct roads analysis. While the January 2001 directive provided for discretion, many employees did not interpret the directive as allowing much flexibility. Therefore, FSM 7712.13 has been revised to make clearer the use of roads analysis at each of the various scales and the actions that are subject to roads analysis. Also, in response to field employee queries, examples of circumstances where roads analysis may not be necessary have been added to FSM 7712.13c. These include temporary roads for short-term access or a minor extension of a road into a forest campground. Additionally, Exhibit 01 of FSM 7712.13 has been modified to reflect the removal of the interim requirements from FSM Chapter 7710.

Regulatory Certifications

Regulatory Impact

This notice has been reviewed under USDA procedures and Executive Order 12866 on Regulatory Planning and Review. The Office of Management and Budget (OMB) has reviewed this notice and has determined it constitutes a significant action as defined by Executive Order 12866. ID No. 7710–2001–3 provides Service-wide direction to forest and regional personnel about analyzing, planning for, and managing the forest transportation system. ID No. 1920–2001–1 relocates interim requirements regarding inventoried roadless areas from FSM 7712 and FSM 2400 to Chapter 1920.

The costs and benefits of these Interim Directives are necessarily speculative. These directives revise a strategy that provides guidance for transportation planning, but does not dictate land management decisions. Therefore, the agency has chosen to perform a qualitative analysis. As with the effects identified in the Environmental Assessment, the costs and benefits associated with the revisions made by the Interim Directives fall within the range of the Cost-Benefit Analysis (Appendix E) prepared for the January 2001 policy. With the changes made by the Interim Directives, FS estimates that these Interim Directives will have an overall positive economic benefit compared to the January 2001 final policy. In the Environmental Assessment, the Cost-Benefit Analysis (Appendix E) cited a reduction in direct and total jobs as well as timber receipts as a result of the decrease in timber harvest and mineral exploration and extraction in inventoried roadless areas and contiguous unroaded areas as negative effects of the January 2001 policy. The costs of the January 2001 road management policy were based on estimates of miles of road to be constructed or reconstructed and loss of jobs associated with reduced timber harvest in inventoried roadless areas and contiguous unroaded areas. The Forest Service estimated that the eventual implementation of the preferred alternative/final road management strategy on all National Forests could result in an annual decrease in timber harvesting by as much as 170 million board feet, a decrease of 5 percent from current levels if no roads were constructed in any inventoried roadless or contiguous unroaded areas for the purpose of serving timber harvests. This represents a value of 1,039 direct jobs and 1,850 total jobs nationwide. However, in the January EA, it was pointed out that this level of impact was highly unlikely. Since the modified road management policy removes contiguous unroaded areas from the interim requirements, it will be even more unlikely that these levels of impacts would be reached. Additionally, dropping the mandatory requirement to prepare an Environmental Impact Statement (EIS) for all road management activities proposed in inventoried roadless areas and contiguous unroaded areas will eliminate needless expenditures of public resources in those cases where an EIS would not be appropriate.

Under the new Interim Directives, the values and characteristics of these contiguous unroaded areas will still be considered through the roads analysis process, NEPA analysis, and forest planning procedures. Consequently, the agency believes that these areas will not necessarily be at greater risk of road construction/reconstruction, or resource development than was the case when they were subject to the interim requirements of the January 2001 policy. Implementation of the final road management strategy as modified by these Interim Directives would still result in additional protection of watersheds and air resources; wildlife; fish; and threatened, endangered, and sensitive species. It would also still reduce access to some forest resources and the economic and social values associated with those resources. Thus, the impacts of these Directives would fall between the impacts described in the January 2001 Environmental Assessment and accompanying Cost-Benefit Analysis. However, while necessarily speculative, the Forest Service estimates the economic impacts under these Interim Directives will likely be less severe than the estimated impacts associated with the January 2001 policy.

These Interim Directives also have been considered in light of the Regulatory Flexibility Act (5 USC 601 *et seq.*). No direct or indirect financial impact on small businesses or other entities has been identified. Therefore, it is hereby certified that this action will not have a significant economic impact on a substantial number of small entities as defined by the Act.

Unfunded Mandates

Pursuant to Title II of the Unfunded Mandates Reform Act of 1995 (2 USC

1531–1538), the Department has assessed the effects of these Interim Directives on State, local, and Tribal governments, and on the private sector. These directives do not compel the expenditure of $100 million or more by any State, local, or Tribal government, or anyone in the private sector. Therefore, a statement under section 202 of the Act is not required.

Federalism

The agency has considered these Interim Directives under the requirements of Executive Order 13132, Federalism, and Executive Order 12875, Government Partnerships. The agency has made a preliminary assessment that the Directives conform with the federalism principles set out in these Executive Orders; would not impose any compliance costs on the States; and would 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. Moreover, these directives address transportation and land management planning processes on National Forests, Grasslands or other units of the National Forest System, which do not directly affect the States. Based on comments received on these directives, the agency will consider if any additional consultation will be needed with State and local governments prior to adopting final directives.

Consultation and Coordination With Indian Tribal Governments

These Interim Directives do not have Tribal implications as defined in Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, and, therefore, advance consultation with Tribes is not required.

Environmental Impact

Section 31.1(b) of Forest Service Handbook 1909.15 (57 FR 43180, September 18, 1992) excludes from documentation in an environmental impact statement ''rules, regulations, or policies to establish service-wide administrative procedures, program processes, or instructions.'' The Forest Service's assessment is that these new Interim Directives to the Forest Service Manual fall within this category of exclusion. However, the Forest Service elected to prepare an Environmental Assessment (EA) in association with development of the January 12, 2001, administrative policy. In that EA (issued January 2001), the Forest Service examined the potential environmental impacts associated with road policy in effect prior to January 12, 2001, (the ''no action'' alternative), the road management strategy as originally proposed in March 2000, and the final road management strategy ultimately adopted January 12, 2001. These impacts arose, for the most part, from the interim requirements associated with inventoried roadless areas and contiguous unroaded areas. They included both potential adverse and beneficial impacts to access and public safety; fire, insect, and disease management; timber harvesting and mineral resource development; recreational and non-recreational land uses; fish and wildlife; wilderness values; watershed and air; and social and economic effects.

Overall, the Forest Service expected that, under the final road management strategy analyzed in the EA, more miles of roads would be decommissioned and reconstructed than under the ''no-action'' alternative, and fewer miles of roads would be constructed than under the ''no-action'' alternative. Under the latest Interim Directives to FSM Chapters 1920 and 7710, more miles of roads could be constructed or reconstructed in unroaded areas contiguous to inventoried roadless areas than expected under the final road management strategy adopted in January 12, 2001, but there will still be less than the miles of roads than would be constructed or reconstructed under the ''no action'' alternative.

However, given the difficulty of identifying contiguous unroaded areas, the number of miles of road cannot be quantified. As a consequence of using the science-based roads analysis process, implementation of the final road management strategy as modified by these Interim Directives would still result in additional protection of watersheds and air resources; wildlife; fish; and threatened, endangered, and sensitive species. It would also reduce access to some forest resources and the economic and social values associated with those resources. Thus, the impacts of these new Interim Directives would fall between the impacts described in the January EA for the ''no-action'' alternative and those described for the final road management strategy.

Because the impacts would fall within the impacts described in the January Road Management Strategy EA, there is no need to modify or reissue the EA prior to issuing these Interim Directives. A new Finding of No Significant Impact (FONSI) has been prepared and is available on the Internet at *www.fs.fed.us/news/roads,* or by writing to the Director of Engineering at the address shown earlier in this notice.

Civil Justice Reform Act

The Interim Directives were reviewed under Executive Order 12988, Civil Justice Reform. The Interim Directives direct the work of Forest Service employees and are not intended to preempt any State and local laws and regulations that might be in conflict or that would impede full implementation of these Directives. The ID's would not retroactively affect existing permits, contracts, or other instruments authorizing the occupancy and use of National Forest System lands and would not require the institution of administrative proceedings before parties may file suit in court challenging these provisions.

Controlling Paperwork Burdens on the Public

The Interim Directive does not contain any record keeping or reporting requirements or other information collection requirements as defined in 5 CFR part 1320 and, therefore, impose no paperwork burden on the public. Accordingly, the review provisions of the Paperwork Reduction Act of 1995 (44 USC 3501, *et seq.*) and implementing regulations at 5 CFR part 1320 do not apply.

Energy Effects

The effects on energy supply and distribution resulting from these Interim Directives were reviewed under Executive Order 13211 of May 18. It was determined that removing the mandatory EIS requirement provisions in FSM 7712.16 will expedite access to oil and gas leases and other energy related projects in a few cases. Otherwise, no other effects were identified. Because these Directives do not significantly affect energy supply, distribution, or use, a Statement of Energy Effects is not required. Additionally, these Interim Directives are also consistent with the intent of the Executive Order 13212 of May 18, 2001, Actions to Expedite Energy Related Projects.

Conclusion

Following the issuance of the road management policy and the roadless area conservation rule on January 12, 2001, the Department and the agency have reviewed those documents to determine if there are impediments to implementation. ID No. 7710–2001–3 represents the culmination of the agency's internal reviews of these practices. With this action, interim requirements related to road construction and reconstruction in inventoried roadless areas are separated from the roads analysis direction and,

instead, revised and relocated to a new section 1925 in FSM Chapter 1920—Land and Resource Management Planning. Additionally, ID No. 1920–2001–1 reflects the decision to remove ''contiguous unroaded areas'' from the scope of the interim requirements. In ID No. 7710–2001–3, FSM 7710.13 is revised to clarify the line officer's discretion and flexibility to determine the scope and scale of roads analysis needed to inform road management decisions. The May 31 Interim Directive also is incorporated into this new Interim Directive.

These ID's remove implementation impediments associated with the road management strategy and roadless area conservation. As a consequence, the agency can fulfill its commitment to improve decisionmaking associated with road construction, reconstruction, and decommissioning and its commitment to protect and conserve roadless areas.

Normally, when the agency determines that public notice and opportunity to comment are necessary on a Forest Service Manual revision, the agency publishes a proposed revision with a minimum 60-day comment period. The agency then considers the comments, makes any changes, drafts and publishes a final **Federal Register** notice explaining the final directive and the rationale for any changes. At a minimum, this process takes 6 months and usually takes 9–12 months. Such a delay in revising the road management policy would perpetuate uncertainty and confusion when undertaking decisions that involve road management activities. The agency could also incur environmental analysis costs that would be disproportionate to the potential effects in inventoried roadless areas and delay access to oil and gas leases, or other mining operations.

Consequently, the agency has elected to issue Interim Directives and to make them immediately effective. An Interim Directive expires 18 months from issuance and may be reissued only once for a total duration of 36 months. Thereafter, the direction must be incorporated into an amendment or allowed to expire.

In the meantime, public comment is invited and will be considered in adopting a final policy. The agency will consider all comments received in determining a final policy. Respondents should note that greater weight is given to original substantive comments than to post cards, forms, questionnaires, or duplicated letters or messages. Only the sections of FSM 7710 that are being revised are set out at the end of this notice along with the text of the roadless area Interim Directive No. 1920–2001–1. The full text of Chapter 7710 and 1920–2001–1 is available on the World Wide Web at *http://www.fs.fed.us.directives.* Single paper copies are available upon request from the address and phone numbers listed earlier in this notice as well as from the nearest National Forest Office or Regional Office, the location of which are also available on the headquarters homepage on the World Wide Web at *http://www.fs.fed.us.*

The agency recognizes that the issuance of five Interim Directives on roadless areas and road management may be confusing to the public. Had the agency been able to undertake and complete the overview of the road management policy before issuing the roadless area Interim Directives, the sequence of revision to agency policy would have flowed in a more understandable manner. However, roadless litigation on the roadless area conservation rule required the agency and the Department to address roadless areas first.

Charts are provided at the end of this notice to assist readers in tracking the various actions and modifications of the roadless area rule and the road management policy since January 12, 2001. The first chart is organized by policy or rule; the second, by date, in chronological order.

Comments received in response to **Federal Register** notices of earlier Interim Directives (ID No. 7700–2001–1, ID No. 7700–2001–2, 2400–2001–3) will be considered along with comments received on the Interim Directives that are the subject of this notice.

Dated: October 9, 2001.

Sally D. Collins,

Associate Chief.

Revisions to Forest Service Road Management Directives

Note: The Forest Service organizes its directive system by alphanumeric codes and subject headings. Only those sections of the Forest Service Manual that are the subject of this notice are set forth here. Those who wish to see the entire document in which the changes are being incorporated may do so at *www.fs.fed.us/news/roads.* In the directives that follow, Forest Service employees charged with decisionmaking responsibilities concerning the National Forest Transportation System are referred to as Responsible Officials and are the intended audience of these administrative directives.

FSM TITLE 7700—TRANSPORTATION SYSTEM

Chapter 7710—Transportation Atlas, Records, and Analysis

Interim Directive No. 7710–2001–3.

Effective Date: December 14, 2001.

Duration: 18 months from effective date.

Approved: SALLY D. COLLINS, Associate Chief.

7710.42 Regional Forester

It is the responsibility of the Regional Forester to:

1. Ensure that roads analysis is a component of sub-basin, multi-Forest, and sub-regional scale assessments.
2. Develop multi-year regional schedules of proposed transportation facility projects (FSM 1920).
3. Establish policy for traffic surveillance and classification to be used in transportation analysis (FSM 7731.5).
4. Coordinate State and Federal transportation involvement in land and resource management planning to ensure that their plans are included in land management policy development and that their policy development has the benefit of Forest plans.
5. To determine, on a case-by-case basis, whether or not to approve a Forest Supervisor request for additional time to complete a forest-scale roads analysis.
6. Oversee and evaluate the use of roads analysis process within the Region (FSM 7712.1).

* * * * *

7712.13 Scope and Scale of Roads Analysis

There are multiple scales at which roads analysis may be conducted to inform road management decisions. Generally, road management decisions should be informed by roads analysis at a broad scale. Accordingly, all units of the National Forest System must conduct a forest-scale roads analysis (FSM 7712.13b and FSM 7712.15).

The Responsible Official has the discretion and duty to determine whether or not a roads analysis below the forest-scale is needed and the degree of detail that is appropriate and practicable. Guidance on selecting the appropriate scale and those proposed actions which may trigger a need for a roads analysis is set forth in FSM 7712.13, paragraphs a–c.

* * * * *

7712.13c Roads Analysis at the Watershed and Project Scale

Roads analysis at the forest-scale will generally provide the context for informing road management decisions and activities at the watershed, area, and project level. Where a forest-scale roads analysis has been conducted, the Responsible Official must consider the decision(s) to be made and determine how to apply the results of the forest-scale roads analysis to best inform

management decisions. However, it is generally expected that road inventories and road condition assessments as identified in FSM 7712.14 would be completed at the watershed or project scale, not the forest-scale.

When higher scale analyses are not available to inform a project decision, the Responsible Official must consider the decisions to be made (FSM 7712.13) and the potential environmental and access effects and determine whether or not additional analysis is needed at the watershed or project scale. Roads analysis below the forest-scale is not automatically required, but may be undertaken at the discretion of the Responsible Official. When the Responsible Official determines that additional analysis is not needed for a project, the Responsible Official must document the basis for that conclusion. Examples where roads analysis may not be necessary include: temporary roads for short-term access; or a minor extension of a campground road.

When proposed road management activities (road construction, reconstruction, and decommissioning) would result in changes in access, such as changes in current use, traffic patterns, and road standards, or where there may be adverse effects on soil and water resources, ecological processes, or biological communities, those decisions must be informed by roads analysis (FSM 7712.1). Site-specific projects may be informed by a watershed roads analysis, if the Responsible Official determines that the scope and scale of issues under consideration warrants such use. FSM 7712.13, exhibit 01, provides a snapshot of the scope and scale of roads analysis and its integration into planning and decisionmaking.

When needed, the outcomes of roads analysis at the watershed and area-scale would result, at a minimum, in the following:

1. Identification of needed and unneeded roads.
2. Identification of road associated environmental and public safety risks.
3. Identification of site-specific priorities and opportunities for road improvements and decommissioning.
4. Identification of areas of special sensitivity, unique resource values, or both.
5. Any other specific information that may be needed to support project-level decisions.

* * * * *

7712.15 Deadlines for Completing Roads Analyses

1. *Analysis Needed to Inform Road Management Decisions.* Section 7712.13 identifies proposed road management decisions other than forest plan revisions or amendments that require roads analysis and provides guidance on the scope and scale of various levels of analysis that might inform those decisions. The following deadlines govern the application of roads analysis to the proposed road management decisions identified in sections 7712.13 through 7712.13c:

a. Decisions made before January 12, 2002, do not require a roads analysis.

b. Decisions made after January 12, 2002, must be informed by a roads analysis, except as provided in FSM 7712.13c.

2. *Forest-Scale Roads Analyses.* Every National Forest System administrative unit must have a forest-scale roads analysis completed by January 13, 2003, except as follows:

a. Those units that will complete a forest plan revision or amendment by January 12, 2002, do not need to complete a forest-scale roads analysis (FSM 7712.1) prior to adopting the plan revision or amendment. However, these units are still required to complete a forest-scale roads analysis by January 13, 2003.

b. Those units that have begun revision or amendment of their forest plans but will not adopt a final revision or final amendment by January 12, 2002, must complete a roads analysis prior to adoption of the final plan revision or amendment.

c. Where additional time is needed for completion of forest-scale roads analysis, a Forest Supervisor may request approval from the Regional Forester for an extension. In making such a request, the Forest Supervisor must provide a statement of the reason(s) the extension is needed.

Inventoried Roadless Areas

FSM TITLE 1900—PLANNING

Chapter 1920—Land and Resource Management Planning

Interim Directive No. 1920–2001–1.

Effective Date: December 14, 2001.

Duration: 18 months from effective date.

Approved: SALLY D. COLLINS, Associate Chief.

FSM 1925—Management of Inventoried Roadless Areas

1925.03 Policy

Inventoried roadless areas contain important environmental values that warrant protection. Accordingly, until a forest-scale roads analysis (FSM 7712.13b) is completed and incorporated into a forest plan, inventoried roadless areas shall, as a general rule, be managed to preserve their roadless characteristics. However, where a line officer determines that an exception may be warranted, the decision to approve a road management activity or timber harvest in these areas is reserved to the Chief or the Regional Forester as provided in FSM 1925.04a and 1925.04b.

1925.04 Responsibility

1925.04a Chief

The Chief reserves the following:

1. The authority to approve or disapprove road construction or reconstruction in inventoried roadless areas (FSM 1925.05) except those decisions delegated to the Regional Foresters at FSM 1925.04b, paragraph 1.

This reservation remains in effect until a forest-scale roads analysis is completed and incorporated into each forest plan (FSM 7712.13b). When an inventoried roadless area road construction, road reconstruction, or timber harvest decision falls under the Chief's authority, the Chief, for purposes of administrative efficiency and timeliness, may designate, on a case-by-case basis by official memorandum, the Associate Chief, a Deputy Chief, or an Associate Deputy Chief to serve as the Responsible Official.

2. The authority to approve or disapprove proposed timber harvest in inventoried roadless areas, except for the following:

a. The timber is generally small-diameter material and the removal of timber is needed for one of the following purposes:

(1) To improve habitat for listed or proposed threatened and endangered species, or for sensitive species (FSM 2670), or

(2) To maintain or restore the desirable characteristics of ecosystem composition and structure, for example, to reduce the risk of uncharacteristic wildfire effects.

b. The cutting, sale, or removal of timber is incidental to the implementation of a management activity and not otherwise prohibited under the land and resource management plan.

c. The cutting, sale, or removal of timber is needed and appropriate for personal or administrative use as provided for in part 223 of Title 36 of the Code of Federal Regulations (36 CFR Part 223).

d. The harvest is in a portion of an inventoried roadless area where construction of a classified road and subsequent timber harvest have previously taken place, and the roadless area characteristics have been substantially altered by those activities.

This reservation applies until revision of a land and resource management plan or adoption of a plan amendment that has considered the protection and management of inventoried roadless areas (FSM 1923). If a Record of Decision for a Forest Plan revision has been issued as of July 27, 2001, the requirement for the Chief's review does not apply. By official memorandum, the Chief may designate, on a case-by-case basis, the Associate Chief, a Deputy Chief, or an Associate Deputy Chief to serve as the Responsible Official.

The delegation of authority to approve or disapprove the timber harvest projects described in preceding paragraphs a through d; remain unchanged by this Interim Directive (FSM 2404.2).

1925.04b Regional Forester

It is the responsibility of the Regional Forester to:

1. Serve as the Responsible Official for any of the following decisions on a road construction or reconstruction project in an inventoried roadless area:

a. A road is needed to protect public health and safety in cases of an imminent threat of flood, fire, or other catastrophic event, that without intervention would cause the loss of life or property.

b. A road is needed to conduct a response action under the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) or to conduct a natural restoration action under CERCLA, section 311 of the Clean Water Act, or Oil Pollution Act.

c. Road construction is needed in conjunction with the continuation, extension, or renewal of a mineral lease on lands that are under lease by the Secretary of the Interior as of January 12, 2001.

d. Road access is needed pursuant to reserved or outstanding rights or as provided by statute or treaty.

e. A road is needed for critical resource restoration and protection.

f. Road realignment is needed to prevent resource damage by an existing road that is deemed essential for public or private access, management, or public health or safety, and where such damage cannot be corrected by maintenance.

g. A road is needed to restore wildlife habitat.

2. Review and determine whether to recommend to the Chief a decision for any road construction or reconstruction project in an inventoried roadless area within the Chief's decision authority (sec. 1925.04a, para. 1).

3. For road construction, reconstruction, and timber management projects in inventoried roadless areas where it has been determined that an environmental impact statement EIS is required, review and agree to the purpose and need statements for the notice of intent to prepare an (EIS).

4. Review and determine whether to recommend to the Chief a decision for any timber harvest project in inventoried roadless areas within the Chief's decision authority (sec. 1925.04a, para. 2).

1925.05 Definitions

Inventoried Roadless Areas. Those areas identified in a set of inventoried roadless area maps, contained in Forest Service Roadless Area Conservation, Final Environmental Impact Statement, Volume 2, dated November 2000, which are held at the National headquarters of the Forest Service, or any update, correction, or revision of those maps.

BILLING CODE 3410–11–P

FOREST SERVICE ROADLESS AND ROAD MANAGEMENT POLICY REVISION -- QUICK REFERENCE CHART

Policy Initiative	Associated Documents	Content and Purpose	Status and Date
1. Roadless Area Conservation Rule 36 CFR Part 294 FSM 7710 FSM 2400	1.1 Final Rule: Special Areas; Roadless Area Conservation	Established prohibitions on road construction and reconstruction and timber harvest in inventoried roadless areas.	Published in Federal Register 1/12/01 @ 66 FR 3244.
	1.2 Delay of effective date	Delayed effective date of roadless area conservation rule for 60 days, from March 13, 2001 until May 12, 2001.	Published un the Federal Register 2/5/01 @ 66 FR 8899.
	1.3 Advanced notice of proposed rulemaking (ANPR); request for public comment	Advised public of potential revision of January 12, 2001, Roadless Area Conservation rule & requested comment on key questions.	Published in Federal Register 7/10/01 @ 66 FR 35918. Comment period ended 09/10/01.
	1.2 Interim Directives No. 7710-2001-2 and No. 2400-2001-3	Implemented the Chief's letter of June 7, 2001. ID to FSM 7710 – delegated authority to the Chief to approve certain road construction or reconstruction in roadless areas. ID to FSM 2400 – delegated authority to the Chief to approve certain timber harvest projects in roadless areas.	Issued through the Directive System Effective: 7/27/01.
	1.3 FR notice of Interim Directives to 2400 and 7710	Informed the public of Interim Directives No. 7710-2001-2 and 2400-2001-3; requested comment.	Published in Federal Register 8/22/01 @ 66 FR 44112. Comment period ends 10/22/01.
	1.4 New Interim Directive No. 1920-2001-X	Consolidated ID's No. 7710-2001-2 & 2400-2001-3 (see 1.2 above) into FSM 1920. Necessitated by decision to remove interim requirements from Road Management Policy. Redesignation to FSM 1920 doesn't change scope or effect from that of July 27 ID's. Public notice will be part of Federal Register notice on Road Management policy revision.	Approach agreed to in meeting with road policy team 8/30/01. Revised draft received 8/31, will be processed at same time as new road management ID 7710-2001-3.
2. Road Management Policy 36 CFR Parts 212, 261, & 295 FSM 7700 Zero Code and Chapter 7710	2.1 Final Rule/Final Policy: Administration of the Forest Development Transportation System; Prohibitions; Use of Motor Vehicles Off Forest Service Roads	Revised regulations and FSM Chapters 7700 and 7710 concerning the management, use, and maintenance of the National Forest Transportation System.	Published in Federal Register 1/12/01 @ 66 FR 3206; Effective 1/12/01
	2.2 Interim Directive No. 7710-2001-1	Extended the deadline by which all decisions must be informed by a roads analysis. Redelegated authority to approve exceptions to forest-scale roads analysis from the Chief to Regional Foresters.	Issued through the Directive System - Effective: 5/30/01.
	2.3 FR notice of Interim Directive; request for comment	Informed the public of Interim Directive No. 7710-2001-1 (5/30/01) and requested comment on it.	Published in Federal Register 8/24/01 @ 66 FR 44590. Public comment period ends 10/23/01.
	2.4 New Interim Directive No. 7710-2001-3	Revises Chapter 7710 to streamline and remove interim requirements for entering inventoried roadless areas & clarifies local decisionmakers' discretion for roads analysis. Also incorporated recently issued ID #7710-2001-1 (see 2.1 above).	Issued on 12/14/01; Effective Date 12/14/01.

FOREST SERVICE ROADLESS AREA CONSERVATION AND ROAD MANAGEMENT POLICY REVISION – SEQUENTIAL REFERENCE CHART

Date	Document	Action
1/12/01	Special Areas: Roadless Area Conservation; Final Rule (66 FR 3244)	Published in Federal Register and Effective Date
1/12/01	Forest Service Transportation System; Prohibitions; Use of Motor Vehicles Off Forest Service Roads; Final Rule (66 FR 3206)	Published in Federal Register
1/12/01	Forest Service Transportation System; Final Administrative Policy; Directives Nos. 7700 and 7710; Notice	Published in Federal Register and Effective Date
2/5/01	Special Areas: Roadless Area Conservation; Final Rule (66 FR 3244) 60-Day delay of effective date; from March 13, 2001 until May 12, 2001. (66 FR 8899)	Published in Federal Register
3/13/01	Forest Service Transportation System; Prohibitions; Use of Motor Vehicles Off Forest Service Roads; Final Rule (66 FR 3206)	Original Effective Date (delayed by 60 days, 66 FR 3244)
5/30/01	Forest Service Transportation System Interim Directive No. 7710-2001-1	Effective Date
7/10/01	Roadless Area Conservation Advanced Notice of Proposed Rulemaking (ANPR) and request for public comment (66 FR 35918)	Published in Federal Register
7/27/01	Roadless Area Conservation Interim Directives No. 7710-2001-2 and 2400-2001-3	Effective Date
8/22/01	Roadless Area Conservation Notice of Interim Directives No. 7710-2001-2 and 2400-2001-3 and request for comment	Published in Federal Register
8/24/01	Forest Service Transportation System Notice of Interim Directive No. 7710-2001-1 and request for comment (66 FR 44590)	Published in Federal Register
9/10/01	Roadless Area Conservation Advanced notice of proposed rulemaking (ANPR); request for public comment (66 FR 35918)	End of Comment Period
10/22/01	Roadless Area Conservation Interim Directives No. 7710-2001-2 and 2400-2001-3 request for comment	End of Comment Period
10/23/01	Forest Service Transportation System Road Management Policy Interim Directive No. 7710-2001-1 request for comment (66 FR 44590)	End of Comment Period

[FR Doc. 01–31276 Filed 12–19–01; 8:45 am]
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Federal Register

Thursday,
December 20, 2001

Part VI

Department of the Treasury

Community Development Financial Institutions Fund

Guidance for Certification of Community Development Entities, New Markets Tax Credit Program; Notice

DEPARTMENT OF THE TREASURY

Community Development Financial Institutions Fund

Guidance for Certification of Community Development Entities, New Markets Tax Credit Program

AGENCY: Community Development Financial Institutions Fund, Department of the Treasury.

ACTION: Guidance for Certification of Community Development Entities, New Markets Tax Credit Program.

SUMMARY: Title I, subtitle C, section 121 of the Community Renewal Tax Relief Act of 2000 (the Act), as enacted by section 1(a)(7) of the Consolidated Appropriations Act, 2001 (Public Law 106–554, December 21, 2000), amended the Internal Revenue Code (IRC) by adding IRC section 45D, New Markets Tax Credit. Section 45D requires the Secretary of the Treasury (Treasury) to establish a program that will provide an incentive to investors in the form of a tax credit over seven years, which is expected to stimulate investment in new private capital that, in turn, will facilitate economic and community development in distressed communities. Section 121(f) of the Act, among other things, requires the Secretary to issue guidance on how entities may apply to receive allocations of New Markets Tax Credits (NMTCs), the competitive procedure through which such allocations will be made, and the actions that will be taken to ensure that proper allocations are made to appropriate entities. The Secretary delegated such authority to the Under Secretary (Domestic Finance), who in turn delegated such authority to the Director of the Community Development Financial Institutions Fund (the Fund).

On April 20, 2001, the Fund issued guidance (which was published in the **Federal Register** on May 1, 2001 at 66 FR 21846) (the General Guidance) that provided general information on how an entity may apply to become certified as a ''qualified community development entity'' (CDE), how a CDE may apply to receive an allocation of NMTCs, the competitive procedure through which such allocations will be made, and the actions that will be taken to ensure that proper allocations are made to appropriate entities. In addition, through the General Guidance, the Fund sought written comments from the public as to certain application and allocation issues.

This document (i) summarizes written public comments submitted to the Fund pursuant to the General Guidance, specifically with respect to the Fund's certification of entities as CDEs, and (ii) provides, in accordance with IRC section 45D(c)(1)(C), specific guidance on how an entity may apply to become certified as a CDE. Effective immediately, this Guidance encourages entities to apply for CDE certification. This Guidance does not solicit applications for allocations of NMTCs.

As provided by IRC section 45D(i), Treasury is authorized to prescribe regulations relating to the NMTC Program. Treasury and the Internal Revenue Service (IRS) will promulgate regulations related to tax aspects of the NMTC Program. Following the promulgation of said IRS regulations, the Fund will publish a Notice of Allocation Availability (NOAA) that will provide additional, specific guidance on how a CDE may apply to receive an allocation of NMTCs, the competitive procedure through which such allocations will be made, and the actions that will be taken to ensure that proper allocations are made to appropriate entities. As part of the NOAA, the Fund also will summarize written comments submitted by the public with respect to application and allocation issues presented in the General Guidance. The Fund anticipates that, pursuant to the NOAA, it will allocate to CDEs in calendar year 2002 the authority to issue to their investors up to the aggregate amount of $2.5 billion in equity as to which NMTCs may be claimed (the authority will include the aggregated amounts of $1 billion for calendar year 2001 and $1.5 billion for calendar year 2002, as permitted under IRC sections 45D(f)(1) and 45D(f)(3)).

DATES: Effective immediately, the Fund will accept applications from entities seeking to be certified as CDEs. There is no deadline for the submission of CDE Certification Applications. The Fund will review CDE Certification Applications on an ongoing basis. However, for an Applicant CDE that also expects to submit a NMTC allocation application, please refer below to Part IV, CDE Certification, Section A, for further information.

ADDRESSES: CDE Certification Applications should be sent by mail or courier to: CDFI Fund Awards Manager, Bureau of Public Debt—Franchising, 200 Third Street, Room 211, Parkersburg, WV 26101. Applications will not be accepted at the Fund's offices. CDE Certification Applications and other NMTC Program information may be downloaded from the Fund's web site at *http://www.cdfifund.gov.* If you would like CDE Certification Application materials to be sent to you, contact the Fund by telephone at (202) 622–8662; by e-mail to *cdfihelp@cdfi.treas.gov;* or by facsimile at (202) 622–8244. These are not toll free numbers.

FOR FURTHER INFORMATION: Information regarding the Fund and its programs may be downloaded from the Fund's web site at *http://www.cdfifund.gov.*

I. Definitions

(a) *Affiliate:* means any legal entity that Controls, is Controlled by, or is under common Control with the Applicant CDE.

(b) *Applicant CDE:* means any legal entity that is applying to the Fund to be certified as a CDE, either for itself or on behalf of its Subsidiaries.

(c) *CDE Certification Application:* means the application form, issued by the Fund, to be completed and submitted by an Applicant CDE in order to be certified as a CDE.

(d) *Community Development Entity* or *CDE:* see Qualified Community Development Entity, below.

(e) *Community Development Financial Institution* or *CDFI:* means an entity that has been certified by the Fund as meeting the criteria set forth in section 103 of the Community Development Banking and Financial Institutions Act of 1994 (12 U.S.C. 4702). For further details, refer to the CDFI Program regulations set forth at 12 CFR 1805.201.

(f) *Control*: means (i) Ownership, control, or power to vote more than 50 percent of the outstanding shares of any class of voting securities of any entity, directly or indirectly or acting through one or more other persons; (ii) control in any manner over the election of a majority of the directors, trustees, or general partners (or individuals exercising similar functions) of any other entity; or (iii) the power to exercise, directly or indirectly, a controlling influence over the management policies or investment decisions of another entity, as determined by the Fund.

(g) *Low-Income Community:* means, under IRC section 45D(e)(1), any population census tract if (A) the poverty rate for such tract is at least 20 percent, or (B)(i) in the case of a tract not located within a Metropolitan Area (as hereinafter defined), the median family income for such tract does not exceed 80 percent of statewide median family income, or (ii) in the case of a tract located within a Metropolitan Area, the median family income for such tract does not exceed 80 percent of the greater of statewide median family

income or the Metropolitan Area median family income. With respect to IRC section 45D(e)(1)(B), possession-wide median family income shall be used (in lieu of statewide income) in assessing the status of census tracts located within a possession of the United States. Upon application by an entity for certification as a CDE, the Fund may designate under IRC section 45D(e)(2) an area within a census tract as a Low-Income Community if (A) the boundary of the area is continuous; (B) the area would otherwise meet the definition of a Low-Income Community under IRC section 45D(e)(1) if it were a census tract; and (C) there is inadequate access to investment capital in the area (as demonstrated by studies, surveys, or other analyses provided by the applicant). Under IRC section 45D(e)(3), in the case of an area that is not tracted for population census tracts, the equivalent county divisions (as defined by the Bureau of the Census for purposes of determining poverty areas) shall be used for purposes of defining poverty rates and median family incomes.

(h) *Low-Income Persons:* means individuals having an income, adjusted for family size, of not more than (A) for non-Metropolitan Areas, 80 percent of the statewide median family income; and (B)(i) for Metropolitan Areas, the greater of (A) 80 percent of the statewide median family income or (ii) 80 percent of the Metropolitan Area median family income.

(i) *Metropolitan Area:* means an area designated as such by the Office of Management and Budget pursuant to 44 U.S.C. 3504(e) and 31 U.S.C. 1104(d) and Executive Order 10253 (3 CFR 1949–1953 Comp., p. 758), as amended.

(j) *Qualified Community Development Entity or CDE:* means, under IRC section 45D(c)(1), any domestic corporation or partnership if (A) the primary mission of the entity is serving, or providing investment capital for, Low-Income Communities or Low-Income Persons; (B) the entity maintains accountability to residents of Low-Income Communities through their representation on any governing board of the entity or on any advisory board to the entity; and (C) the entity is certified by the Fund as a CDE. SSBICs, as hereinafter defined, and CDFIs will be deemed to be CDEs in the manner hereinafter set forth.

(k) *Qualified Equity Investment:* means, under IRC section 45D(b)(1), any equity investment in a CDE if (A) such investment is acquired by the investor at its original issue (directly or through an underwriter) solely in exchange for cash; (B) substantially all of such cash is used by the CDE to make Qualified Low-Income Community Investments; and (C) the investment is designated by the CDE as a Qualified Equity Investment. Qualified Equity Investment also includes an equity investment purchased from a prior holder, to the extent provided in IRC section 45D(b)(4). Qualified Equity Investment does not include any equity investment issued by a CDE more than five years after the date the CDE receives a NMTC allocation. Under IRC section 45D(b)(6), ''equity investment'' means (A) any stock (other than nonqualified preferred stock as defined in IRC section 351(g)(2)) in a corporation and (B) any capital interest in a partnership.

(l) *Qualified Low-Income Community Investment:* means, under IRC section 45D(d)(1), (A) any capital or equity investment in, or loan to, any qualified active low-income community business (as defined in IRC section 45D(d)(2)); (B) the purchase from a CDE of any loan made by such entity that is a Qualified Low-Income Community Investment; (C) financial counseling and other services to businesses located in, and residents of, Low-Income Communities; and (D) any equity investment in, or loan to, any CDE.

(m) *Specialized Small Business Investment Company* or *SSBIC:* is defined in IRC section 1044(c)(3).

(n) *Subsidiary:* means a legal entity that is owned or Controlled directly or indirectly by the Applicant CDE.

II. The NMTC Program: Background

By providing an incentive in the form of a tax credit over seven years, NMTCs are intended to stimulate the investment of $15 billion in new private capital in CDEs that, in turn, will make investments in eligible businesses in distressed urban, rural, Native American and Native Hawaiian communities, thus facilitating economic and community development.

Through the NMTC Program, an entity may apply to the Fund to be certified as a CDE. Nonprofit entities and for-profit entities may be certified as CDEs by the Fund. Only CDEs that are for-profit entities are eligible to issue Qualified Equity Investments with respect to which investors will be entitled to claim NMTCs. A taxpayer (including, for example, individuals, corporations, partnerships, and investment funds) that makes a Qualified Equity Investment in a CDE that has received a NMTC allocation from the Fund may claim a five percent tax credit on the investment amount for each of the first three years after the date of the investment and a six percent tax credit for each of the next four years.

In the NOAA, the Fund will address specifically how a CDE may apply to receive an allocation of NMTCs, the competitive procedure through which such allocations will be made, and the actions that will be taken to ensure that proper allocations are made to appropriate entities.

III. Comments Submitted by the Public on the General Guidance

On April 20, 2001, the Fund issued the General Guidance, which described, in general terms, certain aspects of the NMTC Program. The Fund has received numerous comments from organizations and individuals. The following is a discussion of the significant and most frequently commented upon issues related to CDE certification. In the NOAA or in guidance to be issued at a later date, the Fund will summarize written and electronic comments submitted by the public with respect to other application and allocation issues presented in the General Guidance.

A. *General CDE Eligibility Issues:* IRC section 45D(c)(1) defines a CDE as any domestic corporation or partnership if: (A) the primary mission of the entity is serving, or providing investment capital for, Low-Income Communities or Low-Income Persons (Primary Mission Test); (B) the entity maintains accountability to residents of Low-Income Communities through their representation on any governing board of the entity or on any advisory board to the entity (Accountability Test); and (C) the entity is certified by the Secretary as a CDE.

(1) One commenter suggested that the Fund clarify that an entity may apply for CDE certification even if the entity does not intend to apply for a NMTC allocation. IRC sections 45D(d)(1)(B) and 45D(d)(1)(D) permit CDEs receiving NMTC allocations to make Qualified Low-Income Community Investments by purchasing a qualifying loan from another CDE or by investing in another CDE. Therefore, an entity may apply for CDE certification regardless of whether such entity intends to apply for a NMTC allocation.

(2) Another commenter recommended that an organization certified as a CDE be allowed to transfer its CDE certification to its Subsidiary or Subsidiaries. IRC section 45D(c)(1) requires that, in order to be certified as a CDE, an entity must meet two tests: the Primary Mission Test and the Accountability Test. Each entity that applies for certification as a CDE must meet both tests regardless of its affiliation with other organizations. In order to make the CDE certification process as efficient as possible, the

Fund will permit an Applicant CDE to submit a single CDE Certification Application for itself and on behalf of its Subsidiaries. Each of the entities must satisfy the Primary Mission Test and the Accountability Test. The CDE Certification Application contains the specific requirements for such consolidated submissions.

(3) Another commenter suggested that the Fund should not require entities to be duly organized prior to submission of a CDE Certification Application. While the Fund recognizes that Applicant CDEs will have to expend resources in order to form a legal entity that is eligible to apply for CDE certification, the Fund is requiring that a CDE be a duly organized entity. Therefore, the Fund will not confer CDE certification to an entity that has not yet been legally established.

(4) One commenter stated that community development banks should receive automatic CDE certification. The Fund recognizes the important role that community development banks play in providing access to credit for Low-Income Persons and Low-Income Communities. However, IRC section 45D(c)(2) only allows for the automatic certification of SSBICs certified by the Small Business Administration, and CDFIs certified by the Fund. A community development bank applying for certification as a CDE will be required to meet the CDE certification criteria set forth in IRC section 45D, this Guidance, and the CDE Certification Application. A community development bank that is certified as a CDFI, however, will be deemed to meet the requirements for CDE certification.

(5) Two commenters requested clarification as to whether an entity organized as a business trust would be eligible for certification as a CDE if such an entity is taxable as a partnership. An entity may apply for certification as a CDE if it is treated either as a domestic corporation or a partnership for Federal income tax purposes.

(6) Several commenters suggested that an applicant whose business structure consists of an entity with a series of funds be deemed eligible for CDE certification as a single entity. The Fund has considered these comments, and has determined that, if an Applicant CDE represents that it is properly classified for Federal income tax purposes as a single partnership or corporation, it may apply for CDE certification as a single entity. If the Applicant CDE represents that it is properly classified for Federal income tax purposes as multiple partnerships or corporations, it may submit a single application on behalf of the entire series of funds, and each fund must meet the Primary Mission Test and the Accountability Test.

(7) Two commenters requested that the Fund permit organizations that are governmentally controlled entities to qualify for CDE certification. Since the Act does not exclude governmentally controlled entities from being eligible for CDE certification, the Fund will permit governmentally controlled entities that are properly classified as domestic corporations or partnerships for Federal income tax purposes to apply for CDE certification.

B. *Primary Mission Test:* Pursuant to IRC section 45D(c)(1)(A), a CDE must have a primary mission of serving, or providing investment capital for, Low-Income Communities or Low-Income Persons.

(1) Several commenters suggested that Applicant CDEs be allowed to meet the Primary Mission Test by either indirectly or directly serving, or providing investment capital for, Low-Income Communities or Low-Income Persons. The Fund recognizes the merits of these comments and will permit Applicant CDEs to meet the Primary Mission Test either by directly serving Low-Income Communities or Low-Income Persons (e.g., by providing loans to Low-Income Persons or to individuals or businesses located in Low-Income Communities), or by indirectly serving Low-Income Communities or Low-Income Persons (e.g., by providing loans to or investments in other entities that will in turn provide assistance in Low-Income Communities or assistance to Low-Income Persons).

(2) One commenter requested that the Fund deem an Applicant CDE to have met the Primary Mission Test if the Applicant CDE is a nonprofit organization exempt from federal income tax under IRC § 501(c) or any other IRC provision, and the exempt purpose relates to serving Low-Income Communities or Low-Income Persons. However, the exempt purpose test required for tax-exempt status under the IRC is based on different underlying policies than the Primary Mission Test set forth in IRC section 45D(c)(1)(A). Therefore, all Applicant CDEs will be required to provide the documentation required to meet the Primary Mission Test.

(3) One commenter expressed concern about the basis for the Fund's requirement that an Applicant CDE demonstrate that at least 60 percent of its activities are dedicated to serving, or providing investment capital for, Low-Income Communities or Low-Income Persons. The Fund has determined that the 60 percent threshold is an appropriate standard: it is the standard currently used by the Fund in certifying CDFIs and it provides the Fund with evidence that a significant portion of the Applicant CDE's activities are targeted to Low-Income Communities or Low-Income Persons.

C. *Accountability Test:* Pursuant to IRC section 45D(c)(1)(B), a CDE must maintain accountability to residents of Low-Income Communities through their representation on any governing board of the entity or on any advisory board to the entity.

(1) One commenter recommended that the definition of Low-Income Community be expanded to include census tracts in which the median family income does not exceed 80 percent of the national median family income. Because IRC section 45D(e) clearly defines Low-Income Community, the Fund will adhere to such definition, without modification.

(2) Several commenters recommended that the Fund permit Applicant CDEs greater flexibility to meet the Accountability Test. Specifically, the commenters suggested that an Applicant CDE be allowed to meet the Accountability Test by demonstrating that it maintains accountability to residents of Low-Income Communities or Low-Income Persons through the residents' representation not only on governing boards or advisory boards, but alternatively in focus groups and community meetings. The Fund has not accepted this comment because IRC section 45D(c)(1)(B) clearly requires CDEs to maintain ''accountability to residents of low-income communities through their representation on any governing board of the entity or on any advisory board to the entity.''

(3) One commenter suggested that when evaluating a CDE Certification Application, the Fund should assess the extent to which representatives of Low-Income Communities exert meaningful influence over the policies and procedures of the Applicant CDE. The Fund is mindful of the need to create a mechanism for meaningful and substantive participation and influence in CDEs by representatives of Low-Income Communities and has developed evaluation criteria that will provide the Fund with information on the level of participation and influence held by representatives of Low-Income Communities who serve on advisory or governing boards of a CDE. This criterion is further described in the CDE Certification Application.

(4) Several commenters suggested that the Fund allow Applicant CDEs to demonstrate accountability to Low-Income Communities by representatives other than residents of such Low-

Income Communities (*e.g.*, a clergy member, a small business owner, or a director of a community development corporation). The Fund recognizes that a person may be representative of a Low-Income Community because of the type of work that he or she performs in the Low-Income Community. The Fund provides specific guidance in the CDE Certification Application on the various ways in which an Applicant CDE can meet the Accountability Test through persons who are residents of Low-Income Communities or whose work or community development activities makes them accountable to such residents. However, the Fund seeks to encourage, as much as possible, Applicant CDEs to appoint some Low-Income Persons from Low-Income Communities to advisory and/or governing boards.

(5) Several commenters recommended that a CDE be permitted to meet the Accountability Test if it demonstrates that a majority of its governing or advisory board is accountable to residents of Low-Income Communities. The Fund has considered these comments and has determined that, for a CDE wishing to meet the Accountability Test through its governing board, the Fund will require that a minimum of 20 percent of the members of the governing board be representative of the Low-Income Community. For a CDE wishing to meet the Accountability Test through an advisory board or boards, a minimum of 20 percent of the members of each advisory board must be representative of a Low-Income Community.

(6) One commenter proposed that the Fund allow a CDE that serves multiple geographic areas to satisfy the Accountability Test by establishing local advisory boards that are representative of Low-Income Communities. As proposed, these advisory boards would in turn report to a CDE with a regional or national service area. The Fund agrees with this comment, and provides specific guidance in the CDE Certification Application with respect to establishing multiple advisory boards.

D. *Consolidated Applications for Related Entities:* Several commenters suggested that the Fund allow a CDE that receives a NMTC allocation to transfer its allocation to its Affiliates or Subsidiaries. One commenter also suggested that the Fund develop a consolidated CDE Certification Application for multiple legal entities that are commonly controlled (i.e., parent and affiliated entities or entities under common control). The Fund has considered these comments and will permit an entity and its Subsidiaries to apply for CDE certification in a single CDE Certification Application. A for-profit CDE that receives a NMTC allocation may transfer such NMTC allocation to its for-profit Subsidiary or Subsidiaries, provided that said transferees have been certified as CDEs and such transfer is pre-approved in writing by the Fund, in its sole discretion. A nonprofit CDE may apply for and receive a NMTC allocation but must transfer such NMTC allocation to its for-profit Subsidiary or Subsidiaries; said transferees must be certified as CDEs and such a transfer must be pre-approved in writing by the Fund, in its sole discretion.

IV. CDE Certification

A. Applications

As stated above, the Fund is currently accepting applications from entities wishing to be certified as CDEs. CDE Certification Applications will be reviewed on a rolling basis. However, any Applicant CDE interested in applying for a NMTC allocation must submit a CDE Certification Application prior to the deadline for the submission of an application for a NMTC allocation. The Fund anticipates that this deadline for submitting CDE Certification Applications will be 30 days prior to the deadline for submission of applications for NMTC allocations. Both deadlines will be published in the NOAA.

An Applicant CDE may be a for-profit or a nonprofit entity. An Applicant CDE may apply for certification for itself, or it may apply for itself and on behalf of one or more Subsidiaries under a single CDE Certification Application. The CDE Certification Application requires that the Applicant CDE provide, among other items, specific information relating to how it (and, if appropriate, each of its Subsidiaries) meets the Primary Mission Test and the Accountability Test. These requirements are discussed under Section B, Eligibility, below, and in the CDE Certification Application.

Entities that have been certified by the Fund as CDFIs and entities that have been designated by the SBA as SSBICs are deemed to meet the requirements for CDE certification and do not need to complete the CDE Certification Application. Each CDFI and SSBIC desiring CDE certification must indicate to the Fund its desire either (i) by registering on-line with the Fund through the Fund's website at *http://www.cdfifund.gov*, or (ii) by contacting the Fund (see **ADDRESSES**, above) to have registration documents sent to it.

Notwithstanding the preceding paragraph, Subsidiaries and Affiliates of CDFIs and SSBICs will not be deemed to meet the requirements of CDE certification without completing a CDE Certification Application. A CDFI or SSBIC wishing to apply for certification on behalf of one or more of its Subsidiaries must complete a CDE Certification Application for itself and all Subsidiaries it would like certified, and each Subsidiary must meet the Primary Mission Test and the Accountability Test.

B. Eligibility

(1) *Legal Entity Requirements:* IRC section 45D(c)(1) specifies the eligibility requirements that each entity must meet in order to be certified by the Fund as a CDE. The Fund will not confer CDE certification to an Applicant CDE unless the entity is a duly organized and validly existing legal entity under the laws of the jurisdiction in which it is incorporated or otherwise established. As described above, a CDE is any entity treated as a domestic corporation or partnership, for federal income tax purposes, if: (A) The primary mission of the entity is serving, or providing investment capital for, Low-Income Communities or Low-Income Persons; (B) the entity maintains accountability to residents of Low-Income Communities through their representation on any governing board of the entity or on any advisory board to the entity; and (C) the entity is certified by the Fund as a CDE. CDFIs certified by the Fund and SSBICs certified by the SBA will be deemed to be CDEs. An applicant whose business structure consists of an entity with a series of funds may apply for CDE certification as a single entity, or as multiple entities, in accordance with this paragraph. If such an applicant represents that it is properly classified for Federal income tax purposes as a single partnership or corporation, it may apply for CDE certification as a single entity. If the applicant represents that it is properly classified for Federal income tax purposes as multiple partnerships or corporations, then (1) it may submit a single application on behalf of the entire series of funds, and each fund must meet the Primary Mission Test and the Accountability Test; and (2) it may transfer any NMTC allocation it receives to one or more of its funds if the transfer is pre-approved by the Fund. Applicants should note, however, that receipt of CDE certification as a single entity or as multiple entities is not a determination that the applicant and its related funds are properly classified as a single entity

or as multiple entities for Federal income tax purposes.

(2) *Primary Mission Test:* To comply with the Primary Mission Test, an entity (a) must provide organizational documents that, in the opinion of the Fund, clearly evidence a mission of serving or providing investment capital for Low-Income Communities or Low-Income Persons; and (b) must be able to demonstrate that at least 60 percent of its activities are dedicated to serving Low-Income Communities or Low-Income Persons. An Applicant CDE may meet the Primary Mission Test either by directly serving Low-Income Communities or Low-Income Persons (*e.g.,* by providing loans to Low-Income Persons or to individuals or businesses located in Low-Income Communities), or by indirectly serving Low-Income Communities or Low-Income Persons (*e.g.,* by providing loans or investments to other entities that will in turn provide assistance in Low-Income Communities or assistance to Low-Income Persons). The Fund reserves the right to modify or revise the requirements of the Primary Mission Test if it determines, in its sole discretion, that an Applicant CDE has demonstrated that it meets the Primary Mission Test in a manner other than set forth herein, but that meets the intent and purpose of IRC section 45D(c)(1)(A).

(3) *Accountability Test:* To comply with the Accountability Test, an entity must demonstrate that it maintains accountability to residents of Low-Income Communities through their representation on any governing board of the entity or on any advisory board to the entity. The Fund seeks to encourage, as much as possible, Applicant CDEs to appoint some Low-Income Persons from Low-Income Communities to advisory and/or governing boards. In the case of a limited partnership, the Accountability Test may be met if residents of Low-Income Communities are represented on the governing or advisory board of the entity's managing general partner or other controlling entity (such as a nonprofit CDFI). For an entity wishing to meet the Accountability Test through its governing board, a minimum of 20 percent of the members of the governing board must be representative of the Low-Income Community. For an entity wishing to meet the Accountability Test through an advisory board or boards, a minimum of 20 percent of the members of each advisory board must be representative of the Low-Income Community. A CDE is not limited in the number of Low-Income Communities that it may serve or propose to serve. A CDE that serves multiple geographic areas will need to demonstrate that it is accountable to the various geographic areas that it serves. The Fund reserves the right to modify or revise the requirements of the Accountability Test if it determines, in its sole discretion, that an Applicant CDE has demonstrated that it meets the Accountability Test in a manner other than set forth herein, but that meets the intent and purpose of IRC section 45D(c)(1)(B).

V. Evaluation of CDE Certification Applications

The Fund will evaluate each CDE Certification Application to determine whether the Applicant CDE (and, if appropriate, each of its Subsidiaries) meets the eligibility requirements outlined above. Those entities that, in the sole determination of the Fund, satisfy the certification requirements shall be certified by the Fund as CDEs.

VI. Certification Monitoring

A CDE certification will continue until it is revoked or terminated by the Fund. To maintain its CDE certification, a CDE must attest annually (or so often as the Fund may deem necessary) that the CDE (and, if appropriate, each of its Subsidiaries) continues to meet the Primary Mission Test and the Accountability Test. The Fund reserves the right to review and verify said attestation and will revoke or terminate the CDE certification if the Fund, in its sole discretion, determines that the entity no longer meets CDE certification requirements. The Fund may revoke or terminate the CDE certification of any entity that receives designation as a CDE based on its status as a CDFI or SSBIC if it ceases to be designated as a CDFI or SSBIC.

A CDE that is awarded a NMTC allocation and/or is a recipient of a Qualified Low-Income Community Investment from another CDE that has been awarded a NMTC allocation will also be required to demonstrate, on an annual basis (or so often as the Fund may deem necessary), that at least 60 percent of its activities are directed to Low-Income Communities or Low-Income Persons. This is in addition to any other reporting requirements imposed by the IRS or the Fund. Such other reporting requirements will be described more fully in IRS regulations and/or in the NOAA or subsequent guidance to be issued by the Fund.

Authority: Consolidated Appropriations Act of 2001, Pub. L. 106–554; 31 U.S.C. 321.

Dated: December 17, 2001.

Tony T. Brown,

Director, Community Development Financial Institutions Fund.

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The items in this list were editorially compiled as an aid to Federal Register users. Inclusion or exclusion from this list has no legal significance.

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Cotton research and promotion order:

Cotton Board Rules and Regulations; amendment; published 11-20-01

AGRICULTURE DEPARTMENT

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Child nutrition programs:

Child and adult care food program—

Infant meal patterns; and meal pattern tables for suppers and supplemental foods; corrections; published 12-20-01

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DOD freight motor carriers, exempt surface freight forwarders, shippers agents, and freight brokers qualifying program; CFR part removed; published 12-20-01

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Home-equity lending market—

Abusive lending practices; additional disclosure requirements and substantive limitations for certain loans; implementation; and predatory lending practices; published 12-20-01

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Chartering and field of membership policy; published 12-20-01

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Agricultural Marketing Service

Voluntary Federal seed testing and certification services and preliminary test reports; fees; comments due by 12-24-01; published 10-23-01 [FR 01-26592]

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LIST OF PUBLIC LAWS

This is a continuing list of public bills from the current session of Congress which have become Federal laws. It may be used in conjunction with ''P L U S'' (Public Laws Update Service) on 202–523–6641. This list is also available online at *http://www.nara.gov/fedreg/plawcurr.html*.

The text of laws is not published in the **Federal Register** but may be ordered in ''slip law'' (individual pamphlet) form from the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402 (phone, 202–512–1808). The text will also be made available on the Internet from GPO Access at *http://www.access.gpo.gov/nara/nara005.html*. Some laws may not yet be available.

H.R. 2291/P.L. 107–82

To extend the authorization of the Drug-Free Communities Support Program for an additional 5 years, to authorize a National Community Antidrug Coalition Institute, and for other purposes. (Dec. 14, 2001; 115 Stat. 814)

H.J. Res. 78/P.L. 107–83

Making further continuing appropriations for the fiscal year 2002, and for other purposes. (Dec. 15, 2001; 115 Stat. 822)

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