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DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 98–ANE–49–AD; Amendment 39–12707; AD 2002–07–12]

RIN 2120–AA64

Airworthiness Directives; General Electric Company CF6–80A, CF6–80C2, and CF6–80E1 Series Turbofan Engines

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment supersedes an existing airworthiness directive (AD), that is applicable to General Electric Company (GE) CF6–80A, CF6–80C2, and CF6–80E1 series turbofan engines. That AD currently requires revisions to the Life Limits Section of the manufacturer's Instructions for Continued Airworthiness (ICA) to include required inspection of selected critical life-limited parts at each piece-part exposure. This amendment adds additional mandatory inspections for certain high pressure compressor (HPC), low pressure turbine (LPT), and high pressure turbine (HPT) parts. The mandatory inspections are needed to identify those critical rotating parts with conditions, which if allowed to continue in service, could result in uncontained failures. The actions specified by this AD are intended to prevent critical life-limited rotating engine part failure, which could result in an uncontained engine failure and damage to the airplane.

DATES: Effective date May 15, 2002.

ADDRESSES: This information may be examined, by appointment, at the Federal Aviation Administration (FAA), New England Region, Office of the Regional Counsel, 12 New England Executive Park, Burlington, MA; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Karen Curtis, Aerospace Engineer, Engine Certification Office, FAA, Engine and Propeller Directorate, 12 New England Executive Park, Burlington, MA 01803–5299; telephone (781) 238–7192, fax (781) 238–7199.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) by superseding AD 2000–08–12, Amendment 39–11698 (65 FR 21638, April 24, 2000), which is applicable to (GE) CF6–80A, CF6–80C2, and CF6–80E1 series turbofan engines was published in the **Federal Register** on October 5, 2001 (66 FR 50906). That action proposed to add to the revisions to the Life Limits section of the Engine Manuals, and for air carriers add to their approved continuous maintenance program, additional mandatory inspections for certain HPC, LPT, and HPT parts. The mandatory inspections are needed to identify those critical rotating parts with conditions, which if allowed to continue in service, could result in uncontained failures.

Comments

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

Intent of AD Perceived to Supersede AD 95–18–14

Two commenters state that an existing AD (95–18–14) already requires fluorescent penetrant inspection (FPI) of certain CF6 HPC rotor stage 3–9 spools. These commenters suggest that this AD is intended to supersede AD 95–18–14 and, therefore, request that the final rule provide this clarification.

The FAA disagrees that the intent is to supersede AD 95–18–14, but agrees that clarification is needed to prevent potential confusion. AD 95–18–14 requires that a more detailed FPI of the HPC rotor stage 3–9 spool (as described by GE All Operators' Wire dated 8/10/95) be used whenever FPI of these spools is done. AD 95–18–14, however, does not specify when the FPI is to be conducted. This final rule requires FPI of all HPC rotor stage 3–9 spools at piece-part exposure. This FPI technique is now contained in the GE Standard Practice Manual as the recommended inspection for deep disk spools.

Typographical Error

Two commenters state that the proposal contains a typographical error in the task number for the CF6–80C2 No. 4R bearing FPI, and suggest that task number 72–31–10–200–000-A01 be changed to read task number 72–31–10–200–000-A001.

The FAA disagrees, and believes the commenters were referencing an electronic version of the engine manual for this task number. The task number in the paper copy of the engine manual is consistent with the proposal. GE has advised the FAA that an electronic formatting routine incorrectly converted the text for this task number thereby causing the noted discrepancy between the paper and electronic (e.g. CD-ROM) versions. This electronic formatting routine is being corrected and the next publication of the CD will reflect this correction. The paper version of the manual is correct. Therefore, no change will be made in the final rule.

Intent of AD Perceived to Supersede AD 2001–10–07

One commenter states that an existing AD (2001–10–07) already requires eddy current inspection (ECI) of the CF6–80C2 HPT stage 1 disk dovetail slot bottom. The commenter suggests that this proposal is intended to supersede AD 2001–10–07 and therefore requests that the final rule provide this clarification.

The FAA disagrees that the intent is to supersede AD 2001–10–07, but agrees that clarification on this issue is appropriate to prevent any potential for confusion. AD 2001–10–07 requires both an initial and repetitive ECI of dovetail slot bottoms, but only for certain CF6–80C2 HPT Stage 1 disk part numbers. The initial inspection is required within the time limits specified in that AD. This final rule requires only the repetitive ECI at each piece-part exposure for all current and future CF6–80C2 HPT Stage 1 disk dovetail slot bottoms. Repetitive ECI's performed on the HPT Stage 1 disks specified in AD 2001–10–07 will satisfy both the requirements of that AD and the requirements of this final rule.

Reference the Manual Revisions

One commenter states that engine manual task numbers and/or paragraph numbers are subject to change, and therefore, suggested this final rule should reference the specific date and revision of the manual to ensure compliance. The commenter noted that AD references to other manufacturer publications such as service bulletins, always reference revisions numbers and issue dates.

The FAA disagrees. Compliance with this AD is achieved by incorporating the schedule of inspections into the Life Limits Section of the Instructions for Continued Airworthiness (ICA). Each specific piece-part inspection is therefore done by following the operator's approved maintenance program, not by the AD itself, and, therefore, the AD need not make specific reference to a particular version of the manual. In addition, all revisions to the Life Limits Section of the manufacturer's ICA's are approved by the FAA. Any engine shop manual change that results in a change to the task number of a task in that section of the ICA's would require a change that would require FAA approval.

Final Rule Effectivity Date

Two commenters state that the manufacturer has not yet released all of the engine manual changes necessary to comply with the final rule. One of these commenters suggests that the effective date of the final rule should be set for 30 days after release of the manual revisions.

The FAA partially agrees. The FAA has worked closely with the manufacturer to ensure that any new procedures required for the additional inspections are incorporated in the engine shop manuals (ESM) in a timely fashion. These shop manual changes must be published (either by formal or temporary revision to the manual) prior to or simultaneous with the publication of revisions to the manufacturer's Life Limits Section of the Instructions for Continued Airworthiness (ICA). The AD allows up to 30 days after the effective date of the AD for the manufacturer to issue the necessary revisions to their ICA. The majority of the inspections added by this rule already exist in the ESM. Operators were made aware of any new inspections via the notice of proposed rulemaking (NPRM) process and separate communications from the manufacturer. Since publication of the NPRM, the manufacturer has issued temporary revisions to their manuals to add the new inspections (CF6–80C2; TR's 72–0842, -0843, -0844, and ''0845 dated 12/14/01, and CF6–80E1; TR's 72–0057, -0058, -0059, and -0060 dated 12/18/01). Therefore no changes are deemed necessary to the effective date for this AD.

Task Number Inconsistencies

One commenter states that there are inconsistencies between the task numbers in the proposal and the manufacturer's engine manual for certain components, and requests that the final rule correct these inconsistencies.

The FAA agrees. At the time of publication of the NPRM, the engine manual changes for the new inspections, specifically for certain HPT rotor R88DT turbine components, were not yet available and therefore the task numbers were not yet defined. Since then, the manufacturer has issued temporary revisions to the engine manuals to add these inspections including the correct task numbers (CF6–80C2, TR's 72–0842, -0843, -0844, and ''0845 dated 12/14/01 and CF6–80E1 TR's 72–0057, -0058, -0059, -0060 dated 12/18/01). The corresponding changes to the ICA's have also been prepared to reflect these final task numbers. The final rule will reflect the correct task numbers for the new inspections.

Approved As-Written

Three commenters state their approval of the rule as-written, and request no changes.

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

Economic Analysis

The FAA estimates that 790 engines installed on airplanes of US registry would be affected by this AD, that it would take approximately 10 work hours per engine to accomplish the additional inspections and that the average labor rate is $60 per work hour. The total cost of the new inspections per engine would be approximately $600. The FAA estimates that there will be approximately 327 shop visits per year that result in piece-part exposure of the added affected components, therfore, the total annual cost for the additional inspections is estimated to be $196,200.

Regulatory Analysis

This final rule does not have federalism implications, as defined in Executive Order 13132, because it 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. Accordingly, the FAA has not consulted with state authorities prior to publication of this final rule.

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

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

2. Section 39.13 is amended by removing Amendment 39–11698 (65 FR 21638, April 24, 2000) and by adding a new airworthiness directive, Amendment 39–12707, to read as follows:

2002–07–12 General Electric Company: Amendment 39–12707. Docket No. 98–ANE–49–AD. Supersedes AD 2000–08–12, Amendment 39–11698

Applicability

This airworthiness directive (AD) is applicable to General Electric Company (GE) CF6–80A, CF6–80C2, and CF6–80E1 series turbofan engines, installed on but not limited to Airbus Industrie A300, A310, and A330 series, Boeing 747 and 767 series, and McDonnell Douglas MD–11 series airplanes.

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

Compliance

Compliance with this AD is required as indicated, unless already done.

To prevent critical life-limited rotating engine part failure, which could result in an uncontained engine failure and damage to the airplane, accomplish the following:

Inspections

(a) Within the next 30 days after the effective date of this AD, revise the manufacturer's Life Limits Section of the Instructions for Continued Airworthiness (ICA), and for air carrier operations revise the approved continuous airworthiness maintenance program, by adding the following:

''MANDATORY INSPECTIONS''

(1) Perform inspections of the following parts at each piece-part opportunity in accordance with the instructions provided in the applicable manual provisions:

Part nomenclature	Part No. (P/N)	Inspect per engine manual chapter
For CF6–80A Engines:		
Disk, Fan Rotor, Stage 1	All	72–21–03 Paragraph 3. Fluorescent-Penetrant Inspect, and 72–21–03 Paragraph 4. Eddy Current Inspect.
Fan Forward Shaft	All	72–21–05 Paragraph 2. Magnetic Shaft Particle Inspect.
Fan Mid Shaft	All	72–24–01 Paragraph 2. Magnetic Particle Inspect.
Disk, HPC Rotor, Stage One	All	72–31–04 Paragraph 3. Fluorescent-Penetrant Inspect.
Disk, HPC Rotor, Stage Two	All	72–31–05 Paragraph 3. Fluorescent-Penetrant Inspect.
Spool, HPC Rotor, Stage 3–9	All	72–31–06 Paragraph 3. Fluorescent-Penetrant Inspect.
Disk, HPC Rotor, Stage 10	All	72–31–07 Paragraph 3. Fluorescent-Penetrant Inspect.
Spool, HPC Rotor, Stage 11–14	All	72–31–08 Paragraph 3.A. Fluorescent-Penetrant Inspect.
Rotating CDP Seal	All	72–31–10 Paragraph 3. Fluorescent-Penetrant Inspect.
Disk Shaft, HPT Rotor, Stage One	All	72–53–02 Paragraph 3. Fluorescent-Penetrant-Inspect per 70–32–02, and 72–53–02 Paragraph 6.C. Eddy Current Inspection, and 72–53–02 Paragraph 6.D. Disk Bore Area Eddy Current Inspection.
Disk, HPT Rotor, Stage Two	All	72–53–06 Paragraph 3. Fluorescent-Penetrant Inspection, and 72–53–06 Paragraph 6. Eddy Current Inspection of Rim Boltholes for Cracks, and 72–53–06 Paragraph 7. Disk Bore Area Eddy Current Inspection.
Disk, LPT Rotor Stage, 1–4	All	72–57–02 Paragraph 3. Fluorescent-Penetrant Inspection.
Shaft, LPT Rotor	All	72–57–03 Paragraph 3. Fluorescent- Penetrant Inspection, and 72–57–03 Paragraph 6. Eddy Current Inspection.
For All CF6–80C2 Engines:		
Disk, Fan Rotor, Stage 1	All	Task 72–21–03–200–000–004 Fluorescent-Penetrant Inspection, and Task 72–21–03–200–000–008 Eddy Current Inspect Fan Rotor Disk Stage 1 Bore, Forward and Aft Hub Faces, and Bore Radii.
Shaft, Fan Forward	All	Task 72–21–05–200–000–001 Fluorescent-Penetrant Inspection, and Task 72–21–05–200–000–005 Vent Hole Eddy Current Inspection.
HPCR Stage 1 Disk	All	Task 72–31–04–200–000–002 Fluorescent-Penetrant Inspection.
HPCR Stage 2 Disk	All	Task 72–31–05–200–000–002 Fluorescent-Penetrant Inspection.
HPCR Stage 3–9 Spool	All	Task 72–31–06–200–000–001 Fluorescent-Penetrant Inspection.
HPCR Stage 10 Disk	All	Task 72–31–07–200–000–001 Fluorescent-Penetrant Inspection.
HPCR Stage 11–14 Spool/Shaft	All	Task 72–31–08–200–000–002 Fluorescent-Penetrant Inspection.
No. 4 Bearing Rotating (CDP) Air Seal	All	Task 72–31–10–200–000–001 Fluorescent-Penetrant Inspection or Task 72–31–10–200–000–A01 Fluorescent-Penetrant Inspection.
HPCR Stage 10–14 Spool/Shaft	All	Task 72–31–22–200–000–002 Fluorescent-Penetrant Inspection.
Fan Mid Shaft	All	Task 72–24–01–200–000–003 Magnetic Particle Inspection.
Disk Shaft, HPT Rotor, Stage One	All	Task 72–53–02–200–000–001 Fluorescent-Penetrant Inspect, and Task 72–53–02–200–000–005 Disk Rim Bolt Hole Eddy Current Inspection, and Task 72–53–02–200–000–006 Disk Bore Area Eddy Current Inspection, and Task 72–53–02–200–000–007 Disk Dovetail Slot Bottom Eddy Current Inspection.
Disk, HPT Rotor, Stage Two	All	Task 72–53–06–200–000–002 Fluorescent-Penetrant Inspect, and Task 72–53–06–200–000–006 Disk Rim Bolt Hole Eddy Current Inspection Rim Boltholes, and Task 72–53–06–200–000–007 Disk Bore Area Eddy Current Inspection.
LPTR Stage 1–5 Disks	All	Task 72–57–02–200–000–001 Fluorescent-Penetrant Inspection.
LPTR Shaft	All	Task 72–57–03–200–000–002 Fluorescent-Penetrant Inspect, and Task 72–57–03–200–000–006 Eddy Current Inspection.
For CF6–80C2 Engines configured with the R88DT Turbine (Models CF6–80C2B2F, 80C2B4F, 80C2B6F, 80C2B7F, 80C2B8F):		
Disk Shaft, HPT Rotor, Stage One (R88DT, No Rim Bolt Holes).	All	Task 72–53–16–200–000–001 Fluorescent-Penetrant Inspect, and Task 72–53–16–200–000–005 Disk Bore Area Eddy Current Inspection.
Disk, HPT Rotor, Stage Two (R88DT, No Rim Bolt Holes).	All	Task 72–53–18–200–000–002 Fluorescent-Penetrant Inspect, and Task 72–53–18–200–000–005 Disk Bore Area Eddy Current Inspection.
Rotating Interstage Seal (R88DT)	All	Task 72–53–17–200–000–001 Fluorescent-Penetrant Inspect, and Task 72–53–17–200–000–005 Seal Bore Area Eddy Current.
Forward Outer Seal (R88DT)	All	Task 72–53–21–200–000–001 Fluorescent-Penetrant Inspect, and Task 72–53–21–200–000–004 Seal Bore Area Eddy Current.

Part nomenclature	Part No. (P/N)	Inspect per engine manual chapter
For CF6–80E1 Engines:		
Disk, Fan Rotor, Stage One	All	Sub Task 72–21–03–230–051 Fluorescent-Penetrant Inspection, and Sub Task 72–21–03–250–051 or 72–21–03–250–052 Disk Bore Eddy Current Inspection.
Shaft, Fan Forward	All	Sub Task 72–21–05–230–051 Fluorescent-Penetrant Inspection, and Sub Task 72–21–05–250–051 Vent Hole Eddy Current Inspection.
Compressor Rotor, Stage 1 Disk	All	Sub Task 72–31–04–230–051 Fluorescent-Penetrant Inspection.
Compressor Rotor, Stage 2 Disk	All	Sub Task 72–31–05–230–051 Fluorescent-Penetrant Inspection.
Compressor Rotor, Stage 3–9 Spool	All	Sub Task 72–31–06–230–051 Fluorescent-Penetrant Inspection.
Compressor Rotor, Stage 10 Disk (Pre SB 72–0150).	All	Sub Task 72–31–07–230–051 Fluorescent-Penetrant Inspection.
Compressor Rotor, Spool/Shaft, Stage 11–14 (Pre SB 72–0150).	All	Sub Task 72–31–08–230–051 Fluorescent-Penetrant Inspection
Compressor Rotor, Spool/Shaft, Stage 10–14 (SB 72–0150).	All	Sub Task 72–31–23–230–052 Fluorescent-Penetrant Inspection.
Compressor Rotor, No. 4 Bearing Rotating Air Seal (CDP Rotating Seal).	All	Sub Task 72–31–10–230–051 Fluorescent-Penetrant Inspection.
HPT Disk/Shaft, Stage 1	All	Sub Task 72–53–02–230–051 Fluorescent-Penetrant Inspection, and Sub Task 72–53–02–250–051 Eddy Current Inspection, Rim Bolt Holes, and Sub Task 72–53–02–250–054 Eddy Current Inspection, Disk Bore Area.
HPT Disk, Stage 2	All	Sub Task 72–53–06–230–051 Fluorescent-Penetrant Inspection, and Sub Task 72–53–06–250–051 Eddy Current Inspection, Rim Bolt Holes, and Sub Task 72–53–06–250–054 Eddy Current Inspection, Disk Bore Area.
LPT Rotor Shaft	All	Sub Task 72–55–01–240–051 Magnetic Particle Inspect.
LPT Disks, Stages 1–5	All	Sub Task 72–57–02–230–051 Fluorescent-Penetrant Inspect.
LPT Rotor Torque Cone	All	Sub Task 72–57–03–220–051 Fluorescent-Penetrant Inspect
For CF6–80E1 Engines configured with the R88DT Turbine:		
Disk Shaft, HPT Rotor	All	Sub Task 72–53–16–230–052 Fluorescent-Penetrant Inspect, and Sub Task 72–53–16–250–051 Disk Bore Area Eddy Current Inspection.
Disk, HPT Rotor, Stage 2 (R88DT, No Rim Bolt Holes).	All	Sub Task 72–53–18–230–051 Fluorescent-Penetrant Inspect, and Sub Task 72–53–18–250–051 Disk Bore Area Eddy Current Inspection.
HPT Rotor Rotating Interstage Seal (R88DT).	All	Sub Task 72–53–17–230–051 Fluorescent-Penetrant Inspect, and Sub Task 72–53–17–250–051 Seal Bore Area Eddy Current.
HPT Rotor Forward Outer Seal (R88DT)	All	Sub Task 72–53–21–230–051 Fluorescent-Penetrant Inspect, and Sub Task 72–53–21–250–051 Seal Bore Area Eddy Current.

(2) For the purposes of these mandatory inspections, piece-part opportunity means:

(i) The part is considered completely disassembled when accomplished in accordance with the disassembly instructions in the manufacturer's engine manual; and

(ii) The part has accumulated more than 100 cycles-in-service since the last piece-part opportunity inspection, provided that the part was not damaged or related to the cause for its removal from the engine.''

(b) Except as provided in paragraph (c) of this AD, and notwithstanding contrary provisions in section 43.16 of the Federal Aviation Regulations (14 CFR 43.16), these mandatory inspections shall be performed only in accordance with the Life Limits Section of the manufacturer's ICA.

Alternative Methods of Compliance

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

Note 2: Information concerning the existence of approved alternative methods of compliance with this airworthiness directive, if any, may be obtained from the ECO.

Continuous Airworthiness Maintenance Program

(d) FAA-certificated air carriers that have an approved continuous airworthiness maintenance program in accordance with the record keeping requirement of § 121.369 (c) of the Federal Aviation Regulations (14 CFR 121.369 (c)) of this chapter must maintain records of the mandatory inspections that result from revising the Life Limits Section of the Instructions for Continuous Airworthiness (ICA) and the air carrier's continuous airworthiness program. Alternately, certificated air carriers may establish an approved system of record retention that provides a method for preservation and retrieval of the maintenance records that include the inspections resulting from this AD, and include the policy and procedures for implementing this alternate method in the air carrier's maintenance manual required by § 121.369 (c) of the Federal Aviation Regulations (14 CFR 121.369 (c)); however, the alternate system must be accepted by the appropriate PMI and require the maintenance records be maintained either indefinitely or until the work is repeated. Records of the piece-part inspections are not required under § 121.380 (a) (2) (vi) of the Federal Aviation Regulations (14 CFR 121.380 (a) (2) (vi)). All other Operators must maintain the records of mandatory inspections required by the applicable regulations governing their operations.

Note 3: The requirements of this AD have been met when the engine manual changes are made and air carriers have modified their continuous airworthiness maintenance plans to reflect the requirements in the engine manuals.

Effective Date

(e) This amendment becomes effective on May 15, 2002.

Issued in Burlington, Massachusetts, on April 3, 2002.

Jay J. Pardee,

Manager, Engine and Propeller Directorate, Aircraft Certification Service.

[FR Doc. 02–8641 Filed 4–9–02; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Parts 510 and 522

Implantation or Injectable Dosage Form New Animal Drugs; Ketamine Hydrochloride

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the animal drug regulations to reflect approval of an original abbreviated new animal drug application (ANADA) filed by Vetrepharm Research, Inc. The ANADA provides for veterinary prescription use of an injectable solution of ketamine hydrochloride in cats and subhuman primates.

DATES: This rule is effective April 10, 2002.

FOR FURTHER INFORMATION CONTACT: Lonnie W. Luther, Center for Veterinary Medicine (HFV–102), Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855, 301–827–0209.

SUPPLEMENTARY INFORMATION: Vetrepharm Research, Inc., 119 Rowe Rd., Athens, GA 30601, filed ANADA 200–257 that provides for veterinary prescription use of Ketamine HCL, an injectable solution of ketamine hydrochloride, in cats and subhuman primates for restraint.

ANADA 200–257 is approved as of November 9, 2001, and the regulations are amended in 21 CFR 522.1222a to reflect the approval. The basis of approval is discussed in the freedom of information summary.

In addition, Vetrepharm Research, Inc., has not been previously listed in the animal drug regulations as a sponsor of an approved application. At this time, 21 CFR 510.600(c) is being amended to add entries for this sponsor.

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

The agency has determined under 21 CFR 25.33(a)(1) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

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

List of Subjects

21 CFR Part 510

Administrative practice and procedure, Animal drugs, Labeling, Reporting and recordkeeping requirements.

21 CFR Part 522

Animal drugs.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Center for Veterinary Medicine, 21 CFR parts 510 and 522 are amended as follows:

PART 510—NEW ANIMAL DRUGS

1. The authority citation for 21 CFR part 510 continues to read as follows:

Authority: 21 U.S.C. 321, 331, 351, 352, 353, 360b, 371, 379e.

2. Section 510.600 is amended in the table in paragraph (c)(1) by alphabetically adding an entry for ''Vetrepharm Research, Inc.'' and in the table in paragraph (c)(2) by numerically adding an entry for ''064847'' to read as follows:

§ 510.600 Names, addresses, and drug labeler codes of sponsors of approved applications.

* * * * *

(c) * * *

(1) * * *

Firm name and address	Drug labeler code
* * * * * * *	
Vetrepharm Research, Inc., 119 Rowe Rd., Athens, GA 30601	064847
* * * * * * *	

(2) * * *

Drug labeler code	Firm name and address
* * * * * * *	
064847	Vetrepharm Research, Inc., 119 Rowe Rd., Athens, GA 30601
* * * * * * *	

PART 522—IMPLANTATION OR INJECTABLE DOSAGE FORM NEW ANIMAL DRUGS

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

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

4. Section 522.1222a is revised to read as follows:

§ 522.1222a Ketamine.

(a) *Specifications.* Each milliliter contains ketamine hydrochloride equivalent to 100 milligrams (mg) ketamine base activity.

(b) *Sponsors.* See Nos. 000010, 000074, 000856, 059130, 061690, 064408, and 064847 in § 510.600(c) of this chapter.

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

(d) *Conditions of use*—(1) *Cats*—(i) *Amount.* 5 to 15 mg/pound body weight intramuscularly, depending on the effect desired.

(ii) *Indications for use.* For restraint or as the sole anesthetic agent in diagnostic or minor, brief surgical procedures that

do not require skeletal muscle relaxation.

(2) *Subhuman primates*—(i) *Amount.* 3 to 15 mg/kilogram body weight intramuscularly, depending upon the species, general condition, and age of the subject.

(ii) *Indications for use.* For restraint.

Dated: February 27, 2002.

Stephen F. Sundlof,

Director, Center for Veterinary Medicine.

[FR Doc. 02–8569 Filed 4–9–02; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 520

Oral Dosage Form New Animal Drugs; Lincomycin Hydrochloride Soluble Powder

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the animal drug regulations to reflect approval of a supplemental new animal drug application (NADA) filed by Pharmacia and Upjohn Co. The supplemental NADA provides for the use of lincomycin hydrochloride soluble powder in the drinking water of swine weighing greater than 250 pounds for the treatment of swine dysentery.

DATES: This rule is effective April 10, 2002.

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

SUPPLEMENTARY INFORMATION: Pharmacia and Upjohn Co., 7000 Portage Rd., Kalamazoo, MI 49001–0199, filed a supplement to NADA 111–636 that provides for use of LINCOMIX (lincomycin hydrochloride) Soluble Powder for making medicated drinking water for the management of various bacterial diseases of swine and chickens. The supplemental NADA provides for replacement of the limitation ''Not for use in swine weighing more than 250 pounds'' with ''The safety of lincomycin has not been demonstrated for pregnant swine or swine intended for breeding.'' The supplemental application is approved as of December 31, 2001, and the regulations are amended in 21 CFR 520.1263c to reflect the approval. Section 520.1263c is also being revised to reflect current editorial format.

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

The agency has determined under 21 CFR 25.33(a)(1) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

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

List of Subjects in 21 CFR Part 520

Animal drugs.

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

PART 520—ORAL DOSAGE FORM NEW ANIMAL DRUGS

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

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

2. Section 520.1263c is amended by revising paragraphs (a), (b), and (d) to read as follows:

§ 520.1263c Lincomycin hydrochloride soluble powder.

(a) *Specifications.* Each gram of soluble powder contains lincomycin hydrochloride equivalent to 0.4 grams of lincomycin.

(b) *Sponsors.* See Nos. 000009, 046573, and 051259 in § 510.600(c) of this chapter for use as in paragraph (d) of this section.

* * * * *

(d) *Conditions of use*—(1) *Swine*—(i) *Amount.* 250 milligrams per gallon of drinking water to provide 3.8 milligrams per pound of body weight per day.

(ii) *Indications for use.* For the treatment of swine dysentery (bloody scours).

(iii) *Limitations.* Discard medicated drinking water if not used within 2 days. Prepare fresh stock solution daily. Do not use for more than 10 days. If clinical signs of disease have not improved within 6 days, discontinue treatment and reevaluate diagnosis. The safety of lincomycin has not been demonstrated in pregnant swine or swine intended for breeding.

(2) *Chickens*—(i) *Amount.* 64 milligrams per gallon of drinking water.

(ii) *Indications for use.* For the control of necrotic enteritis caused by *Clostridium perfringens* susceptible to lincomycin in broiler chickens.

(iii) *Limitations.* Discard medicated drinking water if not used within 2 days. Prepare fresh stock solution daily. Administer for 7 consecutive days. Do not allow rabbits, hamsters, guinea pigs, horses, or ruminants access to water containing lincomycin. Not for use in layer and breeder chickens.

Dated: March 25, 2002.

Andrew J. Beaulieu,

Acting Director, Office of New Animal Drug Evaluation, Center for Veterinary Medicine.

[FR Doc. 02–8570 Filed 4–9–02; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 165

[CGD01–02–039]

RIN 2115–AA97

Safety Zone; Patriots Weekend, Dockside Restaurant Fireworks Display, Port Jefferson, NY

AGENCY: Coast Guard, DOT.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a temporary safety zone for a fireworks display located in Port Jefferson Harbor, Port Jefferson, NY. This action is necessary to provide for the safety of life on navigable waters during the event. This action is intended to restrict vessel traffic in a portion of Port Jefferson Harbor.

DATES: This rule is effective from 9:15 p.m. on June 8, 2002, until 10:15 p.m. on June 9, 2002.

ADDRESSES: Documents indicated in this preamble as being available in the docket, are part of docket (CGD01–02–039) and are available for inspection or copying at Coast Guard Group/Marine Safety Office, 120 Woodward Ave., New Haven, CT 06512, between 7:30 a.m. and 4 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Boatswain's Mate Second Class (BM2)

R. L. Peebles, Marine Events Petty Officer, Coast Guard Group/MSO Long Island Sound (203) 468–4408.

SUPPLEMENTARY INFORMATION:

Regulatory Information

We did not publish a notice of proposed rulemaking (NPRM) for this regulation. Under 5 U.S.C. 553(b)(B), the Coast Guard finds that good cause exists for not publishing an NPRM. An NPRM was considered unnecessary because the fireworks display is a local event that will have minimal impact on the waterway. The zone is only in effect for 1 hour and vessels can be given permission to transit the zone during all but about 30 minutes of this time. Vessels may transit around the zone at all times. Additionally, vessels would not be precluded from mooring at or getting underway from commercial or recreational piers in the vicinity of the zone.

Background and Purpose

The Coast Guard establishes a temporary safety zone in the waters of Port Jefferson Harbor, Port Jefferson, NY. The safety zone is intended to protect boaters from the hazards associated with fireworks launched from a barge in the area. This safety zone covers the minimum area needed and imposes the minimum restrictions necessary to ensure the protection of all vessels.

Discussion of Rule

The safety zone is for a fireworks display in Port Jefferson Harbor that will be conducted to commemorate Patriots Weekend. The safety zone will be in effect from 9:15 p.m. to 10:15 p.m. on June 8, 2002. The safety zone encompasses all waters of Port Jefferson Harbor within a 600' radius of approximate position 40°54′38″N, 73°04′47″W (NAD 1983).

Public notifications will be made prior to the event via the Local Notice to Mariners and Marine Information Broadcasts. Marine traffic will be allowed to transit around the safety zone at all times. Vessels will not be precluded from mooring at or getting underway from recreational or commercial piers in the vicinity of the zone. No vessel may enter the safety zone without permission from the Captain of the Port, Long Island Sound.

Regulatory Evaluation

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

The Coast Guard expects the economic impact of this final rule to be so minimal that a full Regulatory Evaluation under paragraph 10(e) of the regulatory policies and procedures of DOT is unnecessary. This finding is based on the minimal time that vessels will be restricted from the zone, the opportunity for vessels to transit around the zone during the event, the ability of vessels to moor at or get underway from commercial or recreational piers in the vicinity of the zone, and the advance notifications that will be made.

The size of this safety zone was determined using National Fire Protection Association standards and the Captain of the Port Long Island Sound Standing Orders for 6-inch mortars fired from a barge combined with the Coast Guard's knowledge of tide and current conditions in the area.

Small Entities

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

The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities. This rule will affect the following entities, some of which may be small entities: the owners or operators of vessels intending to transit or anchor in a portion of Port Jefferson Harbor during the times this zone is activated.

This safety zone will not have a significant economic impact on a substantial number of small entities for the following reasons: it is a local event with minimal impact on the waterway, vessels may still transit around the zone during the event, the zone is only in effect for 1 hour and vessels can be given permission to transit the zone except for all but about 30 minutes during this time. Additionally, vessels would not be precluded from mooring at or getting underway from commercial or recreational piers in the vicinity of the zone. Before the effective period, public notifications will be made via Local Notice to Mariners and Marine Information Broadcasts.

Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), we want to assist small entities in understanding this rule so that they can better evaluate its effects on them and participate in the rulemaking. If the rule will affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please contact BM2 Ryan Peebles, in the Command Center at Coast Guard Group/Marine Safety Office Long Island Sound, CT, at (203) 468–4408.

Collection of Information

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

Federalism

We have analyzed this rule under Executive Order 13132 and have determined that this rule does not have implications for federalism under that Order.

Unfunded Mandates

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) governs the issuance of Federal regulations that require unfunded mandates. An unfunded mandate is a regulation that requires a State, local, or tribal government or the private sector to incur direct costs without the Federal Government's having first provided the funds to pay those unfunded mandate costs. This rule will not impose an unfunded mandate.

Taking of Private Property

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

Civil Justice Reform

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

Protection of Children

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

Indian Tribal Governments

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

Energy Effects

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

Environment

The Coast Guard considered the environmental impact of this rule and concluded that under figure 2–1, paragraph 34(g), of Commandant Instruction M16475.1D, this rule is categorically excluded from further environmental documentation. This rule fits paragraph 34(g) as it establishes a safety zone. A ''Categorical Exclusion Determination'' is available in the docket for inspection or copying where indicated under **ADDRESSES.**

List of Subjects in 33 CFR Part 165

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

Regulation

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

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

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

Authority: 33 U.S.C. 1231; 50 U.S.C. 191, 33 CFR 1.05–1(g), 6.04–1, 6.04–6, 160.5; 49 CFR 1.46.

2. From 9:15 p.m. on June 8, 2002, through 10:15 p.m. on June 9, 2002, add temporary § 165.T01–039 to read as follows:

§ 165.T01–039 Safety Zone: Patriots Weekend, Dockside Restaurant Fireworks Display, Port Jefferson, NY.

(a) *Location.* The following area is a safety zone: All waters of Port Jefferson Harbor within a 600-foot radius of the fireworks barge in approximate position 40°54′38″ N, 073°04′47″ W (NAD 1983).

(b) *Enforcement times and dates.* This section will be enforced from 9:15 p.m. until 10:15 p.m. on June 8, 2002. In the event of inclement weather on June 8, 2002, this section will be enforced from 9:15 p.m. until 10:15 p.m. on June 9, 2002.

(c) *Regulations.* (1) The general regulations contained in 33 CFR 165.23 apply.

(2) No vessels will be allowed to transit the safety zone without the permission of the Captain of the Port, Long Island Sound.

(3) All persons and vessels shall comply with the instructions of the Coast Guard Captain of the Port or the designated on-scene-patrol personnel. These personnel comprise commissioned, warrant, and petty officers of the Coast Guard. Upon being hailed by a U.S. Coast Guard vessel by siren, radio, flashing light, or other means, the operator of a vessel shall proceed as directed.

Dated: March 21, 2002.

J.J. Coccia,

Captain, U.S. Coast Guard, Captain of the Port, Long Island Sound.

[FR Doc. 02–8590 Filed 4–9–02; 8:45 am]

BILLING CODE 4910–15–U

NATIONAL ARCHIVES AND RECORDS ADMINISTRATION

36 CFR Part 1254

RIN 3095–AB01

Research Room Procedures; Correction

AGENCY: National Archives and Records Administration (NARA).

ACTION: Final rule; correction.

SUMMARY: NARA published in the **Federal Register** of February 22, 2002, a final rule revising its regulations on use of NARA research rooms to add a policy on use of public access personal computers (workstations) in the research rooms and clarifying researcher identification card issuance. We incorrectly stated that the researcher identification card is valid for one year instead of three years. This document corrects that error.

EFFECTIVE DATE: March 25, 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 final rule document in the **Federal Register** of February 22, 2002 (67 FR 8199) that revised 36 CFR 1254.6 to clarify that, in research rooms where the plastic researcher identification card is also used with the facility's security system, we will issue a plastic card to researchers who have a paper card from another NARA facility. The proposed rule published on September 7, 2001 (66 FR 46752) correctly stated that the researcher identification card is valid for three years. The final rule incorrectly stated a one-year period. NARA is considering revising the length of time a researcher identification card is valid; however, we will issue a proposed rule for public comment before changing the period.

In the document FR 02–4211 published on February 22, 2002 (67 FR 8199), make the following correction:

§ 1254.6 [Corrected]

1. On page 8200, in the second column, in § 1254.6, correct the fourth line of paragraph (a) of that section to read ''valid for three years, and may be renewed''.

Dated: April 3, 2002.

Nancy Y. Allard,

Federal Register Liaison Officer.

[FR Doc. 02–8571 Filed 4–9–02; 8:45 am]

BILLING CODE 7515–01–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[AL–058–200219(a); FRL–7169–1]

Approval and Promulgation of Implementation Plans: Revision to the Alabama Department of Environmental Management (ADEM) Administrative Code for the Air Pollution Control Program

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: The EPA is approving revisions to the Alabama Department of Environmental Management's (ADEM) Administrative Code submitted on February 21, 2002, by the State of Alabama. The revisions comply with the regulations set forth in the Clean Air Act (CAA). The revision was submitted to correct a numbering inconsistency in chapter 335–3–14 ''Air Permits.''

DATES: This direct final rule is effective June 10, 2002 without further notice,

unless EPA receives adverse comment by May 10, 2002. If adverse comment is received, EPA will publish a timely withdrawal of the direct final rule in the **Federal Register** and inform the public that the rule will not take effect.

ADDRESSES: All comments should be addressed to: Sean Lakeman; Regulatory Development Section; Air Planning Branch; Air, Pesticides and Toxics Management Division; U.S. Environmental Protection Agency Region 4; 61 Forsyth Street, SW; Atlanta, Georgia 30303–8960.

Copies of documents relative to this action are available at the following addresses for inspection during normal business hours:

Air and Radiation Docket and Information Center (Air Docket 6102), U.S. Environmental Protection Agency, 401 M Street, SW, Washington, DC 20460.

Environmental Protection Agency, Region 4, Air Planning Branch, 61 Forsyth Street, SW, Atlanta, Georgia 30303–8960.

Alabama Department of Environmental Management, 400 Coliseum Boulevard, Montgomery, Alabama 36110–2059.

FOR FURTHER INFORMATION CONTACT: Sean Lakeman; Regulatory Development Section; Air Planning Branch; Air, Pesticides and Toxics Management Division; U.S. Environmental Protection Agency Region 4; 61 Forsyth Street, SW; Atlanta, Georgia 30303–8960. Mr. Lakeman can also be reached by phone at (404) 562–9043 or by electronic mail at *lakeman.sean@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. Analysis of State's Submittal

On February 21, 2002, the State of Alabama through ADEM submitted revisions to chapter 335–3–14 ''Air Permits'' to correct a numbering inconsistency.

II. Final Action

EPA is approving the aforementioned change to the State of Alabama's SIP because it is consistent with the CAA and EPA policy. The EPA is publishing this rule without prior proposal because the Agency views this as a noncontroversial submittal and anticipates no adverse comments. However, in the proposed rules section of this **Federal Register** publication, EPA is publishing a separate document that will serve as the proposal to approve the SIP revision should adverse comments be filed. This rule will be effective June 10, 2002 without further notice unless the Agency receives adverse comments by May 10, 2002.

If the EPA receives such comments, then EPA will publish a document withdrawing the final rule and informing the public that the rule will not take effect. All public comments received will then be addressed in a subsequent final rule based on the proposed rule. The EPA will not institute a second comment period. Parties interested in commenting should do so at this time. If no such comments are received, the public is advised that this rule will be effective on June 10, 2002 and no further action will be taken on the proposed rule.

III. Administrative Requirements

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is not a ''significant regulatory action'' and therefore is not subject to review by the Office of Management and Budget. For this reason, this action is also not subject to Executive Order 13211, ''Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use'' (66 FR 28355, May 22, 2001). This action merely approves state law as meeting Federal requirements and imposes no additional requirements beyond those imposed by state law. Accordingly, the Administrator certifies that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Because this rule approves pre-existing requirements under state law and does not impose any additional enforceable duty beyond that required by state law, it does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104–4).

This rule also does not have tribal implications because it will not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes, as specified by Executive Order 13175 (65 FR 67249, November 9, 2000). This action also does not have Federalism implications because it does not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999). This action merely approves a state rule implementing a Federal standard, and does not alter the relationship or the distribution of power and responsibilities established in the Clean Air Act. This rule also is not subject to Executive Order 13045 ''Protection of Children from Environmental Health Risks and Safety Risks'' (62 FR 19885, April 23, 1997), because it is not economically significant.

In reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the Clean Air Act. In this context, in the absence of a prior existing requirement for the State to use voluntary consensus standards (VCS), EPA has no authority to disapprove a SIP submission for failure to use VCS. It would thus be inconsistent with applicable law for EPA, when it reviews a SIP submission, to use VCS in place of a SIP submission that otherwise satisfies the provisions of the Clean Air Act. Thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply. This rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

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

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by June 10, 2002. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Lead, Intergovernmental relation, Reporting and recordkeeping requirements.

Dated: March 28, 2002.

A. Stanley Meiburg,

Acting Regional Administrator, Region 4.

Chapter I, title 40, *Code of Federal Regulations*, is amended as follows:

PART 52—[AMENDED]

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

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

Subpart B—Alabama

2. Section 52.50(c) is amended by revising the entry for ''Section 335–3–14.04'' to read as follows:

§ 52.50 Identification of plan.

* * * * *

(c) * * *

EPA APPROVED ALABAMA REGULATIONS

State citation	Title subject	Adoption date	EPA approval date	**Federal Register** notice
*	*	*	*	*
Chapter No. 335–3–14—Air Permits				
*	*	*	*	*
Section 335–3-14.04.	Air Permits Authorizing Construction in Clean Air Areas [:prevention of Significant Deterioration Permitting (PSD)].	February 5, 2002	April 10, 2002	[Insert citation of publication]
*	*	*	*	*

[FR Doc. 02–8531 Filed 4–9–02; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Parts 2, 25 and 87

[ET Docket No. 98–142; FCC 02–23]

Mobile-Satellite Service above 1 GHz

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document makes new spectrum available on a co-primary basis to the fixed-satellite service (''FSS''). These FSS allocations will provide necessary feeder link spectrum for a number of commercial Non-Geostationary Satellite Orbit Mobile-Satellite Service (''NGSO MSS'') systems. Specifically, we allocate the bands 5091–5250 MHz and 15.43–15.63 GHz for Earth-to-space transmissions (''uplinks'') and the band 6700–7025 MHz for space-to-Earth transmissions (''downlinks''). In addition, we grandfather two satellite systems and their associated earth stations at three sites in the downlink band 7025–7075 MHz. In accordance with international regulations, the use of these FSS allocations is limited to feeder links that will be used in conjunction with the service links of NGSO MSS systems. These actions are intended to facilitate the introduction of innovative global radiocommunication services, consistent with international allocations for these frequency bands, and will provide incumbent operations with adequate protection from harmful interference.

DATES: Effective May 10, 2002.

FOR FURTHER INFORMATION CONTACT: Tom Mooring, Office of Engineering and Technology, (202) 418–2450, TTY (202) 418–2989, email: *tmooring@fcc.gov.*

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's *Report and Order,* ET Docket No. 98–142; FCC 02–23, adopted January 28, 2002, and released February 7, 2002. The full text of this document is available on the Commission's internet site at *www.fcc.gov.* It is also available for inspection and copying during regular business hours in the FCC Reference Center (Room CY–A257), 445 Twelfth Street, SW, Washington, DC 20554. The complete text of this document may be purchased from the Commission's duplication contractor Qualex International, (202) 863–2893 voice, (202) 863–2898 Fax, *qualexint@aol.com* email, Portals II, 445 12th St., SW, Room CY–B402, Washington, DC 20554.

Summary of Report and Order

1. We are allocating 325 megahertz of spectrum on a co-primary basis for NGSO MSS feeder downlinks, with an additional 50 megahertz limited to two grandfathered satellite systems and their associated earth stations at three sites. The grandfathered sites are listed in footnote NG173. In addition, we are allocating 359 megahertz of spectrum on a co-primary basis for NGSO MSS feeder uplinks. A portion of this primary uplink allocation (59 megahertz) is temporary in nature. The need for this amount of feeder link spectrum is based on the amount of NGSO MSS service link spectrum that is available, the frequency reuse of the service link spectrum, the need for NGSO MSS feeder link earth stations (''gateways'') to service multiple satellites, and the need to coordinate with incumbent terrestrial operations. These allocations will be used exclusively by commercial NGSO MSS systems for the connection between their satellites and gateways. We have previously allocated spectrum for 2 GHz MSS and Big LEO service links. (Big LEO service links are at 1610–1626.5 MHz and 2483.5–2500 MHz and 2 GHz MSS service links are at 1990–2025 MHz and 2165–2200 MHz.) The adoption of these FSS allocations will allow us to remove conditions placed on Big LEO and 2 GHz MSS licensees' feeder links, which we have previously licensed by waiver.

2. The band 5000–5250 MHz is currently allocated to the aeronautical radionavigation service (''ARNS'') and to several aeronautical support services on a primary basis. ARNS is a radionavigation service intended for the safe operation of aircraft. The microwave landing system (''MLS''), an

ARNS system, is an all-weather precision approach and landing system that currently operates in the band 5030–5091 MHz. Prior to this action, MLS requirements had unencumbered use of the band 5000–5250 MHz over any other use, including other ARNS systems and other primary services.

3. To provide spectrum for NGSO MSS feeder uplinks, we are removing MLS's right of precedence over all other uses in the band 5150–5250 MHz, but are maintaining that right in the band 5000–5150 MHz. Consistent with international allocations, no new NGSO MSS feeder link assignments will be made in the band 5091–5150 MHz after January 1, 2008; and two years later, FSS use of this band becomes secondary to ARNS. In addition, MLS requirements that can not be met in the band 5000–5091 MHz take precedence over all other uses of the band 5091–5150 MHz. These requirements are codified at 47 CFR 2.106, footnote S5.444A, and are being adopted domestically in this *Order.* Together, these actions will accommodate first generation NGSO MSS feeder link requirements, while providing existing MLS stations, which operate in the band 5030–5091 MHz, and gateways, which will operate in the band 5091–5250 MHz, with non-overlapping spectrum. We are also removing unused and unneeded aeronautical support allocations. Specifically, we are removing the aeronautical mobile-satellite (R) service (''AMS(R)S'') from the bands 5150–5250 MHz and 15.4–15.7 GHz, the inter-satellite service (''ISS'') from the bands 5000–5250 MHz and 15.4–15.7 GHz, and the FSS to the extent that it is limited to aeronautical support functions from the bands 5000–5250 MHz and 15.4–15.7 GHz.

4. Incumbent terrestrial users of the band 6700–7075 MHz raise several concerns with regard to sharing this band with NGSO MSS feeder downlinks. To resolve these concerns, we adopt the proposed power flux-density (''pfd'') limits and establish coordination procedures in the band 6700–6875 MHz using existing parts 25 and 101 rules. The pfd limits have been added to § 25.208. If an NGSO MSS satellite transmitting in the band 6700–6875 MHz causes harmful interference to previously licensed co-frequency Public Safety facilities, then that satellite licensee is obligated to remedy the interference complaint. This requirement has been added as § 25.147.

5. We will address coordination requirements in the band 6875–7025 MHz in a future proceeding, but as an interim measure specify that coordination in this band will be on an individual basis using existing parts 25 and 101 rules. The focus of that proceeding will be the issue of ''growth zones,'' the protection of incumbent mobile operations in their normal operating area; and the protection of receive earth stations from later-licensed mobile stations. In addition, we observe that terrestrial fixed users' concerns about effective and equitable use of spectrum in bands shared by the FSS and the fixed service are being considering in IB Docket No. 00–203.

6. In order to permit (mobile) television pickup (''TVPU'') stations to continue to operate freely on two channels in essentially all of the country (in addition to two other channels, which will not share spectrum with gateways), we are limiting the use of the band 7025–7075 MHz to three gateways, two of which are operational and the other of which is undergoing testing. In addition, we recommend that, in the band 6875–7125 MHz, airborne TVPU stations use the channels 7075–7100 MHz and 7100–7125 MHz wherever possible. We find that these actions balance competing demands for spectrum and will mitigate interference between satellite and terrestrial services.

7. We explicitly require that applications for commercial earth stations in the bands 5091–5250 MHz and 15.43–15.63 GHz be coordinated with Federal agencies. In order to better protect MLS operations in the band 5000–5091 MHz, we recommend that non-Government tracking and telecommand operations be conducted in the band 5150–5250 MHz. These requirements are in footnotes US344 and US359 and in §§ 25.202 and 87.173. The following table summarizes the existing domestic allocations versus the allocations we are adopting in this Order.

EXISTING VS. ADOPTED ALLOCATIONS

[All services are allocated on a primary basis, unless otherwise stated]

Band	Existing allocations	Adopted allocations	Summary of major changes
359 Megahertz Allocated for Commercial NGSO MSS Feeder Uplinks, 300 of which is permanent (Prior to this action, Federal & non-Federal Gov't allocations were identical in the hands of 5000–5250 MHz and 15.4–15.7 GHz)			
5000–5091 MHz	ARNS (MLS takes precedence over other uses; MLS currently operated in the sub-band 5030–5091 MHz).	ARNS (MLS takes precedence over other uses). AMS(R)S	Additional 59 megahertz for commercial NGSO MSS feeder uplinks on a temporary, primary basis.
5091–5150 MHz	AMS(R)S FSS & ISS (limited to aeronautical support).	non-Federal Gov't FSS (limited to NGSO MSS feeder uplinks). ARNS (MLS takes precedence over other uses). AMS(R)S	Maintains MLS's right of precedence in the band 5000–5150 MHz. Reduction for 150 megahertz for FSS & ISS used for aeronautical support.
5150–5250 MHz	ARNS (MLS takes precedence over other uses). AMS(R)S FSS & ISS (limited to aeronautical support). (Available for U–NII devices)	non-Federal Gov't FSS (limited to NGSO MSS feeder uplinks). ARNS RDSS (downlinks in the sub-band 5150–5216 MHz). (Available for U–NII devices)	Additional 100 megahertz for commercial NGSO MSS feeder uplinks. Reduction of 100 megahertz for AMS(R)S and for FSS & ISS used for aeronautical support. MLS loses right of precedence in 100 megahertz.
15.40–15.43 GHz	ARNS	ARNS	Additional 200 megahertz for commercial NGSO MSS feeder uplinks.
15.43–15.63 GHz	AMS(R)S FSS & ISS (limited to aeronautical support).	non-Federal Gov't FSS (limited to NGSO MSS feeder uplinks). ARNS	Reduction of 300 megahertz for AMS(R)S and for FSS & ISS used for aeronautical support.

EXISTING VS. ADOPTED ALLOCATIONS—Continued

[All services are allocated on a primary basis, unless otherwise stated]

Band	Existing allocations	Adopted allocations	Summary of major changes
15.63–15.70 GHz ..	.....	ARNS	
325 Megahertz Allocated for Commercial NGSO MSS Feeder Downlinks, with an additional 50 megahertz limited to grandfathered facilities (The band 6700–7075 MHz is non-Federal Government exclusive spectrum.)			
6700–6785 MHz	FSS (uplinks; the sub-band 6725–6875 MHz is part of the internationally planned band that extends from 6725–7025 MHz).	FSS (uplinks) (downlinks, limited to NGSO MSS feeder links).	Additional 175 megahertz for commercial NGSO MSS feeder downlinks.
	FIXED (half of the band 6525–6875 MHz that is used by common carrier & private operational fixed point-to-point microwave licenses).	FIXED	Require coordination using Part 25 and Part 101 rules.
6875–7025 MHz	FSS (uplinks; remainder of the internationally planned band that extends from 6725–7025 MHz; the sub-band 7025–7075 MHz is available for SDARS feeder links).	FSS (uplinks) (downlinks, limited to NGSO MSS feeder links). FIXED & MOBILE	Additional 150 megahertz for commercial NGSO MSS feeder downlinks; case-by-case coordination required on interim basis.
7025–7075 MHz	FIXED & MOBILE (used by BAS and CARS licensees for ENG, STLs, ICR & remote event coverage).	FSS (uplinks) (downlinks, limited to grandfathered NGSO MSS feeder links). FIXED & MOBILE	Additional 50 megahertz for commercial NGSO MSS feeder downlinks, limited to 2 grandfathered systems and 3 sites.

Final Regulatory Flexibility Certification

8. The Regulatory Flexibility Act (''RFA'')[1] requires that a regulatory flexibility analysis be prepared for notice and comment rulemaking proceedings, unless the agency certifies that ''the rule will not, if promulgated, have a significant economic impact on a substantial number of small entities.'' The RFA generally defines ''small entity'' as having the same meaning as the terms ''small business,'' ''small organization,'' and ''small governmental jurisdiction.'' In addition, the term ''small business'' has the same meaning as the term ''small business concern'' under the Small Business Act. A small business concern is one which: (1) Is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the Small Business Administration (SBA).

9. This Report and Order allocates the bands 5091–5250 MHz and 15.43–15.63 GHz for FSS uplinks on a primary basis, allocates the band 6700–7025 MHz on a primary basis for FSS downlinks, and limits the use of these FSS allocations to feeder links that would be used in conjunction with the service links of NGSO MSS systems. In addition, two satellite systems and three sites are grandfathered in the downlink band 7025–7075 MHz. We take this action on our own initiative in order to adopt domestically the NGSO MSS feeder link allocations that have been adopted internationally. These allocations will accommodate the growing demand for NGSO MSS services and will provide satellite operators with increased flexibility in the design of their systems.

10. The Commission has not developed a definition of small entities specifically applicable to the satellite services licensees here at issue. Therefore, the applicable definition of small entity in the satellite services industry is the definition under the Small Business Administration (''SBA'') rules applicable to Communications Services ''Not Elsewhere Classified.''[2] This definition provides that a small entity is expressed as one with $11.0 million or less in annual receipts. According to Census Bureau data, there are 848 firms that fall under the category of Communications Services, Not Elsewhere Classified. Of those, approximately 775 reported annual receipts of $11 million or less and qualify as small entities.[3] The Census Bureau category is very broad and commercial satellite services constitute only a subset of its total.

11. None of the NGSO MSS licensees is a small business because each has revenues in excess of $11 million annually or has a parent company or investors that have revenues in excess of $11 million annually.

12. The Commission did not receive any comments on its the initial regulatory flexibility certification. Nonetheless, we take this opportunity to explain a *de minimus* burden with regards to terrestrial users in the band 6700–7025 MHz. In the *Notice of Proposed Rule Making,* the Commission proposed to allocate the band 6700–7075 MHz to the FSS for satellite transmissions down to earth stations on a primary shared basis with incumbent users. Because such co-primary use implies coordination, the comments of the terrestrial users focused on limiting the impact of the allocation by placing restrictions on earth station use of the band, that is, the terrestrial parties requested that the normal coordination process not apply to this band. In the Report and Order, the Commission requires the use of the normal coordination process in the band 6700–6875 MHz, which is used by fixed point-to-point microwave licensees. If gateway applications are filed prior to the completion of an upcoming rule making that will deal with final coordination rules in the band 6875–7025 MHz, then case-by-case coordination will be required of the gateway applicants. Our action to limit the number of sites for earth stations in the band 7025–7075 MHz to three will also reduce future coordination costs. The Commission finds that, because of the limited number of receive earth stations to be deployed and their viable locations (that is, in rural areas), there will be minimal impact on potential

[1] The RFA, 5 U.S.C. 601 *et. seq.*, has been amended by the Contract with American Advancement Act of 1996, Public Law 104–121, 110 Stat. 847 (1996) (''CWAAA''). Title II of the CWAAA is the Small Business Regulatory Enforcement Fairness Act of 1996 (''SBREFA'').

[2] 13 CFR 121.201, Standard Industrial Classification (NAICS) Codes 48531, 513322, 51334, 513391.

[3] U.S. Bureau of the Census, U.S. Department of Commerce, 1992 Census of Transportation, Communications, and Utilities, UC92-S–1, Subject Series, Establishment and Firm Size, Table 2D, Employment Size of Firms: 1992.

coordination costs. We therefore certify that this Report and Order will not have a significant economic impact on a substantial number of small entities.

13. The Commission will send a copy of the Report and Order, including a copy of this final certification, in a report to Congress pursuant to the Congressional Review Act, 5 U.S.C. 801(a)(1)(A). In addition, the Report and Order and this certification will be sent to the Chief Counsel for Advocacy of the Small Business Administration, 5 U.S.C. 605(b).

Ordering Clauses

14. Authority for issuance of this Report and Order is contained sections 1, 4(i), 301, 302, 303(e), 303(f), 303(g), 303(r), 304, and 307 of the Communications Act of 1934, as amended, 47 U.S.C. 154(i), 301, 302, 303(e), 303(f), 303(g), 303(r), 304, and 307.

15. Parts 2, 25, and 87 of the Commission's rules are amended May 10, 2002.

16. The Commission's Consumer Information Bureau, Reference Information Center, Shall send a copy of this Report and Order, including the Final Regulatory Flexibility Certification, to the Chief Counsel for Advocacy of the Small Business Administration.

List of Subjects in 47 CFR

42 CFR Part 2

Telecommunications.

42 CFR Part 25

Satellites.

42 CFR Part 87

Air Transportation.

Federal Communications Commimssion.

William F. Caton,

Acting Secretary.

Rules Changes

For the reasons discussed in the preamble, the Federal Communications Commission amends 47 CFR parts 2, 25, and 87 as follows:

PART 2—FREQUENCY ALLOCATIONS AND RADIO TREATY MATTERS; GENERAL RULES AND REGULATIONS

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

Authority: 47 U.S.C. 154, 302a, 303, and 336, unless otherwise noted.

2. Section 2.106 is amended as follows:

a. Revise pages 45, 52, 55, 56, 57, 58, and 67.

b. In the list of International Footnotes under heading I., add footnotes S5.351A and S5.384A; remove footnotes S5.408 and S5.417; and revise footnotes S5.447, S5.448, and S5.511A.

c. In the list of International Footnotes under heading II., remove footnotes 733, 753F, 796, and 797.

d. In the list of United States (US) Footnotes, remove footnote US306 and add footnotes US344 and US359.

e. In the list of Non-Federal Government (NG) Footnotes, add footnotes NG171 and NG172.

§ 2.106 Table of Frequency Allocations.

The revisions and additions read as follows:

* * * * *

BILLING CODE 6712–01–P

1610-1670 MHz (UHF)

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International Table			United States Table		FCC Rule Part(s)
Region 1	Region 2	Region 3	Federal Government	Non-Federal Government	
1610-1610.6 MOBILE-SATELLITE (Earth-to-space) AERONAUTICAL RADIONAVIGATION S5.341 S5.355 S5.359 S5.363 S5.364 S5.366 S5.367 S5.368 S5.369 S5.371 S5.372	1610-1610.6 MOBILE-SATELLITE (Earth-to-space) AERONAUTICAL RADIONAVIGATION RADIODETERMINATION-SATELLITE (Earth-to-space) S5.341 S5.364 S5.366 S5.367 S5.368 S5.370 S5.372	1610-1610.6 MOBILE-SATELLITE (Earth-to-space) AERONAUTICAL RADIONAVIGATION Radiodetermination-Satellite (Earth-to-space) S5.341 S5.355 S5.359 S5.364 S5.366 S5.367 S5.368 S5.369 S5.372	1610-1610.6 MOBILE-SATELLITE (Earth-to-space) US319 AERONAUTICAL RADIONAVIGATION US260 RADIODETERMINATION-SATELLITE(Earth-to-space) S5.341 S5.364 S5.366 S5.367 S5.368 S5.372 US208		Satellite Communications (25) Aviation (87)
1610.6-1613.8 MOBILE-SATELLITE (Earth-to-space) RADIO ASTRONOMY AERONAUTICAL RADIONAVIGATION S5.149 S5.341 S5.355 S5.359 S5.363 S5.364 S5.366 S5.367 S5.368 S5.369 S5.371 S5.372	1610.6-1613.8 MOBILE-SATELLITE (Earth-to-space) RADIO ASTRONOMY AERONAUTICAL RADIONAVIGATION RADIODETERMINATION-SATELLITE (Earth-to-space) S5.149 S5.341 S5.364 S5.366 S5.367 S5.368 S5.370 S5.372	1610.6-1613.8 MOBILE-SATELLITE (Earth-to-space) RADIO ASTRONOMY AERONAUTICAL RADIONAVIGATION Radiodetermination-satellite (Earth-to-space) S5.149 S5.341 S5.355 S5.359 S5.364 S5.366 S5.367 S5.368 S5.369 S5.372	1610.6-1613.8 MOBILE-SATELLITE (Earth-to-space) US319 RADIO ASTRONOMY AERONAUTICAL RADIONAVIGATION US260 RADIODETERMINATION-SATELLITE (Earth-to-space) S5.149 S5.341 S5.364 S5.366 S5.367 S5.368 S5.372 US208		
1613.8-1626.5 MOBILE-SATELLITE (Earth-to-space) AERONAUTICAL RADIONAVIGATION Mobile-satellite (space-to-Earth) S5.341 S5.355 S5.359 S5.363 S5.364 S5.365 S5.366 S5.367 S5.368 S5.369 S5.371 S5.372	1613.8-1626.5 MOBILE-SATELLITE (Earth-to-space) AERONAUTICAL RADIONAVIGATION RADIODETERMINATION-SATELLITE (Earth-to-space) Mobile-satellite (space-to-Earth) S5.341 S5.364 S5.365 S5.366 S5.367 S5.368 S5.370 S5.372	1613.8-1626.5 MOBILE-SATELLITE (Earth-to-space) AERONAUTICAL RADIONAVIGATION Mobile-satellite (space-to-Earth) Radiodetermination-satellite (Earth-to-space) S5.341 S5.355 S5.359 S5.364 S5.365 S5.366 S5.367 S5.368 S5.369 S5.372	1613.8-1626.5 MOBILE-SATELLITE (Earth-to-space) US319 AERONAUTICAL RADIONAVIGATION US260 RADIODETERMINATION-SATELLITE (Earth-to-space) Mobile-satellite (space-to-Earth) S5.341 S5.364 S5.365 S5.366 S5.367 S5.368 S5.372 US208		

2483.5-2500 FIXED MOBILE MOBILE-SATELLITE (space-to-Earth) S5.351A Radiolocation S5.150 S5.371 S5.397 S5.398 S5.399 S5.400 S5.402	2483.5-2500 FIXED MOBILE MOBILE-SATELLITE (space-to-Earth) S5.351A RADIOLOCATION RADIODETERMINATION-SATELLITE (space-to-Earth) S5.398 S5.150 S5.402	2483.5-2500 FIXED MOBILE MOBILE-SATELLITE (space-to-Earth) S5.351A RADIOLOCATION Radiodetermination-satellite (space-to-Earth) S5.398 S5.150 S5.400 S5.402	2483.5-2500 MOBILE-SATELLITE (space-to-Earth) US319 RADIODETERMINATION-SATELLITE (space-to-Earth) S5.398 S5.150 S5.402 US41	2483.5-2500 MOBILE-SATELLITE (space-to-Earth) US319 RADIODETERMINATION-SATELLITE (space-to-Earth) S5.398 S5.150 S5.402 US41 NG147	ISM Equipment (18) Satellite Communications (25) Private Land Mobile (90) Fixed Microwave (101)
2500-2520 FIXED S5.409 S5.410 S5.411 MOBILE except aeronautical mobile S5.384A MOBILE-SATELLITE (space-to-Earth) S5.403 S5.351A S5.405 S5.407 S5.412 S5.414	2500-2520 FIXED S5.409 S5.411 FIXED-SATELLITE (space-to-Earth) S5.415 MOBILE except aeronautical mobile S5.384A MOBILE-SATELLITE (space-to-Earth) S5.403 S5.351A S5.404 S5.407 S5.414 S5.415A		2500-2655	2500-2655 FIXED S5.409 S5.411 US205 FIXED-SATELLITE (space-to-Earth) NG102 MOBILE except aeronautical mobile BROADCASTING-SATELLITE NG101	Domestic Public Fixed (21) Auxiliary Broadcasting (74)
2520-2655 FIXED S5.409 S5.410 S5.411 MOBILE except aeronautical mobile S5.384A BROADCASTING-SATELLITE S5.413 S5.416 S5.339 S5.403 S5.405 S5.412 S5.418	2520-2655 FIXED S5.409 S5.411 FIXED-SATELLITE (space-to-Earth) S5.415 MOBILE except aeronautical mobile S5.384A BROADCASTING-SATELLITE S5.413 S5.416 S5.339 S5.403	2520-2535 FIXED S5.409 S5.411 FIXED-SATELLITE (space-to-Earth) S5.415 MOBILE except aeronautical mobile S5.384A BROADCASTING-SATELLITE S5.413 S5.416 S5.403 S5.415A 2535-2655 FIXED S5.409 S5.411 MOBILE except aeronautical mobile S5.384A BROADCASTING-SATELLITE S5.413 S5.416 S5.339 S5.418			

3700-5650 MHz (SHF) Page 55

International Table			United States Table		FCC Rule Part(s)
Region 1	Region 2	Region 3	Federal Government	Non-Federal Government	
See previous page for 3600-4200 MHz	3700-4200 FIXED FIXED-SATELLITE (space-to-Earth) MOBILE except aeronautical mobile		3700-4200	3700-4200 FIXED NG41 FIXED-SATELLITE (space-to-Earth)	International Fixed (23) Satellite Communications (25) Fixed Microwave (101)
4200-4400 AERONAUTICAL RADIONAVIGATION S5.438 S5.437 S5.439 S5.440			4200-4400 AERONAUTICAL RADIONAVIGATION S5.440 US261		Aviation (87)
4400-4500 FIXED MOBILE			4400-4500 FIXED MOBILE	4400-4500	
4500-4800 FIXED FIXED-SATELLITE (space-to-Earth) S5.441 MOBILE			4500-4800 FIXED MOBILE US245	4500-4800 FIXED-SATELLITE (space-to-Earth) 792A US245	
4800-4990 FIXED MOBILE S5.442 Radio astronomy S5.149 S5.339 S5.443			4800-4940 FIXED MOBILE S5.149 US203	4800-4940 S5.149 US203	
			4940-4990 FIXED MOBILE S5.149 S5.339 US257	4940-4990 S5.149 S5.339 US257	Note: 4940-4990 MHz became non-Federal Government exclusive spectrum in March 1999
4990-5000 FIXED MOBILE except aeronautical mobile RADIO ASTRONOMY Space research (passive) S5.149			4990-5000 RADIO ASTRONOMY US74 Space research (passive) US246		
5000-5150 AERONAUTICAL RADIONAVIGATION S5.367 S5.444 S5.444A			5000-5250 AERONAUTICAL RADIO-NAVIGATION US260	5000-5150 AERONAUTICAL RADIO-NAVIGATION US260 S5.367 S5.444 S5.444A US211 US344	Satellite Communications (25) Aviation (87)

5150-5250 AERONAUTICAL RADIONAVIGATION FIXED-SATELLITE (Earth-to-space) S5.447A S5.446 S5.447 S5.447B S5.447C	S5.367 S5.444 US211 US307 US344	5150-5250 AERONAUTICAL RADIO-NAVIGATION US260 FIXED-SATELLITE (Earth-to-space) S5.447A US344 S5.447C US211 US307	
5250-5255 EARTH EXPLORATION-SATELLITE (active) RADIOLOCATION SPACE RESEARCH S5.447D S5.448 S5.448A	5250-5350 RADIOLOCATION S5.333 US110 G59	5250-5350 Radiolocation S5.333 US110	
5255-5350 EARTH EXPLORATION-SATELLITE (active) RADIOLOCATION SPACE RESEARCH (active) S5.448 S5.448A			
5350-5460 EARTH EXPLORATION-SATELLITE (active) S5.448B AERONAUTICAL RADIONAVIGATION S5.449 Radiolocation	5350-5460 AERONAUTICAL RADIO-NAVIGATION S5.449 RADIOLOCATION G56 US48	5350-5460 AERONAUTICAL RADIO-NAVIGATION S5.449 Radiolocation US48	Aviation (87)
5460-5470 RADIONAVIGATION S5.449 Radiolocation	5460-5470 RADIONAVIGATION S5.449 Radiolocation G56 US49 US65	5460-5470 RADIONAVIGATION S5.449 Radiolocation US49 US65	
5470-5650 MARITIME RADIONAVIGATION Radiolocation S5.450 S5.451 S5.452	5470-5600 MARITIME RADIONAVIGATION Radiolocation G56 US50 US65	5470-5600 MARITIME RADIONAVIGATION Radiolocation US50 US65	Maritime (80)
	5600-5650 MARITIME RADIONAVIGATION METEOROLOGICAL AIDS Radiolocation US51 G56 S5.452 US65	5600-5650 MARITIME RADIONAVIGATION METEOROLOGICAL AIDS Radiolocation US51 S5.452 US65	

5650-7250 MHz (SHF)

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International Table			United States Table		FCC Rule Part(s)
Region 1	Region 2	Region 3	Federal Government	Non-Federal Government	
5650-5725 RADIOLOCATION Amateur Space research (deep space) S5.282 S5.451 S5.453 S5.454 S5.455			5650-5925 RADIOLOCATION G2	5650-5830 Amateur S5.150 S5.282	ISM Equipment (18) Amateur (97)
5725-5830 FIXED-SATELLITE (Earth-to-space) RADIOLOCATION Amateur S5.150 S5.451 S5.453 S5.455 S5.456	5725-5830 RADIOLOCATION Amateur S5.150 S5.453 S5.455				
5830-5850 FIXED-SATELLITE (Earth-to-space) RADIOLOCATION Amateur Amateur-satellite (space-to-Earth) S5.150 S5.451 S5.453 S5.455 S5.456	5830-5850 RADIOLOCATION Amateur Amateur-satellite (space-to-Earth) S5.150 S5.453 S5.455			5830-5850 Amateur Amateur-satellite (space-to-Earth) S5.150	
5850-5925 FIXED FIXED-SATELLITE (Earth-to-space) MOBILE S5.150	5850-5925 FIXED FIXED-SATELLITE (Earth-to-space) MOBILE Amateur Radiolocation S5.150	5850-5925 FIXED FIXED-SATELLITE (Earth-to-space) MOBILE Radiolocation S5.150	S5.150 US245	5850-5925 FIXED-SATELLITE (Earth-to-space) US245 MOBILE NG160 Amateur S5.150	ISM Equipment (18) Private Land Mobile (90) Amateur (97)
5925-6700 FIXED FIXED-SATELLITE (Earth-to-space) MOBILE			5925-6425	5925-6425 FIXED NG41 FIXED-SATELLITE (Earth-to-space)	Satellite Communications (25) Fixed Microwave (101)
			6425-6525 S5.440 S5.458	6425-6525 FIXED-SATELLITE (Earth-to-space) MOBILE S5.440 S5.458	Auxiliary Broadcasting (74) Cable TV Relay (78) Fixed Microwave (101)

S5.149 S5.440 S5.458	6525-6700 S5.149 S5.458	6525-6700 FIXED FIXED-SATELLITE (Earth-to-space) S5.149 S5.458	Satellite Communications (25) Fixed Microwave (101)
6700-7075 FIXED FIXED-SATELLITE (Earth-to-space) (space-to-Earth) S5.441 MOBILE S5.458 S5.458A S5.458B S5.458C	6700-7125	6700-6875 FIXED FIXED-SATELLITE (Earth-to-space) (space-to-Earth) S5.441 S5.458 S5.458A S5.458B	
		6875-7025 FIXED NG118 FIXED-SATELLITE (Earth-to-space) (space-to-Earth) S5.441 MOBILE NG171 S5.458 S5.458A S5.458B	Satellite Communications (25) Auxiliary Broadcasting (74) Cable TV Relay (78)
		7025-7075 FIXED NG118 FIXED-SATELLITE (Earth-to-space) NG172 MOBILE NG171 S5.458 S5.458A S5.458B	
7075-7250 FIXED MOBILE	S5.458	7075-7125 FIXED NG118 MOBILE NG171 S5.458	
	7125-7190 FIXED S5.458 US252 G116	7125-7190 S5.458 US252	
	7190-7235 FIXED SPACE RESEARCH (Earth-to-space) S5.458	7190-7250	
S5.458 S5.459 S5.460	7235-7250 FIXED S5.458	S5.458	

14.5-18.3 GHz (SHF)

International Table			United States Table		FCC Rule Part(s)
Region 1	Region 2	Region 3	Federal Government	Non-Federal Government	
14.5-14.8 FIXED FIXED-SATELLITE (Earth-to-space) S5.510 MOBILE Space research			14.5-14.7145 FIXED Mobile Space research	14.5-14.7145	
			14.7145-15.1365 MOBILE Fixed Space research US310	14.7145-15.1365 US310	
14.8-15.35 FIXED MOBILE Space research S5.339			15.1365-15.35 FIXED Mobile Space research S5.339 US211	15.1365-15.35 S5.339 US211	
15.35-15.4 EARTH EXPLORATION-SATELLITE (passive) RADIO ASTRONOMY SPACE RESEARCH (passive) S5.340 S5.511			15.35-15.4 EARTH EXPLORATION-SATELLITE (passive) RADIO ASTRONOMY US74 SPACE RESEARCH (passive) US246		
15.4-15.43 AERONAUTICAL RADIONAVIGATION S5.511D			15.4-15.43 AERONAUTICAL RADIONAVIGATION US260 US211		Aviation (87)
15.43-15.63 FIXED SATELLITE (space-to-Earth) (Earth-to-space) S5.511A AERONAUTICAL RADIONAVIGATION S5.511C			15.43-15.63 AERONAUTICAL RADIO-NAVIGATION US260 S5.511C US211 US359	15.4-15.43 FIXED SATELLITE (Earth-to-space) AERONAUTICAL RADIO-NAVIGATION US260 S5.511C US211 US359	Satellite Communications (25) Aviation (87)
15.63-15.7 AERONAUTICAL RADIONAVIGATION S5.511D			15.63-15.7 AERONAUTICAL RADIONAVIGATION US260 US211		Aviation (87)
15.7-16.6 RADIOLOCATION S5.512 S5.513			15.7-16.6 RADIOLOCATION US110 G59	15.7-17.2 Radiolocation US110	Private Land Mobile (90)

International Footnotes

* * * * *

I. New ''S'' Numbering Scheme

* * * * *

S5.351A For the use of the bands 1525–1544 MHz, 1545–1559 MHz, 1610–1626.5 MHz, 1626.5–1645.5 MHz, 1646.5–1660.5 MHz, 1980–2010 MHz, 2170–2200 MHz, 2483.50–2500 MHz, 2500–2520 MHz and 2670–2690 MHz by the mobile-satellite service, see Resolutions 212 (Rev. WRC–97) and 225 (WRC–2000).

* * * * *

S5.384A The bands, or portions of the bands, 1710–1885 MHz and 2500–2690 MHz, are identified for use by administrations wishing to implement International Mobile Telecommunications-2000 (IMT–2000) in accordance with Resolution 223 (WRC–2000). This identification does not preclude the use of these bands by any application of the services to which they are allocated and does not establish priority in the Radio Regulations.

* * * * *

S5.447 *Additional allocation:* in Germany, Austria, Belgium, Denmark, Spain, Estonia, Finland, France, Greece, Israel, Italy, Japan, Jordan, Lebanon, Liechtenstein, Lithuania, Luxembourg, Malta, Norway, Pakistan, the Netherlands, Portugal, Syria, the United Kingdom, Sweden, Switzerland and Tunisia, the band 5150–5250 MHz is also allocated to the mobile service, on a primary basis, subject to agreement obtained under No. S9.21.

S5.448 *Additional allocation:* in Austria, Azerbaijan, Bulgaria, Libya, Mongolia, Kyrgyzstan, Slovakia, the Czech Republic, Romania and Turkmenistan, the band 5250–5350 MHz is also allocated to the radionavigation service on a primary basis.

* * * * *

S5.511A The band 15.43–15.63 GHz is also allocated to the fixed-satellite service (space-to-Earth) on a primary basis. Use of the band 15.43–15.63 GHz by the fixed-satellite service (space-to-Earth and Earth-to-space) is limited to feeder links of non-geostationary systems in the mobile-satellite service, subject to coordination under No. S9.11A. The use of the frequency band 15.43–15.63 GHz by the fixed-satellite service (space-to-Earth) is limited to feeder links of non-geostationary systems in the mobile-satellite service for which advance publication information has been received by the Bureau prior to 2 June 2000. In the space-to-Earth direction, the minimum earth station elevation angle above and gain towards the local horizontal plane and the minimum coordination distances to protect an earth station from harmful interference shall be in accordance with Recommendation ITU–R S.1341. In order to protect the radio astronomy service in the band 15.35–15.4 GHz, the aggregate power flux-density radiated in the 15.35–15.4 GHz band by all the space stations within any feeder-link of a non-geostationary system in the mobile-satellite service (space-to-Earth) operating in the 15.43–15.63 GHz band shall not exceed the level of –156 dB(W/m^2) in a 50 MHz bandwidth, into any radio astronomy observatory site for more than 2% of the time.

* * * * *

United States (US) Footnotes

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US344 In the band 5091–5250 MHz, non-Government earth stations in the fixed-satellite service (Earth-to-space) shall be coordinated through the Frequency Assignment Subcommittee (see Recommendation ITU–R S.1342). In order to better protect the operation of the international standard system (microwave landing system) in the band 5000–5091 MHz, non-Government tracking and telecommand operations should be conducted in the band 5150–5250 MHz.

* * * * *

US359 In the band 15.43–15.63 GHz, use of the fixed-satellite service (Earth-to-space) is limited to non-Government feeder links of non-geostationary systems in the mobile-satellite service. These non-Government earth stations shall be coordinated through the Frequency Assignment Subcommittee (see Annex 3 of Recommendation ITU–R S.1340).

* * * * *

Non-Federal Government (NG) Footnotes

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NG171 In the band 6875–7125 MHz, the following two channels should be used for airborne TV pickup stations, wherever possible: 7075–7100 MHz and 7100–7125 MHz.

NG172 In the band 7025–7075 MHz, the fixed-satellite service (space-to-Earth) is allocated on a primary basis, but the use of this allocation shall be limited to two grandfathered satellite systems. Associated earth stations located within 300 meters of the following locations shall be grandfathered: (1) in the band 7025–7075 MHz, Brewster, Washington (48°08′46.7″ N, 119°42′8.0″ W); and, (2) in the band 7025–7055 MHz, Clifton, Texas (31°47′58.5″ N, 97°36′46.7″ W) and Finca Pascual, Puerto Rico (17°58′41.8″ N, 67°8′12.6″ W). All coordinates are specified in terms of the North American Datum of 1983.

* * * * *

PART 25—SATELLITE COMMUNICATIONS

3. The authority citation for part 25 continues to read as follows:

Authority: 47 U.S.C. 701–744. Interprets or applies Sections 4, 301, 302, 303, 307, 309 and 332 of the Communications Act, as amended, 47 U.S.C. Sections 154, 301, 302, 303, 307, 309 and 332, unless otherwise noted.

4. Add § 25.147 to subpart B to read as follows:

§ 25.147 Licensing provision for NGSO MSS feeder downlinks in the band 6700–6875 MHz.

If an NGSO MSS satellite transmitting in the band 6700–6875 MHz causes harmful interference to previously licensed co-frequency Public Safety facilities, then that satellite licensee is obligated to remedy the interference complaint.

5. Section 25.202 is amended by adding footnotes 14 and 15 to the table in paragraph (a)(1) to read as follows:

§ 25.202 Frequencies, frequency tolerance and emission limitations.

(a) * * *

Space-to-Earth (GHz)	Earth-to-space (GHz)
3.7–4.2 [1]	5.091–5.25 [12,14]
6.7–7.025 [12]	5.925–6.425 [1]
10.7–10.95 [1,12]	12.75–13.15 [1,12]
10.95–11.2 [1,2,12]	13.2125–13.25 [1,12]
11.2–11.45 [1,12]	13.75–14 [4,12]
11.45–11.7 [1,2,12]	14–14.2 [5]
11.7–12.2 [3]	14.2–14.5
12.2–12.7 [13]	15.43–15.63 [12,15]
18.3–18.58 [1,10]	17.3–17.8 [9]
18.58–18.8 [6,10,11]	27.5–29.5 [1]
18.8–19.3 [7,10]	29.5–30
19.3–19.7 [8,10]	48.2–50.2
19.7–20.2 [10]	
37.6–38.6	
40–41	

* * * * *

[14] See 47 CFR 2.106, footnotes S5.444A and US344, for conditions that apply to this band.

[15] See 47 CFR 2.106, footnotes S5.511C and US359, for conditions that apply to this band.

* * * * *

6. In § 25.208 add paragraph (n) to read as follows:

§ 25.208 Power flux density limits.

* * * * *

(n) The power-flux density at the Earth's surface produced by emissions

from a space station in the fixed-satellite service (space-to-Earth), for all conditions and for all methods of modulation, shall not exceed the limits given in Table N. These limits relate to the power flux-density which would be obtained under assumed free-space conditions.

TABLE N.—LIMITS OF POWER-FLUX DENSITY FROM SPACE STATIONS IN THE BAND 6700–7075 MHZ

Frequency band	Limit in dB(W/m2) for angle of arrival (δ) above the horizontal plane			Reference bandwidth
	0^0–5^0	5^0–25^0	25^0–90^0	
6700–6825 MHz	−137	−137 + 0.5(δ − 5)	−127	1 MHz
6825–7075 MHz	−154	−154 + 0.5(δ–5)	144	4 kHz
	and	and	and	1 MHz
	−134	−134 + 0.5(δ − 5)	−124	

PART 87—AVIATION SERVICES

7. The authority citation for part 87 continues to read as follows:

Authority: 48 Stat. 1066, 1082, as amended; 47 U.S.C. 154, 303, 307(e) unless otherwise noted. Interpret or apply 48 Stat. 1064–1068, 1081–1105, as amended; 47 U.S.C. 151–156, 301–609.

8. Section 87.173 is amended by adding the following entries to the table in paragraph (b) to read as follows:

§ 87.173 Frequencies.

* * * * *

(b) Frequency table:

* * * * *

Frequency or frequency band	Subpart	Class of station	Remarks
* *	*	* *	* *
5000–5250 MHz[1]	Q	MA, RLW	Microwave landing system.
* *	*	* *	* *
15400–15700 MHz[2]	Q	RL	Aeronautical radionavigation.
* *	*	* *	* *

[1] See 47 CFR 2.106, footnotes S5.444A and US344, for conditions that apply to this band.
[2] See 47 CFR 2.106, footnotes S5.511C and US359, for conditions that apply to this band.

[FR Doc. 02–8345 Filed 4–9–02; 8:45 am]

BILLING CODE 6712–01–P

Proposed Rules

Federal Register
Vol. 67, No. 69
Wednesday, April 10, 2002

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF AGRICULTURE

Agricultural Research Service

7 CFR Part 500

National Arboretum

AGENCY: Agricultural Research Service, USDA.

ACTION: Proposed rule.

SUMMARY: The Department of Agriculture (USDA) seeks comments on a proposed rule that would revise a schedule of fees to be charged for certain uses of the facilities, grounds, and services at the United States National Arboretum (USNA). This proposed rule makes changes to subpart B of 7 CFR part 500. Subpart B contains the fee structures for use of USNA facilities, grounds and services. The USNA will change the fees charged for riding its tram service, use of the grounds and facilities, as well as for commercial photography and cinematography. The USNA will enter into a concession agreement for the provision of food services on the USNA grounds. Fees generated will be used to defray USNA expenses or to promote the mission of the USNA. The public will not be charged an admission fee for visiting the USNA.

DATES: Comments must be submitted on or before May 10, 2002.

ADDRESSES: Address all comments to Thomas S. Elias, Director, U.S. National Arboretum, Beltsville Area, Agricultural Research Service, 3501 New York Avenue, NE., Washington, DC 20002.

FOR FURTHER INFORMATION CONTACT: Cori Grim, Director, U.S. National Arboretum, Beltsville Area, ARS, 3501 New York Avenue, NE., Washington, DC 20002; (202) 245-4553.

SUPPLEMENTARY INFORMATION:

Classification

This proposed rule has been reviewed under Executive Order 12866, and it has been determined that it is not a ''significant regulatory action'' rule because it will not have an annual effect on the economy of $100 million or more or adversely and materially affect a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or Tribal governments or communities. This proposed rule will not create any serious inconsistencies or otherwise interfere with actions taken or planned by another agency. It will not materially alter the budgetary impact of entitlements, grants, user fees, or loan programs, or the rights and obligations of recipients thereof, and does not raise novel legal or policy issues arising out of legal mandates, the President's priorities, or principles set forth in Executive Order 12866.

Regulatory Flexibility Act

The Department of Agriculture certifies that this rule will not have a significant impact on a substantial number of small entities as defined in the Regulatory Flexibility Act, Pub. L. 96-354, as amended (5 U.S.C. 601, *et seq.*).

Paperwork Reduction Act

In accordance with the Office of Management and Budget (OMB) regulations (5 CFR part 1320) which implement the Paperwork Reduction Act of 1995 Pub. L. No. 104-13, as amended (44 U.S.C. chapter 35), the information collection and recordkeeping requirements that have been imposed in the management of these programs have been approved by OMB (OMB #0518-0024).

Title: Collection of information regarding the use of facilities or the performance of photography/cinematography at the U.S. National Arboretum.

Summary: The purpose of this collection of information is to collect, either orally or by use of a form, basic information from persons who request to use space at the USNA for which a user fee shall be charged. Use of space includes not only the use of physical space for events, but also the use of the grounds of the USNA for commercial photography and cinematography purposes. Information to be collected will include the name, address, and telephone numbers of the party requesting use of the USNA space, the date and time that the party is requesting to use the space, the purpose for which the space will be used, the number of people expected at the event for which the space is to be used, any requirements for setup of the space that the USNA will be expected to provide, and the signature of the individual responsible for requesting space on behalf of a party.

Need for the Information: The information is needed for USNA to administer the scheduling of space usage and to keep records of parties accountable for use of USNA property.

Respondents: Respondents to the collection of information will be those persons or organizations that request use of the USNA facility or grounds. Each respondent will have to furnish the information for each space usage request. The USNA expects to receive approximately 220 requests for use of space per year.

Estimate of burden: The estimated burden on respondents for each space usage request is .25 hours. The total annual reporting and record keeping burden on respondents will be minimal.

Background

Section 890(b) of the Federal Agriculture Improvement and Reform Act of 1996, Pub. L. 104-127 (1996 Act), expands the authorities of the Secretary of Agriculture to charge reasonable fees for the use of USNA facilities and grounds as well as to enter into a concession agreement for the provision of food services on the grounds. These new authorities include the ability to charge fees for temporary use by individuals or groups of USNA facilities and grounds in furtherance of the mission of the USNA. Also, authority is provided to charge fees for the use of the USNA for commercial photography and cinematography. All rules and regulations noted in 7 CFR part 500, subpart A, Conduct on U.S. National Arboretum Property, will apply to individuals or groups granted approval to use the facilities and grounds.

Fee Schedule for Tours

The USNA operates a 48-passenger tram (which accommodates 2 wheelchairs) to provide mobile tours throughout the USNA grounds. The proposed rule changes the fee to be charged to all riders as well as the amount to be charged for pre-scheduled group tram tours. Additionally, a fee is proposed for providing tour guides for pre-scheduled non-tram tours. Fee amounts were determined after a survey

of similar services provided by other Arboreta and Botanical Gardens and an analysis of costs associated with the program. Fees generated will be used to offset costs or for the purposes of promoting the mission of the USNA.

Fee Schedule for Use of Facilities and Grounds

The USNA proposes to change the fees for temporary use by individuals or groups of USNA facilities and grounds. The proposed fees have been established based on actual costs (i.e., electricity, heating, water, maintenance, security, scheduling, etc.). Facilities and grounds are available by reservation at the discretion of the USNA and may be available to individuals or groups in furtherance of the mission of the USNA. Agency initiatives may be granted first priority. Reservation requests should be made as far in advance of the need as possible to ensure consideration.

Fee Schedule for Use of Facilities and Grounds for Purposes of Photography or Cinematography

The USNA proposes to change the fee for the use of the facility or grounds for purposes of commercial photography or cinematography. The proposed fees have been established based on comparable opportunities provided by other Arboreta and Botanical Gardens across the nation. Facilities and grounds are available for use for commercial photography or cinematography at the discretion of the USNA Director. Requests for use should be made a minimum of two weeks in advance of required date. The USNA does not intend to charge fees to the press for photography or cinematography related to stories concerning the USNA and its mission or for other noncommercial, First Amendment activity.

Payment Submission Requirements

Payment for use of the tram will be made by cash or money order (in U.S. funds) and is due at the time of ticket purchase. Payment for pre-scheduled tram tours should be made at least two weeks in advance and may be made by cash or check. Payment for tour guides for pre-scheduled, non-tram tours should be made at least two weeks in advance and may be made by cash or check. Fee payments for use of facilities or grounds or for photography and cinematography must be made in advance of services being rendered. These payments are to be made in the form of a check or money order. Checks and money orders are to be made payable, in U.S. funds, to the U.S. National Arboretum. The USNA will provide receipts to requestors for their records or billing purposes.

Food Services

The USNA proposes to enter into a concession agreement for the provision of food services on the facility. Snacks and small food items will be available for visitors to purchase at established commercial prices. Box lunches may be pre-arranged with the concessionaire for a set fee.

List of Subjects in 7 CFR Part 500

Agricultural research, Federal buildings and facilities, Government property, National Arboretum.

For the reasons set out in the preamble, 7 CFR part 500 is proposed to be amended by revising subpart B to read as set forth below:

PART 500—NATIONAL ARBORETUM

Subpart B—Fee Schedule for Certain Uses of National Arboretum Facilities and Grounds

Sec.
500.20 Scope.
500.21 Fee schedule for tours.
500.22 Fee schedule for use of facilities and grounds.
500.23 Fee schedule for photography and cinematography on grounds.
500.24 Payment of fees.
500.25 Food services.

Authority: 20 U.S.C. 196.

Subpart B—Fee Schedule for Certain Uses of National Arboretum Facilities and Grounds

§ 500.20 Scope.

The subpart sets forth schedules of fees for temporary use by individuals or groups of United States National Arboretum (USNA) facilities and grounds for any purpose that is consistent with the mission of the USNA. This part also sets forth schedules of fees for the use of the USNA for commercial photography and cinematography. Fees generated will be used to offset costs of services or for the purposes of promoting the mission of the USNA. All rules and regulations noted in 7 CFR 500, subpart A—Conduct on U.S. National Arboretum Property, will apply to individuals or groups granted approval to use the facilities and grounds for the purposes specified in this subpart.

§ 500.21 Fee schedule for tours.

The USNA provides tours of the USNA grounds in a 48-passenger tram (accommodating 2 wheelchairs) for a fee as follows: $4.00 per adult; $3.00 per senior citizen or Friend of the National Arboretum; $2.00 per child through age 16. Pre-scheduled tram tours for groups may be arranged for a set fee of $125.00. Additionally, a professional tour guide may be pre-arranged to provide a non-tram tour for the fee of $50 per hour. Promotional programs offering discounted fares for these programs may be instituted at the discretion of the USNA.

§ 500.22 Fee schedule for use of facilities and grounds.

The USNA will charge a fee for temporary use by individuals or groups of USNA facilities and grounds. Facilities and grounds are available by reservation at the discretion of the USNA and may be available to individuals or groups whose purpose is consistent with the mission of the USNA. Agency initiatives may be granted first priority. Non profit organizations that substantially support the mission and purpose of the USNA may be exempted from the requirements of this part by the Director. Reservation requests should be made as far in advance of the need as possible to ensure consideration. The following are the fees for use of USNA buildings: ''Half Day'' usage is defined as 4 hours or less; ''Whole Day'' is defined as more than 4 hours in a day. For outside normal business hours, usage of such buildings and facilities requires an additional $40/hour for supervision/security. Additionally, at the discretion of the USNA, custodial fees may be assessed in the amount of $25 per hour.

Area	Includes—	Per day charge	
		Half day	Whole day
Auditorium	Basic audience-style set-up for 125 people or classroom set-up for 40–50 people. Includes microphone/lectern, screen, 4–6' tables, projection stand, (2) flip charts (no paper) and (2) trash cans. Also includes the use of the Kitchen space, Upstairs Conference Room, and Coat Room. Extra tables are $10 each.	N/A	$250
Upstairs Conference Room	(Only if Auditorium is not in use). Includes the non-exclusive use of the Kitchen space and Coat Room.	$50	$100

Area	Includes—	Per day charge	
		Half day	Whole day
Lobby	As is (with furniture in place)	N/A	$100
	Furniture removed		$150
	Set up with tables and chairs		$100
Classroom	Standard set-up with 40 chairs. Includes microphone/lectern, screen, projection stand, (2) flip charts (no paper) and trash can.	$50	$125
Classroom—Multiple	5 sessions or more	$45	$90
Yoshimura Center	For use from 10:00 a.m. to 3:00 p.m. weekends only.	$50	$125
Set up with tables and chairs		$100	$100
Grounds—1–300 people	No public invited: Patio, Meadow, Triangle, NY Avenue, etc. Cost includes scheduling time, extra mowing, and site preparation. Guest organization responsible for everything related to their event, including portable toilets..	N/A	$500
301–600	Same as above	N/A	$750
Grounds	Public invited (i.e., show or sale). Cost includes scheduling time, extra mowing, and site preparation. Guest organization responsible for everything related to their event, including portable toilets.	N/A	$750
Damages	Damages to plants, grounds, facilities or equipment will be assessed on a value based on replacement cost (including labor) plus 10% (administrative fee).		

§ 500.23 Fee schedule for photography and cinematography on grounds.

The USNA will charge a fee for the use of the facility or grounds for purposes of commercial photography or cinematography. Facilities and grounds are available for use for commercial photography or cinematography at the discretion of the USNA Director. Requests for use should be made a minimum of two weeks in advance of the required date. In addition to the fees listed below, supervision/security costs of $40.00 per hour will be charged. The USNA Director may waive fees for photography or cinematography conducted for the purpose of disseminating information to the public regarding the USNA and its mission or for the purpose of other noncommercial, First Amendment activity. ''Half Day'' usage is defined as 4 hours or less; ''Whole Day'' usage is defined as more than 4 hours in a days.

Category and type	Notes	Per day charge	
		Half day	Whole day
Still Photography:			
Individual	For personal use only. Includes hand-held cameras, recorders, small non-commercial tripods.	No charge	No charge
Commercial and wedding.	Includes all photography which uses professional photographer and/or involves receiving a fee for the use or production of the photography. Note: This includes 5 people or less with carry on (video) equipment. Includes wedding party photography.	$250 plus supervisor.	$500 plus supervisor
Cinematography:			
Set Set preparation	Set up sets; no filming performed	N/A	$250 plus supervision
Filming	Sliding scale based on number of people in cast and crew and number of pieces of equipment. 45 people and 6 pieces of equipment = $1,500, 200 people = $3,900 Note: 5 people with carry on equipment = same as still photography.		$1,200 to $3,900
Strike Set	Take down sets, remove equipment; no filming	N/A	$250 plus supervision
Music Videos	No sound involved; smaller operation	N/A	$1,000 plus supervision
Damages: All	Damages to plants, grounds, facilities or equipment will be assessed on a value based on replacement cost (including labor) plus 10% (administrative fee).		

§ 500.24 Payment of fees.

Payment for use of the tram will be made by cash or money order (in U.S. funds) and is due at the time of ticket purchase. Payment for pre-scheduled tram tours or tour guides should be made at least two weeks in advance and may be made by cash or check. Fee payments for use of facilities or grounds (including security and custodial fees) or for photography and cinematography must be made in advance of services being rendered. These payments are to be made in the form of a check or money order. Checks and money orders are to be made payable, in U.S. funds, to the ''U.S. National Arboretum.'' The USNA will provide receipts to requestors for their records or billing purposes.

§ 500.25 Food services.

The USNA will enter into a concession agreement for the provision of food services on the facility. Snacks and small food items will be available for visitors to purchase at established commercial prices. Box lunches may be pre-arranged with the concessionaire for a set fee.

Done at Washington, DC, this 7th day of January, 2002.

Edward B. Knipling,

Acting Administrator, Agricultural Research Service.

[FR Doc. 02–8589 Filed 4–9–02; 8:45 am]

BILLING CODE 3410–03–P

DEPARTMENT OF ENERGY

Office of Energy Efficiency and Renewable Energy

10 CFR Part 430

[Docket No. EE–RM/STD–01–350]

RIN 1904–AA–78

Energy Efficiency Program for Consumer Products: Energy Conservation Standards for Residential Furnaces and Boilers

AGENCY: Office of Energy Efficiency and Renewable Energy, Department of Energy.

ACTION: Notice of public workshop.

SUMMARY: The Department of Energy (DOE or Department) is convening a public workshop to discuss and receive comments on issues related to residential furnaces and boilers venting installations and to discuss the Department's research concerning venting systems.

DATES: The public workshop will be held on Wednesday, May 8, 2002, from 9:00 a.m. to 5:00 p.m. Written comments should be submitted by June 7, 2002.

ADDRESSES: The workshop will be held at the U.S. Department of Energy, Forrestal Building, Room 1E–245, 1000 Independence Avenue, SW, Washington, DC 20585. (Please note that foreign nationals visiting DOE Headquarters are subject to advance security screening procedures. If you are a foreign national and wish to participate in the workshop, please inform DOE of this fact as soon as possible by contacting Ms. Brenda Edwards-Jones at (202) 586–2945 so that the necessary procedures can be completed.)

On or about April 22, 2002, DOE will place a set of presentations describing the Department's research into this issue and workshop agenda on the DOE website at: *http://www.eren.doe.gov/buildings/codes—standards/*. Written comments are welcome, especially following the workshop. Please submit written comments to: Ms. Brenda Edwards-Jones, U.S. Department of Energy, Office of Energy Efficiency and Renewable Energy, Energy Conservation Program for Consumer Products: Energy Conservation Standards for Residential Furnaces and Boilers, Docket Number: EE–RM/STD–01–350, EE–41, 1000 Independence Avenue, SW, Washington, DC 20585–0121. Telephone: (202) 586–2945. You should label comments both on the envelope and on the documents and submit them for DOE receipt by June 7, 2002. Please submit one signed copy and a computer diskette or CD (in WordPerfect™ 8 format)—no telefacsimiles. The Department will also accept electronically-mailed comments, e-mailed to *Brenda.Edwards-Jones@ee.doe.gov*, but you must supplement such comments with a signed hard copy.

Copies of the transcript of the public workshop, the public comments received, and this notice may be read at the Freedom of Information Reading Room, U.S. Department of Energy, Forrestal Building, Room 1E–190, 1000 Independence Avenue, SW, Washington, DC 20585, (202) 586–3142, between the hours of 9 a.m. and 4 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Cyrus Nasseri, U.S. Department of Energy, Office of Energy Efficiency and Renewable Energy, EE–41, 1000 Independence Avenue, SW, Washington, DC 20585–0121, (202) 586–9138, email: *cyrus.nasseri@ee.doe.gov,* or Francine Pinto, U.S. Department of Energy, Office of General Counsel, GC–72, 1000 Independence Avenue, SW., Washington, DC 20585–0103, (202) 586–9507, email: *francine.pinto@hq.doe.gov*.

SUPPLEMENTARY INFORMATION: Part B of Title III of the Energy Policy and Conservation Act of 1975 (EPCA or Act), Pub. L. 94–163, as amended by the National Energy Conservation Policy Act (NECPA), Pub. L. 95–619; the National Appliance Energy Conservation Act of 1987 (NAECA), Pub. L. 100–12; the National Appliance Energy Conservation Amendments of 1988 (NAECA 1988), Pub. L. 100–357; and the Energy Policy Act of 1992 (EPACT), Pub. L. 102–486, created the Energy Conservation Program for Consumer Products other than Automobiles. The consumers' products subject to this Program include residential furnaces, boilers and mobile home furnaces. (42 U.S.C. 6295(f)).

Since the fiscal year 2001, the Department has been pursuing a rulemaking activity for the purpose of determining whether amended energy conservation standards for covered residential furnaces, boilers and mobile home furnaces are justified. On June 19, 2001, the Department published a notice announcing a public workshop and the availability of the framework document for residential furnace and boiler efficiency standards. 62 FR 32914. On July 17, 2001, the Department conducted a workshop (the ''framework workshop'') to explain and discuss the process, analyses, and issues that are involved in this proceeding.

During and after the framework workshop, the Department received comments from residential furnace and boiler manufacturers, trade associations and other interested parties expressing concern regarding the effect of increased standards on the venting system of these products. The concern is that with increased furnace efficiency, the flue gas temperature is reduced and the moisture in flue gas may condense and cause corrosion in the vent system, which can lead to potential safety problems if the corrosive liquid perforates the vent system and allows harmful gases to enter living space. Reduced flue gas temperature also makes the flue gas less buoyant and reduces the efficacy of venting systems during furnace operating cycles.

Because of the above concern, it is necessary to understand the flue gas condensation phenomenon, including how the condensation begins to affect the furnace vent system at increased furnace efficiency and what technology options mitigate condensation. The Department has reviewed the consensus standards on safe installation of gas appliances developed by American Gas Association (AGA) and the National Fire Protection Association (NFPA). These consensus standards are contained in the National Fuel Gas Code (NFGC), also known as Z223.1/NFPA 54. The NFGC establishes guidelines for venting category I gas-fired furnaces by means of venting tables which list allowable furnace input ratings versus vent lengths. The Department has reviewed the methodology used in the NFGC tables, test data (e.g., jacket loss) reported by various organizations, as well as a computer simulation model (e.g., VENT–II) which was used in the past to evaluate venting system performance. The Department has also reviewed information on current venting practices and codes and potential design options for venting system treatment.

The workshop announced in today's notice is the next step in the rulemaking process for determining whether to amend the energy conservation standards for covered residential furnaces, boilers and mobile home furnaces. A detailed agenda for this workshop is currently under development and as noted above, will be posted on the Department's web site on or about April 22, 2002. The agenda items will cover issues related to Annual Fuel Utilization Efficiency (AFUE) limits for non-condensing furnaces based on the NFGC and furnace test data, current venting practices and codes, the effect of higher Steady State Efficiency (SSE) on the

NFGC tables and design options that may decrease condensation in the venting system. For each agenda item, the Department will make a presentation summarizing the current status and will initiate a discussion regarding the accuracy and completeness of data and analysis tools. During these discussions, the Department is particularly interested in receiving comments and views of interested parties concerning the venting issues referenced above and possible approaches to enhance the accuracy of the analysis tools and data. The Department encourages those who wish to participate in the workshop to make presentations that address these issues. If you would like to make a presentation during the workshop, please inform Ms. Edwards-Jones at least two weeks before the date of the workshop and provide her with a copy of your written presentation material at least one week before the date of the workshop.

The workshop will be conducted in an informal, conference style. A court reporter will be present to record the minutes of the meeting. There shall be no discussion of proprietary information, costs or prices, market shares, or other commercial matters regulated by the U.S. antitrust laws. After the workshop and expiration of the period for submitting written comments, the Department will proceed with collecting data and conducting analyses concerning possible amended standards for residential furnaces, boilers and mobile home furnaces.

If you would like to participate in the workshop, receive workshop materials, or be added to the DOE mailing list to receive future notices and information regarding residential furnaces, boilers and mobile home furnaces, please contact Ms. Brenda Edwards-Jones at (202) 586–2945.

Issued in Washington, DC, on April 5, 2002.

David K. Garman,

Assistant Secretary for Energy Efficiency and Renewable Energy.

[FR Doc. 02–8619 Filed 4–9–02; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2001–SW–41–AD]

RIN 2120–AA64

Airworthiness Directives; Model HH–1K, TH–1F, TH–1L, UH–1A, UH–1B, UH–1E, UH–1F, UH–1H, UH–1L, and UH–1P; and Southwest Florida Aviation Model SW204, SW204HP, SW205, and SW205A–1 Helicopters, Manufactured by Bell Helicopter Textron, Inc. for the Armed Forces of the United States

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes adopting a new airworthiness directive (AD) for specified restricted category helicopters. The proposed AD would require updating the product identification, extending the application of the AD to other models, continuing the existing retirement time for certain main rotor tension-torsion (TT) straps, and adding the TT strap part numbers to the applicability. This proposal is prompted by the need to expand the applicability to additional restricted category helicopters and to add two part numbers to the applicability. The actions specified by the proposed AD are intended to prevent failure of a TT strap, loss of a main rotor blade, and subsequent loss of control of the helicopter.

DATES: Comments must be received on or before June 10, 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–41–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.* Comments may be inspected at the Office of the Regional Counsel between 9 a.m. and 3 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Michael Kohner, Aviation Safety Engineer, FAA, Rotorcraft Directorate, Rotorcraft Certification Office, Fort Worth, Texas 76193–0170, telephone (817) 222–5447, fax (817) 222–5783.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments will be considered before taking action on the proposed rule. The proposals contained in this document may be changed in light of the comments received.

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

Commenters wishing the FAA to acknowledge receipt of their mailed comments submitted in response to this proposal must submit a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket No. 2001–SW–41–AD.'' The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Office of the Regional Counsel, Southwest Region, Attention: Rules Docket No. 2001–SW–41–AD, 2601 Meacham Blvd., Room 663, Fort Worth, Texas 76137.

Discussion

On July 31, 1980, the FAA issued AD 80–17–09, Amendment 39–3876 (45 FR 54014, August 14, 1980), Docket No. 80–ASW–25, for BHTI Model 204B, 205A–1, 212, 214B, and 214B–1 helicopters and for Model UH–1 series helicopters. AD 80–17–09 reduced the retirement time of the TT straps, part number (P/N) 204–012–122–1 and –5 from 2,400 hours to 1,200 hours time-in-service (TIS) or 24 months for the affected model helicopters.

The FAA has decided to propose that the current requirements of AD 80–17–09 and the expanded requirements proposed in this AD be separated into two proposals. The FAA intends to propose superseding AD 80–17–09 when it next proposes changes to that AD for ''nonmilitary surplus''

helicopters. The intent of this action is to propose replacing the requirements of AD 80–17–09 for the ''military UH–1 series'' helicopters, certificated in all categories, with the proposed requirements in this document. This document proposes continuing the existing retirement time for the TT straps, expanding the applicability to additional model helicopters, and adding two part numbers to the applicability.

This proposal is prompted by the need to expand the applicability to additional restricted category helicopters and to add two part numbers to the applicability. The actions specified by the proposed AD are intended to prevent failure of a TT strap, loss of a main rotor blade, and subsequent loss of control of the helicopter.

This unsafe condition is likely to exist or develop on other helicopters of these type designs. Therefore, the FAA has determined that a reduced retirement life for certain TT straps of 1,200 hours TIS or 24 months since the initial installation on any helicopter, whichever occurs first, is required for these restricted category helicopters.

The FAA estimates that this proposed AD would affect 75 helicopters of U.S. registry. The FAA also estimates that it would take 8 work hours to replace the TT straps and that the average labor rate is $60 per work hour. The TT straps would cost approximately $10,484 per helicopter. Based on these figures, the total cost impact of the proposed AD on U.S. operators is estimated to be $822,300.

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

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

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

Arrow Falcon Exporters, Inc. (previously Utah State University); Firefly Aviation Helicopter Services (previously Erickson Air-Crane Co.); Garlick Helicopters, Inc.; Global Helicopter Technology, Inc.; Hagglund Helicopters, Llc (previously Western International Aviation, Inc.; Hawkins and Powers Aviation, Inc.; International Helicopters, Inc.; Robinson Air Crane, Inc.; Smith Helicopters; Southern Helicopter, Inc.; Southwest Florida Aviation; Tamarack Helicopters, Inc. (previously Ranger Helicopter Services, Inc.); U.S. Helicopter, Inc.; and Williams Helicopter Corporation (previously Scott Paper Co.): Docket No. 2001–SW–41–AD.

Applicability: Model HH–1K, TH–1F, TH–1L, UH–1A, UH–1B, UH–1E, UH–1F, UH–1H, UH–1L, and UH–1P; and Southwest Florida Aviation Model SW204, SW204HP, SW205, and SW205A–1 helicopters, manufactured by Bell Helicopter Textron, Inc. (BHTI) for the Armed Forces of the United States, with main rotor tension-torsion (TT) strap, part number (P/N) 204–012–122–1, 204–012–122–5, 2601399, or 2606650, installed, certificated in any category.

Note 1: This AD applies to each helicopter identified in the preceding applicability provision, regardless of whether it has been otherwise modified, altered, or repaired in the area subject to the requirements of this AD. For helicopters that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (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 before further flight, unless accomplished previously.

To prevent failure of a TT strap, loss of a main rotor blade, and subsequent loss of control of the helicopter, accomplish the following:

(a) Remove and replace any TT strap with 1,200 hours time-in-service (TIS) or 24 months since the initial installation, whichever occurs first.

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

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

(c) Special flight permits will not be issued.

Issued in Fort Worth, Texas, on April 2, 2002.

Eric Bries,

Acting Manager, Rotorcraft Directorate, Aircraft Certification Service.

[FR Doc. 02–8597 Filed 4–9–02; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2001–SW–50–AD]

RIN 2120–AA64

Airworthiness Directives; Eurocopter France Model EC120B, EC155B, SA330F, SA330G, SA330J, AS332C, AS332L, AS332L1, AS332L2, AS350B, AS350BA, AS350B1, AS350B2, AS350B3, AS350D, AS355E, AS355F, AS355F1, AS355F2, AS355N, AS365N2, AS365N3, SA–365N, and SA–365N1 Helicopters

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes adopting a new airworthiness directive (AD) for the specified Eurocopter France (ECF) helicopters. That proposal would require determining the load release unit (cargo hook) serial number, measuring the clearance between the locking catch and the cargo hook, and removing unairworthy cargo hooks from service. This proposal is prompted by the discovery of a defect on certain cargo hooks that may prevent load release. The actions specified by this

proposed AD are intended to prevent failure of a cargo hook to release a load, creating an additional hazard in an emergency situation and subsequent loss of control of a helicopter.

DATES: Comments must be received on or before June 10, 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–50–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.* Comments may be inspected at the Office of the Regional Counsel between 9 a.m. and 3 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Jim Grigg, Aviation Safety Engineer, FAA, Rotorcraft Directorate, Rotorcraft Standards Staff, Fort Worth, Texas 76193–0110, telephone (817) 222–5490, fax (817) 222–5961.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments will be considered before taking action on the proposed rule. The proposals contained in this document may be changed in light of the comments received.

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

Commenters wishing the FAA to acknowledge receipt of their mailed comments submitted in response to this proposal must submit a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket No. 2001–SW–50–AD.'' The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Office of the Regional Counsel, Southwest Region, Attention: Rules Docket No. 2001–SW–50–AD, 2601 Meacham Blvd., Room 663, Fort Worth, Texas 76137.

Discussion

The Direction Generale De L'Aviation Civile (DGAC), the airworthiness authority for France, notified the FAA that an unsafe condition may exist on various ECF model helicopters. The DGAC advises of the discovery of an anomaly on the locking catch of certain cargo hooks that could jam the ring on the cargo hook and jeopardize the release of an underslung load.

ECF has issued Alert Telexes 01.00.47, 01.00.49, 01.00.53, 01.00.60, 01.00.66, 04A001, and 04A004, dated July 10, 2001, which specify measuring the clearance between the locking catch and the cargo hook and the acceptable dimension of the ring. The telexes state that the clearance, as illustrated in their Figure 1, must be less than 14 millimeters (mm) (0.55 inches). The DGAC classified these telexes as mandatory and issued AD 2001–318(A), dated July 25, 2001, to ensure the continued airworthiness of these helicopters in France.

These helicopter models are manufactured in France and are type certificated for operation in the United States under the provisions of 14 CFR 21.29 and the applicable bilateral agreement. Pursuant to the applicable bilateral agreement, the DGAC has kept the FAA informed of the situation described above. The FAA has examined the findings of the DGAC, reviewed all available information, and determined that AD action is necessary for products of these type designs that are certificated for operation in the United States.

This unsafe condition is likely to exist or develop on other helicopters of these same type designs registered in the United States. Therefore, the proposed AD would require, before the next flight utilizing the cargo hook, measuring the clearance between the locking catch and the cargo hook, and removing any cargo hook from service if that clearance is equal to or greater than 14mm (0.55 inches).

The FAA estimates that 725 helicopters of U.S. registry would be affected by this proposed AD. The FAA estimates that it would take approximately 1/4 work hour to determine the serial number of the part, 1 hour to measure the gap between the locking catch and the cargo hook for an estimated 50 helicopters, and 1 hour to remove and replace each of an estimated 10 cargo hooks. The average labor rate is estimated to be $60 per work hour. Required parts would cost approximately $5,000. Based on these figures, the total cost impact of the proposed AD on U.S. operators is estimated to be $64,475 assuming 10 cargo hooks require replacement.

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

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

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

Eurocopter France: Docket No. 2001–SW–50–AD.

Applicability: Model EC120B, EC 155B, SA330F, SA330G, SA330J, AS332C, AS332L, AS332L1, AS332L2, AS350B, AS350BA, AS350B1, AS350B2, AS350B3, AS350D,

AS355E, AS355F, AS355F1, AS355F2, AS355N, AS–365N2, AS–365N3, SA–365N, and SA–365N1 helicopters, with a SIREN load release unit (cargo hook), part number (P/N) AS21–5–1 through –7, and a cargo hook serial number less than 415, installed, certificated in any category.

Note 1: This AD applies to each helicopter identified in the preceding applicability provision, regardless of whether it has been otherwise modified, altered, or repaired in the area subject to the requirements of this AD. For helicopters that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (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 before the next flight utilizing the cargo hook, unless accomplished previously.

To prevent failure of a cargo hook, inability to release a load creating an additional hazard in an emergency situation, and subsequent loss of control of a helicopter, accomplish the following:

(a) With the cargo hook in the no-load position, measure the clearance ''J'' in accordance with Figure 1 of this AD. Remove any cargo hook if clearance ''J'' (see Figure 1) is equal to or greater than 14 millimeters (0.55 inches).

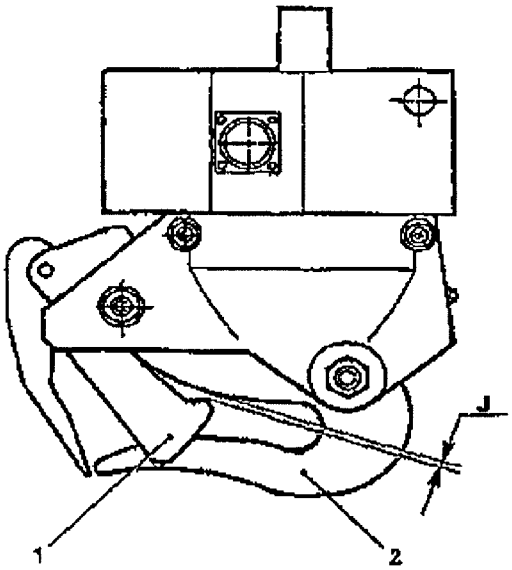

Figure 1

Siren Load Release Unit
P/N AS21-5-(1 through 7)

1. Locking Catch
2. Cargo Hook

Clearance "J" must be less than 14 mm (0.55 inches)

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

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

(c) Special flight permits will not be issued allowing use of the affected cargo hook.

Note 3: The subject of this AD is addressed in Direction Generale De L'Aviation Civile, (France) AD 2001–318(A), dated July 25, 2001.

Issued in Fort Worth, Texas, on April 2, 2002.

Eric Bries,

Acting Manager, Rotorcraft Directorate, Aircraft Certification Service.

[FR Doc. 02–8596 Filed 4–9–02; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

14 CFR Part 382

[OST Docket No. 2002–11473]

RIN 2105–AD04

Reporting Requirements for Disability-Related Complaints

AGENCY: Office of the Secretary, Department of Transportation (DOT).

ACTION: Proposed rule; extension of comment period.

SUMMARY: The Department of Transportation (DOT or Department) hereby extends the comment period on the proposed rule requiring certain foreign and domestic air carriers to report complaints that they receive alleging inadequate accessibility or discrimination on the basis of disability.

DATES: The comment period is extended from April 15, 2002, to June 1, 2002.

ADDRESSES: Comments on this action must refer to the docket and notice numbers cited at the beginning of this document and must be submitted to the Docket Management Facility of the Office of the Secretary (OST), located on the Plaza Level of the Nassif Building at the U.S. Department of Transportation, Room PL–401, 400 Seventh Street, SW., Washington, DC 20590–0001. The DOT Docket Facility is open to the public from 9 a.m. to 5 p.m., Monday through Friday. Comments will be available for inspection at this address and will also be viewable via the dockets link on the Department's web site (www.dot.gov). Commenters who wish the receipt of their comments to be acknowledged should include a stamped, self-addressed postcard with their comments. The Docket Clerk will date-stamp the postcard and mail it back to the commenter.

FOR FURTHER INFORMATION CONTACT: Jonathan Dols, Office of the General Counsel, Department of Transportation, 400 7th Street, SW., Room 4116, Washington, DC 20590, 202–366–6828 (voice), (202) 366–0511 (TTY), 202–366–7152 (fax), or *jonathan.dols@ost.dot.gov* (email). Arrangements to receive this document in an alternative format may be made by contacting the above named individual.

SUPPLEMENTARY INFORMATION: On March 8, 2002, the Air Transport Association of America (ATA) and the Regional Airline Association (RAA) filed a request to extend to June 1, 2002, the comment period on the Department's proposed rule requiring certain foreign and domestic air carriers to report disability-related complaints (see 67 FR 6892, February 14, 2002). In their request, ATA and RAA stated that they and their members need additional time to analyze the proposed rule, to assess its impact, to devise an appropriate survey, and to develop substantive recommendations. They maintain that additional time will yield more insightful comments that will, in turn, improve the final rule. The Department concurs that an extension of the comment period is necessary to allow members of industry sufficient time to analyze the impact of the proposed rule and determines that this extension would not unduly affect the public's or the government's interest. Moreover, the Department has not received any objection to the extension of time requested by ATA and RAA. Accordingly, the Department finds that this constitutes good cause to extend the comment period on the proposed rule from April 15, 2002, to June 1, 2002.

Issued in Washington, DC this 3rd day of April, 2002, under authority delegated to me by 14 CFR 385.17(c).

Robert C. Ashby,

Deputy Assistant General Counsel for Regulation and Enforcement, U.S. Department of Transportation.

[FR Doc. 02–8552 Filed 4–9–02; 8:45 am]

BILLING CODE 4910–62–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[REG–165706–01]

RIN 1545–BA46

Obligations of States and Political Subdivisions

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of proposed rulemaking and notice of public hearing.

SUMMARY: This document contains proposed regulations on the definition of refunding issue applicable to tax-exempt bonds issued by States and local governments. This document provides a notice of public hearing on these proposed regulations.

DATES: Written or electronic comments must be received by July 9, 2002. Outlines of topics to be discussed at the public hearing scheduled for July 30, 2002, at 10 a.m., must be received by July 9, 2002.

ADDRESSES: Send submissions to: CC:ITA:RU (REG–165706–01), room 5226, Internal Revenue Service, POB 7604, Ben Franklin Station, Washington, DC 20044. Submissions may be hand delivered between the hours of 8 a.m. and 5 p.m. to: CC:ITA:RU (REG–165706–01), courier's desk, Internal Revenue Service, 1111 Constitution Avenue NW., Washington, DC. Alternatively, submissions may be made electronically to the IRS Internet site at *www.irs.gov/regs.* The public hearing will be held in the Auditorium, Internal Revenue Building, 1111 Constitution Avenue NW., Washington, DC.

FOR FURTHER INFORMATION CONTACT: Concerning the regulations, Michael P. Brewer, (202) 622–3980; concerning submissions and the hearing, Treena Garrett, (202) 622–7190 (not toll-free numbers).

SUPPLEMENTARY INFORMATION:

Background

Section 150 of the Internal Revenue Code (Code) provides certain definitions and special rules for purposes of applying the tax-exempt bond limitations contained in sections 103 and 141 through 150. On June 18, 1993, final regulations (TD 8476) under section 150 were published in the **Federal Register** (58 FR 33510). On May 9, 1997, additional final regulations (TD 8718) under section 150 were published in the **Federal Register** (62 FR 25502). This document proposes to modify the definition of refunding issue under § 1.150–1(d).

Explanation of Provisions

Section 1.150–1(d) of the current regulations provides a definition of *refunding issue*. In general, a refunding issue is an issue of obligations the proceeds of which are used to pay principal, interest, or redemption price on another issue. The current regulations contain certain exceptions to this general rule. One exception (the *change in obligor exception*) provides that an issue is not a refunding issue to the extent that the obligor of one issue is neither the obligor of the other issue nor a related party with respect to the obligor of the other issue. Another exception (the *six-month exception*) provides that if a person assumes (including taking subject to) obligations of an unrelated party in connection with an asset acquisition (other than a transaction to which section 381(a) applies if the person assuming the obligation is the acquiring corporation within the meaning of section 381(a)), and the assumed issue is refinanced within six months before or after the date of the debt assumption, the refinancing issue is not treated as a refunding issue.

Section 1.150–1(b) of the current regulations provides that the term *related party* means, in reference to a governmental unit or a 501(c)(3) organization, any member of the same controlled group. Section 1.150–1(e) of the current regulations provides that the term *controlled group* means a group of entities controlled directly or indirectly by the same entity or group of entities. The determination of control is made on the basis of all the relevant facts and circumstances. One entity or group of entities (the *controlling entity*) generally controls another entity or group of

entities (the *controlled entity*) if the controlling entity possesses either of the following rights or powers and the rights or powers are discretionary and non-ministerial: (i) The right or power both to approve and to remove without cause a controlling portion of the governing body of the controlled entity; or (ii) the right or power to require the use of funds or assets of the controlled entity for any purpose of the controlling entity.

Recently, questions have arisen regarding the application of these provisions with respect to certain issuances of bonds for 501(c)(3) organizations that operate hospital systems. In question generally is whether bonds issued in connection with the combination of two or more 501(c)(3) organizations to refinance outstanding bonds should be characterized as refunding bonds. One question is how the change in obligor exception and the six-month exception should be applied when the obligor of the new issue becomes related to the obligor of the other issue as part of the refinancing transaction. Another question is whether the acquisition by a 501(c)(3) organization of the sole membership interest in another 501(c)(3) organization should be treated as an asset acquisition for purposes of the six-month exception. A third question is what assets should be treated as financed by the new bonds under both the change in obligor exception and the six-month exception.

In general, the proposed regulations retain the change in obligor exception and the six-month exception, with certain modifications. The proposed regulations clarify that the determination of whether persons are related for purposes of the change in obligor exception and the six-month exception is generally made immediately before the transaction. However, a refinancing issue is a refunding issue under the proposed regulations if the obligor of the refinanced issue (or any person that is related to the obligor of the refinanced issue immediately before the transaction) has or obtains in the transaction the right to appoint the majority of the members of the governing body of the obligor of the refinancing issue (or any person that controls the obligor of the refinancing issue).

The proposed regulations state that the six-month exception applies to *acquisition transactions*. An acquisition transaction is a transaction in which a person acquires from an unrelated party: (i) Assets, other than an equity interest in an entity, if the acquirer is treated as acquiring such assets for all Federal income tax purposes; (ii) stock of a corporation with respect to which a valid election under section 338 is made; or (iii) control of a governmental unit or a 501(c)(3) organization through the acquisition of stock, membership interests or otherwise.

The proposed regulations retain the exclusion under which the six-month exception does not apply to transactions to which section 381(a) applies, and broaden its scope. In particular, under the proposed regulations the exclusion may apply even if the person assuming the obligations is not the acquiring corporation within the meaning of section 381(a) (for example, a transaction in which a corporation assumes the obligations of a target corporation in a transaction to which section 381(a) applies and then contributes all of the assets of the target corporation to a controlled subsidiary). The proposed regulations also extend the application of this rule for section 381(a) transactions to the change in obligor exception.

The proposed regulations provide two new, additional requirements for purposes of the change in obligor exception and the six-month exception. In certain circumstances where the obligors of the issues are affiliated before the transaction or become affiliated as part of the transaction, the proposed regulations provide that an issue will be treated as a refunding issue unless: (i) The refinanced issue is redeemed on the earliest date on which the issue may be redeemed, and (ii) the new issue is treated as being used to finance the assets that were financed with the proceeds of the refinanced issue. These new requirements are intended to further the Congressional policy against overburdening the tax-exempt bond market, as expressed in sections 148 and 149(d). In particular, they are intended to prevent overburdening in the case of transactions between affiliated persons that contain certain economic characteristics of a refunding.

Proposed Effective Date

The proposed regulations will apply to bonds sold on or after the date of publication of final regulations in the **Federal Register**. However, issuers may apply the proposed regulations in whole, but not in part, to any issue that is sold on or after the date the proposed regulations are published in the **Federal Register** and before the applicability date of the final regulations.

Special Analyses

It has been determined that this notice of proposed rulemaking is not a significant regulatory action as defined in Executive Order 12866. Therefore, a regulatory assessment is not required. It has also been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) does not apply to these regulations, and because the regulations do not impose a collection of information on small entities, the Regulatory Flexibility Act (5 U.S.C. chapter 6) does not apply. Pursuant to section 7805(f) of the Internal Revenue Code, this notice of proposed rulemaking will be submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on small business.

Comments and Public Hearing

Before these proposed regulations are adopted as final regulations, consideration will be given to any written comments that are submitted timely (preferably a signed original and eight copies) to the IRS. All comments will be available for public inspection and copying.

A public hearing has been scheduled for July 30, 2002, at 10:00 a.m. in the Auditorium, Internal Revenue Building, 1111 Constitution Avenue, NW., Washington, DC. Because of access restrictions, visitors will not be admitted beyond the lobby more than 15 minutes before the hearing starts.

The rules of 26 CFR 601.601(a)(3) apply to the hearing.

Persons who wish to present oral comments at the hearing must submit written comments by July 9, 2002 and submit an outline of the topics to be discussed and the amount of time to be devoted to each topic by July 9, 2002.

A period of 10 minutes will be allotted to each person for making comments.

An agenda showing the scheduling of the speakers will be prepared after the deadline for receiving outlines has passed. Copies of the agenda will be available free of charge at the hearing.

Drafting Information

The principal authors of these regulations are Bruce M. Serchuk, Office of Chief Counsel (Tax-exempt and Government Entities), Internal Revenue Service and Stephen J. Watson, Office of Tax Legislative Counsel, Department of the Treasury. However, other personnel from the IRS and Treasury Department participated in their development.

List of Subjects in 26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

Proposed Amendments to the Regulations

Accordingly, 26 CFR part 1 is proposed to be amended as follows:

PART 1—INCOME TAXES

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

Authority: 26 U.S.C. 7805 * * *

Par. 2. Section 1.150–1 is amended as follows:

1. Paragraph (a)(2)(iii) is added.
2. Paragraphs (d)(2)(ii) and (d)(2)(v) are revised.

The added and revised provisions read as follows:

§ 1.150–1 Definitions.

(a) * * *

(2) * * *

(iii) *Special effective date for paragraphs (d)(2)(ii) and (d)(2)(v).* Paragraphs (d)(2)(ii) and (d)(2)(v) of this section apply to bonds sold on or after the date of publication of final regulations in the **Federal Register**, and may be applied by issuers in whole, but not in part, to any issue that is sold on or after April 10, 2002.

* * * * *

(d) * * *

(2) * * *

(ii) *Certain issues with different obligors*—(A) *In general.* An issue is not a refunding issue to the extent that the obligor (as defined in paragraph (d)(2)(ii)(B) of this section) of one issue is neither the obligor of the other issue nor a related party with respect to the obligor of the other issue. The determination of whether persons are related for this purpose is generally made immediately before the issuance of the refinancing issue. This paragraph (d)(2)(ii)(A) does not apply to any issue that is issued in connection with a transaction to which section 381(a) applies.

(B) *Definition of obligor.* The obligor of an issue means the actual issuer of the issue, except that the obligor of the portion of an issue properly allocable to an investment in a purpose investment means the conduit borrower under that purpose investment. The obligor of an issue used to finance qualified mortgage loans, qualified student loans, or similar program investments (as defined in § 1.148–1) does not include the ultimate recipient of the loan (e.g., the homeowner, the student).

(C) *Certain integrated transactions.* If, within six months before or after a person assumes (including taking subject to) obligations of an unrelated party in connection with an acquisition transaction (other than a transaction to which section 381(a) applies), the assumed issue is refinanced, the refinancing issue is not a refunding issue. An acquisition transaction is a transaction in which a person acquires from an unrelated party—

(*1*) Assets (other than an equity interest in an entity);

(*2*) Stock of a corporation with respect to which a valid election under section 338 is made; or

(*3*) Control of a governmental unit or a 501(c)(3) organization through the acquisition of stock, membership interests or otherwise.

(D) *Special rule for affiliated persons.* Paragraphs (d)(2)(ii)(A) and (C) of this section do not apply to any issue that is issued in connection with a transaction between affiliated persons (as defined in paragraph (d)(2)(ii)(E) of this section), unless—

(*1*) The refinanced issue is redeemed on the earliest date on which it may be redeemed (or otherwise within 90 days after the date of issuance of the refinancing issue); and

(*2*) The refinancing issue is treated for all purposes of sections 103 and 141 through 150 as financing the assets that were financed with the refinanced issue.

(E) *Affiliated persons.* For purposes of paragraph (d)(2)(ii)(D) of this section, persons are affiliated persons if—

(*1*) At any time during the six months prior to the transaction, more than 5 percent of the voting power of the governing body of either person is in the aggregate vested in the other person and its directors, officers, owners, and employees; or

(*2*) During the one-year period beginning six months prior to the transaction, the composition of the governing body of the acquiring person (or any person that controls the acquiring person) is modified or established to reflect (directly or indirectly) representation of the interests of the acquired person or the person from whom assets are acquired (or there is an agreement, understanding, or arrangement relating to such a modification or establishment during that one-year period).

(F) *Reverse acquisitions.* Notwithstanding any other provision of this paragraph (d)(2)(ii), a refinancing issue is a refunding issue if the obligor of the refinanced issue (or any person that is related to the obligor of the refinanced issue immediately before the transaction) has or obtains in the transaction the right to appoint the majority of the members of the governing body of the obligor of the refinancing issue (or any person that controls the obligor of the refinancing issue). See paragraph (d)(2)(v) *Example 2* of this section.

* * * * *

(v) *Examples.* The provisions of this paragraph (d)(2) are illustrated by the following examples:

Example 1. Consolidation of 501(c)(3) hospital organizations. (i) A and B are unrelated hospital organizations described in section 501(c)(3). A has assets with a fair market value of $175 million, and is the obligor of outstanding tax-exempt bonds in the amount of $75 million. B has assets with a fair market value of $145 million, and is the obligor of outstanding tax-exempt bonds in the amount of $50 million. In response to significant competitive pressures in the healthcare industry, and for other substantial business reasons, A and B agree to consolidate their operations. To accomplish the consolidation, A and B form a new 501(c)(3) hospital organization, C. A and B each appoint one-half of the members of the initial governing body of C. Subsequent to the initial appointments, C's governing body is self-perpetuating. On December 29, 2003, State Y issues bonds with sale proceeds of $129 million and lends the entire sale proceeds to C. The 2003 bonds are collectively secured by revenues of A, B and C. Simultaneously with the issuance of the 2003 bonds, C acquires the sole membership interest in each of A and B. C's ownership of these membership interests entitles C to exercise exclusive control over the assets and operations of A and B. C uses the $129 million of sale proceeds of the 2003 bonds to defease the $75 million of bonds on which A was the obligor, and the $50 million of bonds on which B was the obligor. All of the defeased bonds will be redeemed on the first date on which they may be redeemed. In addition, C treats the 2003 bonds as financing the same assets as the defeased bonds. The 2003 bonds do not constitute a refunding issue because the obligor of the 2003 bonds (C) is neither the obligor of the defeased bonds nor a related party with respect to the obligors of those bonds immediately before the issuance of the 2003 bonds. In addition, the requirements of paragraph (d)(2)(ii)(D) of this section have been satisfied.

(ii) The facts are the same as in paragraph (i) of this *Example 1,* except that C acquires the membership interests in A and B subject to the obligations of A and B on their respective bonds, and the 2003 bonds are sold within six months after the acquisition by C of the membership interests. The 2003 bonds do not constitute a refunding issue.

Example 2. Reverse acquisition. D and E are unrelated hospital organizations described in section 501(c)(3). D has assets with a fair market value of $225 million, and is the obligor of outstanding tax-exempt bonds in the amount of $100 million. E has assets with a fair market value of $100 million. D and E agree to consolidate their operations. On May 18, 2004, Authority Z issues bonds with sale proceeds of $103 million and lends the entire sale proceeds to E. Simultaneously with the issuance of the 2004 bonds, E acquires the sole membership interest in D. In addition, D obtains the right

to appoint the majority of the members of the governing body of E. E uses the $103 million of sale proceeds of the 2004 bonds to defease the bonds of which D was the obligor. All of the defeased bonds will be redeemed on the first date on which they may be redeemed. In addition, E treats the 2004 bonds as financing the same assets as the defeased bonds. The 2004 bonds constitute a refunding issue because the obligor of the defeased bonds (D) obtains in the transaction the right to appoint the majority of the members of the governing body of the obligor of the 2004 bonds (E). See paragraph (d)(2)(ii)(F) of this section.

Example 3. Relinquishment of control. The facts are the same as in *Example 2,* except that D does not obtain the right, directly or indirectly, to appoint any member of the governing body of E. Rather, E obtains the right both to approve and to remove without cause each member of the governing body of D. In addition, prior to being acquired by E, D experiences financial difficulties as a result of mismanagement. Thus, as part of E's acquisition of D, all of the former members of D's governing body resign their positions and are replaced with persons appointed by E. The 2004 bonds do not constitute a refunding issue.

* * * * *

Robert E. Wenzel,

Deputy Commissioner of Internal Revenue.

[FR Doc. 02–8655 Filed 4–5–02; 2:41 pm]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Bureau of Alcohol, Tobacco and Firearms

27 CFR Part 4

[Notice No. 941]

RIN 1512–AC65

Proposal To Recognize Synonyms for Petite Sirah and Zinfandel Grape Varieties (2001R–251P)

AGENCY: Bureau of Alcohol, Tobacco and Firearms, Department of the Treasury.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Bureau of Alcohol, Tobacco and Firearms is proposing two amendments to its list of prime grape variety names used to designate American wines. The first amendment would recognize the name ''Durif'' as a synonym for the Petite Sirah grape, while the second would recognize the name ''Primitivo'' as a synonym for the Zinfandel grape. The Bureau's proposal is based on recent DNA research into the identity of these grapes.

DATES: Written comments must be received by June 10, 2002.

ADDRESSES: Send written comments to: Chief, Regulations Division, Bureau of Alcohol, Tobacco and Firearms, P.O. Box 50221, Washington, DC 20091–0221 (Attn: Notice No. 941). *See* the ''Public Participation'' section of this notice for alternative means of commenting.

Copies of the proposed regulation, background materials, and any written comments received will be available for public inspection during normal business hours at the ATF Reading Room, Office of Public Affairs and Disclosure, Room 6480, 650 Massachusetts Avenue, NW., Washington, DC 20226.

FOR FURTHER INFORMATION CONTACT: Jennifer Berry, Bureau of Alcohol, Tobacco and Firearms, Regulations Division, 111 W. Huron Street, Room 219, Buffalo, NY 14202–2301; telephone (716) 434–8039.

SUPPLEMENTARY INFORMATION:

Background

What Is ATF's Authority To Regulate Grape Variety Names?

Under the Federal Alcohol Administration Act (27 U.S.C. 201 *et seq.*) (FAA Act), wine labels must provide the consumer with ''adequate information as to the identity'' of the product. The FAA Act also requires that the information appearing on wine labels not mislead the consumer. In addition, the Act authorizes the Bureau of Alcohol, Tobacco and Firearms (ATF) to issue regulations to carry out the Act's provisions.

Regulations concerning wine labeling, including those that designate prime grape variety names, are contained in 27 CFR part 4, Labeling and Advertising of Wine. Under 27 CFR 4.23(b) and (c), a wine bottler may use an approved grape variety name as the designation of a wine if at least 75 percent of the wine (51 percent in the case of wine made from *Vitis labrusca* grapes) is derived from that grape variety. Under § 4.23(d), a bottler may use two or more approved grape variety names as the designation of a wine if all of the grapes used to make the wine are of the labeled varieties and the percentage of the wine derived from each grape variety is shown on the label.

Treasury Decision ATF–370 (T.D. ATF–370), issued on January 8, 1996 (61 FR 522), adopted a list of grape variety names that ATF determined to be appropriate for use in designating American wines. The list of prime grape variety names and their synonyms appears at § 4.91, while additional alternative grape names temporarily authorized for use are listed at § 4.92. Synonyms are as acceptable as prime names and can stand alone on a label as a wine's designation. We believe the listing of approved grape variety names for American wines will help standardize wine label terminology, provide important information about the wine, and prevent consumer confusion.

How Did ATF Decide Which Names To Include in § 4.91?

The original prime grape variety name list was created through a two-part research and rulemaking process. In 1982, ATF established the Winegrape Varietal Names Advisory Committee whose members included wine industry members and academic viticultural researchers. The Committee reviewed hundreds of grape varietal names and synonyms then used in the production of American wine, and, in 1984, issued a report listing those names it determined were the most accurate and appropriate for use on American wine labels.

Using this report as a basis for rulemaking, ATF published Notice 581 on February 4, 1986 (51 FR 4392), followed by Notice 749 on September 3, 1992 (57 FR 40380), soliciting comments from the public on the proposed list. After reviewing the more than 200 comments received in response to Notices 581 and 749, ATF published T.D. ATF–370, which added the list of American grape variety names to 27 CFR part 4, Labeling and Advertising of Wine.

T.D. ATF–370 also established a process for the approval of new grape variety names. Under § 4.93, any interested person may petition ATF to add additional grape varieties to the list of prime grape names. Under the regulations, petitioners should submit evidence that:

- The grape variety is accepted;
- The name identifying the grape variety is valid;
- The variety is used or will be used in winemaking; and
- The variety is grown and used in the United States.

Since the publication of T.D. ATF–370, we have added several grape names to the prime grape name list in § 4.91 through this petition process.

Evidence Supporting Proposed Revisions

Petite Sirah/Durif

The names ''Petite Sirah'' and ''Durif'' were each listed as separate prime grape variety names in T.D. ATF–370. ATF originally proposed these names as synonyms in Notice 749, based on a widely held belief that these were two names for the same grape variety. However, Dr. Carole Meredith of the Department of Viticulture and Enology,

University of California at Davis (UC-Davis), commented in response to Notice 749 that she had evidence that Petite Sirah and Durif may not be the same variety. Dr. Meredith stated that her preliminary DNA research on Petite Sirah vines in UC-Davis' collection indicated that the name ''Petite Sirah'' was being used for more than one grape variety. She concluded that it would be premature to accept Petite Sirah and Durif as synonyms. In response to these comments, we listed Petite Sirah and Durif as separate prime grape variety names in T.D. ATF–370 and not as synonyms. However, we stated we would continue to seek evidence regarding the true identity of the grape called Petite Sirah.

Dr. Meredith has since completed her DNA research of California Petite Sirah vines, and published her findings in an article titled ''The Identity and Parentage of the Variety Known in California as Petite Sirah,'' in the American Journal of Enology and Viticulture, Vol. 50, No. 3, 1999. Dr. Meredith used DNA marker analysis to determine the identity of Petite Sirah vines in public collections and in commercial vineyards in California. This analysis revealed that a majority of the Petite Sirah vines were identical to Durif. Of 13 UC-Davis vines labeled Petite Sirah, 9 were identified as Durif. Of 53 commercial plants examined, 49 were identified as Durif. The remaining vines were found to be Pinot noir, Peloursin, or Syrah. Dr. Meredith concluded that these vines, most of which were obtained from old vineyards, had been misidentified, probably as the result of planting and labeling errors made decades ago.

When we contacted Dr. Meredith to discuss her study, she stated that she now supports identifying Petite Sirah and Durif as synonyms. She further commented that although Durif is the variety's original name, Petite Sirah is the name commonly used in the United States and is equally valid as the grape's name. Based on Dr. Meredith's research, ATF is proposing to amend its list of prime grape variety names to make ''Petite Sirah'' and ''Durif'' synonyms for the same grape.

Zinfandel/Primitivo

ATF listed ''Zinfandel'' and ''Primitivo'' as separate prime grape varieties in T.D. ATF–370, basing its decision on the available evidence and on comments received during the rulemaking process. Among the commenters was Dr. Carole Meredith of UC-Davis. She reported that her DNA research on Zinfandel and the Italian grape Primitivo showed them to have identical DNA ''fingerprints.'' However, her Primitivo research up to that point had been limited to two Italian samples that, she noted, may not have represented the full range of Primitivo cultivars. She further noted that Italians seemed to use Primitivo as a generic term for more than one grape variety. Because the name ''Primitivo'' was being used for grape varieties not identical to Zinfandel, ATF decided that the two grape names could not be used interchangeably and must be listed as separate varieties.

Since the publication of T.D. ATF–370 in 1996, Dr. Meredith and others have conducted additional research into the identity of Zinfandel. Also, other regulatory bodies, notably the European Union, have recognized Zinfandel and Primitivo as names for the same grape. European Commission Regulation No. 2770/98, which governs the use of grape variety names within the European Union, recognizes the name ''Zinfandel'' as a synonym for the Primitivo grape. Italian Primitivo growers may therefore label their wine as Zinfandel, while under § 4.91 American Zinfandel growers may not label their wine as Primitivo.

In an effort to clarify this issue, we contacted Dr. Meredith and asked if recent research supported recognizing Zinfandel and Primitivo as synonymous names for the same grape variety. She stated that her DNA profiling research, along with research conducted in Australia and Italy, has shown conclusively that Primitivo samples from Italy and Zinfandel samples from California are the same grape variety. She further commented that, because Primitivo and Zinfandel have been propagated independently for some time, some clonal divergence has occurred. This has resulted in small differences, such as berry size or fruit composition, that she believes may be significant for winemaking. However, she commented, these intravariety differences are common among other old and geographically dispersed varieties like Pinot noir or Syrah. She therefore concluded that Primitivo and Zinfandel should be classified as synonyms.

Based on current evidence, we propose to amend the list of prime grape variety names to make ''Primitivo'' and ''Zinfandel'' synonyms for the same grape variety. Because both names are well established, we believe they should be considered equally valid. However, we welcome comments on this subject.

Public Participation

ATF requests comments from all interested parties on the proposals contained in this notice. We specifically request comments on the clarity of this proposed rule and how it may be made easier to understand.

What Is a Comment?

In order for a submission to be considered a ''comment,'' it must clearly indicate a position for or against the proposed rule or some part of it, or express neutrality about the proposed rule. Comments that use reasoning, logic, and, if applicable, good science to explain the commenter's position are most persuasive in the formation of a final rule.

To be eligible for consideration, comments must:

- Contain your name and mailing address;
- Reference this notice number;
- Be legible and written in language generally acceptable for public disclosure;
- Contain a legible, written signature if submitted by mail or fax; and
- Contain your e-mail address if submitted by e-mail.

To assure public access to our office equipment, comments submitted by e-mail or fax must be no more than three pages in length when printed on 8 ½″ by 11″ paper. Comments submitted by mail may be any length.

How May I Submit Comments?

By Mail: You may send written comments by mail to the address shown above in the **ADDRESSES** section of this notice.

By Fax: You may submit comments by facsimile transmission to (716) 434–8041. We will treat faxed transmissions as originals.

By E-Mail: You may submit comments by e-mail by sending the comments to *nprm@atfhq.atf.treas.gov*. We will treat e-mailed transmissions as originals.

By On-line Form: You may also submit comments using the comment form provided with the online copy of the proposed rule on the ATF Internet web site at *http://www.atf.treas.gov/alcohol/rules/index.htm*. We will treat comments submitted via the web site as originals.

How Does ATF Use the Comments?

We will carefully consider all comments we receive on or before the closing date. We will also carefully consider comments we receive after that date if it is practical to do so, but we cannot assure consideration for late comments. We will not acknowledge receipt of comments or reply to individual comments. We will summarize and discuss pertinent comments in the preamble to any

subsequent notices or the final rule published as a result of the comments.

Can I Review Comments Received?

You may view copies of the comments on this notice of proposed rule making by appointment at the ATF Reference Library, Office of Liaison and Public Information, Room 6480, 650 Massachusetts Avenue, NW., Washington, DC 20226, telephone (202) 927–7890. You may also request copies of comments by filing a Freedom of Information Act (FOIA) request. For instructions on filing a FOIA request, please refer to the Internet address: *http://www.atf.treas.gov/about/foia.htm* or call (202) 927–8480.

For the convenience of the public, ATF will post comments received in response to this notice on the ATF web site. All comments posted on our web site will show the name of the commenter, but will not show street addresses, telephone numbers, or e-mail addresses. We may also omit voluminous attachments or material that we do not consider suitable for posting. In all cases, the full comment will be available in the library or through FOIA requests, as noted above. To access online copies of the comments on this rulemaking, visit *http://www.atf.treas.gov/,* and select ''Regulations,'' then ''Notices of proposed rulemaking (Alcohol)'' and this notice. Click on the ''View Comments'' button.

Will ATF Keep My Comments Confidential?

ATF cannot recognize any material in comments as confidential. All comments and materials may be disclosed to the public in the ATF Reading Room or in response to a FOIA request. We may also post the comment on our web site. (See ''Can I Review Comments Received?'') Finally, we may disclose the name of any person who submits a comment and quote from the comment in the preamble to a final rule on this subject. If you consider your material to be confidential or inappropriate for disclosure to the public, you should not include it in the comments.

Regulatory Analyses and Notices

Does the Paperwork Reduction Act Apply to This Proposed Rule?

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

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

ATF certifies that this proposed regulation will not have a significant economic impact on a substantial number of small entities. We expect no negative impact on small entities. We are not proposing new requirements. Accordingly, the Act does not require a regulatory flexibility analysis.

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

This is not a significant regulatory action as defined by Executive Order 12866. Therefore, the order does not require a regulatory assessment.

Drafting Information

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

List of Subjects in 27 CFR Part 4

Advertising, Customs duties and inspection, Imports, Labeling, Packaging and containers, Reporting and recordkeeping requirements, Trade practices, Wine.

Authority and Issuance

Accordingly, 27 CFR part 4, Labeling and Advertising of Wine, is proposed to be amended as follows:

PART 4—LABELING AND ADVERTISING OF WINE

Paragraph 1. The authority citation for part 4 continues to read as follows:

Authority: 27 U.S.C. 205.

Para. 2. Section 4.91 is amended by making the following additions to the list of prime grape names:

a. ''Petite Sirah'' is added in parenthesis behind ''Durif'';

b. ''Durif'' is added, in parenthesis, behind ''Petite Sirah'';

c. ''Zinfandel'' is added, in parenthesis, behind ''Primitivo''; and

d. ''Primitivo'' is added, in parenthesis, behind ''Zinfandel.''

The amendments will read as follows:

§ 4.91 List of approved prime names.

* * * * *

Durif (Petite Sirah)

* * * * *

Petite Sirah (Durif)

* * * * *

Primitivo (Zinfandel)

* * * * *

Zinfandel (Primitivo)

Signed: February 18, 2002.

Bradley A. Buckles,

Director.

Approved: March 11, 2002.

Timothy E. Skud,

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

[FR Doc. 02–8524 Filed 4–9–02; 8:45 am]

BILLING CODE 4810–13–P

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 165

[CGD01–02–031]

RIN 2115–AA97

Safety Zone; Fore River Channel—Weymouth Fore River—Weymouth, Massachusetts

AGENCY: Coast Guard, DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Coast Guard proposes to establish a temporary safety zone on the Weymouth Fore River in Weymouth, MA, along the main shipping channel, to permit the construction of a temporary bridge over the river adjacent to the existing Route 3A bridge. The 6-day, safety zone enforcement periods we propose would begin this year on June 10, July 15, and July 29 and if the contractor needs additional time to complete the prescribed work, 6-day contingency enforcement periods would begin June 24, August 12, and August 26, 2002. During enforcement periods, the safety zone, which is necessary for the protection of life and property, would temporarily close all waters of the Weymouth Fore River in the area along the main shipping channel, between the fendering system of the bridges, and approximately 200 yards upstream and 100 yards downstream of the Route 3A bridge.

DATES: Comments and related material must reach the Coast Guard on or before May 10, 2002.

ADDRESSES: You may mail comments and related material to Marine Safety Office Boston, 455 Commercial Street, Boston, MA. Marine Safety Office Boston maintains the public docket for this rulemaking. Comments and material received from the public, as well as documents indicated in this preamble as being available in the docket, will become part of the docket and will be available for inspection or copying at Marine Safety Office Boston between 8 A.M. and 3 P.M., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Chief Petty Officer Michael Popovich, Marine Safety y Office Boston, Waterways Safety and Response Division, at (617) 223–3000.

SUPPLEMENTARY INFORMATION:

Request for Comments

We encourage you to participate in this rulemaking by submitting comments and related material. If you do so, please include your name and address, identify the docket number for this rulemaking CGD01–02–031, indicate the specific section of this document to which each comment applies, and give the reason for each comment. You have until May 9, 2002, to comment on this proposed rule involving the Fore River Channel closure. A shortened comment period is necessary to ensure that there is ample time to prepare a final rule and facilitate the first scheduled closure on June 10, 2002. Due to this shortened comment period, in order to provide additional notice to the public, we will place a notice of our proposed rule in the local notice to mariners, post the published Notice of Proposed Rulemaking on the MSO Boston web site at http://www.uscg.mil/d1/units/msobos/, and advise port users of the published NPRM at local port operator group meetings. You may request a copy of this notice via facsimile, by calling Chief Petty Officer Michael Popovich at (617) 223–3000.

Please submit all comments and related material in an unbound format, no larger than 8½ by 11 inches, suitable for copying. If you would like to know your submission reached us, please enclose a stamped, self-addressed postcard or envelope. We will consider all comments and material received during the comment period. We may change this proposed rule in view of them. In our final rule, we will include a concise general statement of the comments received and identify any changes from the proposed rule based on the comments. If we make the final rule effective less than 30 days after publication in the **Federal Register**, we will explain our good cause for doing so as required by 5 U.S.C. 553(d)(3). These measures are being implemented to ensure the safety of the vessels whose movement is being regulated, others in the maritime community, surrounding communities, and the public.

Public Meeting

We do not now plan to hold a public meeting. However, you may submit a request for a meeting by writing to Marine Safety Office Boston at the address under **ADDRESSES** explaining why one would be beneficial. If we determine that a public meeting would aid this rulemaking, we will hold one at a time and place announced by a separate notice in the **Federal Register**.

Background and Purpose

The Massachusetts Highway Department has undertaken a project to erect a temporary bridge adjacent to the existing bridge over the Weymouth Fore River, to temporarily replace the existing bridge as a land transit route. Currently the construction of the temporary bridge is entering the final stages of the project, which involves erection of both bridge gantries as well as the roadway sections. To accomplish this work, it is necessary to position a crane barge in the main shipping channel in the vicinity of the bridges. During the construction periods, the crane barge will obstruct the main shipping channel from vessel transits. Additionally, the work from the crane barge involves lifting large segments of heavy materials, thereby creating a safety hazard to mariners and the public in the vicinity of the crane barge and the construction operation during these periods. A safety zone is necessary to ensure public safety while the construction work is taking place.

We propose to establish a safety zone on all waters, from the surface to the river bottom, within the Weymouth Fore River encompassed by a line connecting points 42°14′34″ N, 070°58′03″ W; 42°14′44″ N, 070°57′59″ W; 42°14′45″ N, 070°58′03″ W; and 42°14′35″ N, 070°58′05″ W, which encloses the area along the main shipping channel, between the fendering system of the bridges, and approximately 200 yards upstream and 100 yards downstream of the Route 3A bridge, for six-day construction periods. The safety zone will effectively close the main shipping channel in the vicinity of the bridges for the construction periods.

Six-day construction periods are necessary because once the crane barge is in position, and materials are staged to erect the bridge sections, this work cannot be interrupted until each section is in place and complete which is estimated to take 6 days. Further, completion of the temporary bridge construction is deemed in the public interest so that a major disruption in the landside transportation infrastructure is not experienced should the existing bridge become unsafe for vehicular traffic.

The proposed safety zone would be enforced from sunrise Monday, June 10, 2002, until sunset on Saturday, June 15, 2002, sunrise Monday, July 15, 2002, until sunset on Saturday, July 20, 2002, and sunrise Monday, July 29, 2002, until sunset on Saturday, August 3, 2002. In the event that the contractor is unable to complete the prescribed work during these periods, there will also be three contingency safety zone enforcement periods from sunrise Monday, June 24, 2002, until sunset on Saturday, June 29, 2002, sunrise Monday, August 12, 2002, until sunset Saturday, August 17, 2002, and from sunrise Monday, August , 2002, until sunset Saturday, August 31, 2002.

The safety zone is deemed necessary for the protection of life and property within the Captain of the Port (COTP) Boston zone. Public notifications will be made prior to the effective period via safety marine information broadcasts and local notice to mariners.

Regulatory Evaluation

Although this proposed regulation will prevent vessel traffic from transiting a portion of the Weymouth Fore River main shipping channel during the effective periods, the impact is not considered significant for several reasons. Impacted entities include one commercial oil transfer facility that receives large tank vessels, the Massachusetts Water Resources Authority (MWRA), which barges sludge to a facility in Quincy, Massachusetts, and numerous marinas, yacht clubs, and boat yards upstream of the Route 3A bridge. The Massachusetts Highway Department and its contractor, Middlesex Corporation, have met with these stakeholders to attempt to minimize impacts. Both the oil terminal and MWRA are able to, and have agreed to, work their vessel transit schedules around the 6-day periods during which the safety zone will be enforced without significant negative economic impact.

Marinas, yacht clubs, boat yards, and the boating public will not be severely impacted because an alternate water route (channel) will be available for transit on the western (Quincy) side of the main channel during the construction periods when the safety zone is enforced. Temporary aids to navigation and lighting will be placed to facilitate use of the alternate water route. This alternate route will provide an alternative for many of the waterway users to transit outside of the safety zone and under the western (Quincy) side of both the temporary bridge span and the existing Route 3A bridge span during the periods that the safety zone will be enforced.

We have been advised by Middlesex Corporation, the contractor for the Massachusetts Highway Department, that they performed soundings, measured vertical clearances, and

dragged the bottom for obstructions within the proposed alternate channel. The results of their measurements indicate the following clearances: Maximum vertical clearance (channel margin) at high tide is 30 feet; maximum vertical clearance (channel margin) at low tide is 39 feet; minimum water depth at low tide is 14 feet; maximum horizontal clearance between pier fenders is 75 feet.

Additionally, stakeholders are being provided advanced notice of the safety zone well in advance, through this rulemaking process, enabling them to make alternate arrangements in lieu of transiting the restricted area during the enforcement periods. Notifications will also be made to the local maritime community by safety marine information broadcasts and local notice to mariners.

For the reasons stated, this proposed rule is not a ''significant regulatory action'' under section 3(f) of Executive Order 12866 and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. The Office of Management and Budget has not reviewed it under that Order. It is not significant under the regulatory policies and procedures of the Department of Transportation (DOT)(44 FR 11040, February 26, 1979). The Coast Guard expects the economic impact of this proposed rule to be minimal enough that a full Regulatory Evaluation under paragraph 10e of the regulatory policies and procedures of DOT is unnecessary.

Small Entities

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

The Coast Guard certifies under 5 U.S.C. 605(b) that this proposed rule will not have a significant economic impact on a substantial number of small entities. This proposed rule will affect the following entities, some of which may be small entities: the owners or operators of vessels intending to transit the Fore River main channel during the construction periods when the safety zone is enforced; or marinas, yacht clubs, and boat yards that service these vessels. For reasons outlined in the Regulatory Evaluation section, this impact is not expected to be significant.

If you think that your business, organization, or governmental jurisdiction qualifies as a small entity and that this proposed rule would have a significant economic impact on it, please submit a comment (see **ADDRESSES**) explaining why you think it qualifies and how and to what degree this proposed rule would economically affect it.

Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), we want to assist small entities in understanding this proposed rule so that they can better evaluate its effects on them and participate in the rulemaking. If the proposed rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please contact Chief Petty Officer Michael Popovich at the address listed under **ADDRESSES**.

Collection of Information

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

Federalism

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

Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) governs the issuance of Federal regulations that require unfunded mandates. An unfunded mandate is a regulation that requires a State, local, or tribal government or the private sector to incur direct costs without the Federal Government's having first provided the funds to pay those costs. This proposed rule would not impose an unfunded mandate.

Taking of Private Property

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

Civil Justice Reform

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

Protection of Children

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

Energy Effects

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

Environment

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

List of Subjects in 33 CFR Part 165

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

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

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

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

Authority: 33 U.S.C. 1231; 50 U.S.C. 191, 33 CFR 1.05–1(g), 6.04–1, 6.04–6, 160.5; 49 CFR 1.46.

2. Add temporary § 165.T01–031 to read as follows:

§ 165.T01–031 Safety Zone: Fore River Channel, Weymouth Fore River, Weymouth, MA.

(a) *Location.* The following area is a safety zone: all waters from the surface

to the river bottom within the Weymouth Fore River encompassed by a line connecting points 42°14′34″ N, 070°58′03″ W; 42°14′44″ N, 070°57′59″ W; 42°14′45″ N, 070°58′03″ W; and 42°14′35″ N, 070°58′05″ W, which encloses the area along the main shipping channel, between the fendering system of the bridges, and approximately 200 yards upstream and 100 yards downstream of the Route 3A bridge.

(b) *Effective period.* This section is effective from sunrise June 10, 2002 until sunset on August 3, 2002.

(c) *Enforcement periods.* This section will be enforced from Monday, June 10, 2002, until sunset on Saturday, June 15, 2002; from sunrise Monday, July 15, 2002, until sunset on Saturday, July 20, 2002; and from sunrise Monday, July 29, 2002, until sunset on Saturday, August 3, 2002. In the event that the contractor is unable to complete the prescribed work during these closures, there will also be three contingency enforcement periods: from sunrise Monday, June 24, 2002, until sunset on Saturday, June 29, 2002; from sunrise Monday, August 12, 2002, until sunset Saturday, August 17, 2002; and from sunrise Monday, August 26, 2002 until sunset Saturday, August 31, 2002. Whenever the Captain of the Port (COTP) determines that a safety zone in effect is not needed for the entire 6-day period to accomplish the purposes of this rule due to completion of scheduled work, the COTP will discontinue enforcement of the safety zone for that period and issue a broadcast notice to mariners (BNTM) so informing the public.

(d) *Regulations.* (1) In accordance with the general regulations in § 165.23, entry into or movement within this zone will be prohibited unless authorized by the Captain of the Port Boston. Requests to enter the safety zone can be made by calling Marine Safety Office Boston at (617) 223–3000.

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

Dated: March 28, 2002.

B. M. Salerno,

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

[FR Doc. 02–8591 Filed 4–9–02; 8:45 am]

BILLING CODE 4910–15–U

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[AL–058–200219(b); FRL–7168–9]

Approval and Promulgation of Implementation Plans: Revisions to the Alabama Department of Environmental Management (ADEM) Administrative Code for the Air Pollution Control Program

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The EPA is proposing approval of revisions to the Alabama Department of Environmental Management's (ADEM) Administrative Code submitted on February 21, 2002, by the State of Alabama. The revisions comply with the regulations set forth in the Clean Air Act (CAA). On February 21, 2002, the State of Alabama through ADEM submitted revisions to chapters 335–3–14 ''Air Permits'' to correct numbering inconsistency.

In the Final Rules Section of this **Federal Register**, the EPA is approving the State's SIP revision as a direct final rule without prior proposal because the Agency views this as a noncontroversial submittal and anticipates no adverse comments. A detailed rationale for the approval is set forth in the direct final rule. If no adverse comments are received in response to this action, no further activity is contemplated. If EPA receives adverse comments, the direct final rule will be withdrawn and all public comments received will be addressed in a subsequent final rule based on this proposed rule. The EPA will not institute a second comment period on this document. Any parties interested in commenting on this document should do so at this time.

DATES: Written comments must be received on or before May 10, 2002.

ADDRESSES: Written comments should be addressed to Sean Lakeman, at the EPA Regional Office listed below. The interested persons wanting to examine these documents should make an appointment with the appropriate office at least 24 hours before the visiting day. Copies of the documents relative to this action are available for public inspection during normal business hours at the following locations:

Air and Radiation Docket and Information Center (Air Docket 6102), U.S. Environmental Protection Agency, 401 M Street, SW, Washington, DC 20460 U.S. Environmental Protection Agency, Region 4, Atlanta Federal Center, Air, Pesticides, and Toxics Management Division, 61 Forsyth Street, Atlanta, Georgia 30303–8960.

FOR FURTHER INFORMATION CONTACT: Sean Lakeman; Regulatory Development Section; Air Planning Branch; Air, Pesticides and Toxics Management Division; U.S. Environmental Protection Agency Region 4; 61 Forsyth Street, SW; Atlanta, Georgia 30303–8960. Mr. Lakeman can also be reached by phone at (404) 562–9043 or by electronic mail at *lakeman.sean@epa.gov.*

SUPPLEMENTARY INFORMATION: For additional information see the direct final rule which is published in the Final Rules section of this **Federal Register**.

Dated: March 28, 2002.

A. Stanley Meiburg,

Acting Regional Administrator, Region 4.

[FR Doc. 02–8532 Filed 4–9–02; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[SC–037; 040–200217; FRL–7169–6]

Approval and Promulgation of Implementation Plans: South Carolina: Nitrogen Oxides Budget and Allowance Trading Program

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing to approve a State Implementation Plan (SIP) revision submitted by the State of South Carolina on October 30, 2000, and revised on July 30, 2001. This revision responds to the EPA's regulation entitled, ''Finding of Significant Contribution and Rulemaking for Certain States in the Ozone Transport Assessment Group Region for Purposes of Reducing Regional Transport of Ozone,'' otherwise known as the ''NO_X SIP Call.'' This revision establishes and requires a nitrogen oxides (NO_X) allowance trading program for large electric generating and industrial units, and reductions for cement kilns, beginning in 2004. The revision includes a budget demonstration and initial source allocations that clearly demonstrate that South Carolina will achieve the required NO_X emission reductions in accordance with the timelines set forth in EPA's NO_X SIP Call. The intended effect of this SIP revision is to reduce emissions of NO_X in order to help attain the national

ambient air quality standard for ozone. EPA is proposing to approve South Carolina's NO_X Reduction and Trading Program because it meets the requirements of the Phase I NO_X SIP Call that will significantly reduce ozone transport in the eastern United States. South Carolina has requested that EPA parallel process this revision because the revision is not yet state-effective.

DATES: Written comments must be received on or before May 10, 2002.

ADDRESSES: All comments should be addressed to: Sean Lakeman; Regulatory Development Section; Air Planning Branch; Air, Pesticides and Toxics Management Division; U.S. Environmental Protection Agency Region 4; 61 Forsyth Street, SW, Atlanta, Georgia 30303–8960.

Copies of documents relative to this action are available at the following addresses for inspection during normal business hours:

Environmental Protection Agency, Region 4, Air Planning Branch, 61 Forsyth Street, SW, Atlanta, Georgia 30303–8960.

South Carolina Department of Health and Environmental Control, Bureau of Air Quality Control, 2600 Bull Street, Columbia, South Carolina 29201.

The interested persons wanting to examine these documents should make an appointment at least 24 hours before the visiting day and reference file SC–037.

FOR FURTHER INFORMATION CONTACT: Sean Lakeman, Regulatory Development Section, Air Planning Branch, Air, Pesticides and Toxics Management Division, Region 4, U.S. Environmental Protection Agency, 61 Forsyth Street, SW, Atlanta, Georgia 30303–8960. The telephone number is (404) 562–9043. Mr. Lakeman can also be reached via electronic mail at *lakeman.sean@epa.gov.*

SUPPLEMENTARY INFORMATION: On October 30, 2000, the South Carolina Department of Health and Environmental Control (DHEC) submitted a draft NO_X emission control rule to the EPA for pre-adoption review. Also, DHEC requested that EPA parallel process the submittal concurrent with the development of the final State rule and included a schedule for development and adoption of the rule by the State. On July 30, 2001, DHEC submitted adopted revisions to its SIP to meet the requirements of the Phase I NO_X SIP Call. After the rules are adopted by the South Carolina Board of Health and Environmental Control, the revisions must be reviewed and approved by the South Carolina General Assembly. After approval by the General Assembly, the rules will become state-effective upon publication in the South Carolina State Register. EPA will take final action on South Carolina's revisions when the State submits state-effective rule revisions, including their emission budgets and initial allocations.

The revisions submitted comply with the requirements of the Phase I NO_X SIP Call. Included in South Carolina's submittal are new rules Regulation 61–62.96 NO_X Budget Trading Program and Regulation 61–62.99 Nitrogen Oxides Budget Program Requirements For Stationary Sources Not In the Trading Program. The information in this proposal is organized as follows:

I. EPA's Action
A. What action Is EPA proposing today?
B. Why Is EPA Proposing This Action?
C. What Are the NO_X SIP Call General Requirements?
D. What is SPA's NO_X budget and allowance trading program?
E. What guidance did EPA use to evaluate South Sarolina's submittal?
What is the result of EPA's evaluation of South Carolina's program?
II. South Carolina's Control of NO_X Emissions
A. When did South Carolina submit the SIP revision to EPA in response to the NO_X SIP Call?
B. What is the South Carolina NO_X Budget Trading Program?
C. What is the Compliance Supplement Pool?
D. What is the New Source Set-Aside program?
III. Proposed Action
IV. Administrative Requirements

I. EPA's Action

A. What Action is EPA Proposing Today?

EPA is proposing to approve revisions to South Carolina's SIP concerning the adoption of its NO_X Reduction and Trading Program, submitted for parallel processing on October 30, 2000, and revised on July 30, 2001.

B. Why is EPA Proposing This Action?

EPA is proposing this action because South Carolina's NO_X Reduction and Trading Program and cement kiln regulations meet the requirements of the Phase I NO_X SIP Call. Therefore, EPA is proposing full approval of South Carolina's NO_X Reduction and Trading Program.

C. What Are the NO_X SIP Call General Requirements?

The NO_X SIP Call requires 22 States and the District of Columbia to meet statewide NO_X emission budgets during the five month period from May 1 to September 30, called the ozone season (or control period), in order to reduce the amount of ground level ozone that is transported across the eastern United States. The D.C. Circuit decision on March 3, 2000, concerning the NO_X SIP Call (*Michigan* v. *EPA,* 213 F.3d 663 (D.C. Cir. 2000)) reduced the number of States from 22 to 19.

EPA identified NO_X emission reductions by source category that could be achieved by using cost-effective controls. The source categories included were electric generating units (EGUs) and non-electric generating units (non-EGUs), internal combustion engines, and cement kilns. EPA determined state-wide NO_X emission budgets based on the implementation of these cost effective controls for each affected jurisdiction to be met by the year 2007. Internal combustion engines are not addressed by South Carolina in this response to Phase I, but will be in Phase II. In the NO_X SIP Call notice, EPA suggested that imposing statewide NO_X emissions caps on large fossil-fuel fired industrial boilers and EGUs would provide a highly cost effective means for states to meet their NO_X budgets. In fact, the state-specific budgets were set assuming an emission rate of 0.15 pounds NO_X per million British thermal units (lb. NO_X/mmBtu) at EGUs, multiplied by the projected heat input (mmBtu/hr). The NO_X SIP Call state budgets also assumed on average a 30 percent NO_X reduction from cement kilns, and a 60 percent reduction from industrial boilers. The non-EGU control assumptions were applied at units where the heat input capacities were greater than 250 mmBtu per hour, or in cases where heat input data were not available or appropriate, at units with actual emissions greater than one ton per day. However, the NO_X SIP Call allowed states the flexibility to decide which source categories to regulate in order to meet the statewide budgets.

To assist the states in their efforts to meet the SIP Call, the NO_X SIP Call final notice included a model NO_X allowance trading regulation, called ''NO_X Budget Trading Program for State Implementation Plans,'' (40 CFR part 96), that could be used by states to develop their regulations. The NO_X SIP Call notice explained that if states developed an allowance trading regulation consistent with the EPA model rule, they could participate in a regional allowance trading program that would be administered by the EPA. See 63 FR 57458–57459.

There were several periods during which EPA received comments on various aspects of the NO_X SIP Call emissions inventories. On March 2, 2000 (65 FR 11222), EPA published additional technical amendments to the NO_X SIP. On March 3, 2000, the D.C. Circuit issued a decision on the NO_X SIP Call that largely upheld EPA's position. (*Michigan* v. *EPA*, 213 F.3d 663 (D.C. Cir. 2000)). The DC Circuit Court denied petitioners' requests for rehearing or rehearing en banc on July 22, 2000. However, the Circuit Court remanded four specific elements to EPA for further action: the definition of electric generating unit, the level of control for stationary internal combustion engines, the geographic extent of the NO_X SIP Call for Georgia and Missouri, and the inclusion of Wisconsin. On March 5, 2001, the U.S. Supreme Court declined to hear an appeal by various utilities, industry groups, and a number of upwind states from the D.C. Circuit's ruling on EPA's NO_X SIP Call rule.

EPA published a proposal that addresses the remanded portion of the NO_X SIP Call on February 22, 2002 (67 FR 8396). Any

additional emissions reductions required as a result of a final rulemaking on that proposal will be reflected in the second phase portion (Phase II) of the State's emission budget. On April 11, 2000, in response to the Court's decision, EPA notified South Carolina of the maximum amount of NO_X emissions allowed for the State during the ozone season. This budget adjusted South Carolina's NO_X emission budget to reflect the Court's decision regarding internal combustion engines and cogeneration facilities. Although the Court did not order EPA to modify South Carolina's budget, the EPA believes these adjustments are consistent with the Court's decision.

D. What is EPA's NO_X Budget and Allowance Trading Program?

EPA's model NO_X budget and allowance trading rule, 40 CFR part 96, sets forth an NO_X emissions trading program for large EGUs and non-EGUs. A state can voluntarily choose to adopt EPA's model rule in order to allow sources within its borders to participate in regional allowance trading. The October 27, 1998, **Federal Register** notice contains a full description of the EPA's model NO_X budget trading program. See 63 FR 57514—57538 and 40 CFR part 96.

Emissions trading, in general, uses market forces to reduce the overall cost of compliance for pollution sources, such as power plants, while maintaining emission reductions and environmental benefits. One type of market-based program is an emissions budget and allowance trading program, commonly referred to as a ''cap and trade'' program.

In a cap and trade program, the state (or EPA) sets a regulatory limit in mass emissions (emissions budget) from a specific group of sources. The budget limits the total number of allowances for each source covered by the program during a particular control period. When the budget is set at a level lower than the current emissions, the effect is to reduce the total amount of emissions during the control period. After setting the budget, the state (or EPA) then assigns, or allocates, allowances to the participating entities up to the level of the budget. Each allowance authorizes the emission of a quantity of pollutant, e.g., one ton of airborne NO_X.

At the end of the control period, each source must demonstrate that its actual emissions during the control period were less than or equal to the number of available allowances it holds. Sources that reduce their emissions below their allocated allowance level may sell their extra allowances. Sources that emit more than the amount of their allocated allowance level may buy allowances from the sources with extra reductions. In this way, the budget is met in the most cost-effective manner.

E. What Guidance Did EPA Use To Evaluate South Carolina's Submittal?

The final NO_X SIP Call rule included a model NO_X budget trading program regulation. See 40 CFR part 96. EPA used the model rule in 40 CFR part 96, and 40 CFR 51.121–51.122 to evaluate South Carolina's NO_X reduction and trading program and 40 CFR Part 98 subpart B (proposed model rule for cement kilns) to evaluate South Carolina's cement kiln rule SIP submittal.

F. What Is the Result of EPA's Evaluation of South Carolina's Program?

EPA has evaluated South Carolina's July 30, 2001, SIP submittal and finds it approvable. The South Carolina NO_X reduction and trading program and cement kiln rule are consistent with EPA's guidance and meet the requirements of the Phase I NO_X SIP Call. EPA finds the NO_X control measures in South Carolina's NO_X reduction and trading program approvable. Also, EPA finds that the submittal contained the information necessary to demonstrate that South Carolina has the legal authority to implement and enforce the control measures, and to demonstrate their appropriate distribution of the compliance supplement pool. Furthermore, EPA proposes to find that the submittal demonstrates that the compliance dates and schedules, and the monitoring, recordkeeping and emission reporting requirements, will be met.

II. South Carolina's Control of NO_X Emissions

A. When Did South Carolina Submit the SIP Revision to EPA in Response to the NO_X SIP Call?

On October 30, 2000, the South Carolina DHEC submitted a draft NO_X emission control rule to the EPA for pre-adoption review, requesting parallel processing concurrent with the development of the rule at the State level and included a schedule for development and adoption of the rule by the State. On July 30, 2001, DHEC submitted adopted revisions to its SIP to meet the requirements of the Phase I NO_X SIP Call. Since the rules have not completed South Carolina's internal requirements to become state-effective, EPA is using the parallel process to propose approval of these rules.

B. What Is South Carolina's NO_X Budget Trading Program?

South Carolina proposes, as in the model rule, to allow the large EGUs, boilers, and turbines to participate in the multi-state cap and trade program. Cement kilns are not included in the trading program, but will be required to install low NO_X burners, mid-kiln system firings or technology that achieves the same emission decreases, which achieve overall 30 percent reduction from sources in this category. South Carolina's SIP revision to meet the requirements of the NO_X SIP Call consists of a new rule for the ''NO_X Budget Trading Program'' (regulation 61–62.96) and a new rule for ''Nitrogen Oxides (NO_X) Budget Program Requirements for Stationary Sources Not in the Trading Program'' (regulation 61–62.99). The requirements under 61–62.96 affect EGUs and non-EGUs. Regulation 61–62.96 ''NO_X Budget Trading Program'' added nine new subparts: Subpart A—NO_X Budget Trading Program General Provisions; Subpart B—Authorized Account Representative for NO_X Budget Sources; Subpart C—Permits; Subpart D—Compliance Certification; Subpart E—NO_X Allowance Allocations; Subpart F—NO_X Allowance Tracking System; Subpart G—NO_X Allowance Transfers; Subpart H—Monitoring and Reporting; Subpart I—Individual Unit Opt-ins.

South Carolina's NO_X Budget Trading Program establishes and requires a NO_X allowance trading program for large EGUs and non-EGUs. The regulations under 61–62.96 establish an NO_X cap and allowance trading program for the ozone control seasons beginning May 31, 2004, and commencing May 1 in years thereafter.

The State of South Carolina voluntarily chose to follow the EPA's model NO_X budget and allowance trading rule, 40 CFR part 96. Since South Carolina's NO_X Budget Trading Program is based upon EPA's model rule, it is approvable and South Carolina sources are allowed to participate in the interstate NO_X allowance trading program that EPA will administer for the participating states.

The State of South Carolina has adopted regulations that are substantively identical to 40 CFR part 96. Therefore, pursuant to 40 CFR 51.121(p)(1), South Carolina's SIP revision is approved as satisfying the State's NO_X emission reduction obligations. Under 61–62.96, South Carolina allocates NO_X allowances to the EGU and non-EGU units that are affected by these requirements. The NO_X trading program, except for one source discussed below, applies to fossil fuel fired EGUs with a nameplate capacity greater than 25 MW that sell electricity to the grid as well as any non-EGUs that have a maximum design heat input greater than 250 mmBtu per hour. Each NO_X allowance permits a source to emit one ton of NO_X during the seasonal control period. NO_X allowances may be bought or sold. Unused NO_X allowances may also be banked for future use, with certain limitations.

In Section 96.4(a) of their rule, South Carolina deviated from the EGU and non-EGU budget under the NO_X SIP Call by categorizing as a non-EGU an existing co-generating unit at a paper mill which produces less than an annual average of one third of its potential electrical output capacity for sale. South Carolina moved the allowances for this unit from the EGU budget into the non-EGU budget. The net effect was to keep the total South Carolina EGU and non-EGU budget the same as under the NO_X SIP Call. Since the effect of this action did not change the State's total NO_X budget, and will achieve the same amount of NO_X reductions, it is considered approvable.

In Section 96.4(b) of their rule, the State allows a unit that restricts its fuel use to only natural gas or fuel oil and its NO_X emissions to 25 tons or less during a control period (through a federally enforceable permit) to be exempted from the requirements of the trading program. The State has clearly required that the unit meet both the fuel use and the NO_X emissions limitation throughout section 96.4(b). However, in Section 96.4(b)(iv) the rule indicates that a unit shall lose its exemption if the unit fails to comply with the restrictions on fuel use and NO_X emissions. This section would be clearer if it specified that a unit will lose its exemption if the unit fails to comply with the restrictions on fuel use or NO_X emissions. However, the State patterned their rule after the verbiage in 40 CFR part 97, in which the

word ''and'' is used erroneously. This verbiage has been corrected to ''or'' in proposed revisions to 40 CFR part 97. EPA believes that South Carolina intends for this rule to reflect the correct definition and that a unit will lose its exemption if the unit fails to meet either the fuel use or the emissions limitation. The State's intention is further evidenced by the appropriate inclusion of both requirements (fuel use and emissions limitations) throughout section 96.4(b), therefore the EPA believes this section is approvable.

Source owners will monitor their NO_X emissions by using systems that meet the requirements of 40 CFR part 75, subpart H, and report resulting data to EPA electronically. Each budget source complies with the program by demonstrating at the end of each control period that actual emissions do not exceed the amount of allowances held for that period. However, regardless of the number of allowances a source holds, it cannot emit at levels that would violate other Federal or State limits, for example, reasonably available control technology (RACT), new source performance standards, or Title IV (the Federal Acid Rain program). South Carolina's regulations require the following in Section 96.6 Standard requirements: '' (g) Effect on Other Authorities. No provision of the NO_X Budget Trading Program, a NO_X Budget permit application, a NO_X Budget permit, or an exemption under Section 96.5 shall be construed as exempting or excluding the owners and operators and, to the extent applicable, the NO_X authorized account representative of a NO_X Budget source or NO_X Budget unit from compliance with any other provision of the applicable, approved State implementation plan, a federally enforceable permit, or the Clean Air Act (CAA).''

South Carolina's Nitrogen Oxides (NO_X) Budget Program Requirements for Stationary Sources Not In The Trading Program (Regulation 61–62.99) establishes requirements for cement manufacturing facilities. While these sources are subject to NO_X reduction requirements, they do not participate in the NO_X trading program. Cement kilns will be required to install low NO_X burners, mid-kiln system firings, or technology that achieves equivalent emission reductions. For mobile and area source categories, South Carolina's submittal does not rely on any additional reductions beyond the anticipated federal measures.

South Carolina's submittal demonstrates that the Phase I NO_X emission budgets established by EPA will be met. The final NO_X budget for EGUs and non-EGUs in South Carolina has been revised from the March 2, 2001, notice (65 FR 11222) that revised the NO_X statewide emissions budgets for the affected states and the District of Columbia. South Carolina's submittal provides documentation demonstrating that EPA's 2007 budget emissions incorrectly omitted numerous small generators (less than 25 MW) and a generator with a nameplate capacity of 27 MW that were identified in the North American Electric Reliability Council Database and did not appear in EPA's original overall EGU budget for South Carolina. EPA reviewed South Carolina's corrections and concurs with South Carolina's revised list of EGUs, large non-EGUs and small non-EGUs, as well as South Carolina's resultant 2007 NO_X budget emissions for the EGU and non-EGU source categories. EPA therefore is proposing to approve South Carolina's draft NO_X emission budgets to meet Phase I of the NO_X SIP Call as shown below:

Source category	EPA 2007 NO_X budget emissions (tons/season)	South Carolina 2007 NO_X budget emissions (tons/season)
EGUs	16,772	17,837
Non-EGUs	27,787	32,141
Area Sources	9,415	9,415
Non-road Sources	14,637	14,637
Highway Sources	54,494	54,494
Total	123,105	128,524

C. What Is the Compliance Supplement Pool?

To provide additional flexibility for complying with emission control requirements associated with the NO_X SIP Call, the final NO_X SIP Call rule provided each affected state with a ''compliance supplement pool.'' The compliance supplement pool is a quantity of NO_X allowances that may be used to cover excess emissions from sources that are unable to meet control requirements during the 2004 and 2005 ozone season. Allowances from the compliance supplement pool will not be valid for compliance past the 2005 ozone season. The NO_X SIP Call included these voluntary provisions in order to address commenters' concerns about the possible adverse effect that the control requirements might have on the reliability of the electricity supply or on other industries required to install controls as the result of a state's response to the NO_X SIP Call.

A state may issue some or all of the compliance supplement pool via two mechanisms. First, a state may issue some or all of the pool to sources with credits from implementing NO_X reductions in an ozone season beyond any applicable requirements of the CAA after September 30, 1999, and before May 31, 2004, (i.e., early reductions). This will allow sources that cannot install controls prior to May 31, 2004, to purchase other sources' early reduction credits in order to comply. Note that while South Carolina offers the opportunity for sources to earn early reduction credits in the 2000 ozone season (early reduction credits may only be issued for reductions made above and beyond any requirements under the CAA), this presumes monitoring according to part 75, subpart H, to establish a baseline in the ozone season prior to the year for which early reduction credits are requested. Second, a state may issue some or all of the pool to sources that demonstrate a need for an extension of the May 31, 2004, compliance deadline due to undue risk to the supply of electricity or other industrial sectors, and where early reductions are not available. See 40 CFR 51.121(e)(3). In South Carolina's rule, each NO_X Budget unit for which the owner or operator requests early reduction credits shall reduce its NO_X emission rate, for each control period for which early reduction credits are requested, to 0.25 lb/mmBtu or less for a ''one to one'' credit. For reductions down to but not including 0.25 lb/mmBtu sources can receive early reduction credits at a rate of one-half credit for each ton of NO_X reduction. South Carolina's regulation reads, ''After the early reduction credits are calculated, the credits shall be discounted for units that do not reduce down to 0.25 lb/mmBtu so that for each ton of NO_X reduction achieved down to but not including 0.25 lb/mmBtu, the unit shall receive one half credit. For units that reduce their NO_X emissions beyond and including 0.25 lb/mmBtu, the credits will not be discounted and the unit shall receive one credit for each ton of NO_X reduction.'' Since the net effect of South Carolina's rule as it relates to early reduction credit will keep the budget at the proper value, this deviation is considered approvable.

D. What Is the New Source Set-Aside Program?

South Carolina's SIP provides for new unit set-asides for EGUs and for non-EGUs. DHEC will establish one allocation set-aside pool for each control period. The allocation set-aside pool will consist of NO_X allowances equal to four percent in 2004, 2005, and 2006, and three percent thereafter, of the tons of NO_X allowances in the State trading budget, rounded to the nearest whole NO_X allowance as appropriate. This approach to allocations for new units is acceptable because it falls within the flexibility of the NO_X SIP Call requirements for a state's allocation to new sources.

III. Proposed Action

EPA is proposing to approve the South Carolina's SIP revision consisting of its draft

NO_X Budget Trading Program and cement kiln rule, which was submitted on October 30, 2000, and revised on July 30, 2001. EPA finds that South Carolina's submittal will be fully approvable when it becomes state-effective because it meets the requirements of the Phase I NO_X SIP Call.

IV. Administrative Requirements:

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this proposed action is not a ''significant regulatory action'' and therefore is not subject to review by the Office of Management and Budget. For this reason, this action is also not subject to Executive Order 13211, ''Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use'' (66 FR 28355, May 22, 2001). This proposed action merely proposes to approve state law as meeting Federal requirements and imposes no additional requirements beyond those imposed by state law. Accordingly, the Administrator certifies that this proposed rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Because this rule proposes to approve pre-existing requirements under state law and does not impose any additional enforceable duty beyond that required by state law, it does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104–4).

This proposed rule also does not have tribal implications because it will not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes, as specified by Executive Order 13175 (65 FR 67249, November 9, 2000). This action also does not have Federalism implications because it does not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999). This action merely proposes to approve a state rule implementing a Federal standard, and does not alter the relationship or the distribution of power and responsibilities established in the Clean Air Act. This proposed rule also is not subject to Executive Order 13045 ''Protection of Children from Environmental Health Risks and Safety Risks'' (62 FR 19885, April 23, 1997), because it is not economically significant.

In reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the Clean Air Act. In this context, in the absence of a prior existing requirement for the State to use voluntary consensus standards (VCS), EPA has no authority to disapprove a SIP submission for failure to use VCS. It would thus be inconsistent with applicable law for EPA, when it reviews a SIP submission, to use VCS in place of a SIP submission that otherwise satisfies the provisions of the Clean Air Act. Thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply. This proposed approval of the South Carolina NO_X Budget Trading Program does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Nitrogen dioxide, Ozone, Reporting and recordkeeping requirements.

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

Dated: April 1, 2002.

A. Stanley Meiburg,

Acting Regional Administrator, Region 4.

[FR Doc. 02–8685 Filed 4–9–02; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 62

[Region 2 Docket No. PR8–239, FRL–7169–5]

Approval and Promulgation of State Plans for Designated Facilities and Pollutants; Commonwealth of Puerto Rico

AGENCY: Environmental Protection Agency.

ACTION: Proposed Rule.

SUMMARY: The Environmental Protection Agency (EPA) is proposing to approve the Section 111(d) plan submitted by the Commonwealth of Puerto Rico, for the purpose of implementing and enforcing the emission guidelines for existing municipal solid waste landfills. The plan was submitted to fulfill requirements of the Clean Air Act (the Act). The Puerto Rico plan establishes emission limits for existing municipal solid waste landfills, and provides for the implementation and enforcement of those limits.

DATES: Comments must be received on or before May 10, 2002.

ADDRESSES: Comments should be mailed to Raymond W. Werner, Chief, Air Programs Branch, Environmental Protection Agency, Region II, 290 Broadway, 25th Floor, New York, NY 10007–1866. Copies of the documents relevant to this action are available for public inspection during normal business hours at the following locations: Division of Environmental Planning and Protection, Air Programs Branch, Environmental Protection Agency, Region II, 290 Broadway, 25th Floor, New York, NY 10007–1866; Environmental Protection Agency, Region II, Caribbean Environmental Protection Division, Centro Europa Building, Suite 417, 1492 Ponce De Leon Avenue, Stop 22, San Juan, Puerto Rico 00907–4127; and the Puerto Rico Environmental Quality Board, National Plaza Building, 431 Ponce De Leon Avenue, Hato Rey, Puerto Rico.

FOR FURTHER INFORMATION CONTACT: Demian P. Ellis at (212) 637–3713, or by e-mail at *ellis.demian@epa.gov*.

SUPPLEMENTARY INFORMATION: This document is divided into Sections I—V, and answers the questions posed below:

I. General Provisions

- What action is being taken by the Environmental Protection Agency (EPA) today?
- What is a State 111(d) plan?
- What pollutants will this action control?
- What are the expected environmental and public health benefits from controlling municipal solid waste (MSW) landfill gas emissions?

II. Federal Requirements the Puerto Rico 111(d) Plan Must Meet for Approval

- What general EPA requirements must Puerto Rico meet to receive approval of its MSW landfill 111(d) plan?
- What does the Puerto Rico plan contain?
- Does the Puerto Rico plan meet all EPA requirements for approval?

III. Requirements for Affected MSW Landfill Owners/Operators Must Meet

- How does a MSW landfill determine if it is subject to the Puerto Rico 111(d) plan?
- What general requirements must a facility meet as an affected landfill owner/operator that is subject to the EPA approved Puerto Rico plan?
- If a landfill is subject to the plan's requirement for installation of a landfill gas collection and control system, what emissions limits must it meet, and in what time frame?
- Are there any operational requirements for an installed landfill gas collection and control system?
- What are the testing, monitoring, record keeping, and reporting requirements for a landfill?
- Is a landfill owner/operator required to apply for a Title V permit?
- If the capacity of a landfill is modified or expanded, what additional requirements must it meet?

IV. Conclusion

V. Administrative Requirements

I. General Provisions

What Action Is Being Taken by the EPA Today?

EPA is proposing to approve the Commonwealth of Puerto Rico MSW landfill Clean Air Act (the Act) Section 111(d) plan, as submitted by the Puerto Rico Environmental Quality Board

(EQB), on February 20, 2001, for the implementation of EPA's emission guidelines for existing municipal solid waste (MSW) landfills. Once the state plan is approved, affected sources will become subject to the state plan and no longer be subject to the federal plan.

What Is a State 111(d) Plan?

A State 111(d) plan is a plan which implements emission guidelines for designated pollutants and facilities. Under Section 111(d), EPA is required to establish procedures for state submittal and EPA approval of state plans that implement state adopted emissions guidelines, promulgated by EPA, for the control of designated pollutants and facilities. State plans, when approved by EPA, implement and provide for federal enforcement of the emission guidelines requirements. For the purposes of the Act, Puerto Rico is treated as a state.

What Pollutants Will This Action Control?

The emission guidelines promulgated by EPA on March 12, 1996 (61 FR 9919) are applicable to existing MSW landfills (i.e., the designated facilities) that emit landfill gas. Landfill gas consists primarily of carbon dioxide, methane, and nonmethane organic compounds (NMOC). MSW landfills are the largest man made source of methane emissions in the United States. The designated pollutant, NMOC, is a mixture of more than 100 different compounds, including volatile organic compounds (VOC), and hazardous air pollutants (HAP), such as vinyl chloride, toluene, and benzene. A collateral benefit in the control of landfill NMOC is the control of methane.

What Are the Expected Environmental and Public Health Benefits From Controlling Landfill Gas Emissions?

Studies indicate that MSW landfill gas emissions at certain levels can have adverse effects on both public health and welfare. EPA presented its concerns regarding the health and welfare effects of landfill gases in the preamble to the MSW landfill regulations (61 FR 9905). As noted above, MSW landfills emit NMOC that contains HAP, and VOC, including odorous compounds. Exposure to HAP can lead to cancer, respiratory irritation, and damage to the nervous system. VOC emissions contribute to the formation of ozone which can result in adverse affects on human health and vegetation. Methane contributes to global climate change and can also result in fires or explosions if the gas accumulates in physical structures on or off the landfill site. The Puerto Rico 111(d) plan will serve to significantly reduce these potential problems associated with landfill gas emissions.

II. Federal Requirements Puerto Rico's 111(d) Plan Must Meet for Approval

What General EPA Requirements Must Puerto Rico Meet To Receive Approval of Its 111(d) Plan (the ''plan'')?

EPA promulgated detailed procedures for submitting and approving State plans in 40 CFR part 60, subpart B. Also, EPA promulgated the MSW landfill emission guidelines (subpart Cc) and a related NSPS (subpart WWW) on March 12, 1996, and amended them both on June 16, 1998 and February 24, 1999. The Puerto Rico plan must meet the requirements of (1) 40 CFR part 60, subpart Cc, 60.30c through 60.36c, and the related subpart WWW. In addition, under 40 CFR part 60, subpart B, 60.23 through 26, a state plan submitted for EPA approval under the landfill emission guidelines must demonstrate that it has adequate resources and the legal authority to administer and enforce the program. The EQB has made such a demonstration.

States were required to submit their MSW landfill 111(d) plans to EPA on December 12, 1996. As a result of litigation over the landfill rule, on November 13, 1997, EPA issued a notice of proposed settlement in *National Solid Wastes Management Association* v. *Browner, et al.,* No. 96–1152 (D.C. Cir), in accordance with Section 113(g) of the Act, 42 U.S.C. Section 7413(g). See 62 FR 60898, November 13, 1997. Pursuant to the proposed settlement agreement, EPA published, in the **Federal Register**, a direct final rulemaking on June 16, 1998, in which EPA amended 40 CFR part 60, subparts Cc and WWW, to add clarifying language, to make editorial amendments, and to correct typographical errors. The proposed settlement did not vacate or void the March 12, 1996 MSW landfill emission guidelines or NSPS. See 63 FR 32743–32753, 32783–32784. In part, these amendments clarified the emission guidelines regulatory text with respect to landfill applicability (i.e., mass and volume) and Title V permit requirements. On February 24, 1999 (64 FR 9258), EPA amended the MSW landfill rule to further clarify the regulatory text and correct errors with respect to the due date for the submittal of the initial landfill design capacity and emissions rate reports, and the definition of landfill ''modification.'' In summary, these amendments result in four substantive emission guidelines changes: (1) Landfill mass ''and'' volume applicability threshold language, (2) timely Title V permit applications, (3) the definition of landfill ''modification,'' and (4) the due date for submittal of initial design capacity and NMOC emissions rate reports. Additional technical corrections to the NSPS were published on April 10, 2000 (65 FR 18906).

What Does the Puerto Rico Plan Contain?

Consistent with the requirements of subparts B and Cc, as amended, the Puerto Rico Plan contains the following:

1. A demonstration of the Commonwealth's legal authority to implement the Section 111(d) plan;
2. A demonstration of the Commonwealth's legal authority to enforce the Section 111(d) plan;
3. A list of known MSW landfills including NMOC emissions rate estimates;
4. A regulation requiring installation of emission collection and control equipment which is no less stringent than the requirements in subpart Cc;
5. A description of the process Puerto Rico will use to review and approve site-specific gas collection and control design plans;
6. Compliance schedules for each source that requires final compliance no later than that required in EPA's November 8, 1999 Federal 111(d) plan (64 FR 60703), to which Puerto Rico is currently subject;
7. Requirements for sources to test, monitor, keep records, and report to Puerto Rico;
8. Records of the public hearings on the Commonwealth's Plan; and
9. A provision for the Commonwealth's submittal to EPA of annual reports on Puerto Rico's progress in the enforcement of its plan.

The reader is referred to the technical support document (TSD) for further details on Puerto Rico's plan.

Does the Puerto Rico Plan Meet All EPA Requirements for Approval?

Yes. EPA has reviewed Puerto Rico's Section 111(d) plan for existing MSW landfills against the requirements of 40 CFR part 60, subparts B and Cc and finds that it has satisfied the requirements for a MSW landfill 111(d) plan submittal.

Although an issue regarding applicability and enforceability had been previously identified, Puerto Rico has addressed this issue to EPA's satisfaction. Specifically, Puerto Rico had inadvertently omitted certain language from the definition of ''modification'' included in the

emission guidelines (as revised on February 24, 1999). To address this issue, Puerto Rico subsequently revised its definition to conform with the complete definition provided in the emission guidelines. Therefore, EPA is proposing to approve the Puerto Rico plan. Details regarding the approvability of plan elements are included earlier in this notice and in the TSD associated with this action. A copy of the TSD is available, upon request, from the EPA Regional Office listed in the **ADDRESSES** section of this document.

III. Requirements That Affected MSW Landfill Owners/Operators Must Meet

How Does a MSW Landfill Determine if It Is Subject to the Puerto Rico 111(d) Plan?

If a facility commenced construction, reconstruction, or modification of its MSW landfill before May 30, 1991, and has accepted waste at any time since November 8, 1987, or the landfill has added capacity for future waste deposition, then it is subject to the 111(d) plan requirements.

What General Requirements Must a Facility Meet as an Affected Landfill Owner/Operator That Is Subject to the EPA Approved Puerto Rico Plan?

The plan requires a facility to submit an initial design capacity report, and possibly a NMOC emissions rate report. If the design capacity of the landfill is equal to or greater than 2.5 million megagrams and 2.5 million cubic meters of MSW, the plan requires the facility to also submit, concurrently with the design capacity report, an initial NMOC emissions rate report. Puerto Rico is currently subject to the federal landfill plan, 40 CFR part 62, subpart GGG. As required under 40 CFR 62.14355(a) of the Federal landfill 111(d) plan, both the initial design capacity and NMOC emissions rate reports were due April 6, 2000. The initial NMOC and any subsequent emissions rate determinations are required to be calculated according to methods specified in the regulation. If the facility's calculated landfill NMOC emissions rate were 50 megagrams per year, or more, then it is required to install a MSW landfill gas collection and control system that meets the design and operational requirements specified in Part VII, which incorporates all the pertinent requirements in 40 CFR 60.759 and 60.753. 40 CFR 62.14352(e) of the federal plan also requires that all Title V permitting applications for landfills with a design capacity equal to or above 2.5 million megagrams and 2.5 million cubic meters were to have been submitted by April 6, 2001. Facilities, as a courtesy, should send copies of the NMOC emission rate reports, initial design capacity report, and Title V permit application required under the federal plan to the Puerto Rico Environmental Quality Board. Any compliance timelines which were triggered by the submittal of an initial NMOC emission rate report under the federal plan do not change as a result of EPA's action today.

If a Landfill Is Subject to the Plan's Requirement for Installation of a Landfill Gas Collection and Control System, What Emissions Limits Must It Meet, and in What Time Frame?

A facility must install a landfill gas collection and control system to reduce the collected NMOC emissions by 98 weight-percent, or reduce the emissions from the control device to a concentration of 20 parts per million by volume, or less, for an enclosed combustor. A landfill's final compliance date and the related increments of progress are dependent upon when its annual emissions rate report initially shows that NMOC emissions are 50 megagrams per year or more. Based on the Puerto Rico plan requirements (which are at least as stringent as the Federal plan requirements at 40 CFR 62.14356(a) and (c), except as provided in 40 CFR 62.14356(d)), a landfill must meet the following compliance schedule and increments of progress:

COMPLIANCE SCHEDULE AND INCREMENTS OF PROGRESS

Increment	Action	Compliance date*
Increment 1	Submit a final control plan	1 year after report.
Increment 2	Award Contracts	20 months after report.
Increment 3	Initiate on-site construction	24 months after report.
Increment 4	Complete on-site construction.	30 months after report.
Increment 5	Final compliance	30 months after report.
Increment 6	Performance test	36 months after report.

*Report refers to the initial NMOC emission rate report or the first annual emission rate report showing NMOC emissions ≥ 50 megagrams per year. The initial NMOC emission rate report is due 90 days after effective date of the Federal Plan or April 6, 2000.

For a landfill with an initial NMOC emission rate report showing 50 megagrams per year, its final compliance date according to the Puerto Rico plan (which incorporates the the federal compliance schedule and increments of progress) is October 6, 2002.

Are There Any Operation Requirements for an Installed Landfill Gas Collection and Control System?

Yes, there are operational requirements. The operational requirements are summarized below:

1. Operate the collection system wellheads at negative pressure;

2. Operate the interior collection wellheads with a landfill gas temperature less than 550 degrees Celsius and with either a nitrogen level less than 20 percent, or an oxygen level less than 5 percent;

3. Operate the collection system so that the methane gas concentration is less than 500 parts per million by volume above background at the surface of the landfill;

4. Operate the collection system so that the colleted gases are vented to the control system; and

5. Operate the collection and control system at all times.

Details regarding all operational requirements are stipulated in 40 CFR part 60, subpart WWW, 40 CFR 60.753.

What Are the Testing, Monitoring, Record Keeping, and Reporting Requirements for a Landfill?

A landfill's testing, monitoring, record keeping, and reporting requirements are summarized below:

Performance testing, to determine compliance with 98 weight-percent efficiency or the 20 parts per million by volume (ppmv) outlet concentration level, must be completed within 180 days after construction completion on the collection and control system. Testing methods must be consistent

with EPA source test methods referenced in the PREQB landfill regulation.

Monitoring temperature on a continuous basis is required for enclosed combustion control devices, and flares. Measurement of the gas flow rate from the collection system to an enclosed combustion device, or flare, is required at least once every 15 minutes, unless the bypass line valves are secured in a closed position. Monthly monitoring requirements are specified in the regulation for the gas collection system. Gas wellhead monitored parameters include gauge pressure, nitrogen or oxygen concentration, and temperature. Quarterly monitoring is required of NMOC surface concentrations.

Reporting requirements relate to landfill design capacity and NMOC emission rates; submittal of a collection and control system design plan; and system start-up, performance testing, operations, closure notification, and equipment removal. Records must be kept on-site of maximum design capacity, current amount of solid waste in-place, year-by-year waste acceptance rate; up-to-date readily accessible records for the life of the control equipment of certain data measured during the initial performance test or compliance determination; and control device vendor specifications until removal. Details regarding testing, monitoring, record keeping, and reporting requirements within the emission guidelines reference the corresponding sections in the NSPS, 40 CFR part 60, subpart WWW in 40 CFR 60.754, 60.755, 60.756, and 60.757.

Is a Landfill Owner/Operator Required To Apply for a Title V Permit?

As stated previously, if a landfill's design capacity is equal to or greater than 2.5 million megagrams and 2.5 million cubic meters, as provided under 40 CFR 62.14352(e) of the federal plan, it was required to apply for a Title V permit no later than April 6, 2001.

If the Capacity of a Landfill Is Modified or Expanded, What Additional Requirements Must It Meet?

Any MSW landfill that commences construction, modification, or reconstruction on or after May 30, 1991 becomes subject to the EPA new source performance standards (NSPS) for landfills, 40 CFR part 60, subpart WWW.

IV. Conclusion

EPA has reviewed Puerto Rico's MSW 111(d) plan and finds that it satisfies all the requirements for a 111(d) plan submittal. Therefore, based upon the rationale discussed herein and in further detail in the TSD associated with this action, EPA is proposing to approve the Puerto Rico MSW landfill 111(d) plan. Upon final approval of the Puerto Rico 111(d) plan for landfills, the Federal plan promulgated on November 8, 1999, will no longer apply in Puerto Rico. As provided by 40 CFR 60.28(c), any revisions to the Puerto Rico Section 111(d) plan or associated regulations will not be considered part of the applicable plan until submitted by the EQB in accordance with 40 CFR 60.28(a) or (b), as applicable, and until approved by EPA in accordance with 40 CFR part 60, subpart B, requirements.

V. Administrative Requirements

Executive Order 12866

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

Paperwork Reduction Act

This action will not impose any collection information subject to the provisions of the Paperwork Reduction Act, 44 U.S.C. 3501 et seq., other than those previously approved and assigned OMB control number 2060–0220. For additional information concerning these requirements, *see* 40 CFR 60.35c. 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.

Executive Order 13045

Protection of Children from Environmental Health Risks and Safety Risks (62 FR 19885, April 23, 1997), applies to any rule that: (1) Is determined to be ''economically significant'' as defined under Executive Order 12866, and (2) concerns an environmental health or safety risk that EPA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, the Agency must evaluate the environmental health or safety effects of the planned rule on children, and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency.

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

Executive Order 13132

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

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

EPA has concluded that this rule does not have federalism implications. Thus, the requirements of sections 6(b) and 6(c) of the Executive Order do no apply to this rule.

Executive Order 13175

Executive Order 13175, entitled ''Consultation and Coordination with Indian Tribal Governments'' (65 FR 67249, November 6, 2000), requires EPA to develop an accountable process to ensure ''meaningful and timely input by tribal officials in the development of regulatory policies that have tribal implications.'' ''Policies that have tribal implications'' is defined in the Executive Order to include regulations that have ''substantial direct effects on one or more Indian tribes, on the relationship between the Federal government and the Indian tribes, or on the distribution of power and responsibilities between the Federal government and Indian tribes.''

This rule does not have tribal implications. It will not have substantial direct effects on tribal governments, on the relationship between the Federal government and Indian tribes, or on the distribution of power and responsibilities between the Federal government and Indian tribes, as specified in Executive Order 13175. Thus, Executive Order 13175 does not apply to this rule.

Regulatory Flexibility

The Regulatory Flexibility Act (RFA) generally requires an agency to conduct a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and small governmental jurisdictions.

This rule will not have a significant impact on a substantial number of small entities because such businesses have already been subject to the federal plan, which mirrors this rule. Therefore, because the Federal approval does not create any new requirements, I certify that this action will not have a significant economic impact on a substantial number of small entities.

Unfunded Mandates

Under section 202 of the Unfunded Mandates Reform Act of 1995 (''Unfunded Mandates Act''), signed into law on March 22, 1995, EPA must prepare a budgetary impact statement to accompany any proposed or final rule that includes a Federal mandate that may result in estimated costs to state, local, or tribal governments in the aggregate; or to the private sector, of $100 million or more. Under section 205, EPA must select the most cost-effective and least burdensome alternative that achieves the objectives of the rule and is consistent with statutory requirements. Section 203 requires EPA to establish a plan for informing and advising any small governments that may be significantly or uniquely impacted by the rule.

EPA has determined that the approval action promulgated does not include a Federal mandate that may result in estimated costs of $100 million or more to either state, local, or tribal governments in the aggregate, or to the private sector. This Federal action approves pre-existing requirements under state or local law, and imposes no new requirements. Accordingly, no additional costs to state, local, or tribal governments, or to the private sector, result from this action.

National Technology Transfer and Advancement Act

Section 12 of the National Technology Transfer and Advancement Act (NTTAA) of 1995 requires Federal agencies to evaluate existing technical standards when developing a new regulation. To comply with NTTAA, EPA must consider and use ''voluntary consensus standards'' (VCS) if available and applicable when developing programs and policies unless doing so would be inconsistent with applicable law or otherwise impractical.

The EPA believes that VCS are inapplicable to this action.

Today's action does not require the public to perform activities conducive to the use of VCS.

List of Subjects in 40 CFR Part 62

Environmental protection, Administrative practice and procedure, Air pollution control, Intergovernmental relations, Reporting and recordkeeping requirements, Waste treatment and disposal.

Dated: March 28, 2002.

William J. Muszynski,

Acting Regional Administrator, Region 2.

[FR Doc. 02–8686 Filed 4–9–02; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 1

[MD Docket No. 02–64; FCC 02–92]

Assessment and Collection of Regulatory Fees for Fiscal Year 2002

AGENCY: Federal Communications Commission.

ACTION: Notice of Proposed Rulemaking.

SUMMARY: The Commission is proposing to revise its Schedule of Regulatory Fees in order to recover the amount of regulatory fees that Congress has required it to collect for fiscal year 2002. Section 9 of the Communications Act of 1934, as amended, provides for the annual assessment and collection of regulatory fees under sections 9(b)(2) and (b)(3), respectively, for annual ''Mandatory Adjustments'' and ''Permitted Amendments'' to the Schedule of Regulatory Fees.

DATES: Comments are due on or before April 23, 2002, and reply comments are due on or before May 3, 2002.

FOR FURTHER INFORMATION CONTACT: Terry Johnson, Office of Managing Director at (202) 418–0445 or Roland Helvajian, Office of Managing Director at (202) 418–0444.

SUPPLEMENTARY INFORMATION:

Adopted: March 22, 2002.

Released: March 27, 2002.

By the Commission:

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I. Introduction

1. By this *Notice of Proposed Rulemaking* (NPRM), the Commission begins a proceeding to revise its Schedule of Regulatory Fees to collect the amount of regulatory fees that Congress, pursuant to section 9(a) of the

Communications Act, as amended, has required us to collect for Fiscal Year (FY) 2002.[1]

2. Congress has required that we collect $218,757,000 through regulatory fees to recover the costs of our competition, enforcement, spectrum management, and consumer information activities for FY 2002.[2] This amount is $18,611,000 or approximately 9.3% more than the amount that Congress designated for recovery through regulatory fees for FY 2001.[3] We are proposing to revise our fees in order to collect the amount that Congress has specified, as illustrated in a new fee schedule in Attachment D.

3. In proposing to revise our fees, we adjusted the payment units and revenue requirement for each service subject to a fee, consistent with section 159(b)(2). The current Schedule of Regulatory Fees is set forth in §§ 1.1152 through 1.1156 of the Commission's rules.[4]

II. Background

4. Section 9(a) of the Communications Act of 1934, as amended, authorizes the Commission to assess and collect annual regulatory fees to recover costs, as determined annually by Congress, that it incurs in carrying out enforcement, policy and rulemaking, international, and user information activities.[5] *See* Attachment G for a description of these activities. In our *FY 1994 Fee Order,*[6] we adopted the Schedule of Regulatory Fees that Congress established, and prescribed rules to govern payment of the fees, as required by Congress.[7] Subsequently, we modified the fee schedule to increase the fees in accordance with the amounts Congress required us to collect in each succeeding fiscal year. We also amended the rules governing our regulatory fee program based upon our prior experience in administering the program.[8]

5. As noted, for FY 1994 we adopted the Schedule of Regulatory Fees established in section 9(g) of the Act. For fiscal years after FY 1994, however, sections 9(b)(2) and (b)(3), respectively, provide for ''Mandatory Adjustments'' and ''Permitted Amendments'' to the Schedule of Regulatory Fees.[9] Section 9(b)(2), entitled ''Mandatory Adjustments,'' requires that we revise the Schedule of Regulatory Fees to reflect the amount that Congress requires us to recover through regulatory fees.[10]

6. Section 9(b)(3), entitled ''Permitted Amendments,'' requires that we determine annually whether additional adjustments to the fees are warranted, taking into account factors that are in the public interest, as well as issues that are reasonably related to the payer of the fee. These amendments permit us to ''add, delete, or reclassify services in the Schedule to reflect additions, deletions or changes in the nature of its services . . .'' [11]

7. Section 9(i) requires that we develop accounting systems necessary to adjust our fees pursuant to changes in the cost of regulating various services that are subject to a fee, and for other purposes.[12] The Commission is in the process of planning a new cost accounting system, which we anticipate to be operational after sufficient testing in FY 2004. For FY 1997, we relied for the first time on cost accounting data to identify our regulatory costs and to develop our FY 1997 fees based upon these costs. Also, in FY 1997, we found that some fee categories received disproportionately high cost allocations. We adjusted for these high cost allocations by redistributing the costs, and maintained a 25% limit on the extent in which service fee categories can be increased. We believed that this 25% limit would enable cost-based service fees to be implemented more gradually over time. We thought that this methodology, which we continued to use for FY 1998, would enable us to develop a regulatory fees schedule that reflected our cost of regulation. Over time, as the cost of regulation increases or decreases, this methodology would enable us to revise the fee schedule to reflect those services whose regulatory costs had changed.

8. However, we found that developing a regulatory fee structure based on available flawed cost information sometimes did not permit us to recover the amount that Congress required us to collect. In some instances, the large increases in the cost of regulation did not normalize to an acceptable level. We concluded that it would be best to discontinue attempts to base the entire schedule on our available but flawed cost data. Instead, we chose to base the FY 1999 through FY 2001 fees on the basis of ''Mandatory Adjustments'' only. We have found no reason to deviate from this policy for FY 2002. However, we are proposing to apply the ''Mandatory Adjustments'' as we did in FY 2001 to better incorporate changes in payment units. As noted above, however, we expect to have a new cost accounting system in place in FY 2004. Finally, section 9(b)(4)(B) requires us to notify Congress of any permitted amendments 90 days before those amendments go into effect.[13]

III. Discussion

A. Summary of FY 2002 Fee Methodology

9. As noted above, Congress has required that the Commission recover $218,757,000 for FY 2002 through the collection of regulatory fees, representing the costs applicable to our enforcement, policy and rulemaking, international, and user information activities.[14]

10. In developing our proposed FY 2002 fee schedule, we first estimated the number of payment units [15] for FY 2002. Then we compared the FY 2001 revenue estimate amount to the $218,757,000 that Congress has required us to collect in FY 2002 and pro-rated the difference among all the existing fee categories. Finally, we divided the FY 2002 payment unit estimates into the pro-rated FY 2002 revenue estimates to determine the new FY 2002 fees. See Attachment C.

11. Once we established our tentative FY 2002 fees, we evaluated proposals made by Commission staff concerning ''Permitted Amendments'' to the Fee Schedule and to our collection procedures. Collection procedure matters are discussed in paragraphs 17–23.

12. Finally, we have incorporated, as Attachment F, proposed Guidance containing detailed descriptions of each fee category, information on the individual or entity responsible for paying a particular fee and other important information designed to assist potential fee payers in determining the extent of their fee liability, if any, for FY 2002.[16] In the following paragraphs, we describe in greater detail our proposed methodology for establishing our FY 2002 regulatory fees.

[1] 47 U.S.C. 159(a).

[2] Public Law 107–77 and 47 U.S.C. 159(a)(2).

[3] *Assessment and Collection of Regulatory Fees for Fiscal Year 2001,* 66 FR 36177 (2001).

[4] 47 CFR 1.1152 through 1.1156.

[5] 47 U.S.C. 159(a).

[6] 59 FR 30984 (1994).

[7] 47 U.S.C. 159(b), (f)(1).

[8] 47 CFR 1.1151 *et seq.*

[9] 47 U.S.C. 159(b)(2), (b)(3).

[10] 47 U.S.C. 159(b)(2).

[11] 47 U.S.C. 159(b)(3).

[12] 47 U.S.C. 159(i).

[13] 47 U.S.C. 159(b)(4)(B).

[14] 47 U.S.C. 159(a).

[15] Payment units are the number of subscribers, mobile units, pagers, cellular telephones, licenses, call signs, adjusted gross revenue dollars, etc. which represent the base volumes against which fee amounts are calculated.

[16] We also will incorporate a similar Attachment in the *FY 2002 Report and Order* concluding this rulemaking. That Attachment will contain updated information concerning any changes made to the proposed fees that will be adopted in the *FY 2002 Report and Order.*

B. Development of FY 2002 Fees

i. Adjustment of Payment Units

13. In calculating FY 2002 regulatory fees for each service, we adjusted the estimated payment units for each service to reflect substantial changes in payment units for many services since adopting our FY 2001 fees. We obtained our estimated payment units through a variety of means, including our licensee data bases, actual prior year payment records, and industry and trade group projections. Whenever possible, we verified these estimates from multiple sources to ensure accuracy of these estimates. Attachment B summarizes how revised payment units were determined for each fee category.[17]

ii. Calculation of Revenue Requirements

14. We compared the sum of all estimated revenue requirements for FY 2001 to the amount that Congress has required us to collect for FY 2002 ($218,757,000), which is approximately 9.3% more total revenue than in FY 2001. We increased each FY 2001 fee revenue category estimate by 9.3% to provide a total FY 2002 revenue estimate of $218,757,000. Attachment C provides detailed calculations showing how we determined the revised revenue amounts to be raised for each service.

iii. Recalculation of Fees

15. Once we determined the revenue requirement for each service and class of licensee, we divided the revenue requirement by the number of estimated payment units (and by the license term for ''small'' fees) to obtain actual fee amounts for each fee category. These calculated fee amounts were then rounded in accordance with section 9(b)(2) of the Act. *See* Attachment C.

16. We examined the results of our calculations to determine if further adjustments of the fees and/or changes to payment procedures were warranted based upon the public interest and other criteria established in 47 U.S.C. 159(b)(3). Unless otherwise noted herein, nothing else in this proceeding is intended to change any policies or procedures established or reaffirmed in the *FY 2001 Order* (66 FR 36177).

[17] It is important to note also that Congress required a revenue increase in regulatory fee payments of approximately 9.3 percent in FY 2002, which will not fall equally on all payers because payment units have changed in several services. When the number of payment units in a service increases from one year to another, fees do not have to rise as much as they would if payment units had decreased or remained stable. Declining payment units have the opposite effect on fees.

C. Procedures for Payment of Regulatory Fees

17. Generally, we propose to retain the procedures that we have established for the payment of regulatory fees. *See* paragraphs 18, 19, and 20. Section 9(f) requires that we permit ''payment by installments in the case of fees in large amounts, and in the case of small amounts, shall require the payment of the fee in advance for a number of years not to exceed the term of the license held by the payer.'' *See* 47 U.S.C. 159(f)(1). Consistent with section 9(f), we are again proposing to establish three categories of fee payments, based upon the category of service for which the fee payment is due and the amount of the fee to be paid. The fee categories are: (1) ''Standard'' fees, (2) ''large'' fees, and (3) ''small'' fees.

i. Annual Payments of Standard Fees

18. As we have in the past, we are proposing to treat regulatory fee payments by certain licensees as ''standard fees'' which are those regulatory fees that are payable in full on an annual basis. Payers of standard fees are not required to make advance payments for their full license term and are not eligible for installment payments. All standard fees are payable in full on the date we establish for payment of fees in their regulatory fee category. The payment dates for each regulatory fee category will be announced either in the *Report and Order* terminating this proceeding or by public notice in the **Federal Register** pursuant to authority delegated to the Managing Director.

ii. Installment Payments for Large Fees

19. While time constraints may preclude an opportunity for installment payments, we propose that regulatees in any category of service with a liability of $12,000 or more be eligible, if practicable, to make installment payments. Eligibility for installment payments will be based upon the amount of either a single regulatory fee payment or a combination of fee payments by the same licensee or regulatee. We propose that regulatees eligible to make installment payments may submit their required fees in two equal payments (on dates to be announced) or, in the alternative, in a single payment on the date that their final installment payment is due. However, because of time constraints in collecting and recording the fees, it is unlikely that there will be sufficient time for installment payments. Therefore, regulatees who may be eligible to make installment payments may be required, if time constraint permits, to pay these fees on the last date that fee payments may be submitted. The dates for installment payments, or a single payment, will be announced either in the *Report and Order* terminating this proceeding or by public notice published in the **Federal Register** pursuant to authority delegated to the Managing Director.

iii. Advance Payments of Small Fees

20. As we have in the past, we are proposing to treat regulatory fee payments by certain licensees as ''small'' fees subject to advance payment consistent with the requirements of section 9(f)(2). We propose that advance payments will be required from licensees of those services that we decided would be subject to advance payments in our FY 1994 *Report and Order,* and to those additional payers noted.[18] We are also proposing that payers of advance fees will submit the entire fee due for the full term of their licenses when filing their initial, renewal, or reinstatement application. Regulatees subject to a payment of small fees shall pay the amount due for the current fiscal year multiplied by the number of years in the term of their requested license. In the event that the required fee is adjusted following their payment of the fee, the payer would not be subject to the payment of a new fee until filing an application for renewal or reinstatement of the license. Thus, payment for the full license term would be made based upon the regulatory fee applicable at the time the application is filed. The effective date for payment of small fees established in this proceeding will be announced in our *Report and Order* terminating this proceeding or by public notice published in the **Federal Register** per authority delegated to the Managing Director.

iv. Deminimis Fee Payment Liability

21. As we have in the past, we are proposing that regulatees whose *total regulatory fee liability,* including all categories of fees for which payment is due by an entity, amounts to less than $10 will be exempted from fee payment in FY 2002.

[18] Applicants for new, renewal and reinstatement licenses in the following services will be required to pay their regulatory fees in advance: Land Mobile Services, Microwave Services, Marine (Ship) Service, Marine (Coast) Service, Private Land Mobile (Other) Services, Aviation (Aircraft) Service, Aviation (Ground) Service, General Mobile Radio Service (GMRS), 218–219 MHz Service (if any applications should be filed), Rural Radio Service, and Amateur Vanity Call Signs.

v. Standard Fee Calculations and Payment Dates

22. The time for payment of standard fees and any installment payments will be announced in our *Report and Order* terminating this proceeding or will be published in the **Federal Register** pursuant to authority delegated to the Managing Director. For licensees and permittees of Mass Media services, we propose that the responsibility for payment of regulatory fees rests with the holder of the permit or license on October 1, 2001. However, in instances where a Mass Media service license or authorization is *transferred or assigned after October 1, 2001,* and arrangements to pay have not been made between the two parties, the fee is still due and we propose that the fee shall be paid by the licensee or holder of the authorization on the date that the fee payment is due. For licensees, permittees and holders of other authorizations in the Common Carrier and Cable Services whose fees are not based on a subscriber, unit, or circuit count, we are proposing that fees be paid for any authorization issued on or before *October 1, 2001.* A pending change in the status of a license or permit that is not granted as of that date is not taken into account, and the fee is based on the authorization that existed on October 1, 2001.

23. For regulatees whose fees are based upon a subscriber, unit or circuit count, such as cable subscriber services and Commercial Mobile Radio Service (CMRS) cellular, mobile, and messaging services, the number of a regulatees' subscribers, units or circuits on *December 31, 2001,* will be used to calculate the fee payment.[19] A pending change in the status of a license or permit that is not granted as of that date is not effective, and the fee is based on the classification that existed on that date. Where a license or authorization is transferred or assigned after December 31, 2001, the fee shall be paid by the licensee or holder of the authorization on the date that the payment is due. For facilities-based common carriers with active international bearer circuits, the fee is based on the circuit count as of December 31, 2001.

24. Because of the time constraint in paying regulatory fees, the Commission *highly recommends* that entities submitting *more than twenty-five (25) Form 159–C's* use the *electronic fee filer program* when sending in their regulatory fee payment. This will not only reduce errors that can result, but also reduce the amount of paperwork that is received by the Commission. Furthermore, as was the practice last year, the Commission will, for the convenience of payers, accept fee payments made *in advance* of the normal formal window for the payment of regulatory fees.

vi. Mandatory Use of FCC Registration Number (FRN)

25. As a result of a Commission proceeding adopted on August 24, 2001 and effective December 3, 2001, the use of the FCC Federal Registration Number (FRN) is now mandatory by anyone doing business with the Commission, including those subject to the regulatory fee program.[20] Failure to follow the directions regarding the use of the FRN will result in a delay in crediting the payment to the proper account, which may result in the initiation of a delinquent collection effort against the entity.

vii. Population Count of AM and FM Radio Stations

26. The population count for radio stations is not derived merely by a census count of the surrounding community, but from a formula that incorporates various indices such as power, tower size, class size, and other technical attributes. The methodology for calculating the population count is listed in Attachment H of the Assessment and Collection of Regulatory Fees, Notice of Proposed Rulemaking, and Report and Order. Because a number of components are used to calculate the population city grade of each station, it is possible that in some instances the calculation of the population count and related fee may inadvertently be incorrectly stated in the Mass Media Regulatory Fees Public Notice that identifies the radio station call signs and their respective fees. Therefore, we propose that if a licensee has paid the fee listed in the Mass Media Regulatory Fees Public Notice and it is later determined that the population calculation for the station is incorrect, and a letter verifying the correct population count is provided from the supplier of the population calculation, the Commission will refund the fee amount overpaid. Similarly, we also propose that if it is determined that the population calculation and related fee for the station has been understated, and the Commission obtains verification of the correct population calculation from the supplier of the population calculation, the Commission will bill the licensee for the difference in fees that should have been paid.

27. We further propose that we will make corrections for such population calculation errors, whether by refunding or billing for corrected fee amounts, only for three (3) fiscal years after the error appears in the Mass Media Regulatory Fees Public Notice. For example, in the case of a population calculation error resulting in an overstated fee amount, if the Mass Media Regulatory Fees Public Notice for FY 2002 contains a population calculation and related fee error and the licensee provides the appropriate verification of the error before September 30, 2005, the Commission will refund the amount overpaid. Similarly, in a case where a population calculation error results in an understated fee amount, if the Fiscal Year 2002 population calculation error is discovered and verified before September 30, 2005, the Commission will bill the licensee for the difference between the correct fee and the fee listed in the Fiscal Year 2002 Mass Media Regulatory Fees Public Notice. We believe that three years provides a reasonable time for a licensee or the Commission to discover and seek to rectify population calculation errors, and that limiting the time for correction of fees will protect both licensees and the Government from being subject to indefinite potential obligations to make corrective payments.

viii. Technical Changes

28. Presently, regulatory fee payments may be made by Visa and MasterCard credit cards. When paying by credit card, regulatees have two options: (1) Regulatees may submit their payment by using the Commission's FeeFiler (an electronic payment system), or (2) Regulatees may provide the requested credit card information on the FCC Form 159, (Remittance Advice), and mail it to the address described in the Public Notice. Refunds of regulatory fees paid by credit cards are made by check payable to the regulatory fee payor. *No refunds are issued to the card processor.* To expand the use of other types of credit cards, the Commission proposes to accept American Express and Discover credit cards in addition to Visa and MasterCard credit cards.

29. It has come to our attention that we did not make corresponding revisions to certain descriptive portions of §§ 1.1152 and 1.1157 of our rules

[19] Cable system operators are to compute their subscribers as follows: Number of single family dwellings + number of individual households in multiple dwelling unit (apartments, condominiums, mobile home parks, etc.) paying at the basic subscriber rate + bulk rate customers + courtesy and free service. Note: Bulk-Rate Customers = Total annual bulk-rate charge divided by basic annual subscription rate for individual households. Cable system operators may base their count on ''a typical day in the last full week'' of December 2001, rather than on a count as of December 31, 2001.

[20] 66 FR 47890 (September 14, 2001).

when the regulatory fees for wireless radio services were amended to include standard annual regulatory fees based on payment units for Commercial Mobile Radio Service (CMRS) and CMRS messaging. We propose to make the necessary changes to these descriptive portions of §§ 1.1152 and 1.1157 of our rules to reflect that it is no longer the case that all regulatory fee payments for wireless radio services are paid in advance when applications are filed.

30. The Commission incurs transaction costs when processing refunds. The Commission has determined that, in some instances, the transaction costs outweigh the dollar amount of the refund. Therefore, in terms of more efficient money management, the Commission proposes that payments in excess of an application or regulatory fee will be refunded only if the overpayment is *$10 or more.*

D. Schedule of Regulatory Fees

31. The Commission's proposed Schedule of Regulatory Fees for FY 2002 is contained in Attachment D of this *NPRM.*

E. Enforcement

32. As required in 47 U.S.C. 159(c), an additional charge shall be assessed as a penalty for late payment of any regulatory fee. A late payment penalty of 25 percent of the amount of the required regulatory fee will be assessed on the first day following the deadline date for filing of these fees. Failure to pay regulatory fees and/or any late penalty will subject regulatees to sanctions, including the provisions set forth in the Debt Collection Improvement Act of 1996 (''DCIA''). The Commission assesses administrative processing charges on delinquent debts to recover additional costs incurred in processing and handling the related debt pursuant to the DCIA and § 1.1940(d) of the Commission's Rules. These administrative processing charges will be assessed on any delinquent regulatory fee, in addition to the 25 percent late charge penalty. Partial or underpayment of regulatory fees are treated in the following manner. The licensee will be given credit for the amount paid, but if it is later determined that the fee paid is incorrect or was submitted after the deadline date, the 25 percent late charge penalty will be assessed on the portion that is submitted after the filing window. *See* 47 CFR 1.1164. Failure to pay regulatory fees can result in the initiation of a proceeding to revoke any and all authorizations held by the delinquent payor. *See* 47 CFR 1.1164.

IV. Procedural Matters

A. Comment Period and Procedures

33. Pursuant to §§ 1.415 and 1.419 of the Commission's rules, 47 CFR 1.415, 1.419, interested parties may file comments on or before April 23, 2002, and reply comments on or before May 3, 2002. Comments may be filed using the Commission's Electronic Comment Filing System (ECFS) or by filing paper copies.[21]

34. Comments filed through the ECFS can be sent as an electronic file via the Internet to *http://www.fcc.gov/e-file/ecfs.html*. Generally, only one copy of an electronic submission must be filed. In completing the transmittal screen, commenters should include their full name, Postal Service mailing address, and the applicable docket or rulemaking number. Parties may also submit an electronic comment by e-mail via the Internet. To receive filing instructions for e-mail comments, commenters should send an e-mail to *ecfs@fcc.gov,* and should include the following words in the body of the message, ''get form <your e-mail address.>'' A sample form and directions will be sent in reply.

35. Parties who choose to file by paper must file an original and four copies of each filing. Filings can be sent by hand or messenger delivery, by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail (although we continue to experience delays in receiving U.S. Postal Service mail). The Commission's contractor, Vistronix, Inc., will receive hand-delivered or messenger-delivered paper filings for the Commission's Acting Secretary, William F. Caton, at 236 Massachusetts Avenue, NE., Suite 110, Washington, DC 20002. The filing hours at this location will be 8:00 a.m. to 7:00 p.m. All hand deliveries must be held together with rubber bands or fasteners. Any envelopes must be disposed of before entering the building. Commercial overnight mail (other than U.S. Postal Service Express Mail and Priority Mail) must be sent to 9300 East Hampton Drive, Capitol Heights, MD 20743. U.S. Postal Service first-class mail, Express Mail, and Priority Mail should be addressed to 445 12th Street, SW., Washington, DC 20554. All filings must be addressed to the Commission's Acting Secretary, William F. Caton, Office of the Secretary, Federal Communications Commission.

36. Parties who choose to file by paper should also submit their comments on diskette. These diskettes should be submitted to: Terry Johnson, Office of Managing Director, Federal Communications Commission, 445 12th Street, SW., 1–C807, Washington, DC 20554. Such a submission should be on a 3.5 inch diskette formatted in an IBM compatible format using Microsoft TM Word 97 for Windows or compatible software. The diskette should be accompanied by a cover letter and should be submitted in ''read only'' mode. The diskette should be clearly labeled with the commenter's name, proceeding (including the lead docket number in this case, MD Docket No. 02–64), type of pleading (comment or reply comment), date of submission, and the name of the electronic file on the diskette. The label should also include the following phrase ''Disk Copy—Not an Original.'' Each diskette should contain only one party's pleadings, preferably in a single electronic file. In addition, commenters must send diskette copies to the Commission's copy contractor, Qualex International, 445 12th Street, SW., Room CY–B402, Washington, DC 20554. Alternative formats (computer diskette, large print, audio recording, and Braille) are available to persons with disabilities by contacting Brian Millin at (202) 418–7426 voice, (202) 418–7365 TTY, or *bmillin@fcc.gov.* This NPRM can also be downloaded in Microsoft Word and ASCII formats at *http://www.fcc.gov/ccb/cpd.*

37. The public may view the documents filed in this proceeding during regular business hours in the FCC Reference Center, Federal Communications Commission, Room CY–A257, 445 12th Street, S.W., Washington, D.C. 20554, and through the Commission's Electronic Comment Filing System (ECFS) *http://www.fcc.gov/e-file/ecfs.html.*

B. Ex Parte Rules

38. This is a permit-but-disclose notice and comment rulemaking proceeding. *Ex parte* presentations are permitted, except during the Sunshine Agenda period, provided they are disclosed pursuant to the Commission's rules.[22]

C. Initial Regulatory Flexibility Analysis

39. As required by the Regulatory Flexibility Act,[23] the Commission has prepared an Initial Regulatory Flexibility Analysis (IRFA) of the possible impact on small entities of the proposals suggested in this document. The IRFA is set forth as Attachment A.

[21] *Electronic Filing of Documents in Rulemaking Proceedings,* 63 FR 24121 (May 1, 1998).

[22] 47 CFR 1.1203 and 1.1206(b).

[23] See 5 U.S.C. 603.

Written public comments are requested with respect to the IRFA. These comments must be filed in accordance with the same filing deadlines for comments on the rest of the *NPRM*, and must have a separate and distinct heading, designating the comments as responses to the IRFA. The Consumer and Governmental Affairs Bureau (CGA), Reference Information Center, shall send a copy of this *NPRM*, including the IRFA, to the Chief Counsel for Advocacy of the Small Business Administration, in accordance with the Regulatory Flexibility Act.

D. Authority and Further Information

40. Authority for this proceeding is contained in sections 4(i) and (j), 8, 9, and 303(r) of the Communications Act of 1934, as amended.[24] It is ordered that this *NPRM* is adopted. It is further ordered that the Commission's Consumer and Governmental Affairs Bureau (CGA), Reference Information Center, shall send a copy of this *NPRM*, including the Initial Regulatory Flexibility Analysis, to the Chief Counsel for Advocacy of the Small Business Administration.

41. Further information about this proceeding may be obtained by contacting the Fees Hotline at (888) 225–5322.

Federal Communications Commission.

William F. Caton,

Acting Secretary.

Attachment A—Initial Regulatory Flexibility Analysis

1. As required by the Regulatory Flexibility Act (RFA),[25] an Initial Regulatory Flexibility Analysis (IRFA) of the possible significant economic impact on small entities was incorporated in the *Notice of Proposed Rulemaking, In the Matter of Assessment and Collection of Regulatory Fees for Fiscal Year 2002*.[26] Written public comments are requested on this IRFA. Comments must be identified as responses to the IRFA and must be filed by the deadlines for comments on the IRFA provided in the comment period section of the *NPRM*. The Commission will send a copy of the *NPRM*, including IRFA, to the Chief Counsel for Advocacy of the Small Business Administration. In addition, the *NPRM* and IRFA (or summaries thereof) will be published in the **Federal Register**. This present Initial Regulatory Flexibility Analysis (IRFA) conforms to the RFA.[27]

I. Need for, and Objectives of, the Proposed Rules

2. This rulemaking proceeding is initiated to obtain comments concerning the Commission's proposed amendment of its Schedule of Regulatory Fees in the amount of $218,757,000, the amount that Congress has required the Commission to recover. The Commission seeks to collect the necessary amount through its revised fees, as contained in the attached Schedule of Regulatory Fees, in the most efficient manner possible and without undue burden on the public.

II. Description and Estimate of the Number of Small Entities to Which the Proposed Rules Will Apply

3. The IRFA directs agencies to provide a description of and, where feasible, an estimate of the number of small entities that may be affected by the proposed rules, if adopted.[28] The IRFA defines the term ''small entity'' as having the same meaning as the terms ''small business,'' ''small organization,'' and ''small governmental jurisdiction.'' [29] In addition, the term ''small business'' has the same meaning as the term ''small business concern'' under the Small Business Act.[30] A small business concern is one which: (1) is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the Small Business Administration (SBA).[31] A small organization is generally ''any not-for-profit enterprise which is independently owned and operated and is not dominant in its field.'' [32] Nationwide, as of 1992, there were approximately 275,801 small organizations.[33] ''Small governmental jurisdiction''[34] generally means ''governments of cities, counties, towns, townships, villages, school districts, or special districts, with a population of less than 50,000.'' [35] As of 1992, there were approximately 85,006 governmental entities in the United States.[36] This number includes 38,978 counties, cities, and towns; of these, 37,566, or 96%, have populations of fewer than 50,000.[37] The Census Bureau estimates that this ratio is approximately accurate for all governmental entities. Thus, of the 85,006 governmental entities, we estimate that 81,600 (96%) are small entities. Below, we further describe and estimate the number of small entity licensees and regulatees that may be affected by the proposed rules, if adopted.

Cable Services or Systems

4. The SBA has developed a definition of small entities for cable and other pay television services, which includes all such companies generating $11 million or less in revenue annually.[38] This definition includes cable systems operators, closed circuit television services, direct broadcast satellite services, multipoint distribution systems, satellite master antenna systems and subscription television services. According to the Census Bureau data from 1992, there were 1,788 total cable and other pay television services and 1,423 had less than $11 million in revenue.[39]

5. The Commission has developed its own definition of a small cable system operator for purposes of rate regulation. Under the Commission's rules, a ''small cable company'' is one serving fewer than 400,000 subscribers nationwide.[40] Based on our most recent information, we estimate that there were 1,439 cable operators that qualified as small cable system operators at the end of 1995.[41] Since then, some of those companies may have grown to serve over 400,000

[24] 47 U.S.C. 154(i)–(j), 159, & 303(r).

[25] 5 U.S.C. 603. The RFA, 5 U.S.C. 601 *et. seq.*, has been amended by the Contract With America Advancement Act of 1996, Public Law 104–121, 110 Stat. 847 (1996) (CWAAA). Title II of the CWAAA is the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA).

[26] 66 FR 19681 (April 16, 2001).

[27] 5 U.S.C. 604.

[28] 5 U.S.C. 603(b)(3).

[29] 5 U.S.C. 601(6).

[30] 5 U.S.C. 601(3) (incorporating by reference the definition of ''small business concern'' in 15 U.S.C. 632). Pursuant to the RFA, the statutory definition of a small business applies ''unless an agency, after consultation with the Office of Advocacy of the Small Business Administration and after opportunity for public comment, establishes one or more definitions of such term which are appropriate to the activities of the agency and publishes such definition(s) in the **Federal Register**.'' 5 U.S.C. 601(3).

[31] Small Business Act, 15 U.S.C. 632 (1996).

[32] 5 U.S.C. 601(4).

[33] 1992 Economic Census, U.S. Bureau of the Census, Table 6 (special tabulation of data under contract to Office of Advocacy of the U.S. Small Business Administration).

[34] 47 CFR 1.1162

[35] 5 U.S.C. 601(5).

[36] U.S. Dept. of Commerce, Bureau of the Census, ''1992 Census of Governments.''

[37] *Id.*

[38] 13 CFR 121.201, North American Industry Classification System (NAICS) codes 51321 and 51322.

[39] *1992 Economic Census Industry and Enterprise Receipts Size Report*, Table 2D, NAICS codes 51321 and 51322 (U.S. Bureau of the Census data under contract to the Office of Advocacy of the U.S. Small Business Administration).

[40] 47 CFR 76.901(e). The Commission developed this definition based on its determination that a small cable system operator is one with annual revenues of $100 million or less. *Implementation of Sections of the 1992 Cable Act: Rate Regulation, Sixth Report and Order and Eleventh Order on Reconsideration*, 10 FCC Rcd 7393 (1995), 60 FR 10534 (Feb. 27, 1995).

[41] Paul Kagan Associates, Inc., *Cable TV Investor*, Feb. 29, 1996 (based on figures for Dec. 30, 1995).

subscribers, and others may have been involved in transactions that caused them to be combined with other cable operators. Consequently, we estimate that there are fewer than 1,439 small entity cable system operators.

6. The Communications Act of 1934, as amended, also contains a definition of a small cable system operator, which is ''a cable operator that, directly or through an affiliate, serves in the aggregate fewer than 1 percent of all subscribers in the United States and is not affiliated with any entity or entities whose gross annual revenues in the aggregate exceed $250,000,000.'' [42] The Commission has determined that there are 68,980,000 subscribers in the United States.[43] Therefore, we estimate that an operator serving fewer than 689,800 subscribers shall be deemed a small operator, if its annual revenues, when combined with the total annual revenues of all of its affiliates, do not exceed $250 million in the aggregate.[44] Based on available data, we estimate that the number of cable operators serving 689,800 subscribers or less totals 1,450.[45] We do not request nor collect information on whether cable system operators are affiliated with entities whose gross annual revenues exceed $250,000,000,[46] and therefore are unable at this time to estimate more accurately the number of cable system operators that would qualify as small cable operators under the definition in the Communications Act.

7. *Other Pay Services.* Other pay television services are also classified under the North American Industry Classification System (NAICS) codes 51321 and 51322, which includes cable systems operators, closed circuit television services, direct broadcast satellite services (DBS),[47] multipoint distribution systems (MDS),[48] satellite master antenna systems (SMATV), and subscription television services.

Common Carrier Services and Related Entities

8. The most reliable source of information regarding the total numbers of certain common carrier and related providers nationwide appears to be data the Commission publishes annually in its *Telecommunications Provider Locator* report, which encompasses data compiled from FCC Form 499–A Telecommunications Reporting Worksheets.[49] According to data in the most recent report, there are 5,679 interstate service providers.[50] These providers include, *inter alia*, incumbent local exchange carriers, competitive access providers (CAPS)/competitive local exchange carriers (CLECs), local resellers and other local exchange carriers, interexchange carriers, operator service providers, prepaid calling card providers, toll resellers, and other toll carriers.

9. We have included small incumbent local exchange carriers (LECs) [51] in this present RFA analysis. As noted above, a ''small business'' under the RFA is one that, *inter alia*, meets the pertinent small business size standard (*e.g.,* a telephone communications business having 1,500 or fewer employees), and ''is not dominant in its field of operation.'' [52] The SBA's Office of Advocacy contends that, for RFA purposes, small incumbent LECs are not dominant in their field of operation because any such dominance is not ''national'' in scope.[53] We have therefore included small incumbent LECs in this IRFA analysis, although we emphasize that this IRFA action has no effect on Commission analyses and determinations in other, non-RFA contexts.

10. *Total Number of Telephone Companies Affected.* The Census Bureau reports that, at the end of 1992, there were 3,497 firms engaged in providing telephone services, as defined therein, for at least one year.[54] This number contains a variety of different categories of carriers, including local exchange carriers, interexchange carriers, competitive access providers, operator service providers, pay telephone operators, and resellers. It seems certain that some of these 3,497 telephone service firms may not qualify as small entities or small incumbent LECs because they are not ''independently owned and operated.'' [55] It seems reasonable to conclude that fewer than 3,497 telephone service firms are small entity telephone service firms or small incumbent LECs that may be affected by the proposed rules, if adopted.

11. *Wireline Carriers and Service Providers.* The SBA has developed a definition of small entities for telephone communications companies other than radiotelephone (wireless) companies. The Census Bureau reports that there were 2,321 such telephone companies in operation for at least one year at the end of 1992.[56] According to the SBA's definition, a small business telephone company other than a radiotelephone (wireless) company is one employing no more than 1,500 persons.[57] All but 26 of the 2,321 non-radiotelephone (wireless) companies listed by the Census Bureau were reported to have fewer than 1,000 employees. Even if all 26 of the remaining companies had more than 1,500 employees, there would still be 2,295 non-radiotelephone (wireless) companies that might qualify as small entities or small incumbent LECs. Although it seems certain that some of these carriers are not independently owned and operated, we are unable at this time to estimate with greater precision the number of wireline carriers and service providers that would qualify as small business concerns under SBA's definition. Therefore, we estimate that fewer than 2,295 small telephone communications companies other than radiotelephone (wireless) companies are small entities or small incumbent LECs that may be affected by the proposed rules, if adopted.

12. *Local Exchange Carriers (LECS), Competitive Access Providers (CAPs), Interexchange Carriers (IXCs), Operator Service Providers (OSPs), Payphone*

[42] 47 U.S.C. 543(m)(2).

[43] *Annual Assessment of the Status on Competition in the Market for the Delivery of Video Programming*, CS Docket No. 00–132, Seventh Annual Report, FCC 01–1 (released January 8, 2001), Table C–1.

[44] *Id.* 47 CFR 76.1403(b).

[45] *FCC Announces New Subscriber Count for the Definition of Small Cable Operator*, Public Notice, DA–01–0158 (released January 24, 2001).

[46] We do receive such information on a case-by-case basis only if a cable operator appeals a local franchise authority's finding that the operator does not qualify as a small cable operator pursuant to § 76.1403(b) of the Commission's rules. *See* 47 CFR 76.1403(d).

[47] Direct Broadcast Services (DBS) are discussed with the international services, *infra*.

[48] Multipoint Distribution Services (MDS) are discussed with the mass media services, *infra*.

[49] FCC, Common Carrier Bureau, Industry Analysis Division, *Telecommunications Provider Locator*, Table 1 (November 2001).

[50] FCC, *Telecommunications Provider Locator* at Table 1.

[51] See 47 U.S.C 251(h) (defining ''incumbent local exchange carrier'').

[52] 5 U.S.C. 601(3).

[53] Letter from Jere W. Glover, Chief Counsel for Advocacy, SBA, to William E. Kennard, Chairman, FCC (May 27, 1999). The Small Business Act contains a definition of ''small business concern,'' which the RFA incorporates into its own definition of ''small business.'' See 15 U.S.C. 632(a) (Small Business Act); 5 U.S.C. 601(3) (RFA). SBA regulations interpret ''small business concern'' to include the concept of dominance on a national basis. 13 CFR 121.102(b). Since 1996, out of an abundance of caution, the Commission has included small incumbent LECs in its regulatory flexibility analyses. See, e.g., Implementation of the Local Competition Provisions of the Telecommunications Act of 1996, CC Docket, 96–98, First Report and Order, 11 FCC Rcd 15499, 16144–45 (1996), 61 FR 45476 (Aug. 29, 1996).

[54] U.S. Department of Commerce, Bureau of the Census, *1992 Census of Transportation, Communications, and Utilities: Establishment and Firm Size*, at Firm Size 1–123 (1995) (*1992 Census*).

[55] *See generally* 15 U.S.C. 632(a)(1).

[56] *1992 Census, supra,* at Firm Size 1–123.

[57] 13 CFR 121.201, NAICS codes 51331, 51333, and 51334.

Providers, and Resellers. Neither the Commission nor the SBA has developed a definition for small LECs, competitive access providers (CAPs), interexchange carriers (IXCs), operator service providers (OSPs), payphone providers, or resellers. The closest applicable definition for these carrier-types under SBA rules is for telephone communications companies other than radiotelephone (wireless) companies.[58] The most reliable source of information that we know regarding the number of these carriers nationwide appears to be the data that we collect annually in connection with the FCC 499–A Telecommunications Reporting Worksheets.[59]

According to our most recent data, there are 1,329 incumbent and other LECs, 532 CAPs and competitive local exchange carriers (CLECs), 229 IXCs, 22 OSPs, 936 payphone providers, 32 prepaid calling card providers, 38 other toll carriers, and 710 local and toll resellers.[60] Although it seems certain that some of these carriers are not independently owned and operated, or have more than 1,500 employees, we are unable at this time to estimate with greater precision the number of these carriers that would qualify as small business concerns under the SBA's definition. Therefore, we estimate that there are fewer than 1,329 small entity incumbent and other LECs, 532 CAPs/CLECs, 229 IXCs, 22 OSPs, 936 payphone providers, and 710 local and toll resellers, 32 prepaid calling card providers, and 38 other toll carriers that may be affected by the proposed rules, if adopted.

International Services

13. The Commission has not developed a definition of small entities applicable to licensees in the international services. Therefore, the applicable definition of small entity is generally the definition under the SBA rules applicable to Communications Services, Not Elsewhere Classified (NEC).[61] This definition provides that a small entity is expressed as one with $11.0 million or less in annual receipts.[62] According to the Census Bureau, there were a total of 848 communications services providers, NEC, in operation in 1992, and a total of 775 had annual receipts of less than $10.0 million.[63] The Census report does not provide more precise data.

14. *International Broadcast Stations.* Commission records show that there are approximately 19 international high frequency broadcast station authorizations. We do not request nor collect annual revenue information, and are unable to estimate the number of international high frequency broadcast stations that would constitute a small business under the SBA definition. However, the Commission estimates that only six international high frequency broadcast stations are subject to regulatory fee payments.

15. *International Public Fixed Radio (Public and Control Stations).* There is one licensee in this service subject to payment of regulatory fees, and the licensee does not constitute a small business under the SBA definition.

16. *Fixed Satellite Transmit/Receive Earth Stations.* There are approximately 4,303 earth station authorizations, a portion of which are Fixed Satellite Transmit/Receive Earth Stations. We do not request nor collect annual revenue information, and are unable to estimate the number of the earth stations that would constitute a small business under the SBA definition.

17. *Fixed Satellite Small Transmit/Receive Earth Stations.* There are approximately 4,303 earth station authorizations, a portion of which are Fixed Satellite Small Transmit/Receive Earth Stations. We do not request nor collect annual revenue information, and are unable to estimate the number of fixed small satellite transmit/receive earth stations that would constitute a small business under the SBA definition.

18. *Fixed Satellite Very Small Aperture Terminal (VSAT) Systems.* These stations operate on a primary basis, and frequency coordination with terrestrial microwave systems is not required. Thus, a single ''blanket'' application may be filed for a specified number of small antennas and one or more hub stations. There are 485 current VSAT System authorizations. We do not request nor collect annual revenue information, and are unable to estimate the number of VSAT systems that would constitute a small business under the SBA definition.

19. *Mobile Satellite Earth Stations. There are 21 licensees.* We do not request nor collect annual revenue information, and are unable to estimate the number of mobile satellite earth stations that would constitute a small business under the SBA definition.

20. *Radio Determination Satellite Earth Stations.* There are four licensees. We do not request nor collect annual revenue information, and are unable to estimate the number of radio determination satellite earth stations that would constitute a small business under the SBA definition.

21. *Space Stations (Geostationary).* There are presently an estimated 71 Geostationary Space Station authorizations. We do not request nor collect annual revenue information, and are unable to estimate the number of geostationary space stations that would constitute a small business under the SBA definition.

22. *Space Stations (Non-Geostationary).* There are presently six Non-Geostationary Space Station authorizations. We do not request nor collect annual revenue information, and are unable to estimate the number of non-geostationary space stations that would constitute a small business under the SBA definition.

23. *Direct Broadcast Satellites.* Because DBS provides subscription services, DBS falls within the SBA-recognized definition of ''Cable and Other Pay Television Services.''[64] This definition provides that a small entity is one with $11.0 million or less in annual receipts.[65] Currently, there are nine DBS authorizations, though there are only two DBS companies in operation at this time. We do not request nor collect annual revenue information for DBS services, and are unable to determine the number of DBS operators that would constitute a small business under the SBA definition.

Mass Media Services

24. *Commercial Radio and Television Services.* The proposed rules and policies will apply to television broadcasting licensees and radio broadcasting licensees.[66] The SBA

[58] 13 CFR 121.201, NAICS codes 51331, 51333, and 51334.

[59] See *Telecommunications Provider Locator* at Table 1.

[60] *Telecommunications Provider Locator* at Table 1. The total for resellers includes both toll resellers and local resellers.

[61] An exception is the Direct Broadcast Satellite (DBS) Service, *infra.*

[62] 13 CFR 121.201, NAICS codes 48531, 513322, 51334, and 51339.

[63] *1992 Economic Census Industry and Enterprise Receipts Size Report,* Table 2D, NAICS codes 48531, 513322, 51334, and 513391 (U.S. Bureau of the Census data under contract to the Office of Advocacy of the U.S. Small Business Administration).

[64] 13 CFR 121.201, NAICS codes 51321 and 51322.

[65] 13 CFR 121.201, NAICS codes 51321 and 51322.

[66] While we tentatively believe that the SBA's definition of ''small business'' greatly overstates the number of radio and television broadcast stations that are small businesses and is not suitable for purposes of determining the impact of the proposals on small television and radio stations, for purposes of this *NPRM* we utilize the SBA's definition in determining the number of small businesses to which the proposed rules would apply. We reserve the right to adopt, in the future, a more suitable definition of ''small business'' as applied to radio and television broadcast stations or other entities subject to the proposed rules in this *NPRM,* and to

defines a television broadcasting station that has $10.5 million or less in annual receipts as a small business.[67] Television broadcasting stations consist of establishments primarily engaged in broadcasting visual programs by television to the public, except cable and other pay television services.[68] Included in this industry are commercial, religious, educational, and other television stations.[69] Also included are establishments primarily engaged in television broadcasting and which produce taped television program materials.[70] Separate establishments primarily engaged in producing taped television program materials are classified under another NAICS number.[71] There were 1,509 television stations operating in the nation in 1992.[72] That number has remained fairly constant as indicated by the approximately 1,686 operating television broadcasting stations in the nation as of September 30, 2001.[73] For 1992, [74] the number of television stations that produced less than $10.0 million in revenue was 1,155 establishments.[75] Only commercial stations are subject to regulatory fees.

25. Additionally, the SBA defines a radio broadcasting station that has $5 million or less in annual receipts as a small business.[76] A radio broadcasting station is an establishment primarily engaged in broadcasting aural programs by radio to the public.[77] Included in this industry are commercial, religious, educational, and other radio stations.[78] Radio broadcasting stations, which primarily are engaged in radio broadcasting and which produce radio program materials, are similarly included.[79] However, radio stations which are separate establishments and are primarily engaged in producing radio program material are classified under another NAICS number.[80] The 1992 Census indicates that 96 percent (5,861 of 6,127) of radio station establishments produced less than $5 million in revenue in 1992.[81] Official Commission records indicate that at total of 11,334 individual radio stations were operating in 1992.[82] As of September 30, 2001, Commission records indicate that a total of 13,012 radio stations were operating, of which 8,285 were FM stations.[83] Only commercial stations are subject to regulatory fees.

26. The rules may affect an estimated total of 1,230 television stations, approximately 1,281 of which are considered small businesses.[84] The revised rules will also affect an estimated total of 10,819 radio stations, approximately 12,209 of which are small businesses.[85] These estimates may overstate the number of small entities because the revenue figures on which they are based do not include or aggregate revenues from non-television or non-radio affiliated companies. There are also 2,256 low power television stations (LPTV).[86] Given the nature of this service, we will presume that all LPTV licensees qualify as small entities under the SBA definition.

27. *Auxiliary, Special Broadcast and Other Program Distribution Services.* This service involves a variety of transmitters, generally used to relay broadcast programming to the public (through translator and booster stations) or within the program distribution chain (from a remote news gathering unit back to the station). The Commission has not developed a definition of small entities applicable to broadcast auxiliary licensees. The applicable definitions of small entities are those, noted previously, under the SBA rules applicable to radio broadcasting stations and television broadcasting stations.[87]

28. The Commission estimates that there are approximately 3,600 translators and boosters. The Commission does not collect financial information on any broadcast facility, and the Department of Commerce does not collect financial information on these auxiliary broadcast facilities. We believe that most, if not all, of these auxiliary facilities could be classified as small businesses by themselves. We also recognize that most commercial translators and boosters are owned by a parent station which, in some cases, would be covered by the revenue definition of small business entity discussed above. These stations would likely have annual revenues that exceed the SBA maximum to be designated as a small business (either $5 million for a radio station or $10.5 million for a TV station). Furthermore, they do not meet the Small Business Act's definition of a ''small business concern'' because they are not independently owned and operated.[88]

29. *Multipoint Distribution Service (MDS).* This service has historically provided primarily point-to-multipoint, one-way video services to subscribers, and Local Multipoint Distribution Service (LMDS).[89] The Commission recently amended its rules to allow MDS licensees to provide a wide range of high-speed, two-way services to a variety of users.[90] In connection with

consider further the issue of the number of small entities that are radio and television broadcasters or other small media entities. See *Report and Order in MM Docket No. 93–48 (Children's Television Programming),* 11 FCC Rcd 10660, 10737–38 (1996), 61 FR 43981 (Aug. 27, 1996), *citing* 5 U.S.C. 601(3).

[67] 13 CFR 121.201, NAICS code 51312.

[68] Economics and Statistics Administration, Bureau of Census, U.S. Department of Commerce, *1992 Census of Transportation, Communications and Utilities, Establishment and Firm Size, Series UC92–S–1,* Appendix A–9 (1995) (*1992 Census, Series UC92–S–1*).

[69] *Id.; see* Executive Office of the President, Office of Management and Budget, *Standard Industrial Classification Manual* (1987), at 283, which describes ''Television Broadcasting Stations'' (SIC code 4833, now NAICS code 51312) as:

Establishments primarily engaged in broadcasting visual programs by television to the public, except cable and other pay television services. Included in this industry are commercial, religious, educational and other television stations. Also included here are establishments primarily engaged in television broadcasting and which produce taped television program materials.

[70] *1992 Census, Series UC92-S–1,* at Appendix A–9.

[71] *Id.,* NAICS code 51211 (Motion Picture and Video Tape Production); NAICS 51229 (Theatrical Producers and Miscellaneous Theatrical Services) (producers of live radio and television programs).

[72] FCC News Release No. 31327 (January 13, 1993); *1992 Census, Series UC92–S–1,* at Appendix A–9.

[73] FCC News Release, ''Broadcast Station Totals as of September 30, 2001.''

[74] A census to determine the estimated number of Communications establishments is performed every five years, in years ending with a ''2'' or ''7.'' See *1992 Census, Series UC92–S–1,* at III.

[75] The amount of $10 million was used to estimate the number of small business establishments because the relevant Census categories stopped at $9,999,999 and began at $10,000,000. No category for $10.5 million existed. Thus, the number is as accurate as it is possible to calculate with the available information.

[76] 13 CFR 121.201, NAICS codes 513111 and 513112.

[77] *1992 Census, Series UC92–S–1,* at Appendix A–9.

[78] *Id.*

[79] *Id.*

[80] *Id.*

[81] The Census Bureau counts radio stations located at the same facility as one establishment. Therefore, each co-located AM/FM combination counts as one establishment.

[82] FCC News Release, No. 31327 (Jan. 13, 1993).

[83] FCC News Release, ''Broadcast Station Totals as of September 30, 2001.''

[84] We use an estimated figure of 77 percent (from 1992) of TV stations operating at less than $10 million and apply it to the 2000 total of 1,663 TV stations to arrive at 1,281 stations categorized as small businesses.

[85] We use the 96% figure of radio station establishments with less than $5 million revenue from data presented in the year 2000 estimate (FCC News Release, September 30, 2000) and apply it to the 12,717 individual station count to arrive at 12,209 individual stations as small businesses.

[86] FCC News Release, ''Broadcast Station Totals as of September 30, 2001.''

[87] 13 CFR 121.201, NAICS codes 513111 and 513112.

[88] 15 U.S.C. 632.

[89] For purposes of this item, MDS includes single channel Multipoint Distribution Service (MDS), Local Multipoint Distribution Service (LMDS), and the Multichannel Multipoint Distribution Service (MMDS). *See* 66 FR 36177.

[90] Amendment of Parts 21 and 74 to Enable Multipoint Distribution Service and Instructional Television Fixed Service Licensees to Engage in

Continued

the 1996 MDS auction, the Commission defined small businesses as entities that had annual average gross revenues for the three preceding years not in excess of $40 million.[91] The Commission established this small business definition in the context of this particular service and with the approval of the SBA.[92] The MDS auction resulted in 67 successful bidders obtaining licensing opportunities for 493 Basic Trading Areas (BTAs).[93] Of the 67 auction winners, 61 met the definition of a small business. At this time, we estimate that of the 61 small business MDS auction winners, 48 remain small business licensees. In addition to the 48 small businesses that hold BTA authorizations, there are approximately 392 incumbent MDS licensees that are considered small entities.[94] After adding the number of small business auction licensees to the number of incumbent licensees not already counted, we find that there are currently approximately 440 MDS licensees that are defined as small businesses under either the SBA or the Commission's rules. Some of those 440 small business licensees may be affected by the proposals in this Notice.

Wireless and Commercial Mobile Services

30. *Cellular Licensees.* Neither the Commission nor the SBA has developed a definition of small entities specific to cellular licensees. Therefore, the applicable definition of small entity is the definition under the SBA rules applicable to radiotelephone (wireless) companies. This provides that a small entity is a radiotelephone (wireless) company employing no more than 1,500 persons.[95] According to the Census Bureau, only twelve radiotelephone (wireless) firms from a total of 1,178 such firms which operated during 1992 had 1,000 or more employees.[96] Even if all twelve of these firms were cellular telephone companies, nearly all cellular carriers were small businesses under the SBA's definition. In addition, we note that there are 1,758 cellular licenses; however, a cellular licensee may own several licenses. According to the November 2001 Telecommunications Provider Locater, 858 wireless telephony providers reported that they were engaged in the provision of either cellular service, Personal Communications Service (PCS) services, and SMR telephony carriers, which are placed together in the data.[97] We do not have data specifying the number of these carriers that are not independently owned and operated or have more than 1,500 employees, and are unable at this time to estimate with greater precision the number of cellular service carriers that would qualify as small business concerns under the SBA's definition. We estimate that there are fewer than 858 small wireless service providers that may be affected by the proposed rules, if adopted.

31. *220 MHz Radio Service—Phase I Licensees.* The 220 MHz service has both Phase I and Phase II licenses. Phase I licensing was conducted by lotteries in 1992 and 1993. There are approximately 1,515 such non-nationwide licensees and four nationwide licensees currently authorized to operate in the 220 MHz band. The Commission has not developed a definition of small entities specifically applicable to such incumbent 220 MHz Phase I licensees. To estimate the number of such licensees that are small businesses, we apply the definition under the SBA rules applicable to Radiotelephone (wireless) Communications companies. This definition provides that a small entity is a radiotelephone (wireless) company employing no more than 1,500 persons.[98] According to the Census Bureau, only 12 radiotelephone (wireless) firms out of a total of 1,178 such firms which operated during 1992 had 1,000 or more employees.[99] If this general ratio continues in 2001 in the context of Phase I 220 MHz licensees, we estimate that nearly all such licensees are small businesses under the SBA's definition.

32. *220 MHz Radio Service—Phase II Licensees.* The Phase II 220 MHz service is a new service, and is subject to spectrum auctions. In the 220 MHz Third Report and Order, 62 FR 16004, April 3, 1997, we adopted criteria for defining small and very small businesses for purposes of determining their eligibility for special provisions such as bidding credits and installment payments.[100] We have defined a small business as an entity that, together with its affiliates and controlling principals, has average gross revenues not exceeding $15 million for the preceding three years. A very small business is defined as an entity that, together with its affiliates and controlling principals, has average gross revenues that do not exceed $3 million for the preceding three years.[101] The SBA has approved these definitions.[102] Auctions of Phase II licenses commenced on September 15, 1998, and closed on October 22, 1998.[103] In the first auction, 908 licenses were auctioned in three different-sized geographic areas: three nationwide licenses, 30 Regional Economic Area Group (EAG) Licenses, and 875 Economic Area (EA) Licenses. Of the 908 licenses auctioned, 693 were sold.[104] Thirty-nine small businesses won licenses in the first 220 MHz auction. The second auction included 225 licenses: 216 EA licenses and 9 EAG licenses. Fourteen companies claiming small business status won 158 licenses.[105]

33. *700 MHz Guard Band Licenses.* In the 700 MHz Guard Band Order, we adopted criteria for defining small businesses and very small businesses for purposes of determining their eligibility for special provisions such as bidding credits and installment payments.[106] We have defined a small business as an entity that, together with its affiliates and controlling principals, has average gross revenues not exceeding $15

Fixed Two-Way Transmissions, 13 FCC Rcd 19112 (1998), recon., 14 FCC Rcd 12764 (1999), further recon., 15 FCC Rcd 14566 (2000).

[91] 47 CFR 21.961 and 1.2110.

[92] *Amendment of Parts 21 and 74 of the Commission's Rules with Regard to Filing Procedures in the Multipoint Distribution Service and in the Instructional Television Fixed Service and Implementation of Section 309(j) of the Communications Act—Competitive Bidding,* 10 FCC Rcd 9589, 9670 (1995), 60 FR 36524 (July 17, 1995).

[93] Basic Trading Areas (BTAs) were designed by Rand McNally and are the geographic areas by which MDS was auctioned and authorized. See id. At 9608.

[94] 47 U.S.C. 309(j). (Hundreds of stations were licensed to incumbent MDS licensees prior to implementation of Section 309(j) of the Communications Act of 1934, 47U.S.C. Section 309(j). For these pre-auction licenses, the applicable standard is SBA's small business size standard for ''other telecommunications'' (annual receipts of $11 million or less). See 13 CFR 121.201.

[95] 13 CFR 121.201, NAICS code 513322.

[96] *1992 Census, Series UC92–S–1,* at Table 5, NAICS code 513322.

[97] *Telecommunications Provider Locater,* Table 1 (November 2001).

[98] 13 CFR 121.201, NAICS code 513322.

[99] U.S. Bureau of the Census, U.S. Department of Commerce, 1992 Census of Transportation, Communications, and Utilities, UC92-S–1, Subject Series, Establishment and Firm Size, Table 5, Employment Size of Firms; 1992, NAICS codes 513321, 513322, and 51333.

[100] 220 MHz Third Report and Order, 12 FCC Rcd 10943, 11068–70, at paragraphs 291-295 (1997).

[101] 220 MHz Third Report and Order, 12 FCC Rcd at 11068–69, paragraph 291.

[102] See Letter to D. Phython, Chief, Wireless Telecommunications Bureau (FCC) from A. Alvarez, Administrator, SBA (January 6, 1998).

[103] See generally Public Notice, ''220 MHz Service Auction Closes,'' Public Notice, 14 FCC Rcd 605 (1998).

[104] Public Notice, ''FCC Announces It is Prepared to Grant 654 Phase II 220 MHz Licenses After Final Payment is Made,'' Public Notice, 14 FCC Rcd 1085 (1999).

[105] ''Phase II 220 MHz Service Spectrum Auction Closes'', Public Notice, 14 FCC Rcd 11218 (1999).

[106] See Service Rules for the 746–764 MHz Bands, and Revisions to Part 27 of the Commission's Rules, WT Docket No. 99–168, Second Report and Order, 65 FR 17599 (April 4, 2000).

million for the preceding three years. Additionally, a very small business is defined as an entity that, together with its affiliates and controlling principals, has average gross revenues that are not more than $3 million for the preceding three years. An auction of 52 Major Economic Area (MEA) licenses commenced on September 6, 2000, and closed on September 21, 2000.[107] Of the 104 licenses auctioned, 96 licenses were sold to 9 bidders. Five of these bidders were small businesses that won a total of 26 licenses. A second auction of 700 MHz Guard Band licenses commenced on February 13, 2001 and closed on February 21, 2001. All eight of the licenses auctioned were sold to three bidders. One of these bidders was a small business that won a total of two licenses.[108]

34. *Private and Common Carrier Paging.* In the Paging Third Report and Order, we adopted criteria for defining small businesses and very small businesses for purposes of determining their eligibility for special provisions such as bidding credits and installment payments.[109] We have defined a small business as an entity that, together with its affiliates and controlling principals, has average gross revenues not exceeding $15 million for the preceding three years. Additionally, a very small business is defined as an entity that, together with its affiliates and controlling principals, has average gross revenues that are not more than $3 million for the preceding three years.[110] The SBA has approved these definitions.[111] An auction of Metropolitan Economic Area licenses commenced on February 24, 2000, and closed on March 2, 2000.[112] Of the 985 licenses auctioned, 440 were sold. Fifty-seven companies claiming small business status won. At present, there are approximately 24,000 Private-Paging site-specific licenses and 74,000 Common Carrier Paging licenses. According to the most recent data in the Telecommunications Provider Locator, 608 carriers reported that they were engaged in the provision of either paging or ''other mobile'' services, which are placed together in the data.[113] We do not have data specifying the number of these carriers that are not independently owned and operated or have more than 1,500 employees, and therefore are unable at this time to estimate with greater precision the number of paging carriers that would qualify as small business concerns under the SBA's definition. Consequently, we estimate that there are fewer than 608 small paging carriers that may be affected by these revised rules. We estimate that the majority of private and common carrier paging providers would qualify as small entities under the SBA definition.

35. *Broadband Personal Communications Service (PCS).* The broadband PCS spectrum is divided into six frequencies designated A through F, and the Commission has held auctions for each block. The Commission defined ''small entity'' for Blocks C and F as an entity that has average gross revenues of less than $40 million in the three previous calendar years.[114] For Block F, an additional classification for ''very small business'' was added and is defined as an entity that, together with its affiliates, has average gross revenues of not more than $15 million for the preceding three calendar years.[115] These regulations defining ''small entity'' in the context of broadband PCS auctions have been approved by the SBA.[116] No small businesses within the SBA-approved definition bid successfully for licenses in Blocks A and B. There were 90 winning bidders that qualified as small entities in the Block C auctions. A total of 93 small and very small business bidders won approximately 40% of the 1,479 licenses for Blocks D, E, and F.[117] On March 23, 1999, the Commission re-auctioned 347 C, D, E, and F Block licenses; there were 48 small business winning bidders. An additional classification for ''very small business'' was added for C Block and is defined as ''an entity that together with its affiliates and persons or entities that hold interest in such entity and their affiliates, has average annual gross revenues that are not more than forty million dollars for the proceding three years.[118] The SBA approved this definition.''[119] Based on this information, we conclude that the number of small broadband PCS licensees will include the 90 winning C Block bidders and the 93 qualifying bidders in the D, E, and F blocks, plus the 48 winning bidders in the re-auction, for a total of 231 small entity PCS providers as defined by the SBA and the Commission's auction rules. On January 26, 2001, the Commission completed the auction of 422 C and F Broadband PCS licenses in Auction No. 35. Of the 35 winning bidders in this auction, 29 qualified as small or very small businesses.

36. *Narrowband PCS.* To date, two auctions of narrowband PCs licenses have been conducted. Through these auctions, the Commission has awarded a total of 41 licenses, out of which 11 were obtained by small businesses. For purposes of the two auctions that have already been held, small businesses were defined as entities with average gross revenues for the prior three calendar years of $40 million or less. To ensure meaningful participation of small business entities in the auctions, the Commission adopted a two-tiered definition of small businesses in the Narrowband PCS Second Report and Order.[120] A small business is an entity that, together with affiliates and controlling interests, has average gross revenues for the three preceding years of not more than $40 million. A very small business is an entity that, together with affiliates and controlling interests, has average gross revenues for the three preceding years of not more than $15 million. These definitions have been approved by the SBA.[121] In the future, the Commission will auction 459

[107] See generally Public Notice, ''220 MHz Service Auction Closes,'' Report No. WT 98–36 (Wireless Telecommunications Bureau, October 23, 1998).

[108] ''700 MHz Guard Bands Auction Closes,'' Public Notice, DA 01–478 (rel. February 22, 2001).

[109] *220 MHz Third Report and Order,* 62 FR 16004 (April 3, 1997), at paragraphs 291–295.

[110] 700 MHz Guard Band Auction Closes,'' Public Notice, 15 FCC Rcd 18026 (2000).

[111] ''Revision of Part 22 and Part 90 of the Commission's Rules to Facilitate Future Development of Paging Systems,'' Memorandum Opinion and Order on Reconsideration and Third Report and Order, 14 FCC Rcd 10030, at paragraph 98–107 (1999).

[112] ''Revision of Part 22 and Part 90 of the Commission's Rules to Facilitate Future Development of Paging Systems,'' Memorandum Opinion and Order on Reconsideration and Third Report and Order, 14 FCC Rcd 10030, at paragraph 98 (1999).

[113] *See Telecommunications Provider Locater* at Table 1 (November 2001).

[114] *See generally* ''929 and 931 MHz Paging Auction Closes,'' Public Notice, 15 FCC Rcd 4858 (2000).

[115] *See* Amendment of Parts 20 and 24 of the Commission's Rules—Broadband PCS Competitive Bidding and the Commercial Mobile Radio Service Spectrum Cap, Report and Order, FCC 96–278, WT Docket No. 96–59 Sections 60 (released June 24, 1996), 61 FR 33859 (July 1, 1996).

[116] *See, e.g.,* Implementation of Section 309(j) of the Communications Act—Competitive Bidding, PP Docket No. 93–253, Fifth Report and Order, 9 FCC Rcd 5532, 5581–84 (1994).

[117] FCC News, *Broadband PCS, D, E and F Block Auction Closes,* No. 71744 (released January 14, 1997).

[118] *See* Amendment of the Commission's Rules Regarding Installment Payment Financing for Personal Communications Services (PCS) Licenses, Fourth Report and Order, 13 FCC Rcd 15743 at 15767–68, paragraphs 45–46 (1998).

[119] *See* Letter to Amy Zoslov, Chief, Auctions and Industry Analysis Division from A. Alvarez, Administrator, SBA (December 2, 1998).

[120] In the Matter of Amendment of the Commission's Rules to Establish New Personal Communications Services, Narrowband PCS, Docket No. ET 92–100, Docket No. PP 93–253, *Second Report and Order and Second Further Notice of Proposed Rulemaking,* 65 FR 35875 (June 6, 2000).

[121] *See* Letter to Amy Zoslov, Chief, Auctions and Industry Analysis Division from A. Alvarez, Administrator, SBA (December 2, 1998).

licenses to serve Metropolitan Trading Areas (MTAs) and 408 response channel licenses. There is also one megahertz of narrowband PCS spectrum that has been held in reserve and that the Commission has not yet decided to release for licensing. The Commission cannot predict accurately the number of licenses that will be awarded to small entities in future auctions. However, four of the 16 winning bidders in the two previous narrowband PCS auctions were small businesses, as that term was defined under the Commission's Rules. The Commission assumes, for purposes of this IRFA, that a large portion of the remaining narrowband PCS licenses will be awarded to small entities. The Commission also assumes that at least some small businesses will acquire narrowband PCS licenses by means of the Commission's partitioning and disaggregation rules.

37. *Rural Radiotelephone Service.* The Commission has not adopted a definition of small entity specific to the Rural Radiotelephone Service.[122] A significant subset of the Rural Radiotelephone Service is the Basic Exchange Telephone Radio Systems (BETRS).[123] We will use the SBA's definition applicable to radiotelephone (wireless) companies, *i.e.,* an entity employing no more than 1,500 persons.[124] There are approximately 1,000 licensees in the Rural Radiotelephone Service, and we estimate that almost all of them qualify as small entities under the SBA's definition.

38. *Air-Ground Radiotelephone Service.* The Commission has not adopted a definition of small entity specific to the Air-Ground Radiotelephone Service.[125] We will use the SBA's definition applicable to radiotelephone (wireless) companies, *i.e.*, an entity employing no more than 1,500 persons.[126] There are approximately 100 licensees in the Air-Ground Radiotelephone Service, and we estimate that almost all of them qualify as small under the SBA definition.

39. *Specialized Mobile Radio (SMR).* Pursuant to 47 CFR 90.814(b)(1), the Commission has defined ''small business'' for purposes of auctioning 900 MHz SMR licenses, 800 MHz SMR licenses for the upper 200 channels, and 800 MHz SMR licenses for the lower 230 channels on the 800 MHz band, as a firm that has had average annual gross revenues of $15 million or less in the three preceding calendar years.[127] The SBA has approved this small business size standard for the 800 MHz and 900 MHz auctions.[128] Sixty winning bidders for geographic area licenses in the 900 MHz SMR band qualified as small business under the $15 million size standard. The auction of the 525 800 MHz SMR geographic area licenses for the upper 200 channels began on October 28, 1997, and was completed on December 8, 1997.[129] Ten winning bidders for geographic area licenses for the upper 200 channels in the 800 MHz SMR band qualified as small businesses under the $15 million size standard.[130] An auction of 800 MHz SMR geographic area licenses for the General Category channels began on August 16, 2000 and was completed on September 1, 2000. Of the 1,050 licenses offered in that auction, 1,030 licenses were sold. Eleven winning bidders for licenses for the General Category channels in the 800 MHz SMR band qualified as small business under the $15 million size standard. In an auction completed on December 5, 2000, a total of 2,800 Economic Area licenses in the lower 80 channels of the 800 MHz SMR service were sold. Of the 22 winning bidders, 19 claimed small business status. Thus, 40 winning bidders for geographic licenses in the 800 MHz SMR band qualified as small businesses. In addition, there are numerous incumbent site-by-site SMR licenses on the 800 and 900 MHz band.

40. These revised fees in the Report and Order apply to SMR providers in the 800 MHz and 900 MHz bands that either hold geographic area licenses or have obtained extended implementation authorizations. We do not know how many firms provide 800 MHz or 900 MHz geographic area SMR service pursuant to extended implementation authorizations, nor how many of these providers have annual revenues of no more than $15 million. One firm has over $15 million in revenues. We assume, for purposes of this FRFA, that all of the remaining existing extended implementation authorizations are held by small entities, as that term is defined by the SBA.

41. *Private Land Mobile Radio (PLMR).* PLMR systems serve an essential role in a range of industrial, business, land transportation, and public safety activities. These radios are used by companies of all sizes operating in all U.S. business categories. The Commission has not developed a definition of small entity specifically applicable to PLMR licensees due to the vast array of PLMR users. For the purpose of determining whether a licensee is a small business as defined by the SBA, each licensee would need to be evaluated within its own business area.

42. The Commission is unable at this time to estimate the number of small businesses which could be impacted by the rules. The Commission's 1994 Annual Report on PLMRs[131] indicates that at the end of fiscal year 1994 there were 1,087,267 licensees operating 12,481,989 transmitters in the PLMR bands below 512 MHz. Because any entity engaged in a commercial activity is eligible to hold a PLMR license, the revised rules in this context could potentially impact every small business in the United States.

43. *Amateur Radio Service.* We estimate that 8,000 applicants will apply for vanity call signs in FY 2001. These licensees are presumed to be individuals, and therefore not small entities. All other amateur licensees are exempt from payment of regulatory fees.

44. *Aviation and Marine Radio Service.* Small businesses in the aviation and marine radio services use a marine very high frequency (VHF) radio, any type of emergency position indicating radio beacon (EPIRB) and/or radar, a VHF aircraft radio, and/or any type of emergency locator transmitter (ELT). The Commission has not developed a definition of small entities specifically applicable to these small businesses. The applicable definition of small entity is the definition under the SBA rules for radiotelephone (wireless) communications.[132]

45. Most applicants for recreational licenses are individuals. Approximately 581,000 ship station licensees and 131,000 aircraft station licensees operate domestically and are not subject to the radio carriage requirements of any statute or treaty. For purposes of our evaluations and conclusions in this IRFA, we estimate that there may be at least 712,000 potential licensees which are individuals or are small entities, as that term is defined by the SBA. We

[122] The service is defined in § 22.99 of the Commission's Rules, 47 CFR 22.99.

[123] BETRS is defined in §§ 22.757 and 22.759 of the Commission's Rules, 47 CFR 22.757 and 22.759.

[124] 13 CFR 121.201, NAICS codes 513321, 513322, and 51333.

[125] The service is defined in § 22.99 of the Commission's Rules, 47 CFR 22.99.

[126] 13 CFR 121.201, NAICS codes 513321, 513322, and 51333.

[127] 47 CFR 90.814(b)(1).

[128] *See* Letter to Thomas J. Sugrue, Chief, Wireless Telecommunications Bureau (FCC) from A. Alvarez, Administrator, SBA (August 10, 1999).

[129] *See* Letter to Daniel B. Phython, Chief, Wireless Telecommunications Bureau (FCC) from A. Alvarez, Administrator, SBA (October 27, 1997).

[130] *Id.*

[131] Federal Communications Commission, *60th Annual Report, Fiscal Year 1994,* at paragraph 116.

[132] 13 CFR 121.201, NAICS codes 513321, 513322, and 51333.

estimate that only 16,800 will be subject to FY 2001 regulatory fees.

46. *Fixed Microwave Services.* Microwave services include common carrier,[133] private-operational fixed,[134] and broadcast auxiliary radio services.[135] At present, there are approximately 22,015 common carrier fixed licensees and 61,670 private operational-fixed licensees and broadcast auxiliary radio licensees in the microwave services. The Commission has not yet defined a small business with respect to microwave services. For purposes of this IRFA, we will use the SBA's definition applicable to radiotelephone (wireless) companies—*i.e.,* an entity with no more than 1,500 persons.[136] We estimate that all of the Fixed Microwave licensees (excluding broadcast auxiliary licensees) would qualify as small entities under the SBA definition for radiotelephone (wireless) companies.

47. *Public Safety Radio Services.* Public Safety radio services include police, fire, local government, forestry conservation, highway maintenance, and emergency medical services.[137] There are a total of approximately 127,540 licensees within these services. Governmental entities [138] as well as private businesses comprise the licensees for these services. As indicated *supra* in paragraph four of this IRFA, all governmental entities with populations of less than 50,000 fall within the definition of a small entity.[139] All licensees in this category are exempt from the payment of regulatory fees.

48. *Personal Radio Services.* Personal radio services provide short-range, low power radio for personal communications, radio signaling, and business communications not provided for in other services. The services include the citizen's band (CB) radio service, general mobile radio service (GMRS), radio control radio service, and family radio service (FRS).[140] Since the CB, GMRS, and FRS licensees are individuals, no small business definition applies for these services. We are unable at this time to estimate the number of other licensees that would qualify as small under the SBA's definition; however, only GMRS licensees are subject to regulatory fees.

49. *Offshore Radiotelephone Service.* This service operates on several UHF TV broadcast channels that are not used for TV broadcasting in the coastal areas of states bordering the Gulf of Mexico.[141] There are presently approximately 55 licensees in this service. We are unable to estimate at this time the number of licensees that would qualify as small under the SBA's definition for radiotelephone (wireless) communications.

50. *Wireless Communications Services.* This service can be used for fixed, mobile, radiolocation and digital audio broadcasting satellite uses. The Commission defined ''small business'' for the wireless communications services (WCS) auction as an entity with average gross revenues of $40 million for each of the three preceding years, and a ''very small business'' as an entity with average gross revenues of $15 million for each of the three preceding years. The SBA has approved these definitions.[142] The FCC auctioned geographic area licenses in the WCS service. In the auction, there were seven winning bidders that qualified as very small business entities, and one that qualified as a small business entity. We conclude that the number of geographic area WCS licensees affected includes these eight entities.

51. *39 GHz Service.* The Commission defined ''small entity'' for 39 GHz licenses as an entity that has average gross revenues of less than $40 million in the three previous calendar years.[143] An additional classification for ''very small business'' was added and is defined as an entity that, together with their affiliates, has average gross revenues of not more than $15 million for the preceding three calendar years.[144] These regulations defining ''small entity'' in the context of 39 GHz auctions have been approved by the SBA. The auction of the 2,173 39 GHz licenses began on April 12, 2000 and closed on May 8, 2000. The 18 bidders who claimed small business status won 849 licenses.

52. *Local Multipoint Distribution Service.* The auction of the 1,030 Local Multipoint Distribution Service (LMDS) licenses began on February 18, 1998 and closed on March 25, 1998. The Commission defined ''small entity'' for LMDS licenses as an entity that has average gross revenues of less than $40 million in the three previous calendar years.[145] An additional classification for ''very small business'' was added and is defined as an entity that, together with its affiliates, has average gross revenues of not more than $15 million for the preceding three calendar years.[146] These regulations defining ''small entity'' in the context of LMDS auctions have been

[133] 47 CFR 101 *et seq.* (formerly, part 21 of the Commission's Rules).

[134] Persons eligible under parts 80 and 90 of the Commission's rules can use Private Operational-Fixed Microwave services. *See* 47 CFR parts 80 and 90. Stations in this service are called operational-fixed to distinguish them from common carrier and public fixed stations. Only the licensee may use the operational-fixed station, and only for communications related to the licensee's commercial, industrial, or safety operations.

[135] Auxiliary Microwave Service is governed by part 74 of Title 47 of the Commission's Rules. *See* 47 CFR 74 *et seq.* Available to licensees of broadcast stations and to broadcast and cable network entities, broadcast auxiliary microwave stations are used for relaying broadcast television signals from the studio to the transmitter, or between two points such as a main studio and an auxiliary studio. The service also includes mobile TV pickups, which relay signals from a remote location back to the studio.

[136] 13 CFR 121.201, NAICS codes 513321, 513322, 51333.

[137] With the exception of the special emergency service, these services are governed by Subpart B of part 90 of the Commission's Rules, 47 CFR 90.15 through 90.27. The police service includes 26,608 licensees that serve state, county, and municipal enforcement through telephony (voice), telegraphy (code) and teletype and facsimile (printed material). The fire radio service includes 22,677 licensees comprised of private volunteer or professional fire companies as well as units under governmental control. The local government service that is presently comprised of 40,512 licensees that are state, county, or municipal entities that use the radio for official purposes not covered by other public safety services. There are 7,325 licensees within the forestry service which is comprised of licensees from state departments of conservation and private forest organizations who set up communications networks among fire lookout towers and ground crews. The 9,480 state and local governments are licensed to highway maintenance service provide emergency and routine communications to aid other public safety services to keep main roads safe for vehicular traffic. The 1,460 licensees in the Emergency Medical Radio Service (EMRS) use the 39 channels allocated to this service for emergency medical service communications related to the delivery of emergency medical treatment. 47 CFR 90.15 through 90.27. The 19,478 licensees in the special emergency service include medical services, rescue organizations, veterinarians, handicapped persons, disaster relief organizations, school buses, beach patrols, establishments in isolated areas, communications standby facilities, and emergency repair of public communications facilities. 47 CFR 90.33 through 90.55.

[138] 47 CFR 1.1162.

[139] 5 U.S.C. 601(5).

[140] Licensees in the Citizens Band (CB) Radio Service, General Mobile Radio Service (GMRS), Radio Control (R/C) Radio Service and Family Radio Service (FRS) are governed by Subpart D, Subpart A, Subpart C, and Subpart B, respectively, of part 95 of the Commission's Rules. 47 CFR 95.401 through 95.428; 95.1 through 95.181; 95.201 through 95.225; 47 CFR 95.191 through 95.194.

[141] This service is governed by subpart I of part 22 of the Commission's Rules. *See* 47 CFR 22.1001 through 22.1037.

[142] See Letter to Amy Zoslov, Chief, Auctions and Industry Analysis Division from A. Alvarez, Administrator, SBA (December 2, 1998).

[143] *See* In the Matter of Amendment of the Commission's Rules Regarding the 37.0–38.6 GHz and 38.6–40.0 GHz Band, Report and Order, 12 FCC Rcd 18600 (1997).

[144] *Id.*

[145] See Local Multipoint Distribution Service, Second Report and Order, 62 FR 23148, April 29, 1997.

[146] *Id.*

approved by the SBA.[147] There were 93 winning bidders that qualified as small entities in the LMDS auctions. A total of 93 small and very small business bidders won approximately 277 A Block licenses and 387 B Block licenses. On March 27, 1999, the Commission re-auctioned 161 licenses; there were 40 small business winning bidders. Based on this information, we conclude that the number of small LMDS licenses will include the 93 winning bidders in the first auction and the 40 winning bidders in the re-auction, for a total of 133 small entity LMDS providers as defined by the SBA and the Commission's auction rules.

53. *218–219 MHz Service.* The first auction of 218–219 MHz spectrum resulted in 170 entities winning licenses for 595 Metropolitan Statistical Area (MSA) licenses. Of the 594 licenses, 557 were won by entities qualifying as a small business. For that auction, we defined a small business as an entity that, together with its affiliates, has no more than a $6 million net worth and, after federal income taxes (excluding any carry over losses), has no more than $2 million in annual profits each year for the previous two years.[148] In the 218–219 MHz Report and Order and Memorandum Opinion and Order, we defined a small business as an entity that, together with its affiliates and persons or entities that hold interests in such an entity and their affiliates, has average annual gross revenues not to exceed $15 million for the preceding three years.[149] A very small business is defined as an entity that, together with its affiliates and persons or entities that hold interests in such an entity and its affiliates, has average annual gross revenues not to exceed $3 million for the preceding three years.[150] We cannot estimate, however, the number of licenses that will be won by entities qualifying as small or very small businesses under our rules in future auctions of 218–219 MHz spectrum. Given the success of small businesses in the previous auction, and the above discussion regarding the prevalence of small businesses in the subscription television services and message communications industries, we assume for purposes of this IRFA that in future auctions, all of the licenses may be awarded to small businesses if these proposed rules were adopted.

III. Description of Projected Reporting, Recordkeeping and Other Compliance Requirements

54. With certain exceptions, the Commission's Schedule of Regulatory Fees applies to all Commission licensees and regulatees. Most licensees will be required to count the number of licenses or call signs authorized, complete and submit an FCC Form 159 (''FCC Remittance Advice''), and pay a regulatory fee based on the number of licenses or call signs.[151] Interstate telephone service providers must compute their annual regulatory fee based on their interstate and international end-user revenue using information they already supply to the Commission in compliance with the Form 499–A, Telecommunications Reporting Worksheet, and they must complete and submit the FCC Form 159. Compliance with the fee schedule will require some licensees to tabulate the number of units (*e.g.*, cellular telephones, pagers, cable TV subscribers) they have in service, and complete and submit an FCC Form 159. Licensees ordinarily will keep a list of the number of units they have in service as part of their normal business practices. No additional outside professional skills are required to complete the FCC Form 159, and it can be completed by the employees responsible for an entity's business record.

55. Each licensee must submit the FCC Form 159 to the Commission's lockbox bank after computing the number of units subject to the fee. Licensees may also file electronically to minimize the burden of submitting multiple copies of the FCC Form 159. Applicants who pay small fees in advance and provide fee information as part of their application must use FCC Form 159.

56. Licensees and regulatees are advised that failure to submit the required regulatory fee in a timely manner will subject the licensee or regulatee to a late payment penalty of 25 percent in addition to the required fee.[152] If payment is not received, new or pending applications may be dismissed, and existing authorizations may be subject to rescission.[153] Further, in accordance with the Debt Collection Improvement Act of 1996, federal agencies may bar a person or entity from obtaining a federal loan or loan insurance guarantee if that person or entity fails to pay a delinquent debt owed to any federal agency.[154] Nonpayment of regulatory fees is a debt owed the United States pursuant to 31 U.S.C. 3711 *et seq.*, and the *Debt Collection Improvement Act of 1996*, Public Law 194–134. Appropriate enforcement measures as well as administrative and judicial remedies, may be exercised by the Commission. Debts owed to the Commission may result in a person or entity being denied a Federal loan or loan guarantee pending before another federal agency until such obligations are paid.[155]

57. The Commission's rules currently provide for relief in exceptional circumstances. Persons or entities may request a waiver, reduction or deferment of payment of the regulatory fee.[156] However, timely submission of the required regulatory fee must accompany requests for waivers or reductions. This will avoid any late payment penalty if the request is denied. The fee will be refunded if the request is granted. In exceptional and compelling instances (where payment of the regulatory fee along with the waiver or reduction request could result in reduction of service to a community or other financial hardship to the licensee), the

[147] See Letter to Daniel Phythyon, Chief, Wireless Telecommunications Bureau (FCC) from A. Alvarez, Administrator, SBA (January 6, 1998).

[148] Implementation of Section 309(j) of the Communications Act—Competitive Bidding, PP WT Docket No. 93–253, Fourth Report and Order, 59 FR 24947 (May 13, 1994).

[149] In the Matter of Amendment of Part 95 of the Commission's Rules to Provide Regulatory Flexibility in the 218–219 MHz Service, WT Docket No. 98–169, Report and Order and Memorandum Opinion and Order, 64 FR 59656 (November 3, 1999).

[150] Amendment of Part 95 of the Commission's Rules to Provide Regulatory Flexibility in the 218–219 MHz Service, Report and Order and Memorandum Opinion and Order, 64 FR 59656 (1999).

[151] The following categories are exempt from the Commission's Schedule of Regulatory Fees: Amateur radio licensees (except applicants for vanity call signs) and operators in other non-licensed services (e.g., Personal Radio, part 15, ship and aircraft). Governments and non-profit (exempt under section 501(c) of the Internal Revenue Code) entities are exempt from payment of regulatory fees and need not submit payment. Non-commercial educational broadcast licensees are exempt from regulatory fees as are licensees of auxiliary broadcast services such as low power auxiliary stations, television auxiliary service stations, remote pickup stations and aural broadcast auxiliary stations where such licenses are used in conjunction with commonly owned non-commercial educational stations. Emergency Alert System licenses for auxiliary service facilities are also exempt as are instructional television fixed service licensees. Regulatory fees are automatically waived for the licensee of any translator station that: (1) is not licensed to, in whole or in part, and does not have common ownership with, the licensee of a commercial broadcast station; (2) does not derive income from advertising; and (3) is dependent on subscriptions or contributions from members of the community served for support. Receive only earth station permittees are exempt from payment of regulatory fees. A regulatee will be relieved of its fee payment requirement if its total fee due, including all categories of fees for which payment is due by the entity, amounts to less than $10.

[152] 47 CFR 1.1164.

[153] 47 CFR 1.1164(c).

[154] Public Law 104–134, 110 Stat. 1321 (1996).

[155] 31 U.S.C. 7701(c)(2)(B).

[156] 47 CFR 1.1166.

Commission will defer payment in response to a request filed with the appropriate supporting documentation.

IV. Steps Taken To Minimize Significant Economic Impact on Small Entities, and Significant Alternatives Considered

58. The RFA requires an agency to describe any significant alternatives that it has considered in reaching its proposed approach, which may include the following four alternatives: (1) The establishment of differing compliance or reporting requirements or timetables that take into account the resources available to small entities; (2) the clarification, consolidation, or simplification of compliance or reporting requirements under the rule for small entities; (3) the use of performance, rather than design, standards; and (4) an exemption from coverage of the rule, or any part thereof, for small entities. As described in Section IV of this IRFA, *supra*, we have created procedures in which all fee-filing licensees and regulatees use a single form, FCC Form 159, and have described in plain language the general filing requirements. We have also created Attachment F, *infra*, which gives ''Detailed Guidance on Who Must Pay Regulatory Fees.'' Because the collection of fees is statutory, our efforts at proposing alternatives are constrained and, throughout these annual fee proceedings, have been largely directed toward simplifying the instructions and necessary procedures for all filers. We have sought comment on other alternatives that might simplify our fee procedures or otherwise benefit small entities, while remaining consistent with our statutory responsibilities in this proceeding.

59. *The Omnibus Consolidated and Emergency Supplemental Appropriations Act for FY 2000,* Public Law 106–553, requires the Commission to revise its Schedule of Regulatory Fees to recover the amount of regulatory fees that Congress, pursuant to Section 9(a) of the Communications Act, as amended, has required the Commission to collect for Fiscal Year (FY) 2002.[157] As noted, we seek comment on the proposed methodology for implementing these statutory requirements and any other potential impact of these proposals on small entities.

60. With the use of actual cost accounting data for computation of regulatory fees, we found that some fees which were very small in previous years would have increased dramatically and would have a disproportionate impact on smaller entities. The methodology we are adopting in this *Notice of Proposed Rulemaking* minimizes this impact by limiting the amount of increase and shifting costs to other services which, for the most part, are larger entities.

61. Several categories of licensees and regulatees are exempt from payment of regulatory fees. *See, e.g.*, footnote 148, *supra*, and Attachment F of the *Notice of Proposed Rulemaking, infra*.

V. Federal Rules That May Duplicate, Overlap, or Conflict With the Proposed Rules

62. None.

Attachment B—Sources of Payment Unit Estimates for FY 2002

In order to calculate individual service fees for FY 2002, we adjusted FY 2001 payment units for each service to more accurately reflect expected FY 2002 payment liabilities. We obtained our updated estimates through a variety of means. For example, we used Commission licensee data bases, actual prior year payment records and industry and trade association projections when available. We tried to obtain verification for these estimates from multiple sources and, in all cases, we compared FY 2002 estimates with actual FY 2001 payment units to ensure that our revised estimates were reasonable. Where appropriate, we adjusted and/or rounded our final estimates to take into consideration the fact that certain variables that impact on the number of payment units cannot yet be estimated exactly. These include an unknown number of waivers and/or exemptions that may occur in FY 2002 and the fact that, in many services, the number of actual licensees or station operators fluctuates from time to time due to economic, technical or other reasons. Therefore, when we note, for example, that our estimated FY 2002 payment units are based on FY 2001 actual payment units, it does not necessarily mean that our FY 2002 projection is *exactly* the same number as FY 2001. It means that we have either rounded the FY 2002 number or adjusted it slightly to account for these variables.

Fee category	Sources of payment unit estimates
Land Mobile (All), Microwave, 218–219 MHz,[158] Marine (Ship & Coast), Aviation (Aircraft & Ground), GMRS, Amateur Vanity Call Signs, Domestic Public Fixed.	Based on Wireless Telecommunications Bureau (WTB) projections of new applications and renewals taking into consideration existing Commission licensee data bases. Aviation (Aircraft) and Marine (Ship) estimates have been adjusted to take into consideration the licensing of portions of these services on a voluntary basis.
CMRS Mobile Services	Based on Wireless Telecommunications Bureau estimates.
CMRS Messaging Services	Based on Wireless Telecommunications Bureau estimates.
AM/FM Radio Stations	Based on estimates from Mass Media Bureau estimates.
UHF/VHF Television Stations	Based on Mass Media Bureau estimates and actual FY 2001 payment units.
AM/FM/TV Construction Permits	Based on Mass Media Bureau estimates and actual FY 2001 payment units.
LPTV, Translators and Boosters	Based on actual FY 2001 payment units.
Auxiliaries	Based on Wireless Telecommunications Bureau estimates.
MDS/LMDS/MMDS	Based on Mass Media Bureau estimates.
Cable Antenna Relay Service (CARS)	Based on Cable Services Bureau estimates.
Cable Television System Subscribers	Based on Cable Services Bureau and industry estimates of subscribership.
Interstate Telecommunication Service Providers	Based on actual FY 2001 interstate revenues reported on Telecommunications Reporting Worksheet, adjusted for FY 2002 revenue growth for industry as estimated by Common Carrier Bureau.
Earth Stations	Based on International Bureau estimates.
Space Stations (GSOs & NGSOs)	Based on International Bureau licensee data bases.
International Bearer Circuits	Based on International Bureau estimates.

[157] 47 U.S.C. 159(a).

Fee category	Sources of payment unit estimates
International HF Broadcast Stations, International Public Fixed Radio Service.	Based on International Bureau estimates.

[158] The Wireless Telecommunications Bureau's staff advises that they anticipate receiving only 25 applications for 218–219 MHz (formerly IVDS) in FY 2001.

Attachment Calculation of FY 2002 Revenue Requirements and Pro-Rata FEES Attachment C

Fee category	FY 2002 payment units	Payment years	FY 2001 revenue estimate	Pro-rated FY 2002 revenue requirement**	Computed new FY 2002 regulatory fee	Rounded new FY 2002 regulatory fee	Expected FY 2002 revenue
PLMRS (Exclusive Use)	4,100	10	275,000	300,575	7	5	205,000
PLMRS (Shared use)	43,500	10	2,900,000	3,169,700	7	5	2,175,000
Microwave	11,500	10	1,195,000	1,306,135	11	10	1,150,000
218–219 MHz (Formerly IVDS)	5	10	1,250	1,366	27	25	1,250
Marine (Ship)	5,200	10	550,000	601,150	12	10	520,000
GMRS	3,180	5	50,000	54,650	3	5	79,500
Aviation (Aircraft)	2,700	10	175,000	191,275	7	5	135,000
Marine (Coast)	900	10	65,000	71,045	8	10	90,000
Aviation (Ground)	2,000	5	85,000	92,905	9	10	100,000
Amateur Vanity Call Signs	9,000	10	120,000	131,160	1.46	1.45	130,500
AM Class A	76	1	146,300	159,906	2,104	2,100	159,600
AM Class B	1,672	1	1,806,300	1,974,286	1,181	1,175	1,964,600
AM Class C	990	1	618,760	676,305	683	685	678,150
AM Class D	1,933	1	2,033,850	2,222,998	1,150	1,150	2,222,950
FM Classes A, B1 & C3	3,192	1	4,160,000	4,546,880	1,424	1,425	4,548,600
FM Classes B, C, C1 & C2	2,956	1	5,166,300	5,646,766	1,910	1,900	5,616,400
AM Construction Permits	48	1	16,240	17,750	370	370	17,760
FM Construction Permits	202	1	277,500	303,308	1,502	1,500	303,000
Satellite TV	128	1	93,980	102,720	803	805	103,040
Satellite TV Construction Permit	5	1	1,920	2,099	420	420	2,100
VHF Markets 1–10	44	1	1,894,200	2,070,361	47,054	47,050	2,070,200
VHF Markets 11–25	61	1	1,936,675	2,116,786	34,701	34,700	2,116,700
VHF Markets 26–50	76	1	1,642,025	1,794,733	23,615	23,625	1,795,500
VHF Markets 51–100	114	1	1,581,250	1,728,306	15,161	15,150	1,727,100
VHF Remaining Markets	215	1	691,025	755,290	3,513	3,525	757,875
VHF Construction Permits	22	1	55,350	60,498	2,750	2,750	60,500
UHF Markets 1–10	97	1	1,136,250	1,241,921	12,803	12,800	1,241,600
UHF Markets 11–25	98	1	922,500	1,008,293	10,289	10,300	1,009,400
UHF Markets 26–50	129	1	778,250	850,627	6,594	6,600	851,400
UHF Markets 51–100	190	1	672,375	734,906	3,868	3,875	736,250
UHF Remaining Markets	206	1	201,250	219,966	1,068	1,075	221,450
UHF Construction Permits	59	1	280,000	306,040	5,187	5,175	305,325
Auxiliaries	24,000	1	270,000	295,110	12	10	240,000
International HF Broadcast	6	1	2,720	2,973	495	495	2,970
LPTV/Translators/Boosters	2,800	1	823,500	900,086	321	320	896,000
CARS	1,600	1	93,500	102,196	64	65	104,000
Cable Systems	68,980,000	1	33,431,844	36,541,005	0.53	0.53	36,541,005
Interstate Telecommunication Service Providers	66,544,000,000	1	93,387,376	102,072,402	0.00153	0.00153	102,072,402
CMRS Mobile Services (Cellular/Public Mobile)	125,000,000	1	27,404,520	29,953,140	0.24	0.24	29,953,140
CMRS Messaging Services	23.600,000	1	1,625,054	1,776,184	0.08	0.08	1,776,184
MDS/MMDS/LMDS	2,300	1	900,000	983,700	428	430	989,000
International Bearer Circuits	2,830,000	1	4,202,255	4,593,065	1.62	2	5,660,000
International Public Fixed	1	1	1,275	1,394	1,394	1,400	1,400
Earth Stations	3,873	1	501,120	547,724	141	140	542,220
Space Stations (Geostationary)	71	1	6,476,250	7,078,541	99,698	99,700	7,078,700
Space Stations (Non-geostationary)	5	1	566,550	619,239	123,848	123,850	619,250
Total Estimated Revenue to be Collected			201,214,514	219,927,464			219,572,022
Total Revenue Requirement				218,757,000			218,757,000

Fee category	FY 2002 payment units	Payment years	FY 2001 revenue estimate	Pro-rated FY 2002 revenue requirement**	Computed new FY 2002 regulatory fee	Rounded new FY 2002 regulatory fee	Expected FY 2002 revenue
Difference				1,170,464			815,022

** 1.093 factor applied based on the amount Congress designated for recovery through regulatory fees (Public Law 107–77 and 47 U.S.C. 159(a)(2)).

Attachment D—FY 2002 Schedule of Regulatory Fees (Proposed)

Fee category	Annual regulatory fee (U.S. $'s)
PLMRS (per license) (Exclusive Use) (47 CFR part 90)	5
Microwave (per license) (47 CFR part 101)	10
218–219 MHz (Formerly Interactive Video Data Service) (per license) (47 CFR part 95)	25
Marine (Ship) (per station) (47 CFR part 80)	10
Marine (Coast) (per license) (47 CFR part 80)	10
General Mobile Radio Service (per license) (47 CFR part 95)	5
Rural Radio (47 CFR part 22) (previously listed under the Land Mobile category)	5
PLMRS (Shared Use) (per license) (47 CFR part 90)	5
Aviation (Aircraft) (per station) (47 CFR part 87)	5
Aviation (Ground) (per license) (47 CFR part 87)	10
Amateur Vanity Call Signs (per call sign) (47 CFR part 97)	1.45
CMRS Mobile Services (per unit) (47 CFR parts 20, 22, 24, 27, 80 and 90)	.24
CMRS Messaging Services (per unit) (47 CFR parts 20, 22, 24 and 90)	.08
Multipoint Distribution Services (MMDS, LMDS & MDS) (per call sign) (47 CFR part 21)	430
AM Radio Construction Permits	370
FM Radio Construction Permits	1,500
TV (47 CFR part 73) VHF Commercial:	
Markets 1–10	47,050
Markets 11–25	34,700
Markets 26–50	23,625
Markets 51–100	15,150
Remaining Markets	3,525
Construction Permits	2,750
TV (47 CFR part 73) UHF Commercial:	
Markets 1–10	12,800
Markets 11–25	10,300
Markets 26–50	6,600
Markets 51–100	3,875
Remaining Markets	1,075
Construction Permits	5,175
Satellite Television Stations (All Markets)	805
Construction Permits—Satellite Television Stations	420
Low Power TV, TV/FM Translators & Boosters (47 CFR part 74)	320
Broadcast Auxiliary (47 CFR part 74)	10
CARS (47 CFR part 78)	65
Cable Television Systems (per subscriber) (47 CFR part 76)	.53
Interstate Telecommunication Service Providers (per revenue dollar)	.00153
Earth Stations (47 CFR part 25)	140
Space Stations (per operational station in geostationary orbit) (47 CFR part 25) also includes Direct Broadcast Satellite Service (per operational station) (47 CFR part 100)	99,700
Space Stations (per operational system in non-geostationary orbit) (47 CFR part 25)	123,850
International Bearer Circuits (per active 64KB circuit)	2
International Public Fixed (per call sign) (47 CFR part 23)	1,400
International (HF) Broadcast (47 CFR part 73)	495

Radio Station Regulatory Fees

Population served	AM Class A	AM Class B	AM Class C	AM Class D	FM Classes A, B1 & C3	FM Classes B, C, C1 & C2
<=20,000	500	375	275	325	375	500
20,001—50,000	925	725	375	525	725	925
50,001—125,000	1,500	975	525	775	975	1,500
125,001—400,000	2,250	1,575	800	950	1,575	2,250
400,001—1,000,000	3,125	2,525	1,425	1,700	2,525	3,125
>1,000,000	4,975	4,100	2,075	2,625	4,100	4,975

Attachment E—Comparison Between FY 2001 & FY 2002 Proposed Regulatory Fees

Fee category	Annual regulatory fee FY 2001	NPRM proposed fee FY 2002	Annual regulatory fee FY 2002
PLMRS (per license) (Exclusive Use) (47 CFR part 90)	5	5	
Microwave (per license) (47 CFR part 101)	5	10	
218–219 MHz (Formerly Interactive Video Data Service) (per license) (47 CFR part 95)	10	25	
Marine (Ship) (per station) (47 CFR part 80)	10	10	
Marine (Coast) (per license) (47 CFR part 80)	5	10	
General Mobile Radio Service (per license) (47 CFR part 95)	5	5	
Rural Radio (47 CFR part 22) (previously listed under Land Mobile)	5	5	
PLMRS (Shared Use) (47 CFR part 90)	5	5	
Aviation (Aircraft) (per station) (47 CFR part 87)	5	5	
Aviation (Ground) (per license) (47 CFR part 87)	10	10	
Amateur Vanity Call Signs (per call sign) (47 CFR part 97)	1.20	1.45	
CMRS Mobile Services (per unit) (47 CFR parts 20, 22, 24, 27, 80 and 90)	.27	.24	
CMRS Messaging Services (per unit) (47 CFR parts 20, 22, 24 and 90)	.05	.08	
Multipoint Distribution Services (Includes MMDS, LMDS & MDS) (per call sign) (47 CFR part 21)	450	430	
AM Construction Permits	280	370	
FM Construction Permits	925	1,500	
TV (47 CFR part 73) VHF Commercial:			
Markets 1–10	45,100	47,050	
Markets 11–25	32,825	34,700	
Markets 26–50	21,325	23,625	
Markets 51–100	13,750	15,150	
Remaining Markets	3,275	3,525	
Construction Permits	3,075	2,750	
TV (47 CFR part 73) UHF Commercial:			
Markets 1–10	15,150	12,800	
Markets 11–25	12,300	10,300	
Markets 26–50	7,075	6,600	
Markets 51–100	4,075	3,875	
Remaining Markets	1,150	1,075	
Construction Permits	4,000	5,175	
Satellite Television Stations (All Markets)	740	805	
Construction Permits—Satellite Television Stations	480	420	
Low Power TV, TV/FM Translators & Boosters (47 CFR part 74)	305	320	
Broadcast Auxiliary (47 CFR part 74)	10	10	
CARS (47 CFR part 78)	55	65	
Earth Stations (47 CFR part 25)	180	140	
Cable Television Systems (per subscriber) (47 CFR part 76)	.49	.53	
Interstate Telecommunication Service Providers (per revenue dollar)	.00132	.00153	
Space Stations (per operational station in geostationary orbit) (47 CFR part 25) also includes Direct Broadcast Satellite Service (per operational station) (47 CFR part 100)	98,125	99,700	
Space Stations (per operational system in non-geostationary orbit) (47 CFR part 25)	94,425	123,850	
International Bearer Circuits (per active 64KB circuit)	5	2	
International Public Fixed (per call sign) (47 CFR part 23)	1,275	1,400	
International (HF) Broadcast (47 CFR part 73)	680	495	

FY 2001 RADIO STATION REGULATORY FEES

Population served	AM Class A	AM Class B	AM Class C	AM Class D	FM Classes A, B1 & C3	FM Classes B, C, C1 & C2
<=20,000	450	350	250	300	350	450
20,001—50,000	850	675	350	475	675	850
50,001—125,000	1,375	900	475	700	900	1,375
125,001—400,000	2,050	1,450	725	875	1,450	2,050
400,001—1,000,000	2,850	2,300	1,300	1,550	2,300	2,850
>1,000,000	4,550	3,750	1,900	2,400	3,750	4,550

FY 2002 RADIO STATION REGULATORY FEES

Population served	AM Class A	AM Class B	AM Class C	AM Class D	FM Classes A, B1 & C3	FM Classes B, C, C1 & C2
<=20,000	500	375	275	325	375	500
20,001—50,000	925	725	375	525	725	925

FY 2002 RADIO STATION REGULATORY FEES—Continued

Population served	AM Class A	AM Class B	AM Class C	AM Class D	FM Classes A, B1 & C3	FM Classes B, C, C1 & C2
50,001—125,000	1,500	975	525	775	975	1,500
125,001—400,000	2,250	1,575	800	950	1,575	2,250
400,001—1,000,000	3,125	2,525	1,425	1,700	2,525	3,125
>1,000,000	4,975	4,100	2,075	2,625	4,100	4,975

Attachment F—Detailed Guidance on Who Must Pay Regulatory Fees

1. The guidelines below provide an explanation of regulatory fee categories established by the Schedule of Regulatory Fees in section 9 (g) of the Communications Act,[159] as modified in the instant *NPRM.* Where regulatory fee categories need interpretation or clarification, we have relied on the legislative history of section 9, our own experience in establishing and regulating the Schedule of Regulatory Fees for Fiscal Years (FY) 1994 through 2001, and the services subject to the fee schedule. The categories and amounts set out in the schedule have been modified to reflect changes in the number of payment units, additions and changes in the services subject to the fee requirement and the benefits derived from the Commission's regulatory activities, and to simplify the structure of the schedule. The schedule may be similarly modified or adjusted in future years to reflect changes in the Commission's budget and in the services regulated by the Commission.[160]

2. *Exemptions.* Governments and nonprofit entities are exempt from paying regulatory fees and should not submit payment. A nonprofit entity is required to have on file with the Commission an IRS Determination Letter documenting that it is exempt from taxes under section 501 of the Internal Revenue Code or the certification of a governmental authority attesting to its nonprofit status. In instances where the IRS Determination Letter or the letter of certification from a governmental authority attesting to its nonprofit status is not sufficiently current, the nonprofit entity may be asked to submit more current documentation. The governmental exemption applies even where the government-owned or community-owned facility is in competition with a commercial operation. Other specific exemptions are discussed below in the descriptions of other particular service categories.

[159] 47 U.S.C. 159(g).

[160] 47 U.S.C. 159(b)(2), (3).

1. Private Wireless Radio Services

3. Two levels of statutory fees were established for the Private Wireless Radio Services—exclusive use services and shared use services. Thus, licensees who generally receive a higher quality communication channel due to exclusive or lightly shared frequency assignments will pay a higher fee than those who share marginal quality assignments. This dichotomy is consistent with the directive of section 9, that the regulatory fees reflect the benefits provided to the licensees.[161] In addition, because of the generally small amount of the fees assessed against Private Wireless Radio Service licensees, applicants for new licenses and reinstatements and for renewal of existing licenses are required to pay a regulatory fee covering the entire license term, with only a percentage of all licensees paying a regulatory fee in any one year. Applications for modification or assignment of existing authorizations do not require the payment of regulatory fees. The expiration date of those authorizations will reflect only the unexpired term of the underlying license rather than a new license term.

a. Exclusive Use Services

4. *Private Land Mobile Radio Services (PLMRS) (Exclusive Use):* Regulatees in this category include those authorized under part 90 of the Commission's Rules to provide limited access Wireless Radio service that allows high quality voice or digital communications between vehicles or to fixed stations to further the business activities of the licensee. These services, using the 220–222 MHz band and frequencies at 470 MHz and above, may be offered on a private carrier basis in the Specialized Mobile Radio Services (SMRS).[162] For FY 2002, PLMRS licensees will pay a $5 annual regulatory fee per license, payable for an entire ten-year license term at the time of application for a new, renewal, or reinstatement license.[163] The total regulatory fee due is $50 for the ten-year term.

5. *Microwave Services:* These services include private and commercial microwave systems and private and commercial carrier systems authorized under part 101 of the Commission's Rules to provide telecommunications services between fixed points on a high quality channel of communications. Microwave systems are often used to relay data and to control railroad, pipeline, and utility equipment. Commercial systems typically are used for video or data transmission or distribution. For FY 2002, Microwave licensees will pay a $10 annual regulatory fee per license, payable for an entire ten-year license term at the time of application for a new, renewal, or reinstatement license. The total regulatory fee due is $100 for the ten-year license term.

6. *218–219 MHz (Formerly Interactive Video Data Service (IVDS)):* The 218–219 MHz service is a two-way, point-to-multi-point radio service allocated high quality channels of communications and authorized under part 95 of the Commission's Rules. The 218–219 MHz service provides information, products, and services, and also the capability to obtain responses from subscribers in a specific service area. The 218–219 MHz service is offered on a private carrier basis. The Commission anticipated receiving 25 applications in the 218–219 MHz service during FY 2001. For FY 2002, we anticipate receiving five applications and propose that the annual regulatory fee for 218–219 MHz licensees be set at $25 per application. The total regulatory fee due would be $250 for the ten-year license term.

b. Shared Use Services

7. *Marine (Ship) Service:* This service is a shipboard radio service authorized under part 80 of the Commission's Rules to provide telecommunications between

[161] 47 U.S.C. 159(b)(1)(A).

[162] This category only applies to licensees of shared-use private 220–222 MHz and 470 MHz and above in the Specialized Mobile Radio (SMR) service who have elected not to change to the Commercial Mobile Radio Service (CMRS). Those who have elected to change to the CMRS are referred to paragraph 14 of this Attachment.

[163] Although this fee category includes licenses with ten-year terms, the estimated volume of ten-year license applications in FY 2000 is less than one-tenth of one percent and, therefore, is statistically insignificant.

watercraft or between watercraft and shore-based stations. Radio installations are required by domestic and international law for large passenger or cargo vessels. Radio equipment may be voluntarily installed on smaller vessels, such as recreational boats. The Telecommunications Act of 1996 gave the Commission the authority to license certain ship stations by rule rather than by individual license. The Commission exercises that authority. Private boat operators sailing entirely within domestic U.S. waters and who are not otherwise required by treaty or agreement to carry a radio, are no longer required to hold a marine license, and they will not be required to pay a regulatory fee. For FY 2002, parties required to be licensed and those choosing to be licensed for Marine (Ship) Stations will pay a $10 annual regulatory fee per station, payable for an entire ten-year license term at the time of application for a new, renewal, or reinstatement license. The total regulatory fee due is $100 for the ten-year license term.

8. *Marine (Coast) Service:* This service includes land-based stations in the maritime services, authorized under part 80 of the Commission's Rules, to provide communications services to ships and other watercraft in coastal and inland waterways. For FY 2002, licensees of Marine (Coast) Stations will pay a $10 annual regulatory fee per call sign, payable for the entire ten-year license term at the time of application for a new, renewal, or reinstatement license. The total regulatory fee due is $100 per call sign for the ten-year license term.

9. *Private Land Mobile Radio Services (PLMRS)(Shared Use):* These services include Land Mobile Radio Services operating under parts 90 and 95 of the Commission's Rules. Services in this category provide one-or two-way communications between vehicles, persons or fixed stations on a shared basis and include radiolocation services, industrial radio services, and land transportation radio services. For FY 2002, licensees of services in this category will pay a $5 annual regulatory fee per call sign, payable for an entire ten-year license term at the time of application for a new, renewal, or reinstatement license. The total regulatory fee due is $50 for the ten-year license term.

10. *Aviation (Aircraft) Service:* These services include stations authorized to provide communications between aircraft and between aircraft and ground stations and include frequencies used to communicate with air traffic control facilities pursuant to part 87 of the Commission's Rules. The Telecommunications Act of 1996 gave the Commission the authority to license certain aircraft radio stations by rule rather than by individual license. The Commission exercises that authority. Private aircraft operators flying entirely within domestic U.S. airspace and who are not otherwise required by treaty or agreement to carry a radio are no longer required to hold an aircraft license, and they will not be required to pay a regulatory fee. For FY 2002, parties required to be licensed and those choosing to be licensed for Aviation (Aircraft) Stations will pay a $5 annual regulatory fee per station, payable for the entire ten-year license term at the time of application for a new, renewal, or reinstatement license. The total regulatory fee due is $50 per station for the ten-year license term.

11. *Aviation (Ground) Service:* This service includes stations authorized to provide ground-based communications to aircraft for weather or landing information, or for logistical support pursuant to part 87 of the Commission's Rules. Certain ground-based stations which only serve itinerant traffic, i.e., possess no actual units on which to assess a fee, are exempt from payment of regulatory fees. For FY 2002, licensees of Aviation (Ground) Stations will pay a $10 annual regulatory fee per license, payable for the entire five-year license term at the time of application for a new, renewal, or reinstatement license. The total regulatory fee is $50 per call sign for the five-year license term.

12. *General Mobile Radio Service (GMRS):* These services include Land Mobile Radio licensees providing personal and limited business communications between vehicles or to fixed stations for short-range, two-way communications pursuant to part 95 of the Commission's Rules. For FY 2002, GMRS licensees will pay a $5 annual regulatory fee per license, payable for an entire five-year license term at the time of application for a new, renewal or reinstatement license. The total regulatory fee due is $25 per license for the five-year license term.

c. Amateur Radio Vanity Call Signs

13. *Amateur Vanity Call Signs:* This category covers voluntary requests for specific call signs in the Amateur Radio Service authorized under part 97 of the Commission's Rules. Applicants for Amateur Vanity Call-Signs will continue to pay a $1.20 annual regulatory fee per call sign, as prescribed in the FY 2001 fee schedule, payable for an entire ten-year license term at the time of application for a vanity call sign until the FY 2002 fee schedule becomes effective. The total regulatory fee due would be $12 per license for the ten-year license term.[164] For FY 2002, Amateur Vanity Call Sign applicants will pay a $1.45 annual regulatory fee per call sign, payable for an entire ten-year term at the time of application for a new, renewal or reinstatement license. The total regulatory fee due is $14.50 per call sign for the ten-year license term.

d. Commercial Wireless Radio Services

14. *Commercial Mobile Radio Services (CMRS) Mobile Services:* The Commercial Mobile Radio Service (CMRS) is an ''umbrella'' descriptive term attributed to various existing broadband services authorized to provide interconnected mobile radio services for profit to the public, or to such classes of eligible users as to be effectively available to a substantial portion of the public. CMRS Mobile Services include certain licensees which formerly were licensed as part of the Private Radio Services (*e.g.,* Specialized Mobile Radio Services) and others formerly licensed as part of the Common Carrier Radio Services (*e.g.,* Public Mobile Services and Cellular Radio Service). While specific rules pertaining to each covered service remain in separate parts 22, 24, 27, 80 and 90, general rules for CMRS are contained in part 20. CMRS Mobile Services will include: Specialized Mobile Radio Services (part 90);[165] Broadband Personal Communications Services (part 24), Public Coast Stations (part 80); Public Mobile Radio (Cellular, 800 MHz Air-Ground Radiotelephone, and Offshore Radio Services) (part 22); and Wireless Communications Service (part 27). Each licensee in this group will pay an annual regulatory fee for each mobile or cellular unit (mobile or telephone number), assigned to its customers, including resellers of its services. For FY 2002, the regulatory fee is $.24 per unit.

15. *Commercial Mobile Radio Services (CMRS) Messaging Services:* The Commercial Mobile Radio Service (CMRS) is an ''umbrella'' descriptive term attributed to various existing

[164] Section 9(h) exempts ''amateur radio operator licenses under part 97 of the Commission's rules (47 CFR part 97)'' from the requirement. However, section 9(g)'s fee schedule explicitly includes ''Amateur vanity call signs'' as a category subject to the payment of a regulatory fee.

[165] This category does not include licensees of private shared-use 220 MHz and 470 MHz and above in the Specialized Mobile Radio (SMR) service who have elected to remain non-commercial. Those who have elected not to change to the Commercial Mobile Radio Service (CMRS) are referred to paragraph 4 of this Attachment.

narrowband services authorized to provide interconnected mobile radio services for profit to the public, or to such classes of eligible users as to be effectively available to a substantial portion of the public. CMRS Messaging Services include certain licensees which formerly were licensed as part of the Private Radio Services (*e.g.,* Private Paging and Radiotelephone Service), licensees formerly licensed as part of the Common Carrier Radio Services (*e.g.,* Public Mobile One-Way Paging), licensees of Narrowband Personal Communications Service (PCS) (*e.g.,* one- way and two-way paging), and 220–222 MHz Band and Interconnected Business Radio Service. In addition, this category includes small SMR systems authorized for use of less than 10 MHz of bandwidth. While specific rules pertaining to each covered service remain in separate parts 22, 24 and 90, general rules for CMRS are contained in part 20. Each licensee in the CMRS Messaging Services will pay an annual regulatory fee for each unit (pager, telephone number, or mobile) assigned to its customers, including resellers of its services. For FY 2002, the regulatory fee is $.08 per unit.

16. Finally, with regard to our definition of a CMRS payment units, we clarify that fees are assessable on each CMRS subscriber considered ''active'' as of December 31, 2001. Examples of CMRS subscribers include: subscribers of terrestrial mobile telephone services, subscribers of one-way or two-way paging services, and subscribers of other wireless messaging services that are capable of transmitting and/or receiving data communications. A ''feeable'' CMRS payment unit is a CMRS subscriber that has possession of a mobile device that can transmit or receive voice or non-voice communications, or a CMRS subscriber has a contractual agreement for the provision of a CMRS service. The responsible payer of the regulatory fee is the CMRS licensee. For example, John Doe purchases a pager and obtains a paging services contract from Paging Licensee X. Paging Licensee X is responsible for paying the applicable regulatory fee for this unit. Further, if John Doe purchases a pager and obtains paging services from a paging reseller which resells services from Paging Licensee X, Paging Licensee X is still responsible for paying the applicable regulatory fee for this CMRS payment unit.

2. Mass Media Services

17. The regulatory fees for the Mass Media fee category apply to broadcast licensees and permittees. Noncommercial Educational Broadcasters are exempt from regulatory fees.

a. Commercial Radio

18. These categories include licensed Commercial AM (Classes A, B, C, and D) and FM (Classes A, B, B1, C, C1, C2, and C3) Radio Stations operating under part 73 of the Commission's Rules. [166] We have combined class of station and city grade contour population data to formulate a schedule of radio fees which differentiate between stations based on class of station and population served. In general, higher class stations and stations in metropolitan areas will pay higher fees than lower class stations and stations located in rural areas. The specific fee that a station must pay is determined by where it ranks after weighting its fee requirement (determined by class of station) with its population. The regulatory fee classifications for Radio Stations for FY 2002 are as follows:

FY 2002 RADIO STATION REGULATORY FEES

Population served	AM Class A	AM Class B	AM Class C	AM Class D	FM Classes A, B1 & C3	FM Classes B, C, C1 & C2
<=20,000	500	375	275	325	375	500
20,001—50,000	925	725	375	525	725	925
50.001—125,000	1,500	975	525	775	975	1,500
125,001—400,000	2,250	1,575	800	950	1,575	2,250
400,001—1,000,000	3,125	2,525	1,425	1,700	2,525	3,125
>1,000,000	4,975	4,100	2,075	2,625	4,100	4,975

19. Licensees may determine the appropriate fee payment by referring to the FCC's internet world wide web site (http://www.fcc.gov) or by calling the FCC's National Call Center (1–888–225–5322). The same information may be included in the Public Notices mailed to each licensee for which we have a current address on file (Note: Non-receipt of a Public Notice does not relieve a licensee of its obligation to submit its regulatory fee payment).

b. Construction Permits—Commercial AM Radio

20. This category includes holders of permits to construct *new* Commercial AM Stations. For FY 2002, a regulatee who held a construction permit on October 1, 2001 will pay a fee of $370 for each permit. A regulatee pays a construction permit fee only if the permit is for a new facility. If the regulatee held a license on October 1, 2001 or prior, but also has a construction permit to make modifications to the licensed facility, it is required to pay the applicable *license fee* for the designated group within which the station appears.

c. Construction Permits—Commercial FM Radio

21. This category includes holders of permits to construct *new* Commercial FM Stations. For FY 2002, a regulatee who held a construction permit on October 1, 2001 will pay a fee of $1,500 for each permit. A regulatee pays a construction permit fee only if the permit is for a new facility. If the regulatee held a license on October 1, 2001 or prior, but also has a construction permit to make modifications to the licensed facility, it is required to pay the applicable *license fee* for the designated group within which the station appears.

d. Commercial Television Stations

22. This category includes licensed Commercial VHF and UHF Television Stations covered under part 73 of the Commission's Rules, except commonly

[166] The Commission acknowledges that certain stations operating in Puerto Rico and Guam have been assigned a higher level station class than would be expected if the station were located on the mainland. Although this results in a higher regulatory fee, we believe that the increased interference protection associated with the higher station class is necessary and justifies the fee.

owned Television Satellite Stations, addressed separately below. Markets are Nielsen Designated Market Areas (DMA) as listed in the *Television & Cable Factbook*, Stations Volume No. 70, 2002 Edition, Warren Publishing, Inc. The fees for each category of station are as follows:

VHF Markets 1–10: $47,050
VHF Markets 11–25: 34,700
VHF Markets 26–50: 23,625
VHF Markets 51–100: 15,150
VHF Remaining Markets: 3,525
UHF Markets 1–10: $12,800
UHF Markets 11–25: 10,300
UHF Markets 26–50: 6,600
UHF Markets 51–100: 3,875
UHF Remaining Markets: 1,075

e. Commercial Television Satellite Stations

23. Commonly owned Television Satellite Stations in any market (authorized pursuant to Note 5 of § 73.3555 of the Commission's Rules) that retransmit programming of the primary station are assessed a fee of $805 annually. Those stations designated as Television Satellite Stations in the 2002 Edition of the *Television and Cable Factbook* are subject to the fee applicable to Television Satellite Stations. All other television licensees are subject to the regulatory fee payment required for their class of station and market.

f. Construction Permits—Commercial VHF Television Stations

24. This category includes holders of permits to construct *new* Commercial VHF Television Stations authorized as of October 1, 2001. For FY 2002, a regulatee who held a construction permit on October 1, 2001 will pay a fee of $2,750 for each permit. A regulatee pays a construction permit fee only if the permit is for a new facility. If the regulatee held a license on October 1, 2001 or prior, but also has a construction permit to make modifications to the licensed facility, it is required to pay the applicable *license fee* for the designated group within which the television station appears.

g. Construction Permits—Commercial UHF Television Stations

25. This category includes holders of permits to construct *new* UHF Television Stations authorized as of October 1, 2001. For FY 2002, a regulatee who held a construction permit on October 1, 2001 will pay a fee of $5,175 for each permit. A regulatee pays a construction permit fee only if the permit is for a new facility. If the regulatee held a license on October 1, 2001 or prior, but also has a construction permit to make modifications to the licensed facility, it is required to pay the applicable *license fee* for the designated group within which the television station appears.

h. Construction Permits—Satellite Television Stations

26. The fee for UHF and VHF Television Satellite Station construction permits for FY 2002 is $420. A regulatee who held a construction permit on October 1, 2001 will pay a fee of $420 for each permit. A regulatee pays a construction permit fee only if the permit is for a new facility. If the regulatee held a license on October 1, 2001 or prior, but also has a construction permit to make modifications to the licensed facility, it is required to pay the applicable *license fee* for the designated group within which the station appears.

i. Low Power Television, FM Translator and Booster Stations, TV Translator and Booster Stations

27. This category includes Low Power UHF/VHF Television stations operating under part 74 of the Commission's Rules with a transmitter power output limited to 1 kW for a UHF facility and, generally, 0.01 kW for a VHF facility. Low Power Television (LPTV) stations may retransmit the programs and signals of a TV Broadcast Station, originate programming, and/or operate as a subscription service. This category also includes translators and boosters operating under part 74 which rebroadcast the signals of full service stations on a frequency different from the parent station (translators) or on the same frequency (boosters). The stations in this category are secondary to full service stations in terms of frequency priority. We have also received requests for waivers of the regulatory fees from operators of community based Translators. These Translators are generally not affiliated with commercial broadcasters, are nonprofit, nonprofitable, or only marginally profitable, serve small rural communities, and are supported financially by the residents of the communities served. We are aware of the difficulties these Translators have in paying even minimal regulatory fees, and we have addressed those concerns in the ruling on reconsideration of the FY 1994 *Report and Order.* Community based Translators that meet certain requirements will have their fees waived.[167] For FY 2002, licensees in low power television, FM translator and booster, and TV translator and booster category will pay a regulatory fee of $320 for each license held.

j. Broadcast Auxiliary Stations

28. This category includes licensees of remote pickup stations (either base or mobile) and associated accessory equipment authorized pursuant to a single license, Aural Broadcast Auxiliary Stations (Studio Transmitter Link and Inter-City Relay) and Television Broadcast Auxiliary Stations (TV Pickup, TV Studio Transmitter Link, TV Relay) authorized under part 74 of the Commission's Rules. Auxiliary Stations are generally associated with a particular television or radio broadcast station or cable television system. This category does not include translators and boosters (see paragraph 26 *infra*). For FY 2002, licensees of Commercial Auxiliary Stations will pay an $10 annual regulatory fee on a per call sign basis.

k. Multipoint Distribution Service

29. This category includes Multipoint Distribution Service (MDS), Local Multipoint Distribution Service (LMDS), and Multichannel Multipoint Distribution Service (MMDS), authorized under parts 21 and 101 of the Commission's Rules to use microwave frequencies for video and data distribution within the United States. For FY 2002, MDS and MMDS stations will pay an annual regulatory fee of $430 per call sign.

3. Cable Services

a. Cable Television Systems

30. This category includes operators of Cable Television Systems, providing or distributing programming or other services to subscribers under part 76 of the Commission's Rules. For FY 2002, Cable Systems will pay a regulatory fee of $.53 per subscriber.[168] Payments for Cable Systems are to be made on a per subscriber basis as of December 31, 2001. Cable Systems should determine their subscriber numbers by calculating the number of single family dwellings, number of individual households in multiple dwelling units, *e.g.,* apartments, condominiums, mobile home parks, etc., paying at the basic subscriber rate, the number of bulk rate customers and the number of courtesy or fee customers. In order to determine the number of bulk rate subscribers, a system should divide its bulk rate charge by the annual subscription rate for individual households. *See* FY 1994

[167] See 10 FCC Rcd 12759, 12762 (1995).

[168] Cable systems are to pay their regulatory fees on a per subscriber basis rather than per 1,000 subscribers as set forth in the statutory fee schedule. See FY 1994 *Report and Order* at paragraph 100.

Report and Order, Appendix B at paragraph 31.[169]

b. Cable Antenna Relay Service

31. This category includes Cable Antenna Relay Service (CARS) stations used to transmit television and related audio signals, signals of AM and FM Broadcast Stations, and cablecasting from the point of reception to a terminal point from where the signals are distributed to the public by a Cable Television System. For FY 2002, licensees will pay an annual regulatory fee of $65 per CARS license.

4. Common Carrier Services

a. Commercial Microwave (Domestic Public Fixed Radio Service)

32. This category includes licensees in the Point-to-Point Microwave Radio Service, Local Television Transmission Radio Service, and Digital Electronic Message Service, authorized under part 101 of the Commission's Rules to use microwave frequencies for video and data distribution within the United States. These services are now included in the Microwave category (see paragraph 5 *supra*).

b. Interstate Telecommunication Service Providers

33. This category includes all providers of local and telephone services to end users. Covered services include the interstate and international portion of wireline local exchange service, local and long distance private line services for both voice and data, dedicated and network packet and packet-like services, long distance message telephone services, and other local and toll services. Providers of such services are referred to herein as ''interstate telecommunication service providers''.

34. Interstate service providers include CAP/CLECs, incumbent local exchange carriers (local telephone operating companies), interexchange carriers (long distance telephone companies), local resellers, OSPs (operator service providers that enable customers to make away from home calls and to place calls with alternative billing arrangements), payphone service providers, prepaid card, private service providers, satellite carriers that provide fixed local or message toll services, shared tenant service providers, toll resellers, and other local and other service providers.

35. To avoid imposing a double payment burden on resellers, we base the regulatory fee on end-user revenues. Interstate telecommunication service providers, including resellers, must submit fee payments based upon their proportionate share of interstate and international end-user revenues for local and toll services. We use the terms end-user revenues, local service and toll service, based on the methodology used for calculating contributions to the Universal Service support mechanisms.[170] Interstate telecommunication service providers do not pay the Common Carrier regulatory fee on revenue from the provision of intrastate local and toll services, wireless monthly and local message services, satellite toll services, carrier's carrier telecommunications services, customer premises equipment, Internet service and non-telecommunications services. For FY 2002, carriers must multiply their interstate and international revenue from subject local and toll services by the factor 0.00153 to determine the appropriate fee for this category of service. Regulatees may want to use the following worksheet to determine their fee payment:

Calendar 2001 revenue informaion	(Show amounts in whole dollars)
1 Service provided by U.S. carriers that both originates and terminates in foreign points. FCC Form 499–A Line 412 (e)	.....
2 Interstate end-user revenues from all telecommunications services. FCC Form 499–A Line 420 (d)	.....
3 International end-user revenues from all telecommunications services except international-to-international. FCC Form 499–A Line 420 (e)	.....
4 Total end-user revenues (Sum of Lines 1, 2 and 3) Note: also enter this number on Block (28A)—''FCC Code 1''.	.....
5 End-user interstate mobile service monthly and activation charges. FCC Form 499–A Line 409 (d)	.....
6 End-user international mobile service monthly and activation charges. FCC Form 499–A Line 409 (e)	.....
7 End-user interstate mobile service message charges including roaming charges but excluding toll charges. FCC Form 499–A Line 410 (d)	.....
8 End-user international mobile service message charges including roaming charges but excluding toll charges. FCC Form 499–A Line 410 (e)	.....
9 End-user interstate satellite services. FCC Form 499–A Line 416 (d)	.....
10 End-user international satellite services. FCC Form 499–A Line 416 (e)	.....
11 Surcharges on mobile and satellite services identified as recovering universal service contributions and included in Line 403 (d) or 403 (e) on your FCC Form 499. [Note: you may not include surcharges applied to local or toll services, nor any surcharges identified as intrastate surcharges.]	.....
12 Interstate and international revenues from resellers that do not contribute to USF. FCC Form 499–A Line 511 (b)	.....
13 Total excluded end-user revenues. (Sum Lines 5 through 12.) Note: also enter this number on Block (29A)—''FCC Code 2''.	.....
14 Total subject revenues. (Line 4 minus Line 13) Note: also enter this number in Block (25A)—''Quantity''.	.....
15 Interstate telecommunications service provider fee factor	.00153
16 2002 Regulatory Fee (Line 14 times Line 15)* Note: also enter this number in Block (27A)-''Total Fee''	.....
*You are exempt from filing if the amount on line 16 is less than $10.	

[169] 59 FR 30984 (June 16, 1994).

[170] See 1998 Biennial Regulatory Review—Streamlined Contributor Reporting Requirements Associated with Administration of Telecommunications Relay Services, North American Numbering Plan, Local Number Portability, and Universal Service Support Mechanisms, Report and Order, FCC 99–175, CC Docket No. 98–171 (rel. July 14, 1999), 64 FR 41320 (Jul. 30, 1999) (*Contributor Reporting Requirements Order*).

5. International Services

a. Earth Stations

36. Very Small Aperture Terminal (VSAT) Earth Stations, equivalent C-Band Earth Stations and antennas, and earth station systems comprised of very small aperture terminals operate in the 12 and 14 GHz bands and provide a variety of communications services to other stations in the network. *VSAT* systems consist of a network of technically-identical small Fixed-Satellite Earth Stations which often include a larger hub station. VSAT Earth Stations and C-Band Equivalent Earth Stations are authorized pursuant to part 25 of the Commission's Rules. *Mobile Satellite Earth Stations,* operating pursuant to part 25 of the Commission's Rules under blanket licenses for mobile antennas (transceivers), are smaller than one meter and provide voice or data communications, including position location information for mobile platforms such as cars, buses, or trucks.[171] *Fixed-Satellite Transmit/Receive and Transmit-Only Earth Station antennas,* authorized or registered under part 25 of the Commission's Rules, are operated by private and public carriers to provide telephone, television, data, and other forms of communications. Included in this category are telemetry, tracking and control (TT&C) earth stations, and earth station uplinks. For FY 2002, licensees of VSATs, Mobile Satellite Earth Stations, and Fixed-Satellite, Transmit/Receive and Transmit-Only Earth Stations will pay a fee of $140 per authorization or registration *as well as a separate fee of $140 for each associated Hub Station.*

37. *Receive-only earth stations.* For FY 2002, there is no regulatory fee for receive-only earth stations.

b. Space Stations (Geostationary Orbit)

38. Geostationary Orbit (also referred to as Geosynchronous) Space Stations are domestic and international satellites positioned in orbit to remain approximately fixed relative to the earth. Most are authorized under part 25 of the Commission's Rules to provide communications between satellites and earth stations on a common carrier and/or private carrier basis. In addition, this category includes Direct Broadcast Satellite (DBS) Service which includes space stations authorized under part 100 of the Commission's rules to transmit or re-transmit signals for direct reception by the general public encompassing both individual and community reception. For FY 2002, entities authorized to operate geostationary space stations (including DBS satellites) will be assessed an annual regulatory fee of $99,700 per operational station in orbit. Payment is required for any geostationary satellite that has been launched and tested and is authorized to provide service.

c. Space Stations (Non-Geostationary Orbit)

39. Non-Geostationary Orbit Systems (such as Low Earth Orbit (LEO) Systems) are space stations that orbit the earth in non-geosynchronous orbit. They are authorized under part 25 of the Commission's rules to provide communications between satellites and earth stations on a common carrier and/or private carrier basis. For FY 2002, entities authorized to operate Non-Geostationary Orbit Systems (NGSOs) will be assessed an annual regulatory fee of $123,850 per operational system in orbit. Payment is required for any NGSO System that has one or more operational satellites operational. In our FY 1997 *Report and Order*[172] at paragraph 75 we retained our requirement that licensees of LEOs pay the LEO regulatory fee upon their certification of operation of a single satellite pursuant to § 25.120(d). We require payment of this fee following commencement of operations of a system's first satellite to insure that we recover our regulatory costs related to LEO systems from licensees of these systems as early as possible so that other regulatees are not burdened with these costs any longer than necessary. Because § 25.120(d) has significant implications beyond regulatory fees (such as whether the entire planned cluster is operational in accordance with the terms and conditions of the license) we previously clarified our definition of an operational LEO satellite to prevent misinterpretation of our intent as follows:

> Licensees of Non-Geostationary Satellite Systems (such as LEOs) are assessed a regulatory fee upon the commencement of operation of a system's first satellite as reported annually pursuant to §§ 25.142(c), 25.143(e), 25.145(g), or upon certification of operation of a single satellite pursuant to § 25.120(d).

d. International Bearer Circuits

40. Regulatory fees for International Bearer Circuits are to be paid by facilities-based common carriers (either domestic or international) activating the circuit in any transmission facility for the provision of service to an end user or resale carrier. Payment of the fee for bearer circuits by non-common carrier submarine cable operators is required for circuits sold on an indefeasible right of use (IRU) basis or leased to any customer, including themselves or their affiliates, other than an international common carrier authorized by the Commission to provide U.S. international common carrier services. *See* FY 1994 *Report and Order* at 5367[173]. Payment of the international bearer circuit fee is also required by non-common carrier satellite operators for circuits sold or leased to any customer, including themselves or their affiliates, other than an international common carrier authorized by the Commission to provide U.S. international common carrier services. The fee is based upon active 64 Kbps circuits, or equivalent circuits. Under this formulation, 64 Kbps circuits or their equivalent will be assessed a fee. Equivalent circuits include the 64 Kbps circuit equivalent of larger bit stream circuits. For example, the 64 Kbps circuit equivalent of a 2.048 Mbps (or E–1) circuit is 30 64 Kbps circuits; a 155 Mbps (or STM–1) circuit is 1,890 64 Kbps circuits. Analog circuits such as 3 and 4 kHz circuits used for international service are also included as 64 kbps circuits. However, any derived circuits (circuits derived from 64 Kbps bearer circuits by the use of digital circuit multiplication systems) are not equivalent 64 kbps bearer circuits. Such derived circuits are not subject to payment of a fee. Only the 64 Kbps bearer circuit from which they have been derived will be subject to payment of a fee. Resold circuits are not subject to payment of a fee. For FY 2002, the regulatory fee is $2 for each active 64 Kbps bearer circuit or equivalent. For television channels, we assess fees as follows:

Analog television channel size in MHz	No. of equivalent 64 Kbps circuits
36	630
24	288
18	240

e. International Public Fixed

41. This fee category includes common carriers authorized under part 23 of the Commission's Rules to provide radio communications between the United States and a foreign point via microwave or HF troposcatter systems, other than satellites and satellite earth

[171] Mobile earth stations are hand-held or vehicle-based units capable of operation while the operator or vehicle is in motion. In contrast, transportable units are moved to a fixed location and operate in a stationary (fixed) mode. Both are assessed the same regulatory fee for FY 2001.

[172] 62 FR 37408 (July 11, 1997)

[173] 59FR 30984 (June 16, 1994).

stations, but not including service between the United States and Mexico and the United States and Canada using frequencies above 72 MHz. For FY 2002, International Public Fixed Radio Service licensees will pay a $1,400 annual regulatory fee per call sign.

f. International (HF) Broadcast

42. This category covers International Broadcast Stations licensed under part 73 of the Commission's Rules to operate on frequencies in the 5,950 kHz to 26,100 kHz range to provide service to the general public in foreign countries. For FY 2002, International HF Broadcast Stations will pay an annual regulatory fee of $495 per station license.

Attachment G—Description of FCC Activities

Licensing: This activity includes the authorization or licensing of radio stations, telecommunications equipment and radio operators, as well as the authorization of common carrier and other services and facilities. Includes direct organizational FTE and FTE workyear effort provided by staff offices to support policy direction, program development, legal services, and executive direction, as well as support services associated with licensing activities.

Competition: This activity includes formal inquiries, rulemaking proceedings to establish or amend the Commission's rules and regulations, action on petitions for rulemaking, and requests for rule interpretations or waivers; economic studies and analyses; spectrum planning, modeling, propagation-interference analyses and allocation; and development of equipment standards. Includes direct organizational FTE and FTE workyear effort provided by staff offices to support policy direction, program development, legal services, and executive direction, as well as support services associated with activities to promote competition.

Enforcement: This activity includes enforcement of the Commission's rules, regulations and authorizations, including investigations, inspections, compliance monitoring, and sanctions of all types. Also includes the receipt and disposition of formal and informal complaints regarding common carrier rates and services, the review and acceptance/rejection of carrier tariffs, and the review, prescription and audit of carrier accounting practices. Includes direct organizational FTE and FTE workyear effort provided by staff offices to support policy direction, program development, legal services, and executive direction, as well as support services associated with enforcement activities.

Consumer Information Services: This activity includes the publication and dissemination of Commission decisions and actions, and related activities; public reference and library services; the duplication and dissemination of Commission records and databases; the receipt and disposition of public inquiries; consumer, small business, and public assistance; and public affairs and media relations. Includes direct organizational FTE and FTE workyear effort provided by staff offices to support policy direction, program development, legal services, and executive direction, as well as support services associated with consumer information activities.

Spectrum Management: This activity includes management of the electromagnetic spectrum as mandated by the Communications Act of 1934, as amended. Spectrum management includes the structure and processes for allocating, allotting, assigning, and licensing this scarce resource to the private sector and state and local governments in a way that promotes competition while ensuring that the public interest is best served. In order to manage spectrum in both an efficient and equitable manner, the Commission prepares economic, technical and engineering studies, coordinates with federal agencies, and represents U.S. industry in international forums. This activity includes direct organizational FTEs and FTE workyear efforts provided by staff offices that support policy direction, program development, legal services, and executive direction, as well as support services associated with spectrum management activities.

Attachment H—Factors, Measurements and Calculations That Go Into Determining Station Signal Contours and Associated Population Coverages

AM Stations

Specific information on each day tower, including field ratio, phasing, spacing and orientation was retrieved, as well as the theoretical pattern RMS figure (mV/m @ 1 km) for the antenna system. The standard, or modified standard if pertinent, horizontal plane radiation pattern was calculated using techniques and methods specified in §§ 73.150 and 73.152 of the Commission's rules.[174] Radiation values were calculated for each of 72 radials around the transmitter site (every 5 degrees of azimuth). Next, estimated soil conductivity data was retrieved from a database representing the information in FCC Figure M3. Using the calculated horizontal radiation values, and the retrieved soil conductivity data, the distance to the city grade (5 mV/m) contour was predicted for each of the 72 radials. The resulting distance to city grade contours were used to form a geographical polygon. Population counting was accomplished by determining which 1990 block centroids were contained in the polygon. The sum of the population figures for all enclosed blocks represents the total population for the predicted city grade coverage area.

FM Stations

The maximum of the horizontal and vertical HAAT (m) and ERP (kW) was used. Where the antenna HAMSL was available, it was used in lieu of the overall HAAT figure to calculate specific HAAT figures for each of 72 radials under study. Any available directional pattern information was applied as well, to produce a radial-specific ERP figure. The HAAT and ERP figures were used in conjunction with the propagation curves specified in § 73.313 of the Commission's rules to predict the distance to the city grade (70 dBuV/m or 3.17 mV/m) contour for each of the 72 radials.[175] The resulting distance to city grade contours were used to form a geographical polygon. Population counting was accomplished by determining which 1990 block centroids were contained in the polygon. The sum of the population figures for all enclosed blocks represents the total population for the predicted city grade coverage area.

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[174] 47 CFR 73.150 and 73.152.

[175] 47 CFR 73.313.

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 635

[Docket No. 020325067–2067–01; I.D. 080901B]

RIN 0648–AP49

Atlantic Highly Migratory Species; Pelagic Longline Fishery; Shark Gillnet Fishery; Sea Turtle and Whale Protection Measures

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

ACTION: Proposed rule; request for comments.

SUMMARY: This proposed rule is necessary to implement the measures required by the June 14, 2001, Biological Opinion (BiOp) issued by NMFS' Office of Protected Resources. The reasonable and prudent alternative (RPA) of the BiOp requires NMFS to implement several measures for the pelagic longline fishery. These include: close the northeast distant statistical reporting (NED) area, require gangions to be two gangion lengths from floatlines, require gangion lengths to be 110 percent of floatline lengths in shallow sets, and require corrodible, non-stainless steel hooks to be deployed. The terms and conditions (TCs) of the BiOp requires NMFS to implement several measures for the shark gillnet fishery. These include: require both the observer and vessel operator to be responsible for sighting whales and the vessel operator to contact NMFS if a listed whale is taken and require shark gillnet fishermen to conduct net checks every 0.5 to 2 hours to look for and remove any sea turtles or marine mammals from their gear. This proposed rule would also require bottom and pelagic longline vessels to post sea turtle handling and release guidelines in the wheelhouse. The intent of these proposed actions is to reduce the incidental catch and post-release mortality of sea turtles and protected species in highly migratory species (HMS) fisheries.

DATES: Comments must be received at the appropriate address or fax number (see **ADDRESSES**) no later than 5 p.m., eastern standard time, on May 10, 2002. Public hearings on this proposed rule will be held in April 2002. Times for the public hearings will be specified in a separate document in the **Federal Register** to be published at a later date.

ADDRESSES: Written comments on the proposed rule should be submitted to Christopher Rogers, Chief, Highly Migratory Species Management Division (SF/1), National Marine Fisheries Service, 1315 East-West Highway, Silver Spring, MD 20910. Comments also may be sent via facsimile (fax) to 301–713–1917. Comments will not be accepted if submitted via e-mail or Internet. Comments regarding the collection-of-information requirements contained in this proposed rule should be sent to the HMS Division, 1315 East-West Highway, Silver Spring, MD 20910, and to the Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), Washington, DC 20503 (Attention: NOAA Desk Officer). For copies of the Draft Environmental Impact Statement/Regulatory Impact Review/Initial Regulatory Flexibility Analysis (DSEIS/RIR/IRFA), contact Tyson Kade at 301–713–2347.

FOR FURTHER INFORMATION CONTACT: Karyl Brewster-Geisz, Tyson Kade, or Margo Schulze-Haugen at 301–713–2347 or fax 301–713–1917.

SUPPLEMENTARY INFORMATION: The Atlantic swordfish and tuna fisheries are managed under the authority of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act) and the Atlantic Tunas Convention Act (ATCA). Atlantic sharks are managed under the authority of the Magnuson-Stevens Act. The Fishery Management Plan for Atlantic Tunas, Swordfish, and Sharks (HMS FMP) is implemented by regulations at 50 CFR part 635. The management of the Atlantic pelagic longline fishery and the shark gillnet fishery is also subject to the requirements of the Endangered Species Act (ESA) and the Marine Mammal Protection Act (MMPA).

Sea Turtle Bycatch Reduction

Under the Endangered Species Act (ESA), NMFS is required to address the fishery-related take of sea turtles that are listed as threatened or endangered. Although a high percentage of hooked sea turtles are released alive, NMFS remains concerned about serious injuries to sea turtles taken by pelagic longline gear. Longline fisheries generally affect sea turtles by entangling or hooking them in fishing gear. Sea turtles that become entangled in longline gear may drown when they are forcibly submerged or they may be injured by the entangling lines. Turtles that are hooked by longline gear can be injured or killed, depending on whether they are hooked internally or externally and whether the hook sets deep in their tissue. In addition to these immediate effects, longline gear can have long-term effects on a turtle's ability to swim, forage, migrate, and breed, although these long-term effects are difficult to monitor or measure. From 1992 to 1999, NMFS estimates that the pelagic longline fishery interacted with an average of 795 leatherback and 986 loggerhead sea turtles annually with an average estimate of 11 leatherback and 8 loggerhead annual mortalities.

In a BiOp prepared under section 7 of the ESA, completed June 14, 2001, NMFS concluded that operation of the U.S. Atlantic pelagic longline fishery jeopardized the continued existence of threatened loggerhead and endangered leatherback sea turtles. Information from the February 2001 Stock Assessment of Loggerhead and Leatherback Sea Turtles and an Assessment of the Impact of the Pelagic Longline Fishery on the Loggerhead and Leatherback Sea Turtles of the Western North Atlantic is incorporated in the BiOp's analysis. The BiOp estimates that a 55-percent reduction in bycatch mortality from the Atlantic pelagic longline fishery is necessary to allow for the recovery of these two species. It is anticipated that this level of reduction can be achieved by implementing an area closure and by modifying the manner in which pelagic longline gear is deployed. The BiOp also requires several other measures to be implemented in the bottom and pelagic longline and shark gillnet fisheries.

Pelagic Longline Fishery

Pelagic longline gear is a type of commercial fishing gear used by U.S. fishermen in the Atlantic Ocean to target HMS. The gear consists of a mainline, often many miles long, suspended in the water column by floats and from which baited hooks are attached on leaders (gangions). Though not completely selective, longline gear can be modified (e.g., gear configuration, hook depth, timing of sets) to target yellowfin tuna, bigeye tuna, or swordfish.

Data collected through observer and vessel logbook programs indicate that pelagic longline fishing for Atlantic swordfish and tunas often results in the catch of non-target finfish species, including sharks, bluefin tuna, billfish, undersized swordfish, and of protected species, including threatened and endangered sea turtles. The bycatch of protected species (sea turtles or marine mammals) may significantly impair the recovery of these species. Consistent with national standard 9 of the Magnuson-Stevens Act, NMFS has implemented measures to reduce bycatch and bycatch mortality to the extent practicable in the Atlantic pelagic longline fishery.

Area Closure

The intent of this proposed rule is to reduce the incidental take and mortality of sea turtles captured by pelagic longlines. The first measure would be a closure of the NED area. The NED area has the highest incidental take rate of sea turtles by the U.S. Atlantic pelagic longline fleet. This proposed regulation would close the NED area to vessels that have been issued, or are required to have, Federal HMS limited access permits and/or use pelagic longline gear. The closed area is bounded by the following coordinates: 35°00′ N. lat., 60°00′ W. long.; 55°00′ N. lat., 60°00′ W.

long.; 55°00′ N. lat., 20°00′ W. long.; 35°00′ N. lat., 20°00′ W. long. This closure comprises an area of 2,631,000 square nautical miles (nm2), including the Grand Banks and other fishing locations. Only larger vessels, primarily fishing out of ports in the northeast, travel to this area on a seasonal basis, from June to October. The BiOp estimates that this closure would reduce leatherback and loggerhead sea turtle interactions by 58 and 67 percent respectively.

Gear Modifications

In addition to the closure, there are several gear modifications designed to reduce the mortality rate of captured sea turtles year-round and in all fishing areas. All Atlantic vessels that use pelagic longline gear and have been issued, or are required to have, Federal HMS limited access permits would be prohibited from setting gangions within two gangion lengths of the floatline. Specifically, while the gear is deployed, gangions may not be attached to floatlines, nor to the mainline except at a distance from the attachment point of the floatline to the mainline of at least twice the length of the average gangion length in the set. Based on information from the Hawaii longline fleet and the NED experiment, hooks that are beneath or adjacent to floatlines have a much higher incidental take of sea turtles than hooks one or more positions away from the floatline. NMFS projects that this measure would result in reductions of 22 percent for loggerhead interactions and 24 percent for leatherback interactions.

In addition to restricting the gangion placement relative to the floatline, all Atlantic vessels that use pelagic longline gear and have been issued, or are required to have, Federal HMS limited access permits would be required to deploy the gear during shallow sets so that the length of the gangion is greater than the length of the floatline. The intent of this requirement would be to ensure that hooked or entangled turtles have sufficient slack line to be able to reach the surface and avoid drowning. For pelagic longline sets in which the combined depth of the floatline plus the gangion is 100 meters or less, the length of the gangion must be at least 10 percent longer than the length of the floatline. For sets in which the combined depth is over 100 meters, the requirement does not apply.

NMFS proposes to require all vessels that use pelagic longline gear and have been issued, or are required to have, Federal HMS limited access permits to use corrodible hooks and/or crimps. At the current time, NMFS considers corrodible hooks and crimps to be those manufactured out of non-stainless steel. NMFS expects to have a workshop in 2002 to assess the impacts of corrodible hooks on sea turtles. Currently, this measure is believed to reduce the post-release mortality of sea turtles by either causing the fishing line to fall off or causing the hook to fall out earlier than might occur if it were made of stainless steel.

Finally, all Atlantic vessels that use bottom or pelagic longline gear and have been issued, or are required to have, Federal HMS limited access permits would be required to post inside the wheelhouse the guidelines for the safe handling of sea turtles captured in a longline interaction. This measure would allow vessel captains to refer to the appropriate handling and release guidelines in the event a sea turtle is hooked or entangled. NMFS previously distributed the guidelines via mail to all HMS bottom and pelagic longline permit holders and announced this requirement (66 FR 36711, July 13, 2001) and the availability of the guidelines via the fax network in September 2001. If a vessel owner did not receive the document, it is available for downloading from the Internet at: *http://www.nmfs.noaa.gov/sfa/hmspg.html*, or NMFS can be contacted to request a copy (*see* **ADDRESSES**).

Reporting

One of the TCs of the BiOp requires that the captains of all vessels that use pelagic longline gear and have been issued, or are required to have, Federal HMS limited access permits report any turtles that are dead when they are captured or that die during capture to the Southeast Fisheries Science Center (SEFSC) Observer Program within 48 hours of returning to port. NMFS expects that this regulation would provide a better assessment of the number of sea turtles harmed during pelagic longline operations. This could result in more accurate management decisions involving fishery interactions with protected species.

Experimental Fishery

Consistent with the BiOp, NMFS expects to continue a research program, in consultation and cooperation with the domestic pelagic longline fleet, to develop and evaluate the efficacy of new technologies and changes in fishing practices to reduce sea turtle interactions. The experimental fishery uses a limited number of qualifying commercial fishing vessels as cooperative research platforms in the NED area. To provide for the maximum amount of transparency and public participation in the process of developing the experimental fishery, NMFS applied for an ESA section 10 permit to conduct this scientific research (66 FR 29934, June 4, 2001). The approved research plan for the experimental fishery, as stated in the BiOp, complies with four conditions: the sea turtle target mortality reduction is 55 percent, the duration is no more than 3 years, all measures that are tested must be exportable to international fleets, and the level of mortality reduction may be achieved through reducing take rates or improving post-release survival for captured sea turtles. NMFS conducted the first year of the experiment in 2001 and is analyzing the results prior to developing the experimental design for the 2002 experiment.

Atlantic Shark Gillnet Fishery

Gillnet fishing for sharks occurs primarily in the waters off the coasts of Georgia and Florida. The fishery is comprised of 4 to 12 vessels that engage in nearshore fishing trips that typically last less than 18 hours. Legislation in South Carolina, Georgia, and Florida has prohibited the use of commercial gillnets in state waters, causing these vessels to operate further offshore in waters under Federal jurisdiction. Historically, eight shark species made up over 99 percent of sharks caught, including: blacknose, Atlantic sharpnose, blacktip, finetooth, scalloped hammerhead, bonnethead, spinner, and great hammerhead sharks. The June 14, 2001, BiOp contains several TCs that NMFS must implement to reduce interactions with and mortalities of sea turtles and whales in the HMS shark gillnet fishery. The two requirements addressed by this proposed rule are discussed below.

Sighting Whales

This action proposes that both the vessel operator of all vessels issued Federal Atlantic shark limited access permits and that fish for Atlantic sharks with a shark gillnet (as defined by 50 CFR 229.2) and, in cases where an observer is on board, the observer would be responsible for sighting whales. The vessel operator would be responsible for contacting the Southeast Regional Office (SERO) of NMFS and ceasing fishing in the event of a listed whale being taken in the drift gillnet/strikenet gear. By having two people responsible for sighting whales, it is hoped that the animals would be spotted prior to any fishery interaction occurring.

Checking Gear

In the shark gillnet fishery, it is customary for fishermen to inspect the length of the net every 0.5 to 2 hours to check the net and the catch. This proposed regulation would require the fishermen to conduct these net checks to look for and remove any sea turtles and marine mammals found during these checks. While using the gear for strikenetting, the fishermen would be exempt from this requirement due to the limited soak time. As the average soak time for the drift gillnets in this fishery is 5.6 to 7.5 hours, this measure would be expected to reduce the mortality level of incidentally captured protected species.

Classification

This proposed rule is published under the authority of the Magnuson-Stevens Act, 16 U.S.C. 1801 *et seq.*, and ATCA, 16 U.S.C. 971 *et seq.*

NMFS has prepared an initial regulatory flexibility analysis.

The initial regulatory flexibility analysis examines the impacts of the preferred alternatives, discussed previously in this document. It assumes that distant water fishermen, during the time they would otherwise be pelagic longline fishing in the NED area would instead: (1) make longline sets in other areas or (2) exit commercial fishing. As of October 2001, there were 320 directed and incidental swordfish permit holders under the limited access system. This number probably represents the number of active pelagic longline vessels since most pelagic longline fishermen land swordfish along with other species. Since 1997, an average of 15 vessels have fished each year in the NED area. Due to the size and cost of operation of these boats, NMFS feels that it may not be as economical to fish in other areas of the Atlantic Ocean and thus the vessels fishing in the NED would be significantly impacted. The other preferred alternatives are not expected to have significant economic effects.

The other alternatives considered for the pelagic longline fishery include: taking no action; other gear modifications, such as requiring dehookers, requiring hooks to be set deeper in the water column, requiring the use of blue-dyed bait, requiring the use of mackerel as bait, requiring the use of stealth gear, and requiring the use of circle hooks; and a ban on pelagic longline fishing by U.S. vessels in the Atlantic Ocean. While the no action and most of the gear modification alternatives would not be expected to have significant economic impacts on participants in the pelagic longline fishery, these alternatives either do not reduce bycatch to the extent required by the BiOp or are not supported by sufficient data to support implementation. Initial data concerning the alternative requiring circle hooks indicates that they may significantly reduce post-release mortality of sea turtles; however, more information is needed concerning impacts on target catch and appropriate hook size. In addition, there would be an economic cost associated with this alternative if fishing vessels were required to switch to circle hooks. While a complete ban on longline fishing would reduce bycatch to a greater extent than the proposed time-area closures, the lost value of commercial seafood products and the adverse impacts on fishery participants and fishing communities would impose greater costs than the proposed action. The RIR/IRFA provides further discussion of the economic effects of all the alternatives considered for the pelagic longline fishery.

The two preferred alternatives for the shark gillnet fishery would affect a small number of vessels, approximately four to eleven based on NMFS records. The alternative to contact NMFS following the take of a listed whale species could have an economic impact as the vessel would be required to terminate fishing operations for that trip. The alternative requiring shark drift gillnet fishermen to check their nets every 0.5 to 2 hours could increase the cost per trip based on the amount of fuel consumed. However, NMFS does not expect these impacts to be significant.

Of the alternatives that were not selected, taking no action would not impose an economic impact. However, prohibiting drift gillnet gear in the shark fishery and requiring vessels to fish in a strikenet fashion using spotter planes could impose a significant negative effect upon the vessels in the shark gillnet fishery.

This proposed rule contains collection-of-information requirements subject to review and approval by the Office of Management and Budget (OMB) under the Paperwork Reduction Act (PRA). These reporting requirements for pelagic longline and shark gillnet vessel operators have been submitted to OMB for approval. Public reporting burden for this collection of information is estimated to average 5 minutes per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

Public comment is sought regarding: whether these proposed collections of information are necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; the accuracy of the burden estimate; ways to enhance the quality, utility, and clarity of the information to be collected; and ways to minimize the burden of the collection of information, including through the use of automated collection techniques or other forms of information technology. Send comments on these or any other aspects of the collection of information to the HMS Division at the **ADDRESSES** above, and to OMB at the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503 (Attention: NOAA Desk Officer).

Notwithstanding any other provision of the law, no person is required to respond to, nor shall any person be subject to a penalty for failure to comply with, a collection of information subject to the requirements of the PRA, unless that collection of information displays a currently valid OMB Control Number.

This proposed rule has been determined to be not significant for purposes of Executive Order 12866.

List of Subjects in 50 CFR Part 635

Fisheries, Fishing, Fishing vessels, Foreign relations, Intergovernmental relations, Penalties, Reporting and recordkeeping requirements, Statistics, Treaties.

Dated: March 29, 2002.

Rebecca Lent,

Deputy Assistant Administrator for Regulatory Programs, National Marine Fisheries Service.

For the reasons set out in the preamble, 50 CFR part 635 is proposed to be amended as follows:

PART 635—ATLANTIC HIGHLY MIGRATORY SPECIES

1. The authority citation for part 635 continues to read as follows:

Authority: 16 U.S.C. 971 *et seq.*; 16 U.S.C. 1801 *et seq.*

2. In § 635.2, new definitions for ''Bottom longline,'' ''Corrodible hook,'' ''Floatline,'' ''Gangion,'' and ''Northeast distant closed area'' are added alphabetically to read as follows:

§ 635.2 Definitions.

* * * * *

Bottom longline means longline gear that is deployed on or near the ocean floor.

* * * * *

Corrodible hook means a fishing hook composed of any material other than stainless steel.

* * * * *

Floatline means a line attached to a buoyant object that is used to support the mainline of a longline at a specific target depth.

* * * * *

Gangion means a line that serves to attach a hook, suspended at a specific target depth, to the mainline of a longline.

* * * * *

Northeast distant closed area means the Atlantic Ocean area bounded by straight lines connecting the following coordinates in the order stated: 35°00′ N. lat., 60°00′ W. long.; 55°00′ N. lat., 60°00′ W. long.; 55°00′ N. lat., 20°00′ W. long.; 35°00′ N. lat., 20°00′ W. long.; 35°00′ N. lat., 60°00′ W. long.

* * * * *

3. In § 635.5, paragraphs (a)(4) and (5) are added to read as follows:

§ 635.5 Recordkeeping and reporting.

* * * * *

(a) * * *

(4) *Pelagic longline sea turtle reporting.* The operators of vessels that have pelagic longline gear on board and that have been issued, or are required to have, a limited access swordfish, shark, or tuna longline category permit for use in the Atlantic Ocean including the Caribbean Sea and the Gulf of Mexico are required to report any sea turtles that are dead when they are captured or that die during capture to the NMFS Southeast Fisheries Science Center Observer Program, at a number designated by NMFS, within 48 hours of returning to port, in addition to submitting all other reporting forms required by this part and 50 CFR parts 223 and 224.

(5) *Shark gillnet whale reporting.* The vessel operators of vessels that are shark gillnetting, as defined by 50 CFR 229.2, and that have been issued, or are required to have, shark directed or incidental limited access permits for use in the Atlantic Ocean including the Caribbean Sea and the Gulf of Mexico are required to contact the NMFS Southeast Regional Office, at a number designated by NMFS, if a listed whale is taken, in addition to submitting all other reporting forms required by this part and 50 CFR part 229.

* * * * *

4. In § 635.21, paragraphs (a)(3), (c)(2)(v), (c)(5)(iii), (d)(3)(v), and (d)(3)(vi) are added to read as follows:

§ 635.21 Gear operation and deployment restrictions.

(a) * * *

(3) Operators of all vessels that have pelagic or bottom longline gear on board and that have been issued, or required to have, a limited access swordfish, shark, or tuna longline category permit for use in the Atlantic Ocean including the Caribbean Sea and the Gulf of Mexico must post inside the wheelhouse the sea turtle handling and release guidelines provided by NMFS.

* * * * *

(c) * * *

(2) * * *

(v) In the Northeast Distant closed area at any time beginning at 12:01 a.m. on July 9, 2002.

* * * * *

(5) * * *

(iii) *Gear modifications.* The following measures are required of vessel operators to reduce the incidental capture and mortality of sea turtles:

(A) *Gangion placement.* Pelagic longline gear must be deployed such that gangions may not be attached to floatlines nor to the mainline except at a distance from the attachment point of the floatline to the mainline, along the mainline, of at least twice the length of the average gangion length in the set.

(B) *Gangion length.* Pelagic longline gear must be deployed such that the length of the gangion is at least 10 percent greater than the length of the floatline for longline sets in which the combined length of the floatline and the gangion is 100 meters or less.

(C) *Corrodible hooks.* Pelagic longline gear must be deployed with only corrodible hooks.

* * * * *

(d) * * *

(3) * * *

(v) Both the observer and vessel operator are responsible for sighting whales. If a listed whale is taken, the vessel operator must cease fishing operations immediately.

(vi) Vessel operators are required to conduct net checks every 0.5 to 2 hours to look for and remove any sea turtles or marine mammals.

* * * * *

5. In § 635.71, paragraphs (a)(36) and (37) are added to read as follows:

§ 635.71 Prohibitions.

(a) * * *

(36) Fish with bottom or pelagic longline and shark gillnet gear for HMS without using the gear modifications required in 50 CFR 635.21.

(37) Fail to report to NMFS the incidental capture of listed whales with shark gillnet gear and sea turtle mortalities associated with pelagic longline gear as required by 50 CFR 635.5.

* * * * *

[FR Doc. 02–8689 Filed 4–9–02; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 660

[I.D. 032702A]

Fisheries Off West Coast States and in the Western Pacific; Pacific Coast Groundfish Fishery; Application for an Exempted Fishing Permit

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

ACTION: Notice of receipt of an application for an exempted fishing permit (EFP); request for comments.

SUMMARY: NMFS announces receipt of an application for an EFP from the Washington State Department of Fish and Wildlife (WSDFW). If awarded, the EFP would allow vessels with valid Washington state delivery permits that have historically fished for arrowtooth flounder to land certain federally managed groundfish species in excess of cumulative trip limits, providing the vessel carries a state-sponsored observer. Observers would collect total catch and effort data and retain specimens that are otherwise not available shoreside. This EFP proposal is intended to promote the objectives of the Pacific Coast Groundfish Fishery Management Plan (FMP) by providing much-needed data on total catch and incidental catch rates.

DATES: DATES: Comments must be received by April 30, 2002.

ADDRESSES: ADDRESSES: Copies of the EFP application are available from Becky Renko, Northwest Region, NMFS, 7600 Sand Point Way N.E., Bldg. 1, Seattle, WA 98115–0070.

FOR FURTHER INFORMATION CONTACT: Becky Renko, 206–526–6110.

SUPPLEMENTARY INFORMATION: This action is authorized by the FMP and implementing regulations at 50 CFR 600.745 and 50 CFR 660.350.

On February 20, 2002, NMFS received a completed EFP application from the WSDFW. The primary purpose of this exempted fishing activity would be to measure bycatch rates for canary and other rockfish species associated with

fishing strategies currently used in the northern arrowtooth flounder fishery. The secondary purpose of the exempted fishing activity would be to measure bycatch rates for widow rockfish and other rockfish species associated with fishing strategies currently used in the mid-water yellowtail rockfish fishery. Fishing for arrowtooth flounder and yellowtail rockfish, which are abundant and commercially important species off Washington, is constrained by efforts to rebuild canary and widow rockfish, both overfished species. Fishers who have historically fished for these species believe that the fisheries can be prosecuted with much lower rockfish bycatch rates than are currently assumed. A similar EFP, that yielded useful data on the arrowtooth flounder fishery, was issued in 2001.

If issued, this EFP would allow approximately 7 vessels, which have historically participated in both the arrowtooth flounder and yellowtail rockfish fisheries, to retain and sell arrowtooth flounder, petrale sole, and yellowtail rockfish in excess of cumulative trip limits between May 1 and August 31, 2002. Other rockfish species, caught in excess of current trip limits and retained under the EFP, would be forfeited to the state. Fishing under the proposed EFP would be restricted to waters north of 46°40′ N. Lat.

The EFP would provide for a state-sponsored observer program under which observers would collect much-needed data to estimate incidental catch rates and total catch of various species and species groups and collect and retain specimens of otherwise prohibited fish caught by the vessel. Without an EFP, groundfish regulations at 50 CFR 660.306(f) would continue to restrict vessels from landing groundfish species or species groups in excess of trip limits.

Data collected during this project are expected to have a broad significance to the management of the groundfish fishery by providing much needed information on: (1) Total catch of rockfish in the northern flatfish and yellowtail rockfish fisheries; (2) catch rates of incidentally caught rockfish species, including canary rockfish and widow rockfish by fishing location; and (3) age structure data that are otherwise not available from landed catch. To the extent possible, data provided by the observers will be compatible with the data collected by the NMFS coastwide observer program. The information gathered through this EFP may lead to future rulemaking.

At the Pacific Fishery Management Council's (Council) November 2001, meeting in Burlingame, CA., the applicants appeared in support of the application. The Council considered the EFP application and recommended that NMFS issue the EFP for the proposed activity. A copy of the application is available for review from NMFS (see **ADDRESSES**).

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

Dated: April 3, 2002.

Bruce C. Morehead,

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

[FR Doc. 02–8690 Filed 4–9–02; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 660

[I.D. 032702B]

Fisheries Off West Coast States and in the Western Pacific; Pacific Coast Groundfish Fishery; Application for an Exempted Fishing Permit

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

ACTION: Notice of receipt of an application for an exempted fishing permit (EFP); request for comments.

SUMMARY: NMFS announces receipt of an application for an EFP from the Washington State Department of Fish and Wildlife. If awarded, the EFP would allow vessels with valid Washington state delivery permits that have historically fished for yellowtail rockfish to land certain federally managed groundfish species in excess of cumulative trip limits and sell yellowtail rockfish for profit, providing the vessel carries a state sponsored observer while conducting EFP fishing. State observers would collect total catch and effort data, and retain specimens that are otherwise not available shoreside. This EFP proposal is intended to promote the objectives of the Pacific Coast Groundfish Fishery Management Plan (FMP) by providing much-needed data on total catch and incidental catch rates, along with a pilot program for the retention of rockfish overages.

DATES: Comments must be received by April 30, 2002.

ADDRESSES: Copies of the EFP application are available from Becky Renko, Northwest Region, NMFS, 7600 Sand Point Way N.E., Bldg. 1, Seattle, WA 98115–0070.

FOR FURTHER INFORMATION CONTACT: Becky Renko (206) 526–6110.

SUPPLEMENTARY INFORMATION: This action is authorized by the FMP and implementing regulations at 50 CFR 600.745 and 50 CFR 660.350.

The purpose of this exempted fishing activity would be to measure bycatch rates for widow and other rockfish associated with fishing strat egies currently used in the mid-water yellowtail rockfish fishery off Washington.

Fishing for yellowtail rockfish, which is an abundant and commercially important species off Washington, is constrained by efforts to rebuild widow and canary rockfish, both overfished species. Fishers who have historically targeted yellowtail rockfish believe that the mid-water yellowtail fishery can be prosecuted with a much lower bycatch rate of widow and canary rockfish than is currently assumed.

If issued, this EFP would allow certain vessels with valid Washington state delivery permits to retain and sell yellowtail rockfish in excess of cumulative trip limits. Other rockfish species, caught in excess of current trip limits and retained under the EFP, would be forfeited to the State. This EFP would also provide for a state run observer program where observers collect and retain specimens of otherwise prohibited fish caught by the vessel. Observers would collect much-needed data, to estimate incidental catch rates and total catch of various species. In addition to providing bycatch information, this EFP would be a pilot program for the retention of rockfish overages. Without an EFP, groundfish regulations at 50 CFR 660.306(f) would continue to restrict vessels from landing groundfish species or species groups in excess of trip limits.

Data collected during this project is expected to have a broad significance to the management of the groundfish fishery by providing much needed information on: (1) rockfish catch in the mid-water yellowtail rockfish fishery; (2) catch rates of incidentally caught rockfish species, including widow rockfish and canary rockfish by fishing location; and (3) age structure data that is otherwise not available from landed catch. To the extent possible, data provided by the state observers will be compatible with that collected by the NMFS coastwide observer program. However, the scope of sampling will be narrower to reflect the specific purpose of this EFP. The information gathered

through this EFP may lead to future rulemaking. If the EFP is issued, approximately nine vessels are expected to fish under the EFP from May 1 through June 30, 2002.

NMFS initially received this EFP request from the State of Washington at the Pacific Fishery Management Council meeting on October 31, 2001. The completed application was received on February 20,2002. In accordance with regulations, NMFS has determined that the proposal warrants further consideration and has consulted with the Council. The Council urged NMFS to issue the EFP during its October/November 2001, meeting in Millbrae, CA. The applicants appeared in support of the application at that meeting. A copy of the application is available for review from NMFS (see **ADDRESSES**).

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

Dated: April 3, 2002.

Bruce C. Morehead,

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

[FR Doc. 02–8691 Filed 4–9–02; 8:45 am]

BILLING CODE 3510–22–S

Notices

Federal Register
Vol. 67, No. 69
Wednesday, April 10, 2002

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Agricultural Research Service

Notice of Intent To Seek Approval To Collect Information

AGENCY: Agricultural Research Service, USDA.

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 (Pub. L. No. 04–13) and Office of Management and Budget (OMB) regulations at 5 CFR part 1320 (60 FR 44978, August 29, 1995), this notice announces the Agricultural Research Service's (ARS) intention to seek approval to collect information in support of Beltsville Area Customer services.

DATES: Comments on this notice must be received by May 10, 2002, to be assured of consideration.

ADDRESSES: Address all comments concerning this notice to Sheryl Griffith, Webmaster, ARS Beltsville area, USDA, 10300 Baltimore Avenue, Beltsville, MD 20705.

FOR FURTHER INFORMATION CONTACT: Contact Sheryl Griffith, Webmaster, ARS Beltsville Area USDA, (301) 504–0133.

SUPPLEMENTARY INFORMATION:

Title: Web Order Forms for Research Data, Materials, Models, Publications, and Speakers and for Conference, Event, or Study Registration Services.

Type of Request: Approval to collect information needed to provide certain services to ARS Beltsville Area customers.

OMB Number: Not yet assigned.

Expiration Date: N/A.

Abstract: Sections 1703 and 1705 the Government Paperwork Elimination Act (GPEA), Pub. L. 105–277, Title XVII, require agencies, by October 21, 2003, to provide for the option of electronic submission of information by the public. To advance GPEA goals, ARS Beltsville Area needs to provide web forms so that customers may contact us electronically to request services such as: Speakers for eligible organizations; research data, materials, and models; publications; or conference registrations. For the convenience of customers, the forms itemize the information we need to provide a timely response. Information from forms will be used by the agency to provide services requested.

Estimate of Burden: Public reporting burden for this collection of information is estimated to average 3 minutes per response (range: 1–5 minutes).

Respondents: Agricultural researchers, students and teachers, business people participating in the ARS Technology Transfer program, members of service organizations, community groups, other federal and local government agencies, and the general public.

Estimated Number Respondents: 11,450.

Estimated Number of Responses per Respondent: One per request.

Estimated Total Annual Burden on Respondents: 572.5 hours.

Copies of forms used in this information collection can be obtained from Sheryl Griffith, Webmaster, ARS Beltsville Area, at (301) 504–0133.

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of the burden of the 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 those who are to respond, including through use of appropriate automated, electronic, mechanical or other technological collection techniques or other forms of information technology. Comments may be sent to: Sheryl Griffith, Webmaster, ARS Beltsville Area USDA, 10300 Baltimore Avenue, Beltsville, MD 20705, (301) 504–0133.

All responses to this notice will be summarized and included in the request for OMB approval. All comments will also become a matter of public record.

Dated: March 18, 2002.

Edward B. Knipling,

Acting Administrator, ARS.

[FR Doc. 02–8720 Filed 4–9–02; 8:45 am]

BILLING CODE 3410–03–P

DEPARTMENT OF AGRICULTURE

Forest Service

Snohomish County Resource Advisory Committee (RAC)

AGENCY: Forest Service, USDA.

ACTION: Notice of meetings.

SUMMARY: the Snohomish County Resource Advisory Committee (RAC) will be meeting on Wednesday, May 1, 2002, and Wednesday, May 15, 2002, at the Snohomish County Administration Building, Willis Trucker Conference room (3rd floor), 3000 Rockefeller Ave. in Everett, WA 98201.

The May 1 meeting will begin at 9:30 a.m., the May 15 meeting will begin at 9 a.m., and both meetings will continue until about 4 p.m. The agenda item to be covered at both meetings is the review and selection of Title II projects for FY 2003.

All Snohomish County Resource Advisory Committee meetings are open to the public. Interested citizens are encouraged to attend.

the Snohomish County Resource Advisory Committee advises Snohomish County on projects, reviews project proposals, and makes recommendations to the Forest Supervisor for projects to be funded by Title II dollars. The Snohomish County Resource Advisory Committee was established to carry out the requirements of the Secure Rural Schools and Community Self-Determination Act of 2000.

FOR FURTHER INFORMATION CONTACT: Direct questions regarding this meeting to Barbara Busse, Designated Federal Official, USDA Forest Service, Mt. Baker-Snoqualmie National Forest, 74920 NE. Stevens Pass Hwy, PO Box 305, Skykomish, WA. 98288 (phone: 360–677–2414) or Terry Skorheim, District Ranger, USDA Forest Service, Mt. Baker-Snoqualmie National Forest, 1405 Emens St., Darrington, WA 98241 (phone: 360–436–1155).

Dated: April 2, 2002.

Barbara Busse,

Designated Federal Official.

[FR Doc. 02–8636 Filed 4–9–02; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF AGRICULTURE

Grain Inspection, Packers and Stockyards Administration

Deposting of Stockyards; Correction

AGENCY: Grain Inspection, Packers and Stockyards Administration, USDA.

ACTION: Notice; correction.

SUMMARY: The Grain Inspection, Packers and Stockyards Administration published a notice in the **Federal Register** deposting 13 previously posted stockyards. Due to a typographical error in the facility number, the wrong stockyard was listed for deposting.

Correction

In the **Federal Register** of March 18, 2002 (67 FR 11976), make the following corrections in the table:

Facility No.	Name and location of stockyard	Date of posting
Remove the following entry:		
FL–124	Tampa Horse Auction, Thonotosassa, Florida	May 13, 1977.
Add the following entry:		
FL–134	Seffner Mango Livestock Market Seffner, Florida	November 18, 1992.

David R. Shipman,

Acting Administrator, Grain Inspection, Packers and Stockyards Administration.

[FR Doc. 02–8602 Filed 4–9–02; 8:45 am]

BILLING CODE 3410–EN–P

DEPARTMENT OF AGRICULTURE

Rural Utilities Service

Tri-State Generation and Transmission Association, Inc.; Notice of Finding of No Significant Impact

AGENCY: Rural Utilities Service, USDA.

ACTION: Notice of finding of no significant impact.

SUMMARY: Notice is hereby given that the Rural Utilities Service (RUS) has made a finding of no significant impact in connection with a request from Tri-State Generation and Transmission Association, Inc. (Tri-State) for assistance from RUS to finance the construction and operation of an 150 MW combustion turbine generation facility in Hildago County, New Mexico.

FOR FUTHER INFORMATION CONTACT: Dennis E. Rankin, Environmental Protection Specialist, RUS, Engineering and Environmental Staff, Stop 1571, 1400 Independence Avenue, SW, Washington, DC 20250–1571, telephone: (202) 720–1953 or e-mail: *drankin@rus.usda.gov.*

SUPPLEMENTARY INFORMATION: Tri-State is proposing to construct a 150 MW combustion turbine generation plant at a site located approximately 12 miles southeast of Lordsburg, New Mexico, just west of State Highway 113 and 2 miles south of Interstate 10. The Pyramid Generating Station will consist of 4 General Electric LM–6000 combustion turbines that will provide approximately 150 MW of generating capacity. The gas turbines will be fueled by natural gas; light distillate oil will serve as the backup fuel. The natural gas will be supplied via a 10-mile lateral pipeline from an existing El Paso Gas pipeline. Water will be obtained from existing wells and a new well on the property. The project includes modifications to an existing transmission system. The Bureau of Land Management will issue a right-of-way permit for the sections of transmission line located on Federal land.

Copies of the Environmental Assessment and FONSI are available at, or can be obtained from, RUS at the address provided herein, or from Karl Myers, Tri-State, P.O. Box 33695, Denver, Colorado 80233–0695, telephone: (303) 452–6111 or e-mail: *kmyers@tristategt.org.*

Dated: April 4, 2002.

Blaine D. Stockton,

Assistant Administrator, Electric Program, Rural Utilities Service.

[FR Doc. 02–8688 Filed 4–9–02; 8:45 am]

BILLING CODE 3410–15–P

DEPARTMENT OF COMMERCE

International Trade Administration

North American Free-Trade Agreement, Article 1904 NAFTA Panel Reviews; Request for Panel Review

AGENCY: NAFTA Secretariat, United States Section, International Trade Administration, Department of Commerce.

ACTION: Notice of First Request for Panel Review.

SUMMARY: On April 2, 2002, the Government of Canada filed a First Request for Panel Review with the United States Section of the NAFTA Secretariat pursuant to Article 1904 of the North American Free Trade Agreement. Additional requests were received on behalf of the Ontario Forest Industries Association (''OFIA'') and the Ontario Lumber Manufacturers Association (''OLMA'') and Tembec, Inc., and on behalf of West Fraser Mills, Ltd. (''West Fraser''), respectively. On April 3, 2002, additional Requests were received on behalf of the B.C. Lumber Trade Council and its Constituent Associations, the Cariboo Lumber Manufacturers' Association, and the Northern Forest Products Association and on behalf of Abitibi-Consolidated, Inc., its affiliates, and Sciere Saguenay Ltee. Panel review was requested of the final determination of Sales at Less Than Fair Value made by the United States Department of Commerce, International Trade Administration, respecting Certain Softwood Lumber Products from Canada. This determination was published in the **Federal Register**, (67 Fed. Reg. 15539) on April 2, 2002. The NAFTA Secretariat has assigned Case Number USA–CDA–2002–1904–02 to this request.

FOR FURTHER INFORMATION CONTACT: Caratina L. Alston, United States Secretary, NAFTA Secretariat, Suite 2061, 14th and Constitution Avenue, Washington, D.C. 20230, (202) 482–5438.

SUPPLEMENTARY INFORMATION: Chapter 19 of the North American Free-Trade Agreement (''Agreement'') establishes a mechanism to replace domestic judicial review of final determinations in antidumping and countervailing duty cases involving imports from a NAFTA country with review by independent binational panels. When a Request for Panel Review is filed, a panel is

established to act in place of national courts to review expeditiously the final determination to determine whether it conforms with the antidumping or countervailing duty law of the country that made the determination.

Under Article 1904 of the Agreement, which came into force on January 1, 1994, the Government of the United States, the Government of Canada and the Government of Mexico established *Rules of Procedure for Article 1904 Binational Panel Reviews* (''Rules''). These Rules were published in the **Federal Register** on February 23, 1994 (59 FR 8686).

A first Request for Panel Review was filed with the United States Section of the NAFTA Secretariat, pursuant to Article 1904 of the Agreement, on April 2, 2002, requesting panel review of the final determination described above.

The Rules provide that:

(a) a Party or interested person may challenge the final determination in whole or in part by filing a Complaint in accordance with Rule 39 within 30 days after the filing of the first Request for Panel Review (the deadline for filing a Complaint is May 2, 2002);

(b) a Party, investigating authority or interested person that does not file a Complaint but that intends to appear in support of any reviewable portion of the final determination may participate in the panel review by filing a Notice of Appearance in accordance with Rule 40 within 45 days after the filing of the first Request for Panel Review (the deadline for filing a Notice of Appearance is May 17, 2002); and

(c) the panel review shall be limited to the allegations of error of fact or law, including the jurisdiction of the investigating authority, that are set out in the Complaints filed in the panel review and the procedural and substantive defenses raised in the panel review.

Dated: April 4, 2002.

Caratina L. Alston,

United States Secretary, NAFTA Secretariat.

[FR Doc. 02–8638 Filed 4–9–02; 8:45 am]

BILLING CODE 3510–GT–P

DEPARTMENT OF COMMERCE

International Trade Administration

North American Free-Trade Agreement, Article 1904 NAFTA Panel Reviews; Request for Panel Review.

AGENCY: NAFTA Secretariat, United States Section, International Trade Administration, Department of Commerce.

ACTION: Notice of First Request for Panel Review

SUMMARY: On April 2, 2002, the Government of Canada, the Governments of the Provinces of Alberta, British Columbia, Manitoba, Ontario, and Saskatchewan, the Gouvernement du Quebec, the Governments of the Northwest Territories and the Yukon Territory, the British Columbia Lumber Trade Council, the Ontario Forest Industries Association, the Ontario Lumber Manufacturers Association, and the Quebec Lumber Manufacturers Association filed a First Request for Panel Review with the United States Section of the NAFTA Secretariat pursuant to Article 1904 of the North American Free Trade Agreement. A Second Request was received on behalf of Tembec, Inc. Panel review was requested of the Final Affirmative Countervailing Duty Determination and Final Negative Critical Circumstances Determination made by the United States Department of Commerce, International Trade Administration, respecting Certain Softwood Lumber Products from Canada. This determination was published in the **Federal Register**, (67 FR 15545) on April 2, 2002. The NAFTA Secretariat has assigned Case Number USA–CDA–2002–1904–03 to this request.

FOR FURTHER INFORMATION CONTACT: Caratina L. Alston, United States Secretary, NAFTA Secretariat, Suite 2061, 14th and Constitution Avenue, Washington, D.C. 20230, (202) 482–5438.

SUPPLEMENTARY INFORMATION: Chapter 19 of the North American Free-Trade Agreement (''Agreement'') establishes a mechanism to replace domestic judicial review of final determinations in antidumping and countervailing duty cases involving imports from a NAFTA country with review by independent binational panels. When a Request for Panel Review is filed, a panel is established to act in place of national courts to review expeditiously the final determination to determine whether it conforms with the antidumping or countervailing duty law of the country that made the determination.

Under Article 1904 of the Agreement, which came into force on January 1, 1994, the Government of the United States, the Government of Canada and the Government of Mexico established *Rules of Procedure for Article 1904 Binational Panel Reviews* (''Rules''). These Rules were published in the **Federal Register** on February 23, 1994 (59 FR 8686).

A first Request for Panel Review was filed with the United States Section of the NAFTA Secretariat, pursuant to Article 1904 of the Agreement, on April 2, 2002, requesting panel review of the final determination described above.

The Rules provide that:

(a) A Party or interested person may challenge the final determination in whole or in part by filing a Complaint in accordance with Rule 39 within 30 days after the filing of the first Request for Panel Review (the deadline for filing a Complaint is May 2, 2002);

(b) A Party, investigating authority or interested person that does not file a Complaint but that intends to appear in support of any reviewable portion of the final determination may participate in the panel review by filing a Notice of Appearance in accordance with Rule 40 within 45 days after the filing of the first Request for Panel Review (the deadline for filing a Notice of Appearance is May 17, 2002); and

(c) The panel review shall be limited to the allegations of error of fact or law, including the jurisdiction of the investigating authority, that are set out in the Complaints filed in the panel review and the procedural and substantive defenses raised in the panel review.

Dated: April 4, 2002.

Caratina L. Alston,

United States Secretary, NAFTA Secretariat.

[FR Doc. 02–8639 Filed 4–9–02; 8:45 am]

BILLING CODE 3510–GT–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–122–503]

Notice of Preliminary Results of Antidumping Duty Administrative Review: Iron Construction Castings from Canada

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

SUMMARY: In response to a request from Canada Pipe Company Limited (Canada Pipe), the Department of Commerce (the Department) is conducting an administrative review of the antidumping duty order on iron construction castings (ICC) from Canada. The period of review (POR) is March 1, 2000 through February 28, 2001. This review covers imports of ICC from one producer, Canada Pipe.

We have preliminarily determined the dumping margin for Canada Pipe to be 1.43 percent.

EFFECTIVE DATE: April 10, 2002.

FOR FURTHER INFORMATION CONTACT: Karine Gziryan and Howard Smith, AD/CVD Enforcement, Office IV, Group II, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, D.C. 20230; telephone (202) 482–4081 and (202) 482–5193, respectively.

SUPPLEMENTARY INFORMATION:

The Applicable Statute and Regulations

Unless otherwise indicated, all citations to the statute are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Tariff Act of 1930 (the Act) by the Uruguay Round Agreements Act (URAA). In addition, unless otherwise indicated, all citations to the Department's regulations are to the current regulations at 19 CFR Part 351 (2001).

Background

On March 5, 1986, the Department published in the *Federal Register* (51 FR 7600) the antidumping duty order on ICC from Canada. On March 5, 2001, the Department published in the Federal Register (66 FR 13283) a notice of opportunity to request an administrative review of this antidumping duty order. On March 30, 2001, in accordance with 19 CFR 351.213(b)(1), the respondent, Canada Pipe, requested that the Department conduct an administrative review of its exports of subject merchandise to the United States. We published the notice of initiation of this review on April 30, 2001 (66 FR 21310).

Scope of the Review

The merchandise covered by the order consists of certain ICC from Canada, limited to manhole covers, rings, and frames, catch basin grates and frames, cleanout covers and frames used for drainage or access purposes for public utility, water and sanitary systems, classifiable as heavy castings under Harmonized Tariff Schedule (HTS) item numbers 7325.10.0010, 7325.10.0020, and 7325.10.0025. The HTS item number is provided for convenience and Customs purposes only. The written description remains dispositive.

Product Comparisons

In accordance with section 771(16) of the Act, the Department considered all products within the scope of this review that Canada Pipe produced and sold in the comparison market during the POR to be foreign like products for purposes of determining appropriate product comparisons to ICC sold in the United States. The Department determined that the home market is the appropriate comparison market because the aggregate quantity of Canada Pipe's home market sales of foreign like product is more than five percent of the aggregate quantity of its U.S. sales of subject merchandise (*see* section 773(a)(1)(C) of the Act). The Department compared U.S. sales to sales made in the home market within the contemporaneous window period, which extends from three months prior to the month of the U.S. sale until two months after the month of the sale. Where there were no sales of identical merchandise made in the home market in the ordinary course of trade, the Department compared U.S. sales to sales of the most similar foreign like product made in the ordinary course of trade. In making product comparisons, the Department selected identical and most similar foreign like products based on the physical characteristics reported by Canada Pipe in the following order of importance: product type, components, shape of the product, weight band, locking mechanism, painted castings or not, machined castings or not.

The POR is March 1, 2000 through February 28, 2001.

Export Price

Section 772(a) of the Act defines export price (EP) as the price at which the subject merchandise is first sold before the date of importation by the exporter or producer outside the United States to an unaffiliated purchaser for exportation to the United States.

Canada Pipe sells subject merchandise directly to its customers in the United States. Until July 1, 2000, Canada Pipe's U.S. affiliate, Bibby USA, was the importer of record for all of its U.S. sales. Bibby USA closed on July 1, 2000. Since July 1, 2000, Canada Pipe acted as the importer of record for its U.S. sales and invoiced Canada Pipe's U.S. customers directly. The sales documentation on the record in this proceeding indicates that Canada Pipe's U.S. sales occurred in Canada between Canada Pipe and the unaffiliated U.S. purchaser. Specifically, we have found the following facts: 1) Bibby USA, when it operated, did not contact the U.S. customers; 2) Canada Pipe's Division, Bibby Ste–Croix Foundry, in Canada contacted the U.S. customers; 3) the U.S. customers send the purchase order directly to Canada Pipe; 4) Canada Pipe makes all arrangements for shipping and delivery to the U.S. customers in Canada; 5) Canada Pipe's invoices are issued and the U.S. customers pay Canada Pipe directly in Canada; and 6) Canada Pipe retains title to the merchandise until the point of delivery to the U.S. customers. Because Bibby USA merely acted as the importer of record, we preliminarily determine that these sales were made in Canada by Canada Pipe and, thus, should be treated as EP transactions. *See Cold–Rolled and Corrosion–Resistant Carbon Steel Flat Products from Korea, Final Results of Administrative Review*, 65 FR 13359 (March 13, 2000) and accompanying Decision Memorandum at Comment 12; and *Porcelain–on–Steel Cookware from Mexico, Final Results of Administrative Review*, 65 FR 30068 (May 10, 2000) and accompanying Decision Memorandum at Comment 2.

We calculated an EP for all Canada Pipe's sales because the merchandise was sold directly by Canada Pipe to the first unaffiliated purchaser in the United States prior to importation, and constructed export price (CEP) was not otherwise warranted based on the facts of record. We made deductions from the starting price for movement expenses in accordance with section 772(c)(2)(A) of the Act. These include foreign movement expense (inland freight), international freight, U.S. brokerage and U.S. duties.

Normal Value

We compared the aggregate quantity of home market and U.S. sales and determined that the quantity of the company's sales in its home market was more than five percent of the quantity of its sales to the U.S. market. Consequently, in accordance with section 773(a)(1)(B) of the Act, we based normal value (''NV'') on home market sales, all of which were to unaffiliated customers.

We calculated monthly weighted–average NVs based on ex–works or delivered prices to unaffiliated customers. We made deductions, where appropriate, from the starting price for early payment discounts, inland insurance, and inland freight. We made circumstance of sale (''COS'') adjustments, in accordance with section 773(a)(6)(C)(iii) of the Act, for direct selling expenses, including credit expenses.

Level of Trade

In accordance with section 773(a)(1)(B) of the Act, to the extent practicable, we determine NV based on sales in the comparison market at the same level of trade (LOT) as the EP or CEP transaction. The NV LOT is that of the starting–price sales in the comparison market or, when NV is based on constructed value (CV), that of the sales from which we derive selling, general and administrative (SG&A) expenses and profit. With respect to

U.S. price when based on EP transactions, the LOT is the level of the sale to the unaffiliated customer.

To determine whether NV sales are at a different LOT than EP or CEP transactions, we examine stages in the marketing process and selling functions along the chain of distribution between the producer and the unaffiliated customer. If the comparison–market sales are at a different LOT and the difference affects price comparability, as manifested in a pattern of consistent price differences between the sales on which NV is based and comparison–market sales at the LOT of the export transaction, we make a LOT adjustment under section 773(a)(7)(A) of the Act.

Canada Pipe reported that during the POR it sold subject merchandise through three channels of distribution in the home market: sales made by Canada Pipe directly to original equipment manufacturers (OEM) (Channel 1), sales from Canada Pipe directly to end–users (Channel 2), and sales from Canada Pipe to distributors (Channel 3). In examining the record, we found that Canada Pipe performs substantially different selling functions (e.g. sales planning, advertising, technical service, etc.) for all three reported channels of distribution. Due to the proprietary nature of the examined selling functions, see the *Preliminary Results: Level of Trade Analysis (Preliminary LOT Memorandum*), dated concurrently with this notice, on file in Room B–099 of the main Department of Commerce Building, the Central Records Unit (CRU), for the specifics of our analysis. Based upon an analysis of the information provided on the record, we conclude that there are significant differences in the selling functions performed by Canada Pipe in making sales through these three channels of distribution. Therefore, using the information on the record, the Department preliminarily determines that Canada Pipe makes sales to three distinct LOTs in the home market. *See* the *Preliminary LOT Memorandum*.

Canada Pipe reported two channels of distribution (*i.e.* sales to OEMs and sales to distributors) in the United States during the POR. In examining the record, we found that Canada Pipe performs substantially different levels of selling functions for both reported channels of distribution. Due to the proprietary nature of the examined selling functions, see the *Preliminary LOT Memorandum* for the specifics of our analysis. Based upon an analysis of the information provided on the record, we conclude that there are significant differences in the selling functions performed by Canada Pipe in making sales through both channels of distribution. Therefore, the Department preliminarily determines that Canada Pipe makes sales to two distinct LOTs in the United States market. *See* the *Preliminary LOT Memorandum*.

In order to determine whether sales in the United States are at a different LOT than sales in the home market, we reviewed the selling activities associated with each LOT in each market. We compared Canada Pipe's selling activities for U.S. EP transactions to OEMs and distributors to Canada Pipe's selling activities performed for sales to OEMs, distributors, and end–users in the home market. First, we found that there were no differences in selling functions performed for Canada Pipe's U.S. OEM sales as compared to home market OEM sales. Second, we found that there were no differences in selling functions performed for Canada Pipe's U.S. distributor sales as compared to home market distributor sales. Third, we found that there were significant differences in the selling functions performed for Canada Pipe's U.S. OEM sales as compared to home market distributor and end–user sales, sufficient to constitute differences in LOT. Finally, we found significant differences in the selling functions performed for Canada Pipe's U.S. distributor sales as compared to home market OEM and end–user sales, sufficient to constitute differences in LOT. *See* the *Preliminary LOT Memorandum*.

To the extent practicable the Department has compared EP sales with home market sales at the same LOT as that of the EP sales. However, where the Department was unable to match EP sales with home market sales at the same LOT, the Department compared the EP sales to home market sales at a different LOT. For such comparisons, we made a LOT adjustment in accordance with section 773(a)(7) of the Act and 19 CFR 351.412. *See* the *Preliminary LOT Memorandum*.

Currency Conversion

Pursuant to section 773A(a) of the Act, we made currency conversions into U.S. dollars based on the exchange rates in effect on the dates of the U.S. sales as certified by the Federal Reserve Bank.

Preliminary Results of the Review

As a result of this review, we preliminarily determine that a 1.43 percent dumping margin exists for Canada Pipe for the period March 1, 2000, through February 28, 2001. The Department will disclose calculations performed within five days of the date of publication of this notice to the parties to this proceeding in accordance with 19 CFR 351.224(b). An interested party may request a hearing within 30 days of publication of these preliminary results. *See* 19 CFR 351.310(c). Any hearing, if requested, will be held 44 days after the date of publication, or the first working day thereafter. Interested parties are invited to comment on these preliminary results. Interested parties may submit case briefs and/or written comments no later than 30 days after the date of publication of these preliminary results of review. Rebuttal briefs and rebuttals to written comments, limited to issues raised in such briefs or comments, may be filed no later than 37 days after the date of publication. Parties who submit arguments are requested to submit with the argument (1) a statement of the issue and (2) a brief summary of the argument. Further, we would appreciate it if parties submitting written comments would also provide the Department with an additional copy of the public version of those comments on diskette. The Department will issue the final results of this administrative review, which will include the results of its analysis of issues raised in any such comments, within 120 days of publication of these preliminary results.

Upon completion of this administrative review, the Department shall determine, and the Customs Service shall assess, antidumping duties on all appropriate entries. We have calculated importer–specific duty assessment rates based on the ratio of the total amount of antidumping duties calculated for the examined sales to the total entered value of examined sales. Where the importer–specific assessment rate is above de minimis, we will instruct Customs to assess duties on that importer's entries of subject merchandise. The Department will issue appraisement instructions directly to Customs.

Furthermore, the following deposit requirements will be effective upon completion of the final results of this administrative review for all shipments of subject merchandise from Canada entered, or withdrawn from warehouse, for consumption on or after the publication date of the final results of this administrative review, as provided by section 751(a)(1) of the Act: (1) the cash deposit rate for Canada Pipe will be the rate established in the final results of this administrative review; (2) for merchandise exported by manufacturers or exporters not covered in this review but covered in the original less–than–fair–value (''LTFV'') investigation or a previous review, the

cash deposit will continue to be the company–specific rate published for the most recent period; (3) if the exporter is not a firm covered in this review, a previous review, or the original LTFV investigation, but the manufacturer is, the cash deposit rate will be the rate established for the most recent period for the manufacturer of the merchandise; and (4) if neither the exporter nor the manufacturer is a firm covered in this review, a previous review, or the original LTFV investigation, the cash deposit rate will be 14.67 percent, the ''all–others'' rate established in the LTFV segment of this proceeding.

These deposit requirements, when imposed, shall remain in effect until publication of the final results of administrative review for a subsequent review period.

This notice also serves as a preliminary reminder to importers of their responsibility under 19 CFR 351.402(f)(2) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

This administrative review and notice are in accordance with sections 751(a)(1) and 777(i)(1) of the Act.

Dated: April 1, 2002

Faryar Shirzad,

Assistant Secretary for Import Administration.

[FR Doc. 02–8708 Filed 4–9–02; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

International Trade Administation

[A–427–801, A–428–801, A–475–801, A–588–804, A–559–801, A–412–801]

Antifriction Bearings (Other Than Tapered Roller Bearings) and Parts Thereof From France, Germany, Italy, Japan, Singapore, and The United Kingdom: Preliminary Results of Antidumping Duty Administrative Reviews and Partial Rescission of Administrative Reviews

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

ACTION: Notice of Preliminary Results of Antidumping Duty Administrative Reviews, and Partial Rescission of Administrative Reviews.

SUMMARY: In response to requests from interested parties, the Department of Commerce is conducting administrative reviews of the antidumping duty orders on antifriction bearings (other than tapered roller bearings) and parts thereof from France, Germany, Italy, Japan, Singapore, and the United Kingdom. The merchandise covered by these orders are ball bearings and parts thereof, and spherical plain bearings and parts thereof. The reviews cover 40 manufacturers/exporters. The period of review is May 1, 2000, through April 30, 2001.

We have preliminarily determined that sales have been made below normal value by various companies subject to these reviews. If these preliminary results are adopted in our final results of administrative reviews, we will instruct the Customs Service to assess antidumping duties on all appropriate entries.

We invite interested parties to comment on these preliminary results. Parties who submit comments in these proceedings are requested to submit with each argument (1) a statement of the issue and (2) a brief summary of the argument.

EFFECTIVE DATE: April 10, 2002.

FOR FURTHER INFORMATION CONTACT: Please contact the appropriate case analysts for the various respondent firms, as listed below, at Import Administration, International Trade Administration, U.S. Department of Commerce, Washington, D.C. 20230; telephone: (202) 482–4733.

France

Dmitry Vladimirov (SKF), Lyn Johnson (Bearing Discount Int. – Germany, Rodamientos Rovi – Venezuela, Rovi–Valencia – Venezuela, Rovi–Marcay – Venezuela, RIRSA – Mexico, DCD – Northern Ireland, EuroLatin Ex. Services – United Kingdom (collectively, Resellers)), or Mark Ross.

Germany

Dunyako Ahmadu (Paul Mueller, FAG), Thomas Schauer (Torrington Nadellager), Lyn Johnson (Resellers), Mark Ross, or Richard Rimlinger.

Italy

David Dirstine (SKF), Janis Kalnins (FAG), Lyn Johnson (Resellers), Mark Ross, or Richard Rimlinger.

Japan

Edythe Artman (Nachi, Isuzu), Minoo Hatten (NSK), Lyn Johnson (Koyo, Asahi), Katja Kravetsky (Nankai Seiko), Janis Kalnins (NPBS), David Dirstine (NTN), George Callen (Osaka Pump, Takeshita), Mark Ross, or Richard Rimlinger.United Kingdom Thomas Schauer (RHP/NSK), Dmitry Vladimirov (Barden), Katja Kravetsky (FAG), Mark Ross, or Richard Rimlinger.

SUPPLEMENTARY INFORMATION:

The Applicable Statute

Unless otherwise indicated, all citations to the Tariff Act of 1930, as amended (the Act), are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Act by the Uruguay Round Agreements Act (URAA). In addition, unless otherwise indicated, all citations to the Department of Commerce's (the Department's) regulations are to 19 CFR Part 351 (2001).

Background

On May 15, 1989, the Department published in the *Federal Register* (54 FR 20909) the antidumping duty orders on ball bearings and parts thereof (BBs) from France, Germany, Italy, Japan, Singapore, and the United Kingdom and on spherical plain bearings and parts thereof (SPBs) from France. On June 19, 2001, in accordance with 19 CFR 351.213(b), we published a notice of initiation of administrative reviews of these orders (66 FR 32934).

Subsequent to the initiation of these reviews, we received timely withdrawals of the requests we had received for review of SNR (France), NMB (Singapore), and SNFA (UK) with respect to BBs and SKF (France) with respect to SPBs. Because there were no other requests for review of the above–named firms, we are rescinding the reviews with respect to these companies in accordance with 19 CFR 351.213(d). Because there is no other request for reviews of the orders on BBs from Singapore and on SPBs from France, we are rescinding the reviews of these orders in full.

Scope of Reviews

The products covered by these reviews are antifriction bearings (other than tapered roller bearings) and parts thereof (AFBs) and constitute the following merchandise:

Ball Bearings and Parts Thereof: These products include all AFBs that employ balls as the rolling element. Imports of these products are classified under the following categories: antifriction balls, ball bearings with integral shafts, ball bearings (including radial ball bearings) and parts thereof, and housed or mounted ball bearing units and parts thereof.

Imports of these products are classified under the following *Harmonized Tariff Schedules* (HTSUS)

subheadings: 3926.90.45, 4016.93.00, 4016.93.10, 4016.93.50, 6909.19.5010, 8431.20.00, 8431.39.0010, 8482.10.10, 8482.10.50, 8482.80.00, 8482.91.00, 8482.99.05, 8482.99.2580, 8482.99.35, 8482.99.6595, 8483.20.40, 8483.20.80, 8483.50.8040, 8483.50.90, 8483.90.20, 8483.90.30, 8483.90.70, 8708.50.50, 8708.60.50, 8708.60.80, 8708.70.6060, 8708.70.8050, 8708.93.30, 8708.93.5000, 8708.93.6000, 8708.93.75, 8708.99.06, 8708.99.31, 8708.99.4960, 8708.99.50, 8708.99.5800, 8708.99.8080, 8803.10.00, 8803.20.00, 8803.30.00, 8803.90.30, and 8803.90.90.

The size or precision grade of a bearing does not influence whether the bearing is covered by the order. For a listing of scope determinations which pertain to the orders, see the ''Scope Determinations Memorandum'' (Scope Memo) from the Antifriction Bearings Team to Laurie Parkhill, dated April 1, 2002, and hereby adopted by this notice. The Scope Memo is on file in the Central Records Unit (CRU), Main Commerce Building, Room B–099, in the General Issues record (A–100–001) for the 99/00 reviews.

Although the HTSUS item numbers above are provided for convenience and customs purposes, written descriptions of the scope of these proceedings remain dispositive.

Verification

As provided in section 782(i) of the Act, we verified information provided by certain respondents using standard verification procedures, including on–site inspection of the manufacturers' facilities, the examination of relevant sales and financial records, and the selection of original documentation containing relevant information. Our verification results are outlined in the public versions of the verification reports, which are on file in the CRU. We will also be verifying certain companies (Barden Corporation and SKF Italy) shortly after publication of these preliminary results of reviews.

Use of Facts Available

In accordance with section 776(a) of the Act, we preliminarily determine that the use of facts available as the basis for the weighted–average dumping margin is appropriate for Isuzu Motors, Ltd. (Japan). We also preliminarily determine that the use of facts available is appropriate with respect to three of the Resellers (Bearing Discount International, DCD, and RIRSA) in the reviews covering BBs from France, Germany, and Italy. None of the above firms responded, or responded fully, to our antidumping questionnaire (see the analysis memoranda to the file for these firms dated April 1, 2002) and, consequently, we find that they have not provided ''information that has been requested by the administering authority'' (section 776(a)(1) of the Act). Although RIRSA claimed that it did not export subject merchandise during the period of review, we found that, based on our examination of the Customs Service database for imports of entered merchandise, RIRSA had shipped merchandise that is classified under the HTSUS subheadings for BBs. Unless RIRSA provides us with more details about the shipped merchandise for the final results of this administrative review, we will continue to use facts available as the basis for the weighted–average dumping margin for RIRSA.

In accordance with section 776(b) of the Act, we are making an adverse inference in our application of the facts available. This is necessary because the above firms have not acted to the best of their ability in providing us with relevant information which is under their control. As adverse facts available for these firms, we have applied the highest rate we have calculated for any companies under review in any segment of the relevant proceedings (i.e., BBs from Germany, France, Italy, and Japan). We have selected these rates because they are sufficiently high as to reasonably assure that the firms named above do not obtain a more favorable result by failing to cooperate. Specifically, these rates are 66.18 percent for BBs from France, 70.41 percent for BBs from Germany, 68.29 percent for BBs from Italy, and 73.55 percent for BBs from Japan.

Section 776(c) of the Act provides that the Department shall, to the extent practicable, corroborate secondary information used for facts available by reviewing independent sources reasonably at its disposal. Information from a prior segment of the proceeding or from another company in the same proceeding constitutes secondary information. The Statement of Administrative Action accompanying the URAA, H.R. Doc. 103–316, at 870 (1994) (SAA), provides that ''corroborate'' means that the Department will satisfy itself that the secondary information to be used has probative value. SAA at 870. As explained in *Tapered Roller Bearings, Four Inches or Less in Outside Diameter, and Components Thereof, from Japan; Preliminary Results of Antidumping Duty Administrative Reviews and Partial Termination of Administrative Reviews*, 61 FR 57391, 57392 (November 6, 1996) (*Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, from Japan*), to corroborate secondary information, the Department will examine, to the extent practicable, the reliability and relevance of the information used. However, unlike other types of information, such as input costs or selling expenses, there are no independent sources for calculated dumping margins. The only source for margins is administrative determinations. Thus, with respect to an administrative review, if the Department chooses as facts available a calculated dumping margin from a prior segment of the proceeding, it is not necessary to question the reliability of the margin for that time period.

With respect to the relevance aspect of corroboration, however, the Department will consider information reasonably at its disposal as to whether there are circumstances that would render a margin not relevant. Where circumstances indicate that the selected margin is not appropriate as adverse facts available, the Department will disregard the margin and determine an appropriate margin (see *Fresh Cut Flowers from Mexico; Final Results of Antidumping Duty Administrative Review*, 61 FR 6812 (February 22, 1996), where the Department disregarded the highest dumping margin as best information available because the margin was based on another company's uncharacteristic business expense resulting in an unusually high margin). Further, in accordance with *F.LII De Cecco Di Filippo Fara S. Martino S.p.A. v. United States*, No. 99–1318 (CAFC June 16, 2000), we also examine whether information on the record would support the selected rates as reasonable facts available.

We find that the above rates that we are using for these preliminary results do have probative value. We compared the selected margins to margins calculated on individual sales of the merchandise in question made by companies covered by the instant review. We found a substantial number of sales, made in the ordinary course of trade and in commercial quantities, with dumping margins near or exceeding the rates under consideration. (The details of this analysis are contained in the proprietary versions of the analysis memoranda for the covered firms dated April 1, 2002.) This evidence supports an inference that the selected rates might reflect the actual dumping margins for the firms in question.

Furthermore, there is no information on the record that demonstrates that the rates selected are inappropriate total adverse facts–available rates for the companies in question. On the contrary,

our existing record supports the use of these rates as the best indications of the export prices and dumping margins for these firms as explained in our April 1, 2002, memoranda. Therefore, we consider the selected rates to have probative value with respect to the firms in question in these reviews and to reflect appropriate adverse inferences.

In accordance with section 776(a) of the Act, we have also applied partial facts available to Nankai Seiko (Japan). Late in the review, while doing a cursory review of the website of one of Nankai Seiko's customers, we learned of a possible connection between the two companies, and asked Nankai Seiko further questions in a supplemental questionnaire. From Nankai Seiko's response, we learned of its consignment arrangement with this company. The antidumping questionnaire instructs respondents specifically to describe any consignment arrangements and the functions of the consignee. Nankai Seiko did not report its consignment sales to the United States as constructed export–price (CEP) sales. Section 776(a)(2) of the Act provides that, if an interested party (A) withholds information that has been requested by the Department, (B) fails to provide such information in a timely manner or in the form or manner requested, subject to subsections 782(c)(1) and (e) of the Act, (C) significantly impedes a determination under the antidumping statute, or (D) provides such information but the information cannot be verified, the Department shall, subject to subsection 782(d) of the Act, use facts otherwise available in reaching the applicable determination. Since Nankai Seiko neither mentioned its consignment arrangements nor provided any necessary CEP data associated with such sales, we have preliminarily determined that Nankai Seiko did not act to the best of its ability to provide information and have applied adverse facts available to its consignment sales, pursuant to section 776(b) of the Act. As adverse facts available, we selected the highest rate we have calculated for any companies under review in any segment of the relevant proceedings (i.e., 73.55 percent for BBs from Japan) and, in our calculation of Nankai's weighted–average margin, applied this rate to the value of the consignment sales.

In addition, we applied partial facts available to Asahi. In our original questionnaire and in a letter dated March 18, 2002, we requested that Asahi provide constructed value (CV) data for all of its U.S. products. Although Asahi provided significantly more CV data in response to our March 18, 2002, letter, it did not provide all of the requested data. Therefore, we have preliminarily concluded that Asahi has not acted to the best of its ability to comply with our request and we have made an adverse inference for applying facts available. When we could not find an appropriate identical or similar home–market match for sales of U.S. products and no CV was available for determining normal value, we used 73.55 percent as the transaction–specific margin, which is the highest rate we have calculated for any Japanese companies under review in any segment of the relevant proceedings (see *Antidumping Duty Orders: Ball Bearings, Cylindrical Roller Bearings and Spherical Plain Bearings, and Parts Thereof From Japan*, 54 FR 20904 (May 15, 1989)). We have selected this rate because it is sufficiently higher than the average transaction–specific margin for other sales by Asahi in which we used CV to determine normal value.

Export Price and Constructed Export Price

For the price to the United States, we used export price or CEP as defined in sections 772(a) and (b) of the Act, as appropriate. Due to the extremely large volume of transactions that occurred during the period of review and the resulting administrative burden involved in calculating individual margins for all of these transactions, we sampled CEP sales in accordance with section 777A of the Act. When a firm made more than 2,000 CEP sales transactions to the United States for merchandise subject to a particular order, we reviewed CEP sales that occurred during sample weeks. We selected one week from each two–month period in the review period, for a total of six weeks, and analyzed each transaction made in those six weeks. The sample weeks are as follows: June 11–17, 2000; August 13–19, 2000; September 24–30, 2000; October 29–November 4, 2000; December 31, 2000–January 6, 2001; and March 18–24, 2001. We reviewed all export–price sales transactions made during the period of review.

We calculated export price and CEP based on the packed F.O.B., C.I.F., or delivered price to unaffiliated purchasers in, or for exportation to, the United States. We made deductions, as appropriate, for discounts and rebates. We also made deductions for any movement expenses in accordance with section 772(c)(2)(A) of the Act.

In accordance with section 772(d)(1) of the Act and the SAA, at 823–824, we calculated the CEP by deducting selling expenses associated with economic activities occurring in the United States, including commissions, direct selling expenses, indirect selling expenses, and repacking expenses in the United States. When appropriate, in accordance with section 772(d)(2) of the Act, we also deducted the cost of any further manufacture or assembly, except where we applied the special rule provided in section 772(e) of the Act (see below). Finally, we made an adjustment for profit allocated to these expenses in accordance with section 772(d)(3) of the Act.

With respect to subject merchandise to which value was added in the United States prior to sale to unaffiliated U.S. customers, *e.g.*, parts of bearings that were imported by U.S. affiliates of foreign exporters and then further processed into other products which were then sold to unaffiliated parties, we determined that the special rule for merchandise with value added after importation under section 772(e) of the Act applied to all firms, except NPBS, that added value in the United States.

Section 772(e) of the Act provides that, when the subject merchandise is imported by an affiliated person and the value added in the United States by the affiliated person is likely to exceed substantially the value of the subject merchandise, we shall determine the CEP for such merchandise using the price of identical or other subject merchandise if there is a sufficient quantity of sales to provide a reasonable basis for comparison and we determine that the use of such sales is appropriate. If there is not a sufficient quantity of such sales or if we determine that using the price of identical or other subject merchandise is not appropriate, we may use any other reasonable basis to determine the CEP.

To determine whether the value added is likely to exceed substantially the value of the subject merchandise, we estimated the value added based on the difference between the averages of the prices charged to the first unaffiliated purchaser for the merchandise as sold in the United States and the averages of the prices paid for the subject merchandise by the affiliated purchaser. Based on this analysis, we determined that the estimated value added in the United States by all firms, with the exception of NPBS, accounted for at least 65 percent of the price charged to the first unaffiliated customer for the merchandise as sold in the United States. (See 19 CFR 351.402(c) for an explanation of our practice on this issue.) Therefore, we preliminarily determine that, for the firms other than NPBS, the value added is likely to exceed substantially the value of the subject merchandise. Also, for those

companies, we determine that there was a sufficient quantity of sales remaining to provide a reasonable basis for comparison and that the use of these sales is appropriate. Accordingly, for purposes of determining dumping margins for the sales subject to the special rule, we have used the weighted–average dumping margins calculated on sales of identical or other subject merchandise sold to unaffiliated persons.

For NPBS, we determined that the special rule did not apply because the value added in the United States did not exceed substantially the value of the subject merchandise. Consequently, NPBS submitted a complete response to our further–manufacturing questionnaire which included the costs of the further processing performed by its U.S. affiliate. Since the majority of NPBS's products sold in the United States were further processed, we analyzed all sales.

No other adjustments to export price or CEP were claimed or allowed.

Normal Value

Based on a comparison of the aggregate quantity of home–market and U.S. sales and absent any information that a particular market situation in the exporting country did not permit a proper comparison, we determined, with the exception of Takeshita Seiko Co., that the quantity of foreign like product sold by all respondents in the exporting country was sufficient to permit a proper comparison with the sales of the subject merchandise to the United States, pursuant to section 773(a) of the Act. Each company's quantity of sales in its home market was greater than five percent of its sales to the U.S. market. Therefore, in accordance with section 773(a)(1)(B)(i) of the Act, we based normal value on the prices at which the foreign like products were first sold for consumption in the exporting country.

With respect to Takeshita Seiko Co., we found that, although its home market was viable under section 773(a)(1) of the Act, the firm made no sales of foreign like product in its home market that we were able to compare to its U.S. sales. Therefore, we based normal value on constructed value.

Due to the extremely large number of transactions that occurred during the period of review and the resulting administrative burden involved in examining all of these transactions, we sampled sales to calculate normal value in accordance with section 777A of the Act. When a firm had more than 2,000 home–market sales transactions on a country–specific basis, we used sales in sample months that corresponded to the sample weeks that we selected for U.S. CEP sales, sales in the month prior to the period of review, and sales in the month following the period of review. The sample months were March, June, August, September, and November of 2000, and January, March and May of 2001.

With respect to the sample months, Koyo reported home–market sales for the incorrect sample months of October and December. Although our June 28, 2001, questionnaire had listed the incorrect months, we corrected this error in a letter dated June 29, 2001. For purposes of these preliminary results, we used Koyo's reported months, March, June, August, September, October, and December of 2000, and March and May of 2001, as the sample months. We will request from Koyo revised home–market sales data with the correct sample months for use in the final results.

We used sales to affiliated customers only where we determined such sales were made at arm's–length prices, *i.e.*, at prices comparable to prices at which the firm sold identical merchandise to unaffiliated customers.

Because we disregarded below–cost sales in accordance with section 773(b) of the Act in the last completed review with respect to Asahi, Barden, Koyo, Nachi, NPBS, NSK, NTN, and NSK/RHP, SKF France, and SKF Italy (see *Antifriction Bearings (Other Than Tapered Roller Bearings) and Parts Thereof From France, Germany, Italy, Japan, Romania, Singapore, Sweden and the United Kingdom; Final Results of Administrative Reviews and Revocation of Orders in Part*, 65 FR 49219, 49221 (August 11, 2000), or *Antifriction Bearings (Other Than Tapered Roller Bearings) and Parts Thereof From France, Germany, Italy, Japan, Sweden and the United Kingdom; Final Results of Administrative Reviews and Revocation of Orders in Part*, 66 FR 36551, 36552 (July 12, 2001)), we had reasonable grounds to believe or suspect that sales of the foreign like product under consideration for the determination of normal value in these reviews may have been made at prices below the cost of production (COP) as provided by section 773(b)(2)(A)(ii) of the Act. Therefore, pursuant to section 773(b)(1) of the Act, we conducted COP investigations of sales by these firms in the home market. Also, we received allegations in proper form that Nankai Seiko and Paul Mueller had made home–market sales below their COP and we conducted COP investigations of home–market sales of these firms as well.

In accordance with section 773(b)(3) of the Act, we calculated the COP based on the sum of the costs of materials and fabrication employed in producing the foreign like product, the selling, general and administrative (SG&A) expenses, and all costs and expenses incidental to packing the merchandise. In our COP analysis, we used the home–market sales and COP information provided by each respondent in its questionnaire responses.

After calculating the COP, in accordance with section 773(b)(1) of the Act, we tested whether home–market sales of the foreign like product were made at prices below the COP within an extended period of time in substantial quantities and whether such prices permitted the recovery of all costs within a reasonable period of time. We compared model–specific COPs to the reported home– market prices less any applicable movement charges, discounts, and rebates.

Pursuant to section 773(b)(2)(C) of the Act, when less than 20 percent of a respondent's sales of a given product were at prices less than the COP, we did not disregard any below–cost sales of that product because the below–cost sales were not made in substantial quantities within an extended period of time. When 20 percent or more of a respondent's sales of a given product during the period of review were at prices less than the COP, we disregarded the below–cost sales because they were made in substantial quantities within an extended period of time pursuant to sections 773(b)(2)(B) and (C) of the Act and because, based on comparisons of prices to weighted–average COPs for the period of review, we determined that these sales were at prices which would not permit recovery of all costs within a reasonable period of time in accordance with section 773(b)(2)(D) of the Act. Based on this test, we disregarded below–cost sales with respect to all of the above–mentioned companies.

We compared U.S. sales with sales of the foreign like product in the home market. We considered all non–identical products within a bearing family to be equally similar. As defined in the questionnaire, a bearing family consists of all bearings which are the foreign like product that are the same in the following physical characteristics: load direction, bearing design, number of rows of rolling elements, precision rating, dynamic load rating, outer diameter, inner diameter, and width.

Home–market prices were based on the packed, ex–factory, or delivered

prices to affiliated or unaffiliated purchasers. When applicable, we made adjustments for differences in packing and for movement expenses in accordance with sections 773(a)(6)(A) and (B) of the Act. We also made adjustments for differences in cost attributable to differences in physical characteristics of the merchandise pursuant to section 773(a)(6)(C)(ii) of the Act and for differences in circumstances of sale in accordance with section 773(a)(6)(C)(iii) of the Act and 19 CFR 351.410. For comparisons to export price, we made circumstances–of–sale adjustments by deducting home–market direct selling expenses from and adding U.S. direct selling expenses to normal value. For comparisons to CEP, we made circumstances–of–sale adjustments by deducting home–market direct selling expenses from normal value. We also made adjustments, when applicable, for home–market indirect selling expenses to offset U.S. commissions in export–price and CEP calculations.

In accordance with section 773(a)(1)(B)(i) of the Act, we based normal value, to the extent practicable, on sales at the same level of trade as the export price or CEP. If normal value was calculated at a different level of trade, we made an adjustment, if appropriate and if possible, in accordance with section 773(a)(7) of the Act. (See Level of Trade section below.)

In accordance with section 773(a)(4) of the Act, we used constructed value as the basis for normal value when there were no usable sales of the foreign like product in the comparison market. We calculated constructed value in accordance with section 773(e) of the Act. We included the cost of materials and fabrication, SG&A expenses, and profit in the calculation of constructed value. In accordance with section 773(e)(2)(A) of the Act, we based SG&A expenses and profit on the amounts incurred and realized by each respondent in connection with the production and sale of the foreign like product in the ordinary course of trade for consumption in the home market.

When appropriate, we made adjustments to constructed value in accordance with section 773(a)(8) of the Act and 19 CFR 351.410 for circumstances–of–sale differences and level–of–trade differences. For comparisons to export price, we made circumstances–of–sale adjustments by deducting home–market direct selling expenses from and adding U.S. direct selling expenses to normal value. For comparisons to CEP, we made circumstances–of–sale adjustments by deducting home–market direct selling expenses from normal value. We also made adjustments, when applicable, for home–market indirect selling expenses to offset U.S. commissions in export–price and CEP comparisons.

When possible, we calculated constructed value at the same level of trade as the export price or CEP. If constructed value was calculated at a different level of trade, we made an adjustment, if appropriate and if possible, in accordance with sections 773(a)(7) and (8) of the Act. (See Level of Trade section below.)

Level of Trade

To the extent practicable, we determined normal value for sales at the same level of trade as the U.S. sales (either export price or CEP). When there were no sales at the same level of trade, we compared U.S. sales to home–market sales at a different level of trade. The normal–value level of trade is that of the starting-price sales in the home market. When normal value is based on constructed value, the level of trade is that of the sales from which we derived SG&A and profit.

To determine whether home–market sales are at a different level of trade than U.S. sales, we examined stages in the marketing process and selling functions along the chain of distribution between the producer and the unaffiliated customer. If the comparison–market sales were at a different level of trade from that of a U.S. sale and the difference affected price comparability, as manifested in a pattern of consistent price differences between the sales on which normal value is based and comparison–market sales at the level of trade of the export transaction, we made a level–of–trade adjustment under section 773(a)(7)(A) of the Act. See *Notice of Final Determination of Sales at Less Than Fair Value: Certain Cut–to–Length Carbon Steel Plate from South Africa*, 62 FR 61731 (November 19, 1997).

For a company–specific description of our level–of–trade analysis for these preliminary results, see Memorandum to Laurie Parkhill from Antifriction Bearings Team regarding Level of Trade, dated April 1, 2002, on file in the CRU, Room B–099.

Preliminary Results of Reviews

As a result of our reviews, we preliminarily determine the following percentage weighted—average dumping margins on BBs for the period May 1, 2000, through April 30, 2001:

FRANCE

Company	Margin
SKF	8.09
Bearing Discount Int	66.18
Rodamientos Rovi	(2)
Rovi Valencia	(2)
Rovi-Marcay	(2)
RIRSA	66.18
DCD	66.18
EuroLatin Ex. Services	(2)

GERMANY

Company	Margin
FAG	0.33
Torrington	1.22
Bearing Discount Int	70.41
Paul Mueller	0.04
Rodamientos Rovi	(2)
Rovi Valencia	(2)
Rovi Marcay	(2)
RIRSA	70.41
DCD	70.41
EuroLatin Ex. Services	(2)

ITALY

Company	Margin
FAG	2.52
SKF	3.70
Bearing Discount Int.	68.29
Rodamientos Rovi	(2)
Rovi Valencia	(2)
Rovi Marcay	(2)
RIRSA	68.29
DCD	68.29
EuroLatin Ex. Services	(2)

JAPAN

Company	Margin
Koyo	7.70
NSK Ltd.	12.22
NTN	9.13
Osaka Pump	0.98
Takeshita	2.88
Asahi Seiko	7.22
Isuzu Motors	73.55
Nachi–Fujikoshi	9.52.
Nankai Seiko	1.13
Nippon Pillow Block	4.75

UNITED KINGDOM

Company	Margin
NSK/RHP Bearings	17.89
FAG	(1)
Barden	5.26

[1] No shipments or sales subject to this review. The deposit rate remains unchanged from the last relevant segment of the proceeding in which the firm had shipments/sales.

[2] No shipments or sales subject to this review. The firm has no individual rate from any segment of this proceeding.

Resellers

With respect to EuroLatin Export Services Limited, Rodamientos Rovi C.A., Rovi Marcay, and Rovi Valencia and the reviews of France, Germany, and Italy, we have determined that these respondents had no shipments during the period of review. We have based our determination on letters from these respondents indicating that they had no shipments and on our examination of the Customs Service database for imports of entered merchandise involving these respondents. Based upon the record and our methodology of reviewing Customs Service information, we have determined that the respondents at issue had no shipments during the period of review, and we have not established margins for use as future cash–deposit rates.

It is impossible to establish with certainty, however, from Customs Service data the accuracy of respondents' statements. Therefore, we will instruct the Customs Service at the time of liquidation to review all documentation for suspended entries of subject merchandise. If the Customs Service finds that any of the four above–named ''no–shipment'' respondents in fact had shipments of subject merchandise during the period of review, we will instruct the Customs Service to apply a facts–available rate to such respondents based on the adverse facts–available rate we have determined for the applicable country of origin (France, Germany, or Italy).

Comments

Any interested party may request a hearing within 21 days of the date of publication of this notice. A general–issues hearing, if requested, and any hearings regarding issues related solely to specific countries, if requested, will be held at the main Commerce Department building at a time and location to be determined.

Issues raised in hearings will be limited to those raised in the respective case and rebuttal briefs. Case briefs from interested parties and rebuttal briefs, limited to the issues raised in the respective case briefs, may be submitted not later than the dates shown below for general issues and the respective country–specific cases. Parties who submit case or rebuttal briefs in these proceedings are requested to submit with each argument (1) a statement of the issue, and (2) a brief summary of the argument with an electronic version included.

Case	Briefs due	Rebuttals due
General Issues	May 6, 2002	May 13, 2002
Germany ...	May 6, 2002	May 13, 2002
Italy	May 7, 2002	May 14, 2002
United Kingdom	May 7, 2002	May 14, 2002
France	May 8, 2002	May 15, 2002
Japan	May 8, 2002	May 15, 2002

The Department will publish the final results of these administrative reviews, including the results of its analysis of issues raised in any such written briefs. The Department will issue final results of these reviews within 120 days of publication of these preliminary results.

Assessment Rates

The Department shall determine, and the Customs Service shall assess, antidumping duties on all appropriate entries. In accordance with 19 CFR 351.212(b)(1), we have calculated, whenever possible, an exporter/importer (or customer)–specific assessment rate or value for subject merchandise.

Export–Price Sales

With respect to export–price sales, for these preliminary results we divided the total dumping margins (calculated as the difference between normal value and export price) for each exporter's importer/customer by the total number of units the exporter sold to that importer/customer. We will direct the Customs Service to assess the resulting per–unit dollar amount against each unit of merchandise in each of that importer's/customer's entries under the relevant order during the review period.

Constructed Export Price Sales

For CEP sales (sampled and non-sampled), we divided the total dumping margins for the reviewed sales by the total entered value of those reviewed sales for each importer. We will direct the Customs Service to assess the resulting percentage margin against the entered customs values for the subject merchandise on each of that importer's entries under the relevant order during the review period (see 19 CFR 351.212(a)).

Cash–Deposit Requirements

To calculate the cash–deposit rate for each respondent (i.e., each exporter and/or manufacturer included in these reviews), we divided the total dumping margins for each company by the total net value for that company's sales of merchandise during the review period subject to each order.

In order to derive a single deposit rate for each order for each respondent, we weight–averaged the export–price and CEP deposit rates (using the export price and CEP, respectively, as the weighting factors). To accomplish this when we sampled CEP sales, we first calculated the total dumping margins for all CEP sales during the review period by multiplying the sample CEP margins by the ratio of total days in the review period to days in the sample weeks. We then calculated a total net value for all CEP sales during the review period by multiplying the sample CEP total net value by the same ratio. Finally, we divided the combined total dumping margins for both export–price and CEP sales by the combined total value for both export–price and CEP sales to obtain the deposit rate.

Entries of parts incorporated into finished bearings before sales to an unaffiliated customer in the United States will receive the respondent's deposit rate applicable to the order.

Furthermore, the following deposit requirements will be effective upon publication of the notice of final results of administrative reviews for all shipments of AFBs entered, or withdrawn from warehouse, for consumption on or after the date of publication, as provided by section 751(a)(1) of the Act: (1) the cash–deposit rates for the reviewed companies will be the rates established in the final results of reviews; (2) for previously reviewed or investigated companies not listed above, the cash–deposit rate will continue to be the company–specific rate published for the most recent period; (3) if the exporter is not a firm covered in this review, a prior review, or the less–than–fair–value investigation, but the manufacturer is, the cash–deposit rate will be the rate established for the most recent period for the manufacturer of the merchandise; and (4) the cash–deposit rate for all other manufacturers or exporters will continue to be the ''All Others'' rate for the relevant order made effective by the final results of review published on July 26, 1993 (see *Antifriction Bearings (Other Than Tapered Roller Bearings) and Parts Thereof From France, et al; Final Results of Antidumping Duty Administrative Reviews and Revocation in Part of an Antidumping Duty Order*, 58 FR 39729 (July 26, 1993), and, for BBs from Italy, see *Antifriction Bearings (Other Than Tapered Roller Bearings) and Parts Thereof From France, et al; Final Results of Antidumping Duty Administrative Reviews, Partial Termination of Administrative Reviews, and Revocation in Part of Antidumping Duty Orders*, 61 FR 66472 (December 17, 1996)). These rates are the ''All Others''

rates from the relevant less–than–fair–value investigations.

These deposit requirements, when imposed, shall remain in effect until publication of the final results of the next administrative reviews.

This notice also serves as a preliminary reminder to importers of their responsibility under 19 CFR 351.402(f) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Department's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of doubled antidumping duties.

We are issuing and publishing these determinations in accordance with sections 751(a)(1) and 777(i)(1) of the Act.

Dated: April 1, 2002

Faryar Shirzad,

Assistant Secretary for Import Administration.

[FR Doc. 02–8559 Filed 4–9–02; 8:45 am]

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DEPARTMENT OF COMMERCE

International Trade Administration

[A–823–812]

Notice of Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination: Carbon and Certain Alloy Steel Wire Rod From Ukraine

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

ACTION: Notice of Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination.

SUMMARY: We preliminarily determine that carbon and certain alloy steel wire rod from Ukraine is being, or is likely to be, sold in the United States at less than fair value, as provided in section 733 of the Tariff Act of 1930, as amended.

DATES: April 10, 2002.

FOR FURTHER INFORMATION CONTACT: Carrie Blozy or Lori Ellison, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230; telephone: (202) 482–0165 or (202) 482–5811, respectively.

SUPPLEMENTARY INFORMATION:

The Applicable Statute

Unless otherwise indicated, all citations to the Tariff Act of 1930, as amended (''the Act''), are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Act by the Uruguay Round Agreements Act (''URAA''). In addition, unless otherwise indicated, all citations to the Department of Commerce (''the Department'') regulations are to the regulations at 19 CFR Part 351 (April 2001).

Period of Investigation

The period of investigation (''POI'') for this investigation corresponds to the two most recent fiscal quarters prior to the filing of the petition, i.e., January 1, 2001 through June 30, 2001.

Postponement of Final Determination and Extension of Provisional Measures

Pursuant to section 735(a)(2) of the Act, on March 21, 2002, Krivorozhstal requested that in the event of an affirmative preliminary determination in this investigation, the Department postpone its final determination until 135 days after the date of the publication of the preliminary determination in the Federal Register, and extend the application of the provisional measures prescribed under 19 CFR 351.210(e)(2) to not more than six months. In accordance with 19 CFR 351.210(b), because (1) our preliminary determination is affirmative, (2) the requesting exporter accounts for a significant proportion of exports of the subject merchandise, and (3) no compelling reasons for denial exist, we are granting Krivorozhstal's request and are postponing the final determination until no later than 135 days after the publication of this notice in the **Federal Register**. Suspension of liquidation will be extended accordingly.

Scope of Investigation

The merchandise covered by this investigation is certain hot-rolled products of carbon steel and alloy steel, in coils, of approximately round cross section, 5.00 mm or more, but less than 19.00 mm, in solid cross-sectional diameter.

Specifically excluded are steel products possessing the above-noted physical characteristics and meeting the Harmonized Tariff Schedule of the United States (HTSUS) definitions for (a) stainless steel; (b) tool steel; (c) high nickel steel; (d) ball bearing steel; and (e) concrete reinforcing bars and rods. Also excluded are (f) free machining steel products (i.e., products that contain by weight one or more of the following elements: 0.03 percent or more of lead, 0.05 percent or more of bismuth, 0.08 percent or more of sulfur, more than 0.04 percent of phosphorus, more than 0.05 percent of selenium, or more than 0.01 percent of tellurium).

Also excluded from the scope are 1080 grade tire cord quality wire rod and 1080 grade tire bead quality wire rod. This grade 1080 tire cord quality rod is defined as: (i) grade 1080 tire cord quality wire rod measuring 5.0 mm or more but not more than 6.0 mm in cross-sectional diameter; (ii) with an average partial decarburization of no more than 70 microns in depth (maximum individual 200 microns); (iii) having no inclusions greater than 20 microns; (iv) having a carbon segregation per heat average of 3.0 or better using European Method NFA 04–114; (v) having a surface quality with no surface defects of a length greater than 0.15 mm; (vi) capable of being drawn to a diameter of 0.30 mm or less with 3 or fewer breaks per ton, and (vii) containing by weight the following elements in the proportions shown: (1) 0.78 percent or more of carbon, (2) less than 0.01 percent of aluminum, (3) 0.040 percent or less, in the aggregate, of phosphorus and sulfur, (4) 0.006 percent or less of nitrogen, and (5) not more than 0.15 percent, in the aggregate, of copper, nickel and chromium.

This grade 1080 tire bead quality rod is defined as: (i) grade 1080 tire bead quality wire rod measuring 5.5 mm or more but not more than 7.0 mm in cross-sectional diameter; (ii) with an average partial decarburization of no more than 70 microns in depth (maximum individual 200 microns); (iii) having no inclusions greater than 20 microns; (iv) having a carbon segregation per heat average of 3.0 or better using European Method NFA 04–114; (v) having a surface quality with no surface defects of a length greater than 0.2 mm; (vi) capable of being drawn to a diameter of 0.78 mm or larger with 0.5 or fewer breaks per ton; and (vii) containing by weight the following elements in the proportions shown: (1) 0.78 percent or more of carbon, (2) less than 0.01 percent of soluble aluminum, (3) 0.040 percent or less, in the aggregate, of phosphorus and sulfur, (4) 0.008 percent or less of nitrogen, and (5) either not more than 0.15 percent, in the aggregate, of copper, nickel and chromium (if chromium is not specified), or not more than 0.10 percent in the aggregate of copper and nickel and a chromium content of 0.24 to 0.30 percent (if chromium is specified).

The designation of the products as ''tire cord quality'' or ''tire bead quality'' indicates the acceptability of the product for use in the production of tire

cord, tire bead, or wire for use in other rubber reinforcement applications such as hose wire. These quality designations are presumed to indicate that these products are being used in tire cord, tire bead, and other rubber reinforcement applications, and such merchandise intended for the tire cord, tire bead, or other rubber reinforcement applications is not included in the scope. However, should petitioners or other interested parties provide a reasonable basis to believe or suspect that there exists a pattern of importation of such products for other than those applications, end-use certification for the importation of such products may be required. Under such circumstances, only the importers of record would normally be required to certify the end use of the imported merchandise.

All products meeting the physical description of subject merchandise that are not specifically excluded are included in this scope.

The products under investigation are currently classifiable under subheadings 7213.91.3010, 7213.91.3090, 7213.91.4510, 7213.91.4590, 7213.91.6010, 7213.91.6090, 7213.99.0031, 7213.99.0038, 7213.99.0090, 7227.20.0010, 7227.20.0020, 7227.20.0090, 7227.20.0095, 7227.90.6051, 7227.90.6053, 7227.90.6058, and 7227.90.6059 of the HTSUS. Although the HTSUS subheadings are provided for convenience and customs purposes, the written description of the scope of this proceeding is dispositive.

See Carbon and Certain Alloy Steel Wire Rod: Requests for exclusion of various tire cord quality wire rod and tire bead quality wire rod products from the scope of antidumping duty (Brazil, Canada, Egypt, Germany, Indonesia, Mexico, Moldova, South Africa, Trinidad and Tobago, Ukraine, and Venezuela) and countervailing duty (Brazil, Canada, Germany, Trinidad and Tobago, and Turkey) investigations.

Case History

On September 24, 2001, the Department initiated antidumping investigations of wire rod from Brazil, Canada, Egypt, Germany, Indonesia, Mexico, Moldova, South Africa, Trinidad and Tobago, Ukraine, and Venezuela. (*See Notice of Initiation of Antidumping Duty Investigations: Carbon and Certain Alloy Steel Wire Rod From Brazil, Canada, Egypt, Germany, Indonesia, Mexico, Moldova, South Africa, Trinidad and Tobago, Ukraine, and Venezuela,* 66 FR 50164–50173, (October 2, 2001) (''*Notice of Initiation*'')). The petitioners in this investigation are Co-Steel Raritan, Inc., GS Industries, Keystone Consolidated Industries, Inc., and North Star Steel Texas, Inc. (''Petitioners''). Since the initiation of the investigation, the following events have occurred.

On October 17, 2001, the Ministry of Economy and for European Integration Issues of Ukraine submitted a request for, and information in support of, graduation to market economy status for Ukraine. On November 20, 2001, Krivorozhstal requested that the Department issue to it a Section B questionnaire. On December 21, 2001 Petitioners submitted comments regarding the request for market economy graduation. On March 1, 2002, Krivorozhstal responded to Petitioners' December 21, 2001 submission.

On October 15, 2001, the United States International Trade Commission (''USITC'') notified the Department of its affirmative preliminary injury determination on imports of subject merchandise from Brazil, Canada, Germany, Indonesia, Mexico, Moldova, Trinidad and Tobago, and Ukraine. On October 29, 2001, the USITC published its preliminary determination stating that there is a reasonable indication that an industry in the United States is materially injured by reason of imports of the subject merchandise from Brazil, Canada, Germany, Indonesia, Mexico, Moldova, Trinidad and Tobago, and Ukraine. *See Carbon and Certain Alloy Steel Wire Rod From Brazil, Canada, Egypt, Germany, Indonesia, Mexico, Moldova, South Africa, Trinidad and Tobago, Turkey, Ukraine, and Venezuela.* 66 FR 54539 (October 29, 2001).

On January 17, 2002, Petitioners requested that the Department extend the deadline for issuance of the preliminary determination by 30 days. On January 22, 2002, the Department postponed the preliminary determination in this and other concurrent wire rod investigations to March 13, 2002 (*see Notice of Postponement of Preliminary Antidumping Duty Determinations: Carbon and Certain Alloy Steel Wire Rod From Brazil, Canada, Germany, Indonesia, Mexico, Moldova, Trinidad and Tobago, and Ukraine,* 67 FR 3877 (January 28, 2002)). On March 4, 2002, Petitioners submitted a letter to the Department requesting the Department to extend the deadline for issuance of the preliminary determination by an additional 20 days. On March 7, 2002, the Department postponed the preliminary determination an additional 20 days to April 2, 2002 *(see Notice of Postponement of Preliminary Antidumping Duty Determinations: Carbon and Certain Alloy Steel Wire Rod From Brazil, Canada, Germany, Indonesia, Mexico, Moldova, Trinidad and Tobago, and Ukraine,* 67 FR 11674 (March 15, 2002)).

On October 9, 2001, Petitioners requested that the scope of the investigation be amended to exclude high carbon, high tensile 1080 grade tire cord and tire bead quality wire rod actually used in the production of tire cord and bead, as defined by specific dimensional characteristics and specifications. On November 28, 2001, the five largest U.S. tire manufacturers and the industry trade association, the Rubber Manufacturers Association, submitted a letter to the Department in response to Petitioners' October 9, 2001, submission regarding the exclusion of certain 1080 grade tire cord and tire bead wire rod used in the production of tire cord and bead. Additionally, the tire manufacturers requested clarification from the Department if 1090 grade is included in Petitioners' October 9, 2001, scope exclusion request. The tire manufacturers requested an exclusion from the scope of this investigation for 1070 grade wire rod and related grades, citing a lack of domestic production capacity to meet the requirements of the tire industry. On November 28, 2001, Petitioners further clarified and modified their October 9, 2001 amendment of the scope of the petition. Finally, on January 21, 2002, Tokusen U.S.A., Inc. submitted a request that grade 1070 tire cord wire rod, and tire cord wire rod more generally, be excluded from the scope of the antidumping duty and countervailing duty investigations.

The Department issued a letter on October 16, 2001 to interested parties in all of the concurrent wire rod antidumping investigations, providing an opportunity to comment on the Department's proposed model match characteristics and hierarchy. Petitioners submitted comments on October 24, 2001. The Department also received comments on model matching from respondents Hysla S.A. de C.V. (Mexico), Ivaco, Inc,. and Ispat Sidbec Inc. (Canada).

On December 19, 2001, Krivorozhstal submitted a request to add an additional model matching characteristic. On December 21, 2001, the Department notified Krivorozhstal the Department was denying its request because, in developing its product characteristics, the Department determined not to include a variable for silicon content (*see Letter to John Kalitka*, dated December 21, 2001).

On October 16, 2001, the Department issued a letter to the Embassy of Ukraine in Washington, D.C., requesting quantity

and value information from all Ukrainian producers/exporters who manufactured and exported subject merchandise to the United States during the POI. The Department requested that the Embassy forward this request to all Ukrainian producers/exporters of subject merchandise that sold to the United States during the POI. The Department also sent this request for quantity and value information directly to the five producers/exporters named in the petition. [1] On October 24, 2001, the Embassy of Ukraine submitted a letter stating that Krivorozhstal was the sole Ukrainian producer that exported subject merchandise to the United States during the POI. Attached to this letter was quantity and value information for Krivorozhstal.

On November 2, 2001, the Department issued an antidumping investigation questionnaire to the Embassy of Ukraine. The Department requested that the Embassy forward the questionnaire to all Ukrainian producers/exporters of subject merchandise that sold to the United States during the POI. The Department also sent the antidumping questionnaire directly to Krivorozhstal. On November 6, 2001, and November 9, 2001, respectively, the Department issued corrections to the antidumping investigation questionnaire (*see Memorandum to the File from Lori Ellison through James C. Doyle, dated November 6, 2001 and Memorandum to the File from Lori Ellison through James C. Doyle*, dated November 9, 2001.)

On November 13, 2001, the Department invited interested parties to comment on surrogate country selection and to provide publicly available information for valuing the factors of production. We received comments regarding surrogate country selection from Petitioners on November 27, 2001. Petitioners submitted surrogate value information on January 11, 2002 and provided certain additional pages on March 11, 2002. On January 8, 2002, Krivorozhstal submitted a request for an extension of the January 11, 2002 deadline for the submission of surrogate values for consideration in the preliminary determination. On January 10, 2002, the Department denied this request on the basis that the established deadline allowed the minimum amount of time necessary for the Department's consideration of these values for the scheduled preliminary determination.

On November 30, 2001 and December 26, 2001, the Department received questionnaire responses from Krivorozhstal. Supplemental questionnaires were issued on December 10, 2001, January 10, 2002, January 25, 2002, February 21, 2002, February 28, 2002, and March 13, 2002. Supplemental responses were submitted by Krivorozhstal on December 31, 2001, February 4, 2002, February 5, 2002, February 11, 2002, March 8, 2002, and March 12, 2002 . Comments on each of Krivorozhstal's responses were submitted by Petitioners. On December 10, 2001, and March 12, 2002, the Department provided clarification and additional reporting requirements to Respondent regarding the Department's requirements. (*See Memorandum to the File from Lori Ellison through James C. Doyle*, dated December 10, 2001 and *Memorandum to the File from Lori Ellison through James C. Doyle*, dated March 12, 2002.) Two full requests and six partial requests for extensions of the response deadlines were granted for these questionnaires. Petitioners submitted comments on separate rates/non-market economy status and application of total adverse facts available on March 14, 2002, and March 15, 2002, respectively. On March 18, 2002, Krivorozhstal submitted a rebuttal in response to Petitioners' March 14, 2002 submission.

On March 19, 2002, the Krivorozhstal submitted a response to the Department's March 13, 2002 questionnaire which included a revised factors of production (by stage) worksheet, technical description, and table of distances and means of transportation. This information was submitted too late for the Department to fully analyze in time for the preliminary determination. The Department therefore is not considering it for purposes of the preliminary determination and is instead relying on Krivorozhstal's March 12, 2002 response.

Critical Circumstances

On December 5, 2001 Petitioners alleged that there that there was a reasonable basis to believe or suspect that critical circumstances exist with respect to imports of wire rod from Brazil, Germany, Mexico, Moldova, Turkey, and Ukraine. [2] On February 4, 2002, the Department preliminarily determined that critical circumstances exist with respect to wire rod from Ukraine. *See Memorandum to Faryar Shirzad Re: Antidumping Duty Investigation of Carbon and Certain Alloy Steel Wire Rod from Ukraine - Preliminary Affirmative Determination of Critical Circumstances*(February 4, 2002); *See also Carbon and Alloy Wire Rod from Germany, Mexico, Moldova, Trinidad and Tobago, and Ukraine: Notice of Preliminary Determination of Critical Circumstances*, 67 FR 6224 (February 11, 2002) (''*Critical Circumstances Notice*'').

Nonmarket Economy Country Status

The Department has treated Ukraine as a nonmarket economy (''NME'') country in all past antidumping investigations. *See, e.g., Notice of Final Determination of Sales at Less Than Fair Value: Solid Agricultural Grade Ammonium Nitrate from Ukraine*, 66 FR 38632 (July, 25, 2001), (''*Ammonium Nitrate from Ukraine*''); *Notice of Preliminary Determinations of Sales at Less Than Fair Value: Steel Concrete Reinforcing Bars from Poland, Indonesia, and Ukraine*, 66 FR 8343 (January 30, 2001); and *Notice of Final Determination of Sales at Less Than Fair Value: Certain Cut-to-Length Carbon Steel Plate from Ukraine*, 62 FR 61754 (November 19, 1997) (''*CTL Plate from Ukraine*''). This NME designation remains in effect until it is revoked by the Department (*see* section 771(18)(C) of the Act). As explained in the ''Case History'' section, on October 17, 2001, the Government of Ukraine submitted a request for, and information in support of, graduation to market economy status for Ukraine. The Department is currently analyzing this request. For purposes of the preliminary determination, we have continued to treat Ukraine as an NME country.

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

Separate Rates

In an NME proceeding, the Department presumes that a single dumping margin is appropriate for all exporters unless a firm establishes that it is eligible for a separate rate. In this investigation, Krivorozhstal has requested that it be assigned a separate rate. Pursuant to this request, Krivorozhstal has provided the requested company-specific separate rates information and has stated that its export activities are not subject to any element of government control.

[1] The five companies named in the petition were Dneprovsky Iron & Steel Works, Kramatorsk Iron & Steel Works, Krivorozhstal, Yenakievsky Iron & Steel Works, and Makeevsky Iron & Steel Works.

[2] On December 21, 2001 the petitioners further alleged that there was a reasonable basis to believe or suspect that critical circumstances exist with respect to imports of wire rod from Trinidad and Tobago

The Department establishes whether each exporting entity is entitled to a separate rate based on its independence from government control over its exporting activities by applying a test arising out of the *Final Determination of Sales at Less Than Fair Value: Sparklers from the People's Republic of China*, 56 FR 20588 (May 6, 1991), as modified by *Final Determination of Sales at Less Than Fair Value: Silicon Carbide from the People's Republic of China* (''*Silicon Carbide*''), 59 FR 22585 (May 2, 1994).

The Department's separate rate test is not concerned, in general, with macroeconomic/ border-type controls, e.g., export licenses, quotas, and minimum export prices, particularly if these controls are imposed to prevent dumping. The test focuses, rather, on controls over the investment, pricing, and output decision-making process at the individual firm level. *See CTL Plate from Ukraine*, 62 FR at 61757–61759; *Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, from the People's Republic of China: Final Results of Antidumping Duty Administrative Review*, 62 FR 61276, 61279 (November 17, 1997) (''TRBs IX''); and *Honey from the People's Republic of China: Preliminary Determination of Sales at Less than Fair Value*(''Honey Investigation''), 60 FR 14725, 14726 (March 20, 1995).

Under the separate rates test, the Department assigns a separate rate in an NME case only if an individual respondent can demonstrate the absence of both *de jure* and *de facto* governmental control over its export activities.

In this case, Petitioners submitted comments on March 13, 2002, alleging that Krivorozhstal is not eligible for a separate rate for the following reasons: 1) Krivorozhstal is state-owned; 2) Krivorozhstal must abide by export price controls that are subject to government review and approval; 3) the subject merchandise was subject to export quotas; 4) control over Krivorozhstal has not been decentralized; 5) the Government has control over the selection and approval of Krivorozhstal's management; and 6) Krivorozhstal does not possess full control over the disposition of its exports sales or profits.

Krivorozhstal maintains that it is an ''independent, public-owned'' distinct legal entity (*see* Krivorozhstal's November 30, 2001 Response at pages 3 and 21). Krivorozhstal states that, unlike state-owned enterprises, public-owned enterprises are ''not accountable'' to the Government of Ukraine regarding the results of business activities. Krivorozhstal states that, as a public-owned enterprise, the laws of Ukraine ''prohibit the government from interfering'' with any of the ''business activities of the company.'' According to Krivorozhstal, public-owned enterprises have many of the same ownership rights as those enterprises owned by private persons and collectives. Through Krivorozhstal's ownership right, Krivorozhstal maintains that it operates independently in business decisions, independently negotiates and signs contracts, and independently chooses its managers (*see* Krivorozhstal's November 30, 2001 Response at pages 2–4). The fact that Krivorozhstal is a 100 percent publicly owned entity does not effect its eligibility for a separate rate. In analogous situations, the Department has determined that ownership of a company by a state-owned enterprise does not require the application of a single rate. In silicon carbide from the People's Republic of China, the Department determined that the ownership of certain of the Chinese respondents ''by all the people,'' in and of itself, cannot be considered as dispositive in determining whether those companies can receive separate rates. See Silicon Carbide, 59 FR at 22586. In this instance, Krivorozhstal has claimed that there is an absence of government control with respect to export activities on a *de jure* and *de facto* basis.

1. Absence of *De Jure* Control. The Department considers three factors which support, though do not require, a finding of *de jure* absence of governmental control. These factors include: 1) an absence of restrictive stipulations associated with an individual exporter's business and export licenses; 2) any legislative enactments decentralizing control of companies; or 3) any other formal measures by the government decentralizing control of companies. *See Sparklers*, 56 FR at 20508.

Krivorozhstal has placed documents on the record that it claims demonstrate the absence of *de jure* governmental control, including the ''Law of Ukraine on Ownership,'' the ''Law of Ukraine On Foreign Economic Activities'' and the ''Law of Ukraine on Enterprises in Ukraine'' (*see* Krivorozhstal's February 11, 2002 submission, at Exhibits ADS 3 and 4; Krivorozhstal's November 30, 2001 submission at Exhibit A–2; and Krivorozhstal's February 11, 2002 submission at Exhibits ADS 1 and 2, respectively). These laws, enacted by the Government of Ukraine, demonstrate a significant degree of deregulation of Ukrainian business activity, as well as deregulation of Ukrainian export activity. In a prior case, *CTL Plate from Ukraine*, 62 FR at 61758–59, the Department analyzed Ukraine's laws and regulations, including those mentioned above, and found that they establish an absence of *de jure* control. *See also Notice of Preliminary Determination of Sales at Less than Fair Value and Postponement of Final Determination: Solid Agricultural Grade Ammonium Nitrate from Ukraine*, 66 FR 13286, 13289 (March 5, 2001). We have no new information in this proceeding that would cause us to reconsider this determination.

Although there is no longer a general export licensing regime in place, the Ukrainian Government does continue to retain *de jure* control over exports for certain categories of goods, including goods subject to antidumping duty investigations and antidumping duty orders.

Mandatory controls are in place regarding: (1) the registration of contracts for export of these goods and (2) the setting of ''indicative prices'' for these goods by the government. In *CTL Plate from Ukraine*, the Department found that mandatory registration did not preclude the granting of a separate rate because registration was for statistical and tax collection purposes, and for monitoring compliance by exporters with international trading rules and agreements (*see CTL Plate from Ukraine*, 62 FR at 61759).

In the antidumping investigation of honey from the People's Republic of China, the Department determined that mandatory minimum export prices set by the Chinese government, intended to control worldwide prices of exported honey and to increase such prices through macro-economic means, did not preclude the respondent companies from receiving separate rates. *See Honey Investigation*, 60 FR at 14727–14728. In the *Honey Investigation*, the Department found that, among other things, the companies were free to independently negotiate export prices with their customers above the floor price. In other words, when considering the totality of all circumstances, the Department found in the *Honey Investigation* that the companies had sufficient independence in their export pricing decisions from government control to qualify for separate rates.

In this case, Krivorozhstal has stated that the subject merchandise exported to the United States was subject only to price floors that were set by the Government in response to the Section 201 Investigation in order to prevent dumping (see Krivorozhstal's November 30, 2001 Response at pages 5–6). According to Krivorozhstal, negotiated

prices during the POI were above, and sometimes below, the floor price and were free from government review or intervention (*see* Krivorozhstal's December 31, 2001 Response at pages 10–11 and Krivorozhstal's February 11, 2002 Response at page 16). However, Krivorozhstal further explained that in cases where the customs value is lower than the indicative price, it must obtain an expert opinion concerning the lower selling price or the Customs Authority may disallow export of the product. *See* Krivorozhstal's March 12, 2002 Response at 8. Additionally, although the subject merchandise exported to the European Union is subject to licensing requirements and quotas, Krivorozhstal asserts that the subject merchandise exported to the United States does not appear on any government list regarding export provisions or licensing and that there are no export quotas applicable to the subject merchandise (*see* Krivorozhstal's November 30, 2001 Response at pages 5–6). Accordingly, we preliminarily determine that there is an absence of *de jure* governmental control over Krivorozhstal's export pricing and marketing decisions.

The Department will examine at verification whether through either registration or the setting of indicative prices, the Government of Ukraine did anything other than monitor foreign economic activity of exports of certain goods in order to prevent dumping by exporters subject to antidumping measures in other countries and thereby ensure compliance with international trading rules.

2. Absence of *De Facto* ControlThe Department typically considers four factors in evaluating whether a respondent is subject to *de facto* governmental control of its export functions: 1) whether the export prices are set by, or subject to the approval of, a governmental authority; 2) whether the respondent has authority to negotiate and sign contracts and other agreements; 3) whether the respondent has autonomy from the government in making decisions regarding the selection of its management; and 4) whether the respondent retains the proceeds of its export sales and makes independent decisions regarding disposition of profits or financing of losses. *See Final Determination of Sales at Less Than Fair Value: Certain Preserved Mushrooms from the People's Republic of China*, 63 FR 72255, 72257 (December 31, 1998).

Krivorozhstal has asserted (and provided supporting documentation) that it: 1) establishes its own export prices (*see* Krivorozhstal's November 30, 2001 Response at Exhibit A–6 and Krivorozhstal's December 31, 2001 Response at page 11); 2) negotiates contracts without guidance from any governmental entities or organizations (*see* Krivorozhstal's February 11, 2002 Response at page 4 and Exhibit A–6); 3) makes its own personnel decisions with regard to the selection of management (*see* Krivorozhstal's November 30, 2001 Response at page 8; Krivorozhstal's February 11, 2002 Response at Exhibits ADS 1 and 2; and Krivorozhstal's March 12, 2002 Response at pages 7–8); and 4) retains the proceeds from export sales and uses profits according to its business needs without any restrictions (*see* Krivorozhstal's November 30, 2001 Response at pages 10–11). Although, according to Ukrainian Law, 50 percent of foreign currency earnings must be converted into Ukrainian currency, the Department has previously determined that this does not preclude the granting of a separate rate. *See CTL Plate from Ukraine* 62 FR at 61759–60. Additionally, Krivorozhstal has stated that it does not coordinate or consult with other exporters regarding its pricing (*see* Krivorozhstal's November 30, 2001 Response at page 7 and Exhibit A–2).

As stated in the previous section, the Government of Ukraine requires registration of exports and sets indicative prices. However, this does not preclude Krivorozhstal from receiving a separate rate if the government does not control the flow of subject merchandise through exporters which have the lowest margin. In CTL Plate from Ukraine, the Department found that these restrictions were ''evidence of the government's good faith attempt to monitor exports of certain goods to ensure that such goods are not traded unfairly.'' *See* 62 FR at 61759.

The information placed on the record by Krivorozhstal as well as Krivorozhstal's verifiable claims support a preliminary finding that there is an absence of de facto governmental control of the export functions of Krivorozhstal. Consequently, subject to verification, we preliminarily determine that Krivorozhstal has met the criteria for the application of separate rates.

Ukraine-Wide Rate

As discussed, supra, in a NME proceeding, the Department presumes that all companies within the country are subject to governmental control. The Department assigns a single NME rate unless a producer can demonstrate eligibility for a separate rate. Krivorozhstal has preliminarily qualified for a separate rate. Furthermore, the information on the record (*i.e.*, U.S. import statistics from Ukraine) indicates that Krivorozhstal accounted for all imports of subject merchandise during the POI. Since Krivorozhstal is the only known Ukrainian producer of the subject merchandise which exported to the United States during the POI, we have calculated a Ukraine-wide rate for this investigation based on the weighted-average margin determined for Krivorozhstal. This Ukraine-wide rate applies to all entries of subject merchandise except for entries of subject merchandise exported by Krivorozhstal.

Fair Value Comparisons

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

On March 15, 2002, Petitioners submitted a letter to the Department in which they requested that the Department apply total adverse facts available to determine the dumping margin for Krivorozhstal for the preliminary determination. In their letter, Petitioners make the following allegations: 1) an accurate and reliable normal value cannot be calculated using Krivorozhstal's section D database; 2) Krivorozhstal's U.S. sales database is unreliable, making accurate product matching impossible; and 3) Krivorozhstal's questionnaire responses remain materially incomplete. Moreover, Petitioners maintain that substantial record evidence demonstrates a pattern of uncooperative behavior warranting application of adverse facts available. The Department has examined Krivorozhstal's submissions and data, and preliminarily found that they are adequate for purposes of calculating a dumping margin. In its responses, Krivorozhstal has made a number of direct, verifiable claims and presented a calculation methodology which can be analyzed further at verification. The Department fully intends to verify all claims made by Krivorozhstal and the methodology used by Krivorozhstal to prepare its U.S. sales database and its factors of production database.

Export Price

For Krivorozhstal, we used EP methodology in accordance with section 772(a) of the Act because the subject

merchandise was sold directly to unaffiliated purchasers outside of the United States, with the knowledge that the final destination of subject merchandise was the United States. Constructed export price (''CEP'') methodology was not otherwise appropriate. We calculated EP based on FCA Ukrainian port prices. We made deductions from the starting price (gross unit price) for inland freight from the plant to the port of export. Because the domestic inland freight expense was paid for in a nonmarket economy currency, we based domestic inland freight expense on a surrogate value from Indonesia. (*See* ''Normal Value'' section below for further discussion.)

Normal Value

Section 773(c)(1) of the Act provides that the Department shall determine the NV using a factors-of-production methodology if: (1) the merchandise is exported from a NME country; and (2) the information does not permit the calculation of NV using home-market prices, third-country prices, or constructed value under section 773(a) of the Act.

Factors of production include: (1) hours of labor required; (2) quantities of raw materials employed; (3) amounts of energy and other utilities consumed; and (4) representative capital costs, including depreciation. We calculated NV based on factors of production reported by Krivorozhstal (*see Memorandum to Edward C. Yang, Office Director, AD/CVD Enforcement, Group III, Factors of Production Valuation for Preliminary Determination*, dated April 2, 2002). (''*Factor Valuation Memo*''). We valued all the input factors using publicly available information as discussed in the ''Surrogate Country'' and ''Factor Valuations'' sections of this notice, *infra*.

1. Surrogate CountrySection 773(c)(4) of the Act requires the Department to value the NME producer's factors of production, to the extent possible, in one or more market economy countries that: (1) are at a level of economic development comparable to that of the NME, and (2) are significant producers of comparable merchandise. Regarding the first criterion, the Department has determined that Egypt, Morocco, Philippines, Sri Lanka, Indonesia, and Pakistan are countries comparable to Ukraine in terms of overall economic development (*see Memorandum from Jeff May, Director, Office of Policy, to James C. Doyle, Program Manager, AD/CVD Enforcement, Group III*, dated November 7, 2001 (''*Surrogate Country Memorandum*'')). Petitioners have argued that Indonesia is the most appropriate surrogate and submitted public available Indonesian values. For purposes of the preliminary determination, we have used Indonesia as our primary surrogate (*see Memorandum to Edward C. Yang, Office Director, AD/CVD Enforcement, Group III, Selection of a Surrogate Country*, dated April 2, 2002). As noted in the *Surrogate Country Memorandum*, Indonesia is economically comparable to Ukraine. Indonesia is also a significant producer of comparable merchandise. Moreover, there is sufficient publicly available information on Indonesian values. Accordingly, we have calculated NV using publicly available information from Indonesia to value Krivorozhstal's factors of production, except where noted below.

In accordance with section 351.301(c)(3)(i) of the Department's regulations, for the final determination in an antidumping investigation, interested parties may submit publicly available information to value factors of production within 40 days after the date of publication of the preliminary determination.

2.Factors of ProductionIn accordance with section 773(c) of the Act, we calculated NV based on the factors of production reported by Krivorozhstal using Indonesian values, except where noted below.

In selecting the surrogate values, we considered the quality, specificity, and contemporaneity of the data. For those values not contemporaneous with the POI, unless otherwise noted below, we adjusted for inflation using price indices published in the International Monetary Fund's *International Financial Statistics*. As appropriate, we adjusted input values to make them delivered prices. For factor values where we used Indonesian import statistics, we did not include data pertaining to imports from non-market economy countries. *See e.g., Notice of Final Results of the Antidumping Duty Administrative Review of Chrome-Plated Lug Nuts from the People's Republic of China*, 63 FR 53872 (October 7, 1998). We also did not include imports from Indonesia, Korea, and Thailand because these countries maintain non-specific export subsidies. *See Notice of Final Determination of Sales at Less Than Fair Value: Certain Automotive Replacement Glass Windshields From the People's Republic of China*, 67 FR 6482 (February 12, 2002). For a detailed analysis of surrogate values, *see Factor Valuation Memo*.

We valued raw material inputs, energy inputs, and packing materials using values from the appropriate HTSUS category. Pursuant to section 351.408(c)(1) of our regulations, where a factor was purchased from a market economy supplier and paid for in a market economy currency, we used the price paid to the market economy supplier. *See Id; see also Lasko Metal Products v. United States*, 43 F.3d 1442, 1445–46 (Fed. Cir. 1994). To value labor, we used regression-based wage rates, in accordance with section 351.408(c)(3) of the Department's regulations. *See Factor Valuation Memo*. We based the value of freight by rail on public information from a cable from the American Embassy in Indonesia (*see Factor Valuation Memo*). We based the value of freight by truck on public information from the Indonesian company PT Batam Samdura (*see Factor Valuation Memo*).

In the Department's November 2, 2001 original questionnaire, Krivorozhstal was requested to report freight information regarding its sales of subject merchandise during the POI. On February 21, 2002, the Department requested that Krivorozhstal clarify certain discrepancies regarding the factor names for which it had reported freight information. On March 18, 2002, the Department further requested that Krivorozhstal report, for each purchased input used in the production of subject merchandise, the distance from the plant to the port of exit or other location where the purchaser takes possession of the merchandise.

Krivorozhstal did not report freight information (quantity supplied, name of the supplier, and distance from the supplier) for purchased coke (PURCOK) and sulfacoal (SULFFCO). Regarding sulfocoal (SULFCO), Krivorozhstal explained that it had no purchases of sulfocoal during the POI. Because Krivorozhstal failed to report the requested information, we find it appropriate to use facts otherwise available pursuant to section 776(a)(2)(B) of the Act. As facts available, we applied to these inputs the freight information reported for similar products. For sulfacoal (SULFFCO), we applied the reported freight information for metallurgical coals (coals mix) (METCOA). For purchased coke (PURCOK), we applied the reported freight information for coke breeze purchased (CKBREP). *See Factor Valuation Memorandum* for freight calculations.

In its March 22, 2002 Response, Krivorozhstal identified the following byproducts as being sold during the POI: granular slag, lime, lime dust and lime screening, gaseous oxygen, gaseous argon, krypton-xenon concentrate, gaseous nitrogen, neon-helium mixture, coke 10–25, coke 0–10, coal, sulfate

ammonium, crude benzene, and blast furnace gas. We have granted offsets only for those byproducts where Krivorozhstal provided evidence of the sale of the byproduct during the POI as requested by the Department's January 10, 2002 supplemental questionnaire (question 104) and February 21, 2002 supplemental questionnaire (question 50). Accordingly, we have granted offsets for the following byproducts: granular slag, coke 10–25, coke 0–10, coal tar, and blast furnace gas. Moreover, consistent with the Department's practice, we have granted an offset only for the amount of the byproduct actually sold during the POI (*see Final Determination of Sales at Less Than Fair Value: Bulk Aspirin from the People's Republic of China*, 65 FR 33805 (May 25, 2000) and accompanying Decision Memorandum at Comment 13). For further information, *see Factor Valuation Memo*.

To value depreciation, SG&A, interest, and profit, we used data from the 1998 financial statements of Alexandria National Iron & Steel Co., an Egyptian steel company, which produces the subject merchandise. Egypt has been identified as a country at a level of economic development comparable to Ukraine. *See Surrogate Country Memo*. We did not use the financial statements of PT Krakatau, an Indonesian producer of the subject merchandise, because we found Alexandria National Iron & Steel Co. to be a more appropriate surrogate for Krivorozhstal for the following two reasons. First, the 1998 financial statements for Alexandria National Iron & Steel Co. are more contemporaneous than those from 1997 for PT Krakatau. Second, for Alexandria National Iron & Steel Co., we found evidence that it is a purchaser of argon, oxygen, and nitrogen. *See Memorandum to the File: Analysis for the Preliminary Determination of Carbon and Certain Alloy Steel Wire Rod from Ukraine*, Attachment 3, April 2, 2002. While Krivorozhstal self-produces these inputs, we were unable to find information indicating whether PT Krakatau purchases or self-produces any of these inputs in its production process. Because the Department has more information on Alexandria's purchase/self-production of certain energy inputs than PT Krakatau's, it is better able to adjust normal value for the self-production by Krivorozhstal of certain energy inputs.

For each of the surrogate values selected for use in the Department's calculations, we adjusted the values for inflation using appropriate price index inflators when those values were not from a period concurrent with the POI. *See Factor Valuation Memo*.

In its responses Krivorozhstal reported that its operates three open pit mines: No.2–bis, No. 3, and ''Yuzhniy'' from which it obtained iron ore for use in the production of the subject merchandise. Open pit mines No. 2–bis and No. 3 are part of the Mining and Enrichment Intergrated Works of Krivorozhstal. Krivorozhstal also reported that it also operates an underground mine from which it obtained iron ore for use in the production of the subject merchandise. Krivorozhstal explained that ''Yuzhniy'' and the underground mine became part of Krivorozhstal in May 2001 and are part of the Mining Department of Krivorozhstal. *See* Krivorozhstal's December 26, 2001 Response at pages 5–6; Krivorozhstal's December 31, 2001 Response at page 20; and Krivorozhstal's February 4, 2002 Response at pages 19–21. Krivorozhstal stated that the distance between the underground mine and the sintering factory of Krivorozhstal is approximately 16 kilometers and the distance from the open pit mines to the enrichment complex is between 5 and 7 kilometers. *See* Krivorozhstal's February 4, 2002 Response at page 26. For purposes of reporting its factors of production for that iron ore obtained from its open pit mines or its underground mine, Krivorozhstal reported the aggregate usage of the inputs into obtaining the iron ore, rather than the aggregate usage of the self-produced iron ore used to produce one metric ton of the subject merchandise.

In its narrative responses, Krivorozhstal also reported that it has its own energy generating facilities, including facilities to generate a certain portion of its electricity requirements and all of its argon, nitrogen, and oxygen requirements. *See* Krivorozhstal's December 26, 2001 Response at pages 14–16. In the antidumping investigation of hot-rolled carbon steel flat products from the People's Republic of China, the Department determined to value certain self-produced energy components (electricity, argon, oxygen, and nitrogen) through surrogate valuation, rather than based on surrogate valuation of the factors going into the production of those inputs based on the fact that the financial statements of the sole surrogate indicated that it purchased a large portion of the inputs in question and did not appear to self-produce any of the inputs. *See Notice of Final Determination of Sales at Less Than Fair Value: Certain Hot-Rolled Carbon Steel Flat Products From the People's Republic of China* (''*Hot-Rolled Steel from the PRC*''), 66 FR 49632 (September 28, 2001) and accompanying Issues and Decision Memorandum at Comment 2. In *Hot-Rolled Steel from the PRC*, we stated that because the surrogate (TATA) does not incur the capital costs associated with the substantial plant and machinery needed to produce the inputs in question, ''the capital costs cannot and do not appear on TATA's financial statements and would not be included in the normal value under respondents' preferred methodology.'' *See* Id. Further, the Department explained that ''To ignore such costs, especially where they are likely to be significant as in the present case, would result in a less accurate calculation, not greater accuracy as implied by the respondents.'' *See* Id. In structural steel beams from the People's Republic of China, the Department followed the approach established in *Hot-Rolled Steel from the PRC* regarding the valuation of certain self-produced energy inputs, explaining that ''the respondent's methodology would add needless complications to our calculation of NV and lead to potentially erroneous results.'' *See Notice of Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination: Structural Steel Beams From The People's Republic of China*(''Structural Steel Beams''), 66 FR 67197, 67201 (December 28, 2001).

In this case, as explained above, to value overhead, SG&A, interest, and profit, we are relying on the 1998 financial statements of Alexandria National Iron and Steel Company (''Alexandria''). The financial statements of Alexandria do not indicate that they self-produce iron ore, electricity, argon, nitrogen, and oxygen. In addition, a press release from the European Investment Bank, dated April 26, 1999, regarding a loan to an Egyptian gas company for the construction of a new air separation plant for the production of industrial gases reports that Alexandria will be a major buyer of the company's products (oxygen, nitrogen, and argon). For a copy of article, *see Analysis Memorandum for the Preliminary Determination: Carbon and Alloy Steel Wire Rod from Ukraine*(''*Prelim Analysis Memo*''), dated April 2, 2002. The Department was unable to locate any other publicly available information regarding Alexandria's self-production of these inputs. Accordingly, for purposes of the preliminary determination, consistent with *Hot-Rolled Steel from the PRC* and

Structural Steel Beams from the PRC, we are valuing self-produced iron ore, argon, nitrogen, and oxygen through the use of surrogate valuation, rather than valuation of the factor inputs going into the production of these inputs. Because Krivorozhstal only generates a relatively small portion of electricity needs (*see Prelim Analysis Memo*), we are not using a surrogate value to value that portion of electricity that is self-produced. The Department has adjusted Krivorozhstal's factors of production to account for this methodological change. See Prelim Analysis Memo for calculation details. We invite parties to comment on this issue, particularly regarding Alexandria's purchase and use of these inputs, and will reconsider this issue for purposes of the final determination.

Verification

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

Final Critical Circumstances Determination

We will make a final determination concerning critical circumstances for Ukraine when we make our final determination regarding sales at LTFV in this investigation, which will be no later than 135 days after the publication of this notice in the **Federal Register.**

Suspension of Liquidation

Because of our preliminary affirmative critical circumstances finding, we are directing the Customs Service to suspend liquidation of all entries of wire rod from Ukraine entered, or withdrawn from warehouse, for consumption on or after the date which is 90 days prior to the date on which this notice is published in the Federal Register (*see Critical Circumstances Notice*). We are instructing the Customs Service to require a cash deposit or the posting of a bond equal to the weighted-average amount by which the NV exceeds the EP, as indicated in the chart below. These instructions suspending liquidation will remain in effect until further notice.

The weighted-average dumping margins are provided below:

Exporter/manufacturer	Weighted-average margin percentage
Krivorozhstal	129.52
Ukraine-wide rate	129.52

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

ITC Notification

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

Public Comment

Case briefs or other written comments in six copies must be submitted to the Assistant Secretary for Import Administration no later than 50 days after the date of publication of this notice, and rebuttal briefs no later than 55 days after the publication of this notice. A list of authorities used and an executive summary of issues should accompany any briefs submitted to the Department. Such summary should be limited to five pages total, including footnotes. In accordance with section 774 of the Act, we will hold a public hearing, if requested, to afford interested parties an opportunity to comment on arguments raised in case or rebuttal briefs. Tentatively, the hearing will be held on fifty-seven days after publication of this notice, at the U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, DC 20230. Parties should confirm by telephone the time, date, and place of the hearing 48 hours before the scheduled time.

Interested parties who wish to request a hearing, or to participate if one is requested, must submit a written request to the Assistant Secretary for Import Administration, U.S. Department of Commerce, Room 1870, within 30 days of the publication of this notice. Requests should contain: (1) the party's name, address, and telephone number; (2) the number of participants; and (3) a list of the issues to be discussed. Oral presentations will be limited to issues raised in the briefs. See 19 CFR 351.310(c). We will make our final determination not later than 135 days after the date of publication of the preliminary determination.

This determination is issued and published in accordance with sections 733(d) and 777(i)(1) of the Act.

Dated: April 2, 2002

Faryar Shirzad,

Assistant Secretaryfor Import Administration.

[FR Doc. 02–8701 Filed 4–9–02; 8:45 am]

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DEPARTMENT OF COMMERCE

International Trade Administration

[A–560–815]

Notice of Preliminary Determination of Sales at Not Less Than Fair Value: Carbon and Certain Alloy Steel Wire Rod from Indonesia.

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

DATES: April 10, 2002.

FOR FURTHER INFORMATION CONTACT: Michael Ferrier or Donna Kinsella at (202) 482–1394 or (202) 482–0194, respectively; Antidumping and Countervailing Duty Enforcement Group III, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, D.C. 20230.

SUPPLEMENTARY INFORMATION:

The Applicable Statute

Unless otherwise indicated, all citations to the statute are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Tariff Act of 1930, as amended (the Act) by the Uruguay Round Agreements Act (URAA). In addition, unless otherwise indicated, all citations to the Department's regulations are references to the provisions codified at 19 CFR Part 351 (2001).

Preliminary Determination

We preliminary determine that carbon and certain alloy steel wire rod from Indonesia is not being sold, or is not likely to be sold, in the United States at less than fair value (LTFV), as provided in section 733 of the Act. The estimated margins of sales at LTFV are shown in ''Suspension of Liquidation'' section of this notice.

Case History

On September 24, 2001, the Department initiated antidumping investigations of wire rod from Brazil, Canada, Egypt, Germany, Indonesia, Mexico, Moldova, South Africa, Trinidad and Tobago, Ukraine, and Venezuela. *See Notice of Initiation of Antidumping Duty Investigations: Carbon and Certain Alloy Steel Wire Rod From Brazil, Canada, Egypt, Germany, Indonesia, Mexico, Moldova, South Africa, Trinidad and Tobago, Ukraine, and Venezuela,* 66 FR 50164 (October 2, 2001) (*Initiation Notice*). The petitioners in this investigation are Co-Steel Raritan, Inc., GS Industries, Keystone Consolidated Industries, Inc.,

and North Star Steel Texas, Inc. (''petitioners''). Since the initiation of the investigation, the following events have occurred.

In a letter dated October 9, 2001, petitioners (Co-Steel Raritan, Inc., GS Industries, Keystone Consolidated Industries, Inc., and North Star Steel Texas, Inc.) requested the scope of the investigation be amended to exclude high carbon, high tensile 1080 grade tire cord and tire bead quality wire rod actually used in the production of tire cord and bead, as defined by specific dimensional characteristics and specifications.

On October 15, 2001, the United States International Trade Commission (USITC) notified the Department of its affirmative preliminary injury determination on imports of subject merchandise from Brazil, Canada, Germany, Indonesia, Mexico, Moldova, Trinidad and Tobago, and Ukraine.

On October 16, 2001, the Department issued a letter to interested parties in all of the concurrent wire rod antidumping investigations, providing an opportunity to comment on the Department's proposed model match characteristics and hierarchy. Petitioners submitted comments on October 24, 2001. The Department also received comments on model matching from respondents Hysla S.A. de C.V. (Mexico), Ivaco, Inc,. and Ispat Sidbec Inc. (Canada).

On October 29, 2001, the USITC published its preliminary determination stating that there is a reasonable indication that an industry in the United States is materially injured by reason of imports of the subject merchandise from Brazil, Canada, Germany, Indonesia, Mexico, Moldova, Trinidad and Tobago, and Ukraine. *See Carbon and Certain Alloy Steel Wire Rod From Brazil, Canada, Egypt, Germany, Indonesia, Mexico, Moldova, South Africa, Trinidad and Tobago, Turkey, Ukraine, and Venezuela,* 66 FR 54539 (October 29, 2001).

On November 28, 2001, five U.S. tire manufacturers and an industry trade association, the Rubber Manufacturers Association, submitted a letter to the Department in response to petitioners' October 9, 2001, submission regarding the exclusion of certain 1080 grade tire cord and tire bead wire rod used in the production of tire cord and bead. Additionally, the tire manufacturers requested clarification from the Department if 1090 grade wire rod is included in petitioners' October 9, 2001, scope exclusion request. The tire manufactures also requested an exclusion from the scope of this investigation for 1070 grade wire rod and related grades, citing a lack of domestic production capacity to meet the requirements of the tire industry. On November 28, 2001, petitioners further clarified and modified their October 9, 2001 amendment of the scope of the petition. Finally, on January 21, 2002, Tokusen U.S.A., Inc. submitted a request that grade 1070 tire cord wire rod, and tire cord wire rod more generally, be excluded from the scope of the antidumping dumping duty and countervailing duty investigations.

On January 17, 2002, petitioners requested that the Department extend the deadline for issuance of the preliminary determination by 30 days. On January 28, 2002, the Department published in the **Federal Register** the notice postponing the preliminary determination to March 13, 2002 (*see Notice of Postponement of Preliminary Antidumping Duty Determinations: Carbon and Certain Alloy Steel Wire Rod From Brazil, Canada, Germany, Indonesia, Mexico, Moldova, Trinidad and Tobago, and Ukraine*, 67 FR 3877). On March 4, 2002, petitioners submitted a letter to the Department requesting the Department to extend the deadline for issuance of the preliminary determination by an additional 20 days. The Department published in the **Federal Register** the notice postponing the preliminary determination an additional 20 days to April 2, 2002 (*see Notice of Postponement of Preliminary Antidumping Duty Determinations: Carbon and Certain Alloy Steel Wire Rod From Brazil, Canada, Germany, Indonesia, Mexico, Moldova, Trinidad and Tobago, and Ukraine*, 67 FR 11674).

On November 6, 2001, the Department issued all sections of its antidumping duty questionnaire to P.T. Ispat Indo (''Ispat Indo''). On December 11, 2001, the Department received Ispat Indo's response to Section A of the questionnaire. On December 18, 2001, petitioners filed comments on Ispat Indo's section A response. Ispat Indo filed its response to Sections B, C, and D of the questionnaire on December 27, 2001. The Department issued a supplemental questionnaire for Ispat Indo's Section A response on December 28, 2001. On January 4, 2002, petitioners filed comments on Ispat Indo's Sections B, C, and D response. On January 9, 2002, petitioners filed additional comments on Ispat Indo's Sections B, C, and D responses. On January 10, 2002, the Department issued a supplemental questionnaire for Ispat Indo's Section B and C responses. On January 18, 2002, Ispat Indo submitted its response to the Department's Section A supplemental questionnaire. On January 28, 2002, the Department issued a supplemental questionnaire to Ispat Indo's Section D response. Ispat Indo submitted their supplemental Section D response to the Department on February 19, 2002. On March 12, 2002, petitioners submitted additional comments on supplemental Sections A, B, C, and D questionnaire responses. On March 18, 2002, Ispat Indo submitted additional information at the Department's request.

Period of Investigation

The POI is July 1, 2000 through June 30, 2001. This period corresponds to the four most recent fiscal quarters prior to the filing of the petition (*i.e.*, August 2001), and is in accordance with section 351.204(b)(1) of the Department's regulations.

Scope of Investigation

The merchandise covered by these investigations is certain hot-rolled products of carbon steel and alloy steel, in coils, of approximately round cross section, 5.00 mm or more, but less than 19.00 mm, in solid cross-sectional diameter.

Specifically excluded are steel products possessing the above-noted physical characteristics and meeting the Harmonized Tariff Schedule of the United States (HTSUS) definitions for (a) stainless steel; (b) tool steel; (c) high nickel steel; (d) ball bearing steel; and (e) concrete reinforcing bars and rods. Also excluded are (f) free machining steel products (*i.e.*, products that contain by weight one or more of the following elements: 0.03 percent or more of lead, 0.05 percent or more of bismuth, 0.08 percent or more of sulfur, more than 0.04 percent of phosphorus, more than 0.05 percent of selenium, or more than 0.01 percent of tellurium).

Also excluded from the scope are 1080 grade tire cord quality wire rod and 1080 grade tire bead quality wire rod. This grade 1080 tire cord quality rod is defined as: (i) grade 1080 tire cord quality wire rod measuring 5.0 mm or more but not more than 6.0 mm in cross-sectional diameter; (ii) with an average partial decarburization of no more than 70 microns in depth (maximum individual 200 microns); (iii) having no inclusions greater than 20 microns; (iv) having a carbon segregation per heat average of 3.0 or better using European Method NFA 04–114; (v) having a surface quality with no surface defects of a length greater than 0.15 mm; (vi) capable of being drawn to a diameter of 0.30 mm or less with 3 or fewer breaks per ton, and (vii) containing by weight the following elements in the proportions shown: (1) 0.78 percent or more of carbon, (2) less than 0.01 percent of aluminum, (3)

0.040 percent or less, in the aggregate, of phosphorus and sulfur, (4) 0.006 percent or less of nitrogen, and (5) not more than 0.15 percent, in the aggregate, of copper, nickel and chromium.

This grade 1080 tire bead quality rod is defined as: (i) grade 1080 tire bead quality wire rod measuring 5.5 mm or more but not more than 7.0 mm in cross-sectional diameter; (ii) with an average partial decarburization of no more than 70 microns in depth (maximum individual 200 microns); (iii) having no inclusions greater than 20 microns; (iv) having a carbon segregation per heat average of 3.0 or better using European Method NFA 04–114; (v) having a surface quality with no surface defects of a length greater than 0.2 mm; (vi) capable of being drawn to a diameter of 0.78 mm or larger with 0.5 or fewer breaks per ton; and (vii) containing by weight the following elements in the proportions shown: (1) 0.78 percent or more of carbon, (2) less than 0.01 percent of soluble aluminum, (3) 0.040 percent or less, in the aggregate, of phosphorus and sulfur, (4) 0.008 percent or less of nitrogen, and (5) either not more than 0.15 percent, in the aggregate, of copper, nickel and chromium (if chromium is not specified), or not more than 0.10 percent in the aggregate of copper and nickel and a chromium content of 0.24 to 0.30 percent (if chromium is specified).

The designation of the products as ''tire cord quality'' or ''tire bead quality'' indicates the acceptability of the product for use in the production of tire cord, tire bead, or wire for use in other rubber reinforcement applications such as hose wire. These quality designations are presumed to indicate that these products are being used in tire cord, tire bead, and other rubber reinforcement applications, and such merchandise intended for the tire cord, tire bead, or other rubber reinforcement applications is not included in the scope. However, should petitioners or other interested parties provide a reasonable basis to believe or suspect that there exists a pattern of importation of such products for other than those applications, end-use certification for the importation of such products may be required. Under such circumstances, only the importers of record would normally be required to certify the end use of the imported merchandise.

All products meeting the physical description of subject merchandise that are not specifically excluded are included in this scope.

The products under investigation are currently classifiable under subheadings 7213.91.3010, 7213.91.3090, 7213.91.4510, 7213.91.4590, 7213.91.6010, 7213.91.6090, 7213.99.0031, 7213.99.0038, 7213.99.0090, 7227.20.0010, 7227.20.0020, 7227.20.0090, 7227.20.0095, 7227.90.6051, 7227.90.6053, 7227.90.6058, and 7227.90.6059 of the HTSUS. Although the HTSUS subheadings are provided for convenience and customs purposes, the written description of the scope of this proceeding is dispositive.

See Carbon and Certain Alloy Steel Wire Rod: Requests for exclusion of various tire cord quality wire rod and tire bead quality wire rod products from the scope of antidumping duty (Brazil, Canada, Egypt, Germany, Indonesia, Mexico, Moldova, South Africa, Trinidad and Tobago, Ukraine, and Venezuela) and countervailing duty (Brazil, Canada, Germany, Trinidad and Tobago, and Turkey) investigations.

Date of Sale

As stated in 19 CFR 351.401(i), the Department normally will use invoice date as the date of sale unless another date better reflects the date on which the exporter or producer establishes the material terms of sale. Ispat Indo reported the invoice date as the home market date of sale, and the invoice date as the U.S. date of sale. Ispat Indo stated that both local and export sales are booked in Ispat Indo's accounts at the time invoice is issued. Ispat Indo maintains that the invoice is the first document confirming the final terms of the sale for both home market and U.S. market sales.

We have examined whether invoice date, contract date, or some other date best represents the date on which the material terms of sale are established for both home market and U.S. sales. The Department has examined the information submitted by Ispat Indo concerning the sales contracts, invoices, and purchase agreements issued during the POI and has found that the material terms of sale are firmly established at invoice date. Specifically, we find that changes in quantity and product specifications referred to by Ispat Indo do occur after the contract date, but not after invoice date. For additional details of our analysis of the date of sale issue,*see Memorandum to the File Regarding Antidumping Duty Investigation on Carbon and Certain Alloy Steel Wire Rod from Indonesia; Preliminary Determination Analysis for P.T. Ispat Indo*(April 2, 2002) (Analysis Memo). Accordingly, for home market and U.S. sales, we have preliminarily determined that invoice date is the appropriate date of sale in this investigation because it best represents the date upon which the material terms of sale are established.

Product Comparisons

In accordance with section 771(16) of the Act, all products produced by Ispat Indo, covered by the description in the ''Scope of Investigation'' above and sold in Indonesia during the POI are considered to be foreign like products for purposes of determining appropriate product comparisons to U.S. sales. Where there were no sales of identical merchandise in the home market to compare to U.S. sales, the Department compared U.S. sales to the next most similar foreign like product on the basis of the characteristics listed in Appendix V of the Department's November 6, 2001, antidumping questionnaire. If there were no home market foreign like products to compare to a U.S. sale, we used constructed value (CV).

Fair Value Comparisons

To determine whether sales of wire rod from Indonesia to the United States were made at LTFV, we compared the export price (EP) to the normal value (NV), as described in the ''Export Price'' and ''Normal Value'' sections of this notice. In accordance with section 777A(d)(1)(A)(i) of the Act, we calculated weighted-average EPs for comparison to NV.

Export Price

We calculated EP in accordance with section 772(a) of the Act because Ispat Indo sold the merchandise directly to the first unaffiliated purchaser in the United States prior to the date of importation, or Ispat Indo sold the merchandise through an affiliated trading company outside the United States who re-sold the merchandise directly to an unaffiliated purchaser in the United States prior to the date of importation, and because constructed export price (CEP) methodology was not otherwise appropriate. We based EP for Ispat Indo on the CIF FO (free out) price to unaffiliated purchasers in the United States. CIF FO has the same meaning as CIF. In accordance with 772(c)(2), we made deductions from the starting price for movement expenses, including foreign inland freight and brokerage and handling.

Normal Value

Selection of Comparison Market

In order to determine whether there is a sufficient volume of sales in the home market to serve as a viable basis for calculating NV (i.e., whether the aggregate quantity of the foreign like product is equal to or greater than five percent of the aggregate quantity of U.S.

sales), we compared Ispat Indo's volume of home market sales of the foreign like product to the volume of U.S. sales of the subject merchandise, in the accordance with section 773(a)(1) of the Act and section 351.404(b) of the Department's regulations. Since Ispat Indo's aggregate quantity of home market sales of the foreign like product was greater than five percent of its aggregate quantity of U.S. sales for the subject merchandise, we determined that the home market was viable for Ispat Indo. Therefore, we have based NV on home market sales in the usual quantities and in the ordinary course of trade.

Affiliate Party Transactions and Arm's Length Test

To test whether these sales were made at arm's length prices, the Department compared, on a model-specific basis, the prices of sales to affiliated customers with sales to unaffiliated customers net of all movement charges, discounts, direct selling expenses, billing adjustments, and packing. Where, for the tested models of the foreign like product, prices to the affiliated party were on average 99.5 percent or more of the price to unaffiliated parties, the Department determined that sales made to the affiliated party were at arm's length. See 19 CFR 351.403(c); see also Antidumping Duties; Countervailing Duties Final Rule, 62 FR 27355 (May 19, 1997).

If these affiliated party sales satisfied the arm's length test, we used them in our analysis. Merchandise sold to affiliated customers in the home market made at non-arm's length prices were excluded from our analysis because we considered them to be outside the ordinary course of trade. See 19 CFR 351.102. Where the exclusion of such sales eliminated all sales of the most appropriate comparison product, we made a comparison to the next most similar model.

Ispat Indo reported the sales to its home market affiliate, P.T. Ispat Wire Products (''IWP''). These sales account for more than 5% the total of Ispat Indo's home market sales during the POI. See 19 CFR 351.403(d). The respondent stated that its affiliate consumed almost all of the wire rod purchased from Ispat Indo in the production of non-subject merchandise. Since Ispat Indo's sales to IWP were at arm's length, the Department did not require Ispat Indo to report home market downstream sales by its affiliate for this preliminary determination. See Final Rule, 62 FR 27355. Sales of subject merchandise resold to the United States by the company's affiliate were reported as U.S. sales by Ispat Indo.

Cost of Production Analysis

Based on our analysis of the cost allegations submitted by petitioners in the original petition, in accordance with section 773(b)(2)(A)(i) of the Act, the Department found reasonable grounds to believe or suspect that Indonesian producers had made sales of wire rod in the home market at prices below the cost of producing the merchandise. As a result, the Department initiated an investigation to determine whether respondents made home market sales during the POI at prices below their cost of production (COP) within the meaning of section 773(b) of the Act. We conducted the COP analysis described below.

1. Calculation of COP

In accordance with section 773(b)(3) of the Act, we calculated a weighted-average COP based on the sum of Ispat Indo's cost of materials and fabrication for the foreign like product, plus amounts for home market selling, general, and administrative expenses (SG&A), interest expenses, and packing costs. We revised the numerator of Ispat Indo's SG&A rate calculation and the numerator of the interest expense rate calculation. For additional details of our cost analysis, see Cost of Production and Constructed Value Calculation Adjustments for the Preliminary Determination (April 2, 2002) (Cost Memo). The Department relied on the COP and CV data submitted by Ispat Indo in its supplemental Section D response on February 19, 2002.

2. Test of Home Market Sales Prices

We compared the weighted-average COP for Ispat Indo to home market sales of the foreign like product, as required under section 773(b) of the Act, in order to determine whether these sales had been made at prices below the COP. In determining whether to disregard home market sales made at prices below the COP, we examined whether such sales were made (1) in substantial quantities within an extended period of time, and (2) at prices which permitted the recovery of all costs within a reasonable period of time, in accordance with section 773(b)(1)(A) and (B) of the Act. On a product-specific basis, we compared COP to home market prices, less any applicable movement charges, billing adjustments, taxes, and discounts and rebates. See section 773(f)(1)(B) of the Act.

3. Results of the COP Test

Pursuant to section 773(b)(2)(C)(i) of the Act, where less than twenty percent of Ispat Indo's sales of a given product were at prices less than the COP, we did not disregard any below-cost sales of that product because we determined that the below-cost sales were not made in ''substantial quantities.'' Where twenty percent or more of its sales of a given product during the POI were at prices less than the COP, we determined such sales to have been made in substantial quantities within an extended period of time. In addition, pursuant to section 773(b)(2)(D) of the Act, we also determined whether such sales were made at prices which would permit recovery of all costs within a reasonable period of time. In such a case, we disregard the below-cost sales. Our cost test for Ispat Indo revealed that more than twenty percent of the respondent's home market sales of certain products were at prices below their respective COP, which did not permit the recovery of all costs within a reasonable period of time. Therefore, we disregarded the below-cost sales and used the remaining above cost sales in our analysis, in accordance with 773(b)(1) of the Act. See Analysis Memo, April 2, 2002.

Constructed Value

If no sales made in the ordinary course of trade in the home market remain, NV shall be based on CV. *See* section 773(b)(1) of the Act. In accordance with section 773(e)(1) of the Act, we calculated CV based on the sum of respondent's cost of materials, fabrication, SG&A, including interest expenses, and profit. In accordance with section 773(e)(2)(A) of the Act, we based SG&A and profit on the amounts incurred and realized by Ispat Indo in connection with the production and sale of the foreign like product in the ordinary course of trade for consumption in the foreign country. We used the CV data the respondent supplied in its section D questionnaire and supplemental questionnaire response.

Price-to-Price Comparisons

We based NV for Ispat Indo on prices of home market sales that passed the COP test. We made deductions for discounts. We made deductions, where appropriate, for inland freight and inland insurance, pursuant to section 773(a)(6)(B) of the Act. We made adjustments, where appropriate, for physical differences in the merchandise in accordance with section 773(a)(6)(C)(ii) of the Act, and 19 CFR 351.411. In accordance with section 773(a)(6)(C)(iii) of the Act and 19 CFR 351.410, we made circumstances of sale (COS) adjustments for imputed credit expenses and bank charges. We also deducted home market packing costs

and added U.S. packing costs in accordance with section 773(a)(6)(A) and(B) of the Act.

Price-to-CV Comparisons

In accordance with section 773(a)(4) of the Act, we based NV on CV if we were unable to find a home market match of identical or similar merchandise within the contemporaneous period. We calculated CV based on the costs of materials and fabrication employed in producing the subject merchandise, SG&A, and profit pursuant to section 773(e) of the Act. In accordance with section 773(e)(2)(A) of the Act, we based SG&A expense and profit on the amounts incurred and realized by Ispat Indo in connection with the production and sale of the foreign like product in the ordinary course of trade for consumption in Indonesia. For selling expenses, we used the weighted-average home market selling expenses. Where appropriate, we made adjustments to CV in accordance with section 773(a)(8) of the Act. For comparisons to EP, we made COS adjustments by deducting home market direct selling expenses and adding U.S. direct selling expenses.

Level of Trade

In accordance with section 773(a)(1)(B) of the Act, to the extent practicable, we determine NV based on sales in the comparison market at the same level of trade (LOT) as the EP transaction. The NV LOT is that of the starting-price sales in the comparison market or, when NV is based on CV, that of the sales from which we derive SG&A expenses and profit. For EP, the U.S. LOT is also the level of the starting-price sale, which is usually from the exporter to the importer. To determine whether NV sales are at a different LOT than EP, we examine stages in the marketing process and selling functions along the chain of distribution between the producer and the unaffiliated customer. If the comparison-market sales are at a different LOT and the difference affects price comparability, as manifested in a pattern of consistent price differences between the sales on which NV is based and comparison-market sales at the LOT of the export transaction, we make a LOT adjustment pursuant to section 773(a)(7)(A) of the Act. *See Notice of Final Determination of Sales at Less Than Fair Value; Certain Cut-to-Length Carbon Steel Plate from South Africa,* 62 FR 61731 (November 19, 1997).

In determining whether separate LOTs actually existed in the home market for Ispat Indo, we examined whether the respondent's sales involved different marketing stages (or their equivalent) based on the channel of distribution, customer categories, and selling functions (or services offered) to each customer or customer category, in both markets. Ispat Indo claimed one LOT in the U.S. and one LOT in the home market. Ispat Indo sells to end-users, both in the home market and the U.S. market. In the home market, Ispat Indo has one channel of distribution. It consists of Ispat Indo selling directly to affiliated and unaffiliated end-users in the home market. For the U.S. market, Ispat Indo stated that it sells through one channel of distribution, directly to end-users in the U.S. Within this channel of distribution, Ispat Indo made sales to end-users where the producing mill directly invoices the U.S. customer, or the producing mill sells the merchandise to IWP who resells the merchandise in the original form to the U.S. customer, or the producing mill invoices a related trading company and ships the merchandise directly to the U.S. customer.

In analyzing Ispat Indo's selling activities for its home market and U.S. market, we determined that essentially the same services were provided in both markets. Ispat Indo provides indirect technical services (*i.e.*, answering routine questions on technical matters) to customers in both the U.S. and home markets. Additionally, the respondent did not incur any warranty expenses in the U.S. and home markets. Therefore, based upon this information, we have preliminary determined that the LOT for all EP sales is the same LOT for all sales in the home market. Accordingly, because we find the U.S. sales and home market sales to be at the same LOT, no LOT adjustment under section 773(a)(7)(A) of the Act is warranted for Ispat Indo.

Currency Conversion

We made currency conversions into U.S. dollars based on the exchange rates in effect on the dates of the U.S. sales as certified by the Federal Reserve Bank. Section 773A(a) of the Act directs the Department to use a daily exchange rate in order to convert foreign currencies into U.S. dollars unless the daily rate involves a fluctuation. It is the Department's practice to find that a fluctuation exists when the daily exchange rate differs from the benchmark rate by more than 2.25 percent. The benchmark is defined as the moving average of rates for the 40 business days immediately prior to the date of the actual daily rate to be classified. When we determine a fluctuation to have existed, we substitute the benchmark rate for the daily rate, in accordance with established practice. Further, section 773A(b) of the Act directs the Department to allow a 60–day adjustment period when a currency has undergone a sustained movement. A sustained movement has occurred when the weekly average of actual daily rates exceeds the weekly average of benchmark rates by more than five percent of eight consecutive weeks. (For an explanation of this method, *see Policy Bulletin 96–1: Currency Conversions*, 61 FR 9434 (March 8, 1996).

Verification

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

Suspension of Liquidation

In accordance with section 733(b)(3) of the Act, the Department will disregard any weighted-average dumping margin that is zero or de minimis, *i.e.* less than 2 percent ad valorem. Based on our preliminary margin calculation, we will not direct the U.S. Customs Service to suspend liquidation of any entries of wire rod from Indonesia as described in the ''Scope of Investigation'' section, that are entered, or withdrawn from warehouse, for consumption on or after the date of publication of this notice in the Federal Register. The Department does not require any cash deposit or posting of a bond for this preliminary determination. The weighted-average dumping margin in the preliminary determination is as follows:

Exporter/manufacturer	Margin (percent)
P.T. Ispat Indo	55 % *

* De minimis

ITC Notification

In accordance with section 733(f) of the Act, we have notified the ITC of our determination. If our final determination is affirmative, the ITC will determine, within 75 days after the date of our final determination, whether these imports are materially injuring, or threatening material injury to, the U.S. industry.

Public Comment

Case briefs for this investigation must be submitted no later than one week after the issuance of the verification reports. Rebuttal briefs must be filed within five days after the deadline for submission of case briefs. A list of authorities used, a table of contents, and

an executive summary of issues should accompany any briefs submitted to the Department. Executive summaries should be limited to five pages total, including footnotes. Section 774 of the Act provides that the Department will hold a hearing to afford interested parties an opportunity to comment on arguments raised in case or rebuttal briefs, provided that such a hearing is requested by any interested party. If a request for a hearing is made in an investigation, the hearing will tentatively be held two days after the deadline for submission of the rebuttal briefs, at the U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230. In the event that the Department receives requests for hearings from parties to several wire rod cases, the Department may schedule a single hearing to encompass all those cases. Parties should confirm by telephone the time, date, and place of the hearing 48 hours before the scheduled time. Interested parties who wish to request a hearing, or participate if one is requested, must submit a written request within 30 days of the publication of this notice. Requests should specify the number of participants and provide a list of the issues to be discussed. Oral presentations will be limited to issues raised in the briefs. If this investigation proceeds normally, we will make our final determination no later than 75 days after the date of this preliminary determination.

This determination is issued and published in accordance with sections 733(f) and 777(i)(1) of the Act.

Dated: April 2, 2002

Faryar Shirzad,

Assistant Secretary for Import Administration.

[FR Doc. 02–8702 Filed 4–9–02; 8:45 am]

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DEPARTMENT OF COMMERCE

International Trade Administration

[A–274–804]

Notice of Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination: Carbon and Certain Alloy Steel Wire Rod from Trinidad and Tobago

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

EFFECTIVE DATE: April 10, 2002.

FOR FURTHER INFORMATION CONTACT: Magd Zalok or Tisha Loeper-Viti at (202) 482–4162 or (202) 482–7425, respectively; AD/CVD Enforcement Group II Office 5, Import Administration, Room 1870, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230.

The Applicable Statute and Regulations

Unless otherwise indicated, all citations to the statute are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Tariff Act of 1930 (the Act) by the Uruguay Round Agreements Act (URAA). In addition, unless otherwise indicated, all citations to the Department of Commerce (the Department) regulations are to the regulations codified at 19 CFR part 351 (2001).

Preliminary Determination

We preliminarily determine that carbon and certain alloy steel wire rod (steel wire rod) from Trinidad and Tobago is being sold, or is likely to be sold, in the United States at less than fair value (LTFV), as provided in section 733 of the Act. The estimated margins of sales at LTFV are shown in the *Suspension of Liquidation* section of this notice.

Case History

This investigation was initiated on September 24, 2001.[1] *See Initiation of Antidumping Duty Investigations: Carbon and Certain Alloy Steel Wire Rod from Brazil, Canada, Egypt, Germany, Indonesia, Mexico, Moldova, South Africa, Trinidad and Tobago Ukraine and Venezuela,* 66 FR 50164 (October 2, 2001) (*Initiation Notice*). Since the initiation of this investigation, the following events have occurred.

On October 12, 2001, the United States International Trade Commission (the ITC) preliminarily determined that the domestic industry producing steel wire rod is materially injured by reason of imports from Brazil, Canada, Germany, Indonesia, Mexico, Moldova, Trinidad and Tobago, and Ukraine of carbon and certain alloy steel wire rod.[2] *See Determinations and Views of the Commission,* USITC Publication No. 3456, October 2001.

The Department issued a letter on October 16, 2001, to interested parties in all of the concurrent steel wire rod antidumping investigations, providing an opportunity to comment on the Department's proposed model match characteristics and hierarchy. The petitioners submitted comments on October 24, 2001. The Department also received comments on model matching from respondents Hysla S.A. de C.V. (Mexico), Ivaco, Inc., Ispat Sidbec Inc. (Canada). These comments were taken into consideration by the Department in developing the model matching characteristics and hierarchy for all of the steel wire rod antidumping investigations.

On November 5, 2001, the Department issued an antidumping questionnaire to Caribbean Ispat Limited (CIL).[3] We issued supplemental questionnaires on January 9 and 16, and February 8, 2002.

On January 17, 2002, the petitioners requested a 30-day postponement of the preliminary determination in this investigation. On January 28, 2002, the Department published a **Federal Register** notice postponing the deadline for the preliminary determinations until March 13, 2002. *See Notice of Postponement of Preliminary Antidumping Duty Determinations: Carbon and Certain Alloy Wire Rod from Brazil, Canada, Indonesia, Germany, Mexico, Moldova, Trinidad and Tobago, and Ukraine,* 67 FR 3877 (January 28, 2002). On March 4, 2002, the petitioners requested an additional 20-day postponement of the preliminary determination in this investigation. On March 15, 2002, the Department published a **Federal Register** notice postponing the deadline for the preliminary determinations until April 2, 2002. *See Notice of Postponement of Preliminary Antidumping Duty Determinations: Carbon and Certain Alloy Steel Wire Rod From Brazil, Canada, Germany, Indonesia, Mexico, Moldova, Trinidad and Tobago, and Ukraine,* 67 FR 11674 (March 15, 2002).

On December 21, 2001, the petitioners alleged that there that there was a reasonable basis to believe or suspect that critical circumstances exist with respect to imports of steel wire rod from

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[1] The petitioners in this investigation are Co-Steel Raritan, Inc., GS Industries, Inc., Keystone Consolidated Industries, Inc., and North Star Steel Texas, Inc.

[2] With respect to imports from Egypt, South Africa, and Venezuela, the ITC determined that imports from these countries during the period of investigation (POI) were negligible and, therefore, these investigations were terminated.

[3] Section A of the questionnaire requests general information concerning a company's corporate structure and business practices, the merchandise under investigation that it sells, and the manner in which it sells that merchandise in all of its markets. Section B requests a complete listing of all home market sales, or, if the home market is not viable, of sales in the most appropriate third-country market. Section C requests a complete listing of U.S. sales. Section D requests information on the cost of production (COP) of the foreign like product and the constructed value (CV) of the merchandise under investigation. Section E requests information on further manufacturing.

Trinidad and Tobago.[4] On February 4, 2002, the Department preliminarily determined that critical circumstances exist with respect to imports of carbon and alloy steel wire rod from Trinidad and Tobago. *See* Memorandum to Faryar Shirzad Re: Antidumping Duty Investigation Carbon and Alloy Steel Wire Rod From Mexico and Trinidad and Tobago—Notice of Preliminary Determinations of Critical Circumstances (February 4, 2002); *see also Carbon and Alloy Steel Wire Rod From Germany, Mexico, Moldova, Trinidad and Tobago, and Ukraine: Notice of Preliminary Determination of Critical Circumstances,* 67 FR 6224 (February 11, 2002).

Postponement of Final Determination and Extension of Provisional Measures

Section 735(a)(2)(A) of the Act provides that a final determination may be postponed until not later than 135 days after the date of the publication of the preliminary determination if, in the event of an affirmative preliminary determination, a request for such postponement is made by exporters who account for a significant proportion of exports of the subject merchandise. Section 351.210(e)(2) of the Department's regulations requires that exporters requesting postponement of the final determination must also request an extension of the provisional measures referred to in section 733(d) of the Act from a four-month period until not more than six months. We received a request to postpone the final determination from CIL on March 22, 2002. In its request, the respondent consented to the extension of provisional measures to no longer than six months. Because this preliminary determination is affirmative, the request for postponement is made by exporters who account for a significant proportion of exports of the subject merchandise, and there is no compelling reason to deny the respondent's request, we have extended the deadline for issuance of the final determination until the 135th day after the date of publication of this preliminary determination in the **Federal Register** and have extended provisional measures to no longer than six months.

Period of Investigation

The POI is July 1, 2000, through June 30, 2001. This period corresponds to the four most recent completed fiscal quarters prior to the month of the filing of the petition (*i.e.,* August 2001).

Scope of Investigation

The merchandise covered by this investigation is certain hot-rolled products of carbon steel and alloy steel, in coils, of approximately round cross section, 5.00 mm or more, but less than 19.00 mm, in solid cross-sectional diameter.

Specifically excluded are steel products possessing the above-noted physical characteristics and meeting the Harmonized Tariff Schedule of the United States (HTSUS) definitions for (a) stainless steel; (b) tool steel; (c) high nickel steel; (d) ball bearing steel; and (e) concrete reinforcing bars and rods. Also excluded are (f) free machining steel products (i.e., products that contain by weight one or more of the following elements: 0.03 percent or more of lead, 0.05 percent or more of bismuth, 0.08 percent or more of sulfur, more than 0.04 percent of phosphorus, more than 0.05 percent of selenium, or more than 0.01 percent of tellurium).

Also excluded from the scope are 1080 grade tire cord quality wire rod and 1080 grade tire bead quality wire rod. This grade 1080 tire cord quality rod is defined as: (i) Grade 1080 tire cord quality wire rod measuring 5.0 mm or more but not more than 6.0 mm in cross-sectional diameter; (ii) with an average partial decarburization of no more than 70 microns in depth (maximum individual 200 microns); (iii) having no inclusions greater than 20 microns; (iv) having a carbon segregation per heat average of 3.0 or better using European Method NFA 04–114; (v) having a surface quality with no surface defects of a length greater than 0.15 mm; (vi) capable of being drawn to a diameter of 0.30 mm or less with 3 or fewer breaks per ton, and (vii) containing by weight the following elements in the proportions shown: (1) 0.78 percent or more of carbon, (2) less than 0.01 percent of aluminum, (3) 0.040 percent or less, in the aggregate, of phosphorus and sulfur, (4) 0.006 percent or less of nitrogen, and (5) not more than 0.15 percent, in the aggregate, of copper, nickel and chromium.

This grade 1080 tire bead quality rod is defined as: (i) Grade 1080 tire bead quality wire rod measuring 5.5 mm or more but not more than 7.0 mm in cross-sectional diameter; (ii) with an average partial decarburization of no more than 70 microns in depth (maximum individual 200 microns); (iii) having no inclusions greater than 20 microns; (iv) having a carbon segregation per heat average of 3.0 or better using European Method NFA 04–114; (v) having a surface quality with no surface defects of a length greater than 0.2 mm; (vi) capable of being drawn to a diameter of 0.78 mm or larger with 0.5 or fewer breaks per ton; and (vii) containing by weight the following elements in the proportions shown: (1) 0.78 percent or more of carbon, (2) less than 0.01 percent of soluble aluminum, (3) 0.040 percent or less, in the aggregate, of phosphorus and sulfur, (4) 0.008 percent or less of nitrogen, and (5) either not more than 0.15 percent, in the aggregate, of copper, nickel and chromium (if chromium is not specified), or not more than 0.10 percent in the aggregate of copper and nickel and a chromium content of 0.24 to 0.30 percent (if chromium is specified).

The designation of the products as ''tire cord quality'' or ''tire bead quality'' indicates the acceptability of the product for use in the production of tire cord, tire bead, or wire for use in other rubber reinforcement applications such as hose wire. These quality designations are presumed to indicate that these products are being used in tire cord, tire bead, and other rubber reinforcement applications, and such merchandise intended for the tire cord, tire bead, or other rubber reinforcement applications is not included in the scope. However, should petitioners or other interested parties provide a reasonable basis to believe or suspect that there exists a pattern of importation of such products for other than those applications, end-use certification for the importation of such products may be required. Under such circumstances, only the importers of record would normally be required to certify the end use of the imported merchandise.

All products meeting the physical description of subject merchandise that are not specifically excluded are included in this scope.

The products under investigation are currently classifiable under subheadings 7213.91.3010, 7213.91.3090, 7213.91.4510, 7213.91.4590, 7213.91.6010, 7213.91.6090, 7213.99.0031, 7213.99.0038, 7213.99.0090, 7227.20.0010, 7227.20.0020, 7227.20.0090, 7227.20.0095, 7227.90.6051, 7227.90.6053, 7227.90.6058, and 7227.90.6059 of the HTSUS. Although the HTSUS subheadings are provided for convenience and customs purposes, the written description of the scope of this proceeding is dispositive.

See Carbon and Certain Alloy Steel Wire Rod: Requests for exclusion of various tire cord quality wire rod and tire bead quality wire rod products from the scope of antidumping duty (Brazil, Canada, Egypt, Germany, Indonesia,

[4] On December 5, 2001, the petitioners further alleged that there was a reasonable basis to believe or suspect that critical circumstances exist with respect to imports of wire rod from Brazil, Germany, Mexico, Moldova, Turkey, and Ukraine.

Mexico, Moldova, South Africa, Trinidad and Tobago, Ukraine, and Venezuela) and countervailing duty (Brazil, Canada, Germany, Trinidad and Tobago, and Turkey) investigations.

Product Comparisons

In accordance with section 771(16) of the Act, all products produced by the respondent covered by the description in the *Scope of Investigation* section, above, and sold in Trinidad and Tobago during the POI are considered to be foreign like products for purposes of determining appropriate product comparisons to U.S. sales. We have relied on eight criteria to match U.S. sales of subject merchandise to comparison-market sales of the foreign like product or constructed value (CV): grade range, carbon content range, surface quality, deoxidation, maximum total residual content, heat treatment, diameter range, and coating. These characteristics have been weighted by the Department where appropriate. Where there were no sales of identical merchandise in the home market made in the ordinary course of trade to compare to U.S. sales, we compared U.S. sales to the next most similar foreign like product on the basis of the characteristics listed above.

On January 8 and March 14, 2002, the petitioners submitted comments questioning the appropriateness of CIL's designation of certain U.S. sales as sales of non-prime merchandise and asked the Department to consider all merchandise sold in the United States as prime. CIL had originally requested that the Department excuse it from reporting these sales as they constituted a very small percentage of U.S. sales and because there were no sales of non-prime merchandise in the home market. The Department denied that request. *See* Department's January 4, 2002, memorandum from Tisha Loeper-Viti to Gary Taverman. In consideration of the information currently on the record regarding this merchandise, the Department has accepted these sales' present designation as non-prime for purposes of the preliminary determination.

Fair Value Comparisons

To determine whether sales of steel wire rod from Trinidad and Tobago were made in the United States at LTFV, we compared the export price (EP) and the constructed export price (CEP) to the normal value (NV), as described in the *Export Price and Constructed Export Price* and *Normal Value* sections of this notice. In accordance with section 777A(d)(1)(A)(i) of the Act, we calculated weighted-average EPs and CEPs. We compared these to weighted-average home market prices, or to CV, as appropriate.

Export Price and Constructed Export Price

For the price to the United States, we used, as appropriate, EP or CEP as defined in sections 772(a) and 772(b) of the Act, respectively. Section 772(a) of the Act defines EP as the price at which the subject merchandise is first sold (or agreed to be sold) before the date of importation by the producer or exporter outside of the United States to an unaffiliated purchaser in the United States or to an unaffiliated purchaser for exportation to the United States, as adjusted under subsection 772(c) of the Act.

Section 772(b) of the Act defines CEP as the price at which the subject merchandise is first sold in the United States before or after the date of importation, by or for the account of the producer or exporter of such merchandise, or by a seller affiliated with the producer or exporter, to an unaffiliated purchaser, as adjusted under subsections 772(c) and (d) of the Act. We based CEP on the applicable terms of sale through Ispat North America Inc. (INA), Ispat Inland Bar Products, a division of Ispat Inland Inc. (Inland Bar), or Walker Wire (Ispat) Inc. (Walker Wire), CIL's affiliated sellers in the United States.

We calculated EP and CEP, as appropriate, based on the packed prices charged to the first unaffiliated customer in the United States.

In accordance with section 772(c)(2) of the Act, we calculated the EP and CEP by deducting movement expenses, including inland freight, ocean freight, marine insurance, U.S. inland freight, and duties, where appropriate.

Section 772(d)(1) of the Act provides for additional adjustments to calculate CEP. Accordingly, where appropriate, we deducted indirect selling expenses, direct selling expenses (credit, warranty, and cleaning and coating expenses directly linked to sales transactions) related to commercial activity in the United States. Pursuant to section 772(d)(3) of the Act, where applicable, we made an adjustment for CEP profit.

The petitioners have commented that many sales in CIL's U.S.-market database are missing the date that the merchandise entered the United States (field ENTRYDTU). The petitioners have asked the Department to assign values for those that are missing by using facts available. CIL has provided this date for CEP sales made by two of its U.S. affiliates, INA and Inland Bar, and used it in the calculation of inventory carrying costs both in the country of exportation and in the United States. For sales by CIL's third U.S. affiliate, Walker Wire, CIL calculated inventory carrying costs using a different methodology, one based on the average number of days the merchandise spent in inventory in the United States, and did not provide an entry date for these sales. The Department has reviewed the methodologies used by the respondent to calculate inventory carrying costs and finds preliminarily that, based on the information currently on the record, they are appropriate. Thus, it is not necessary to assign entry dates to sales by Walker Wire using facts available.

Normal Value

A. Selection of Comparison Markets

Section 773(a)(1) of the Act directs that NV be based on the price at which the foreign like product is sold in the home market, provided that the merchandise is sold in sufficient quantities (or value, if quantity is inappropriate), that the time of the sales reasonably corresponds to the time of the sales used to determine EP or CEP, and that there is no particular market situation that prevents a proper comparison with the EP or CEP. The statute contemplates that quantities (or value) will normally be considered insufficient if they are less than five percent of the aggregate quantity (or value) of sales of the subject merchandise to the United States. See section 773(a)(1)(C)(iii).

We found that CIL had a viable home market for steel wire rod. CIL submitted home market sales data for purposes of the calculation of NV.

In deriving NV, we made adjustments as detailed in the *Calculation of Normal Value Based on Home Market Prices* section below.

The petitioners have asked the Department to reject CIL's reported payment dates and disallow any adjustment for credit expenses in the home market. CIL did not report the actual date that payment was received but rather, provided an ''effective'' payment date for each sale, in accordance with the applicable payment terms, in order to calculate the proper credit expense, if any. Upon careful review of CIL's methodology and all relevant information on the record, the Department accepts CIL's methodology for purposes of the preliminary determination and finds that the reported credit expenses accurately reflect CIL's imputed credit expenses.

B. Cost of Production Analysis

Based on allegations contained in the petition, and in accordance with section 773(b)(2)(A)(i) of the Act, we found reasonable grounds to believe or suspect that steel wire rod sales were made in Trinidad and Tobago at prices below the cost of production (COP). *See Initiation Notice.* As a result, the Department has conducted an investigation to determine whether CIL made home market sales at prices below its COP during the POI, within the meaning of section 773(b) of the Act. We conducted the COP analysis described below.

1. Calculation of Cost of Production

In accordance with section 773(b)(3) of the Act, we calculated a weighted-average COP based on the sum of CIL's cost of materials and fabrication for the foreign like product, plus amounts for the home market general and administrative (G&A) expenses, including interest expenses, selling expenses, and packing expenses.

We relied on the COP data based on Trinidad and Tobago GAAP submitted by CIL in its cost questionnaire responses except for the following adjustments:

a. We denied an adjustment submitted by CIL that had decreased CIL's reported total cost of manufacturing for iron ore purchased from an affiliated party. For further details, see memorandum from Robert B. Greger to Neal M. Halper: Cost of Production and Constructed Value Calculation Adjustments for the Preliminary Determination, dated April 2, 2002 (Cost Memorandum).

b. We adjusted CIL's submitted G&A expenses to correct for a double-counted deduction for net foreign exchange gains on accounts payable. In addition, we adjusted total G&A to include sundry income and expenses and gains on the sale of assets, and exclude foreign exchange gains on accounts receivable and cash. For further details, see the Cost Memorandum.

2. Test of Home Market Sales Prices

We compared the adjusted weighted-average COP to the home market sales of the foreign like product, as required under section 773(b) of the Act, in order to determine whether these sales had been made at prices below the COP within an extended period of time (i.e., a period of one year) in substantial quantities and whether such prices were sufficient to permit the recovery of all costs within a reasonable period of time. On a model-specific basis, we compared the revised COP to the home market prices, less any applicable movement charges, discounts and rebates.

3. Results of the COP Test

Pursuant to section 773(b)(2)(C) of the Act, where less than 20 percent of a respondent's sales of a given product were at prices less than the COP, we did not disregard any below-cost sales of that product because we determined that the below-cost sales were not made in ''substantial quantities.'' Where 20 percent or more of a respondent's sales of a given product during the POI were at prices less than the COP, we determined such sales to have been made in ''substantial quantities'' within an extended period of time in accordance with section 773(b)(2)(B) of the Act. In such cases, because we compared prices to POI average costs, pursuant to section 773(b)(2)(D) of the Act, we also determined that such sales were not made at prices that would permit recovery of all costs within a reasonable period of time. Therefore, we disregarded these below cost sales.

We found that, for certain models of steel wire rod, more than 20 percent of the home market sales were made within an extended period of time at prices less than the COP. Further, the prices did not provide for the recovery of costs within a reasonable period of time. We therefore disregarded these below-cost sales and used the remaining sales as the basis for determining NV, in accordance with section 773(b)(1) of the Act.

C. Calculation of Normal Value Based on Home Market Prices

We based home market prices on the packed prices to unaffiliated purchasers in Trinidad and Tobago. We adjusted the starting price for foreign inland freight pursuant to section 773(a)(6)(B)(ii) of the Act. In addition, for comparisons made to EP sales, we made adjustments for differences in circumstances of sale (COS) pursuant to section 773(a)(6)(C)(iii) of the Act. We made COS adjustments by deducting direct selling expenses incurred for home market sales (credit expense and warranty) and adding U.S. direct selling expenses (credit, warranty, and cleaning and coating expenses directly linked to sales transactions). For comparisons made to CEP sales, we did not add U.S. direct selling expenses. No other adjustments to NV were claimed or allowed.

We found comparable sales in the home market for all U.S. sales. Therefore, we did not use constructed value as a basis for normal value, for purposes of the preliminary determination.

We note that CIL, in its February 25, 2002, submission, argued that certain home market sales were outside the ordinary course of trade. However, upon examining the information provided on the record, we have preliminarily determined that these sales are in the ordinary course of trade and have, therefore, included these sales in our margin calculation. For further details, see the Department's Preliminary Determination Regarding Ordinary Course of Trade memorandum from Gary Taverman to Bernard T. Carreau, dated April 2, 2002.

D. Level of Trade/Constructed Export Price Offset

In accordance with section 773(a)(1)(B)(i) of the Act, to the extent practicable, we determine NV based on sales in the comparison market at the same level of trade (LOT) as the EP or CEP transaction. The NV LOT is that of the starting-price sales in the comparison market or, when NV is based on CV, that of the sales from which we derive SG&A expenses and profit. For EP sales, the U.S. LOT is also the level of the starting-price sale, which is usually from exporter to importer. For CEP transactions, it is the level of the constructed sale from the exporter to the importer.

To determine whether NV sales are at a different LOT than EP or CEP transactions, we examine stages in the marketing process and selling functions along the chain of distribution between the producer and the unaffiliated customer. If the comparison market sales are at a different LOT and the difference affects price comparability, as manifested in a pattern of consistent price differences between the sales on which NV is based and comparison market sales at the LOT of the export transaction, we make a level-of-trade adjustment under section 773(a)(7)(A) of the Act. For CEP sales, if the NV level is more remote from the factory than the CEP level and there is no basis for determining whether the difference in the levels between NV and CEP affects price comparability, we adjust NV under section 773(a)(7)(B) of the Act (the CEP-offset provision). *See Notice of Final Determination of Sales at Less Than Fair Value: Certain Cut-to-Length Carbon Steel Plate from South Africa,* 62 FR 61731, 61733, 61746 (November 19, 1997).

In implementing these principles in this investigation, we obtained information from CIL about the marketing stages involved in the reported U.S. and home market sales, including a description of the selling activities performed by CIL for each channel of distribution. In identifying levels of trade for EP and home market

sales we considered the selling functions reflected in the starting price before any adjustments. For CEP sales, we considered only the selling activities reflected in the price after the deduction of expenses pursuant to section 772(d) of the Act.

In the home market, CIL reported sales to end users as its only channel of distribution. In the U.S. market, CIL reported sales through two channels of distribution, one involving sales made directly by CIL to end users and, occasionally, trading companies, and the second involving sales made by CIL's affiliated U.S. resellers to end users. We have determined that the sales made by CIL directly to U.S. customers are EP sales and those made by CIL's affiliated U.S. resellers constitute CEP sales.

We found the home market and EP sales to be at the same LOT. CIL's EP sales and home market sales were both made primarily to end-users. In both cases, the selling functions performed by CIL were almost identical in both markets. Other than freight & delivery arrangement, which was only provided for U.S. sales, and sales force development, which was only provided in the home market, in both markets CIL provided services such as: strategic and economic planning, sales forecasting, solicitation of orders, technical advice, price negotiation, processing purchase orders, invoicing, extending credit, managing accounts receivable, and making arrangements for warranty related to sales. It was therefore unnecessary to make any level-of-trade adjustment for comparison of EP and home market prices.

CIL makes CEP sales to the United States through its affiliates, INA, Inland Bar, and Walker Wire. Sales through CIL's affiliates are normally made to unrelated end-users in the U.S. market. CIL's affiliates perform all of the selling functions, such as making freight and delivery arrangements, sales force development, market research, solicitation of orders, technical advice, negotiating prices, invoicing, acting as mill and customer liaison, repairing and cleaning coils, and making arrangements for warranty related to sales. However, because in our LOT analysis for CEP sales we only consider the selling activities reflected in the price after the deduction of the expenses incurred by the U.S. affiliate, the record indicates that for CIL's CEP sales there are substantially fewer services performed than for the sales in its home market. Therefore, we have determined that CIL's home market sales are made at a different, and more advanced, stage of marketing than the LOT of the CEP sales.

Accordingly, we determined that a level-of-trade adjustment may be appropriate when comparing to CEP sales. However, the data available do not permit a determination that there is a pattern of consistent price differences between sales at different levels of trade in the home market, as there is only one level of trade in the home market. Therefore, because CIL's home market sales are made at a different, and more advanced, stage of marketing than the LOT of the CEP sales, we have made a CEP offset to CIL's NV in accordance with section 773(a)(7)(B) of the Act. This offset is equal to the amount of indirect expenses incurred in the home market not exceeding the amount of the deductions made from the U.S. price in accordance with 772(d)(1)(D) of the Act.

Currency Conversions

We made currency conversions into U.S. dollars in accordance with section 773A of the Act based on exchange rates in effect on the dates of the U.S. sales, as obtained from the Federal Reserve Bank (the Department's preferred source for exchange rates).

Verification

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

Final Critical Circumstances Determination

We will make a final determination concerning critical circumstances in this case when we make our final determination regarding sales at LTFV in this investigation, which will be no later than 135 days after the publication of this notice in the **Federal Register**.

Suspension of Liquidation

Because of our preliminary affirmative critical circumstances finding in this case, we are directing the Customs Service to suspend liquidation of any unliquidated entries of steel wire rod from Trinidad and Tobago entered, or withdrawn from warehouse, for consumption on or after the date which is 90 days prior to the date on which this notice is published in the **Federal Register**. We are instructing the Customs Service to require a cash deposit or the posting of a bond equal to the weighted-average amount by which the NV exceeds the EP or CEP, as indicated in the chart below for imports from Trinidad and Tobago. These instructions suspending liquidation will remain in effect until further notice.

The weighted-average dumping margins are provided below:

Manufacturer/exporter	Margin (percent)
Caribbean Ispat Limited	12.38
All Others	12.38

Disclosure

The Department will normally disclose calculations performed within five days of the date of publication of this notice to the parties of the proceeding in this investigation in accordance with 19 CFR 351.224(b).

International Trade Commission Notification

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

Public Comment

Case briefs for this investigation must be submitted no later than one week after the issuance of the verification reports. Rebuttal briefs must be filed within five days after the deadline for submission of case briefs. A list of authorities used, a table of contents, and an executive summary of issues should accompany any briefs submitted to the Department. Executive summaries should be limited to five pages total, including footnotes. Further, we would appreciate it if parties submitting written comments would provide on diskette to the Department an additional copy of the public version of any such comments.

Section 774 of the Act provides that the Department will hold a hearing to afford interested parties an opportunity to comment on arguments raised in case or rebuttal briefs, provided that such a hearing is requested by any interested party. If a request for a hearing is made in an investigation, the hearing will tentatively be held two days after the deadline for submission of the rebuttal briefs, at the U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230. In the event that the Department receives requests for hearings from parties to more than one steel wire rod case, the Department may schedule a single hearing to encompass all those cases.

Parties should confirm by telephone the time, date, and place of the hearing 48 hours before the scheduled time.

Interested parties who wish to request a hearing, or participate if one is requested, must submit a written request within 30 days of the publication of this notice. Requests should specify the number of participants and provide a list of the issues to be discussed. Oral presentations will be limited to issues raised in the briefs.

This determination is issued and published pursuant to sections 733(f) and 777(i)(1) of the Act.

Dated: April 2, 2002.

Faryar Shirzad,

Assistant Secretary for Import Administration.

[FR Doc. 02–8703 Filed 4–9–02; 8:45 am]

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DEPARTMENT OF COMMERCE

International Trade Administration

[A–428–832]

Notice of Preliminary Determination of Sales at Less Than Fair Value: Carbon and Certain Alloy Steel Wire Rod from Germany

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

DATES: April 10, 2002.

FOR FURTHER INFORMATION CONTACT: Mark Flessner, Steve Bezirganian, or Robert James, at (202) 482–6312, (202) 482–1131, or (202) 482–0649, respectively; Antidumping and Countervailing Duty Enforcement Group III, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW, Washington, DC 20230.

SUPPLEMENTARY INFORMATION:

The Applicable Statute

Unless otherwise indicated, all citations to the statute are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Tariff Act of 1930, as amended (the Tariff Act), by the Uruguay Round Agreements Act (URAA). In addition, unless otherwise indicated, all citations to the Department's regulations are references to the provisions codified at 19 CFR Part 351 (2001).

Preliminary Determination

We preliminarily determine carbon and certain alloy steel wire rod from Germany (wire rod) is being sold, or is likely to be sold, in the United States at less than fair value (LTFV), as provided in section 733 of the Tariff Act. The estimated margins of sales at LTFV are shown in the ''Suspension of Liquidation'' section of this notice.

Case History

On September 24, 2001, the Department initiated antidumping investigations of wire rod from, *inter alia*, Germany. *See Notice of Initiation of Antidumping Duty Investigations: Carbon and Certain Alloy Steel Wire Rod from Brazil, Canada, Egypt, Germany, Indonesia, Mexico, Moldova, South Africa, Trinidad and Tobago, Ukraine, and Venezuela*, 66 FR 50164 (October 2, 2001) (*Initiation Notice*). Since the initiation of the investigation the following events have occurred:

In a letter dated October 9, 2001, petitioners (Co-Steel Raritan, Inc., GS Industries, Keystone Consolidated Industries, Inc., and North Star Steel Texas, Inc.) requested the scope of the investigation be amended to exclude high carbon, high tensile 1080 grade tire cord and tire bead quality wire rod actually used in the production of tire cord and tire bead, as defined by specific dimensional characteristics and specifications.

On October 15, 2001, the United States International Trade Commission (the Commission) notified the Department of its affirmative preliminary injury determination on imports of subject merchandise from Brazil, Canada, Germany, Indonesia, Mexico, Moldova, Trinidad and Tobago, and Ukraine. *See Carbon and Certain Alloy Steel Wire Rod From Brazil, Canada, Egypt, Germany, Indonesia, Mexico, Moldova, South Africa, Trinidad and Tobago, Turkey, Ukraine, and Venezuela,* 66 FR 54539 (October 29, 2001).

The Department issued a letter on October 16, 2001 to interested parties in all of the concurrent wire rod investigations, providing an opportunity to comment on the Department's proposed model match characteristics and hierarchy. Petitioners submitted comments on October 24, 2001. The Department also received comments on model matching from respondents Hylsa, S.A. de C.V., of Mexico, and Ivaco, Inc. and Ispat Sidbec, Inc., both of Canada.

On November 28, 2001, five U.S. tire manufacturers and an industry trade association, the Rubber Manufacturers Association, submitted a letter to the Department in response to petitioners' October 9, 2001 submission regarding the exclusion of certain 1080 grade tire cord wire rod and 1080 grade tire bead wire rod. Additionally, the tire manufacturers requested clarification from the Department if 1090 grade wire rod is included in petitioners' October 9, 2001 scope exclusion request. The tire manufacturers also requested an exclusion from the scope of this investigation for 1070 grade wire rod and related grades, citing a lack of domestic production capacity to meet the requirements of the tire industry. On November 28, 2001, petitioners further clarified and modified their October 9, 2001 submission on the scope of the investigations. Finally, on January 21, 2002, Tokusen U.S.A., Inc. submitted a request that 1070 grade tire cord wire rod, and tire cord wire rod generally, be excluded from the scope of the antidumping and countervailing duty investigations.

The petitioners filed a request with the Department on January 17, 2002 to extend the deadline for the issuance of the preliminary determination by 30 days. On January 28, 2002, the Department published in the **Federal Register** the notice postponing the preliminary determination to March 13, 2002 (*see Notice of Postponement of Preliminary Antidumping Duty Determinations: Carbon and Certain Alloy Steel Wire Rod From Brazil, Canada, Germany, Indonesia, Mexico, Moldova, Trinidad and Tobago, and Ukraine*, 67 FR 3877). On March 4, 2002, petitioners submitted a letter to the Department requesting that the Department extend the deadline for issuance of the preliminary determinations by an additional 20 days. In response, the Department published in the **Federal Register** a notice postponing the preliminary determination an additional 20 days to April 2, 2002 (*see Notice of Postponement of Preliminary Antidumping Duty Determinations: Carbon and Certain Alloy Steel Wire Rod from Brazil, Canada, Germany, Indonesia, Mexico, Moldova, Trinidad and Tobago, and Ukraine*, 67 FR 11674 (March 15, 2002)).

On December 6, 2001, the Department issued all sections of its antidumping duty questionnaire to Saarstahl AG (Saarstahl), the sole respondent in this investigation. On December 20, 2001, the Department received Saarstahl's response to Section A of the questionnaire. On January 2, 2002, petitioners filed comments on Saarstahl's Section A response. Saarstahl filed its response to sections B, C, and D of the questionnaire on January 10, 2002. On February 1, 2002, Saarstahl responded to the Department's supplemental Section A questionnaire.

Petitioners filed comments on Saarstahl's Sections B, C, and D response on February 5, 2002, and on the company's supplemental Section A response on February 14, 2002. On February 19, 2002, the Department issued a supplemental questionnaire for Saarstahl's Sections B and C responses and for Saarstahl's February 1, 2002 supplemental Section A response. On February 27, 2002, the Department issued a supplemental questionnaire for Saarstahl's Section D response. Saarstahl filed its Sections B and C supplemental response on March 15, 2002; its Section D supplemental response followed on March 25, 2002.

On December 5, 2001, petitioners alleged there was a reasonable basis to believe or suspect critical circumstances exist with respect to the antidumping investigations of steel wire rod from Brazil, Germany, Mexico, Moldova and Ukraine. Petitioners added Trinidad and Tobago to the allegation in a subsequent letter dated December 21, 2001. On February 4, 2002, the Department issued its preliminary affirmative determination of critical circumstances. For a complete discussion of these preliminary findings,*see Carbon and Alloy Steel Wire Rod From Germany, Mexico, Moldova, Trinidad and Tobago, and Ukraine: Notice of Preliminary Determination of Critical Circumstances*, 67 FR 6224 (February 11, 2002).

Period of Investigation

The period of investigation (POI) is July 1, 2000 through June 30, 2001. This period corresponds to the four most recent fiscal quarters prior to the filing of the petition (i.e., August 2001), and is in accordance with section 351.204(b)(1) of the Department's regulations.

Scope of the Investigation

The merchandise covered by these investigations is certain hot-rolled products of carbon steel and alloy steel, in coils, of approximately round cross section, 5.00 mm or more, but less than 19.00 mm, in solid cross-sectional diameter.

Specifically excluded are steel products possessing the above-noted physical characteristics and meeting the Harmonized Tariff Schedule of the United States (HTSUS) definitions for (a) stainless steel; (b) tool steel; (c) high nickel steel; (d) ball bearing steel; and (e) concrete reinforcing bars and rods. Also excluded are (f) free machining steel products (i.e., products that contain by weight one or more of the following elements: 0.03 percent or more of lead, 0.05 percent or more of bismuth, 0.08 percent or more of sulfur, more than 0.04 percent of phosphorus, more than 0.05 percent of selenium, or more than 0.01 percent of tellurium).

Also excluded from the scope are 1080 grade tire cord quality wire rod and 1080 grade tire bead quality wire rod. This grade 1080 tire cord quality rod is defined as: (i) grade 1080 tire cord quality wire rod measuring 5.0 mm or more but not more than 6.0 mm in cross-sectional diameter; (ii) with an average partial decarburization of no more than 70 microns in depth (maximum individual 200 microns); (iii) having no inclusions greater than 20 microns; (iv) having a carbon segregation per heat average of 3.0 or better using European Method NFA 04–114; (v) having a surface quality with no surface defects of a length greater than 0.15 mm; (vi) capable of being drawn to a diameter of 0.30 mm or less with 3 or fewer breaks per ton, and (vii) containing by weight the following elements in the proportions shown: (1) 0.78 percent or more of carbon, (2) less than 0.01 percent of aluminum, (3) 0.040 percent or less, in the aggregate, of phosphorus and sulfur, (4) 0.006 percent or less of nitrogen, and (5) not more than 0.15 percent, in the aggregate, of copper, nickel and chromium.

This grade 1080 tire bead quality rod is defined as: (i) grade 1080 tire bead quality wire rod measuring 5.5 mm or more but not more than 7.0 mm in cross-sectional diameter; (ii) with an average partial decarburization of no more than 70 microns in depth (maximum individual 200 microns); (iii) having no inclusions greater than 20 microns; (iv) having a carbon segregation per heat average of 3.0 or better using European Method NFA 04–114; (v) having a surface quality with no surface defects of a length greater than 0.2 mm; (vi) capable of being drawn to a diameter of 0.78 mm or larger with 0.5 or fewer breaks per ton; and (vii) containing by weight the following elements in the proportions shown: (1) 0.78 percent or more of carbon, (2) less than 0.01 percent of soluble aluminum, (3) 0.040 percent or less, in the aggregate, of phosphorus and sulfur, (4) 0.008 percent or less of nitrogen, and (5) either not more than 0.15 percent, in the aggregate, of copper, nickel and chromium (if chromium is not specified), or not more than 0.10 percent in the aggregate of copper and nickel and a chromium content of 0.24 to 0.30 percent (if chromium is specified).

The designation of the products as ''tire cord quality'' or ''tire bead quality'' indicates the acceptability of the product for use in the production of tire cord, tire bead, or wire for use in other rubber reinforcement applications such as hose wire. These quality designations are presumed to indicate that these products are being used in tire cord, tire bead, and other rubber reinforcement applications, and such merchandise intended for the tire cord, tire bead, or other rubber reinforcement applications is not included in the scope. However, should petitioners or other interested parties provide a reasonable basis to believe or suspect that there exists a pattern of importation of such products for other than those applications, end-use certification for the importation of such products may be required. Under such circumstances, only the importers of record would normally be required to certify the end use of the imported merchandise.

All products meeting the physical description of subject merchandise that are not specifically excluded are included in this scope.

The products under investigation are currently classifiable under subheadings 7213.91.3010, 7213.91.3090, 7213.91.4510, 7213.91.4590, 7213.91.6010, 7213.91.6090, 7213.99.0031, 7213.99.0038, 7213.99.0090, 7227.20.0010, 7227.20.0020, 7227.20.0090, 7227.20.0095, 7227.90.6051, 7227.90.6053, 7227.90.6058, and 7227.90.6059 of the HTSUS. Although the HTSUS subheadings are provided for convenience and customs purposes, the written description of the scope of this proceeding is dispositive.

See the Department's scope memorandum, ''Carbon and Certain Alloy Steel Wire Rod: Requests for exclusion of various tire cord quality wire rod and tire bead quality wire rod products from the scope of antidumping duty (Brazil, Canada, Egypt, Germany, Indonesia, Mexico, Moldova, South Africa, Trinidad and Tobago, Ukraine, and Venezuela) and countervailing duty (Brazil, Canada, Germany, Trinidad and Tobago, and Turkey) investigations,'' dated April 2, 2002.

Use of Facts Available

Section 776(a)(2) of the Tariff Act provides that if any interested party: (A) withholds information that has been requested by the Department; (B) fails to provide such information by the deadlines for submission of the information or in the form or manner requested; (C) significantly impedes an antidumping investigation; or (D) provides such information but the information cannot be verified, the Department shall, subject to section 782(d), use the facts otherwise available in making its determination.

Section 782(d) of the Tariff Act requires the Department to ''promptly inform'' a respondent of the nature of any deficiencies found in its response and to ''provide that person with an opportunity to remedy or explain the deficiency in light of the time limits established for the completion of investigations ... .'' To the extent the respondent fails to address the deficiencies, and subject to section 782(e), the Department may disregard all or part of the response. Section 782(e) provides the Department shall not decline to consider information deemed deficient under section 782(d) if: (1) the information is submitted by the deadline established for its submission; (2) the information can be verified; (3) the information is not so incomplete that it cannot serve as a reliable basis for reaching the applicable determination; (4) the interested party has demonstrated it acted to the best of its ability in providing the information and meeting the requirements established by the Department with respect to the information; and (5) the information can be used without undue difficulties.

Finally, section 776(b) of the Tariff Act provides that adverse inferences may be used in selecting the facts otherwise available when a party has failed to cooperate by not acting to the best of its ability to comply with requests for information. *See also Statement of Administrative Action accompanying the URAA*, H.R. Rep. No. 103–316, vol. 1, at 870 (1994) (SAA).

Although Saarstahl responded to the Department's original and supplemental questionnaires, the company's initial responses were deficient in certain respects. Specifically, Saarstahl failed to provide requested sample sales documentation, or to provide worksheets and supporting documents indicating its derivation of various reported expenses. In addition, Saarstahl failed to provide information in the form requested pertaining to certain expenses incurred on both its home market and U.S. sales which is essential to our calculations. For example, Saarstahl has not provided movement expenses, packing expenses, and certain other expenses in the form or manner requested. Despite our request that Saarstahl report transaction-specific movement expenses, for example, Saarstahl reported many of its home market and U.S. movement expenses based upon ''estimated freight expenses (Fracht-Rückstellung) calculated at the time of sale for each invoice.'' Saarstahl's January 22, 2002 Section B response at B–21. This involved inland plant-to-warehouse and plant-to-customer freight, and warehousing expenses in the home market. For U.S. sales, the Fracht-Rückstellung included foreign inland freight, freight to the port, ocean freight, inland and marine insurance, U.S. customs duties and, where applicable, warehousing expenses. Saarstahl has yet to provide the requested actual expenses or supporting documentation (for example, tariff schedules or contracts demonstrating the freight rates in effect during the POI). Furthermore, Saarstahl has not explained fully its original allocations based upon the Fracht-Rückstellung, or provided the Department the means of establishing independently the validity of the underlying estimates. (For further details of these deficiencies, *see* the Preliminary Analysis Memorandum, dated April 2, 2002.)

Similarly, Saarstahl reported identical packing expenses, by mill, for both home market and U.S. sales, despite indications in its response that sales for export require greater packing materials (an intuitive outcome, given the need to protect carbon and alloy steel during trans-oceanic passage). Saarstahl also did not provide worksheets supporting the calculation of packing costs for two of the three mills producing subject wire rod products during the POI.

For the foregoing reasons, we have determined it is appropriate to use the facts otherwise available for the unsupported elements of Saarstahl's questionnaire response, in accordance with section 776(a)(2)(B) of the Tariff Act. We issued a further supplemental questionnaire to Saarstahl on April 2, 2002, aimed at completing the record with respect to these and other issues prior to our eventual verification of Saarstahl's responses. Consequently, we have used no adverse inference at this time for purposes of this preliminary determination.

As non-adverse facts available for U.S. sales, for the movement expenses at issue, we set these expenses to no less than the median value reported for each expense; similarly, for the home market we set the movement expenses to no greater than the median value reported for each expenses. As to packing expenses, we set U.S. packing costs equal to the highest mill-specific packing cost reported in Saarstahl's Section C response, and set home market packing equal to the lowest mill-specific packing cost reported in the company's Section B response. For further details regarding our selection of non-adverse facts available, *see* the Preliminary Analysis Memorandum. We will analyze fully Saarstahl's expected response to our March 29 supplemental questionnaire and, where appropriate, will review our resort to, and selection of, the facts otherwise available.

Fair Value Comparisons

To determine whether sales of wire rod from Germany to the United States were made at LTFV, we compared the export price (EP) or constructed export price (CEP) to the normal value, as described in the ''Export Price and Constructed Export Price'' and ''Normal Value'' sections of this notice. In accordance with section 777A(d)(1)(A)(i) of the Tariff Act, we calculated weighted-average EPs or CEPs for comparison to normal value.

Transactions Investigated

As stated at 19 CFR 351.401(i), the Department normally will use the respondent's invoice date as the date of sale unless another date better reflects the date upon which the exporter or producer establishes the essential terms of sale. In the home market Saarstahl reported as date of sale the date of the invoice between its sales company in Germany, Vertriebsgesellschaft Saarstahl mbH (VGS) and affiliated and unaffiliated end-users. For all U.S. sales Saarstahl initially reported as the date of sale the date of the invoice issued by VGS; this included sales made through Saarstahl's wholly-owned U.S. affiliate, Saarsteel, Inc. Saarstahl designated these sales as ''channel 2'' sales. However, in its supplemental Section C response Saarstahl reclassified its U.S. channel 2 sales as CEP transactions, basing its date of sale for these transactions on the date of the invoice issued by Saarsteel, Inc. to its first unaffiliated customers in the United States. *See* Saarstahl's March 15, 2002 supplemental Sections B and C response at 53 and Appendix S–32.

We have examined whether invoice date, purchase order date, or some other date best represents the date on which the essential terms of sale are established for both home market and U.S. sales. Record evidence suggests the essential terms of sale (including product specifications, quantities and, most notably, prices) are subject to change up to the point of manufacturing to fill a given order. Further, Saarstahl claims the final price to the customer may change up to the point of invoicing. Therefore, for this preliminary determination we have used the invoice date as the date of sale because this date best represents the date upon which all essential terms of sale are established. For U.S. channel 1 sales, *i.e.*, those not involving Saarsteel, Inc., we used the date of the invoice between VGS and the unaffiliated U.S. customer; for channel

2 sales through Saarsteel, Inc., we used the date of the invoice between Saarsteel, Inc. and the first unaffiliated U.S. customer.

Product Comparisons

In accordance with section 771(16) of the Tariff Act, all products produced by Saarstahl, covered by the description in the ''Scope of the Investigation'' section, above, and sold in Germany during the POI, are considered to be foreign like products for purposes of determining appropriate product comparisons to U.S. sales. Where there were no sales of identical merchandise in the home market to compare to U.S. sales, the Department compared U.S. sales to the next most similar foreign like product on the basis of the characteristics listed in Appendix V of the Department's December 6, 2001 antidumping questionnaire. If there were no home market foreign like products sold in the ordinary course of trade to compare to U.S. sales, we used constructed value (CV).

Export Price and Constructed Export Price

Saarstahl reported two channels of distribution in the United States, channel 1 sales negotiated between VGS in Germany and the first unaffiliated U.S. customer, and channel 2 sales, which involved its U.S. affiliate Saarsteel, Inc. Initially, Saarstahl claimed all sales through both channels as EP transactions. Subsequently, Saarstahl revisited its classification of channel 2 sales, reporting these as CEP transactions without further explanation. For purposes of this preliminary determination we have accepted Saarstahl's revised classification of its sales, and will treat Saarstahl's channel 1 sales as EP transactions, and its channel 2 sales as CEP transactions. We will examine the proper classification of Saarstahl's U.S. sales during our upcoming verification of the respondent's questionnaire response.

We calculated EP in accordance with section 772(a) of the Tariff Act. We based EP for Saarstahl on packed prices to unaffiliated purchasers in the United States. In accordance with section 772(c)(2), and where appropriate, we made deductions from the starting price for movement expenses, including foreign inland freight, foreign brokerage and handling, international freight, marine insurance, U.S. brokerage and handling, U.S. inland freight and insurance, U.S. customs duties, warehousing expenses and other U.S. movement expenses.

With respect to Saarstahl's U.S. channel 2 sales, we accepted Saarstahl's classification of these transactions as CEP sales because its U.S. affiliate Saarsteel, Inc. invoiced U.S. customers, received payment for subject merchandise, and performed other functions, including, for example, warehousing, and financing of accounts receivable for warehouse sales. Consistent with the ruling of the Court of Appeals for the Federal Circuit (Federal Circuit) in *AK Steel Corp. v. United States*, 226 F.3d 1361 (Fed. Cir. 2000), we preliminarily determine all Saarstahl's channel 2 sales (*i.e.*, those through Saarsteel, Inc.) are properly classified as CEP transactions.

We based CEP on packed prices to unaffiliated purchasers in the United States. Where appropriate, we made deductions from the starting price for reported foreign inland freight and insurance, foreign brokerage and handling, international freight, marine insurance, U.S. brokerage and handling, U.S. inland freight and insurance, U.S. customs duties, warehousing expenses and other U.S. movement expenses. In accordance with section 772(d)(1) of the Tariff Act, we deducted those selling expenses associated with economic activities in the United States, including direct selling expenses (imputed credit expenses), and indirect selling expenses. For CEP sales we also made an adjustment for profit in accordance with section 772(d)(3) of the Tariff Act.

Normal Value

Selection of Comparison Market

In order to determine whether there is a sufficient volume of sales in the home market to serve as a viable basis for normal value (NV) (*i.e.*, whether the aggregate quantity of the foreign like product is equal to or greater than five percent of the aggregate quantity of U.S. sales), we compared Saarstahl's volume of home market sales of the foreign like product to the volume of U.S. sales of the subject merchandise, in accordance with section 773(a)(1) of the Tariff Act. Since Saarstahl's aggregate quantity of home market sales of the foreign like product was greater than five percent of its aggregate quantity of U.S. sales of the subject merchandise, we determined the home market was viable for Saarstahl. Therefore, we have based NV on home market sales in the usual quantities and in the ordinary course of trade.

Affiliated Party Transactions and Arm's Length Test

Saarstahl reported sales to its affiliated customers, claiming these firms consumed the foreign like product to produce merchandise not subject to this investigation. To test whether these sales were made at arm's length prices, the Department compared, on a model-specific basis, the prices of sales to affiliated customers with sales to unaffiliated customers, net of all movement expenses, discounts, direct selling expenses, billing adjustments, commissions, and packing. Where, for the tested models of the foreign like product, prices to the affiliated party were on average 99.5 percent or more of the price to unaffiliated parties, the Department determined that sales made to the affiliated party were at arm's length. *See* 19 CFR 351.403(c); *see also Antidumping Duties; Countervailing Duties: Final Rule*, 62 FR 27296, 27355 (May 19, 1997).

If these affiliated party sales satisfied the arm's length test, we used them in our analysis. Sales of the foreign like product to affiliated customers in the home market which were not made at arm's length prices were excluded from our analysis because we considered them to be outside the ordinary course of trade. See 19 CFR 351.102.

Cost of Production Analysis

Based on our analysis of the cost allegations submitted by the petitioners in the original petition, in accordance with section 773(b)(2)(A)(i) of the Tariff Act, the Department found reasonable grounds to believe or suspect that German producers had made sales of wire rod in the home market at prices below the cost of producing the merchandise. As a result, the Department initiated an investigation to determine whether respondents made home market sales during the POI at prices below their cost of production (COP) within the meaning of section 773(b) of the Tariff Act. We conducted the COP analysis described below.

1. Calculation of COP

In accordance with section 773(b)(3) of the Tariff Act, we calculated a weighted-average COP based on the sum of Saarstahl's cost of materials and fabrication for the foreign like product, plus amounts for home market selling, general, and administrative expenses (SG&A), including interest expenses, and packing costs. The Department relied upon the COP data submitted by Saarstahl on March 25, 2002, with two exceptions: First, we recalculated Saarstahl's SG&A ratio and, second, we adjusted Saarstahl's interest expense ratio, as the Department's policy is to allow short-term interest income up to, but not in excess of, the amount of financial expenses incurred. *See Notice of Final Determination of Sales at Less*

Than Fair Value: Static Random Access Memory Semiconductors From Taiwan, 63 FR 8909, 8933 (February 23, 1998) (Comment 28); *see also* the Office of Accounting's Preliminary Calculation Memorandum, dated April 2, 2002.

2. Test of Home Market Prices

We compared the weighted-average COP for Saarstahl to home market sales of the foreign like product, as required under section 773(b) of the Tariff Act, in order to determine whether these sales had been made at prices below the COP. In determining whether to disregard home market sales made at prices below COP, we examined whether such sales were made (i) in substantial quantities within an extended period of time, and (ii) at prices which permitted the recovery of all costs within a reasonable period of time, in accordance with section 773(b)(1)(A) and (B) of the Tariff Act. On a product-specific basis, we compared COP to home market prices, less any applicable movement charges, billing adjustments, discounts and rebates.

3. Results of the Cost Test

Pursuant to section 773(b)(2)(C) of the Tariff Act, where less than twenty percent of Saarstahl's sales of a given product were at prices less than the COP, we did not disregard any below-cost sales of that product because we determined the below-cost sales were not made in ''substantial quantities.'' Where twenty percent or more of Saarstahl's sales of a given product during the POI were at prices less than the COP, we determined such sales to have been made in substantial quantities within an extended period of time, in accordance with sections 773(b)(2)(C)(i) and 773(b)(2)(B) of the Tariff Act. In such cases, pursuant to section 773(b)(2)(D) of the Tariff Act, we also determined such sales were not made at prices which would permit the recovery of all costs within a reasonable period of time. Therefore, we disregarded the below-cost sales.

Our cost test for Saarstahl revealed that more than twenty percent of the respondent's home market sales of certain products within an extended period of time were at prices below their respective COP, and such prices would not permit the recover of all costs within a reasonable period of time. Therefore, we disregarded the below-cost sales and used the remaining sales in our analysis, in accordance with section 773(b)(1) of the Tariff Act. See the Preliminary Analysis Memorandum.

Constructed Value

In accordance with section 773(e)(1) of the Tariff Act, we calculated CV based upon the sum of the respondent's cost of materials, fabrication, SG&A, including interest expenses, and profit. In accordance with section 773(e)(2)(A) of the Tariff Act, we based SG&A and profit on the amounts incurred and realized by Saarstahl in connection with the production and sale of the foreign like product in the ordinary course of trade for consumption in the foreign country. For selling expenses, we used the weighted-average home market selling expenses from Saarstahl's Section B sales listing. We relied upon the CV data the respondent supplied in its Section D supplemental questionnaire response, with the modifications noted above.

Price-to-Price Comparisons

We based NV for Saarstahl on prices of home market sales that passed the cost test. We made deductions, where appropriate, for rebates. We added any interest revenue. We also deducted foreign inland freight, including inland insurance, and warehousing expenses, pursuant to section 773(a)(6)(B) of the Tariff Act. We made adjustments, where appropriate, for physical differences in the merchandise in accordance with section 773(a)(6)(C)(ii) of the Tariff Act, and 19 CFR 351.411. In accordance with section 773(a)(6)(iii) of the Tariff Act and 19 CFR 351.410, we made circumstance of sale (COS) adjustments for commissions and for imputed credit expenses less any interest revenue. We also deducted home market packing costs and added U.S. packing costs in accordance with section 773(a)(6)(A) and (B) of the Tariff Act.

Price-to-CV Comparisons

In accordance with section 773(a)(4) of the Tariff Act, we based NV on CV if we were unable to find a home market match of identical or similar merchandise made at arm's length prices and otherwise in the ordinary course of trade. Where appropriate, we made adjustments to CV in accordance with section 773(a)(8) of the Tariff Act. For comparison to EP, we made COS adjustments by deducting home market direct selling expenses and adding U.S. direct selling expenses.

Level of Trade

In accordance with section 773(a)(1)(B) of the Tariff Act, to the extent practicable, we determine the NV based on sales in the comparison market at the same level of trade (LOT) as the EP or CEP transaction. The NV LOT is that of the starting-price sales in the comparison market or, when NV is based on constructed value, that of the sales from which we derive SG&A expenses and profit. For EP the U.S. LOT is also the level of the starting-price sale, which is usually from the exporter to the importer. For CEP it is the level of the constructed sale from the exporter to the importer. To determine whether NV sales are at a different LOT than EP or CEP, we examine stages in the marketing process and selling functions along the chain of distribution between the producer and the unaffiliated customer. If the comparison-market sales are at a different LOT and the difference affects price comparability, as manifested in a pattern of consistent price differences between the sales on which NV is based and sales at the LOT of the export transaction, we make a LOT adjustment pursuant to section 773(a)(7)(A) of the Tariff Act. *See Notice of Final Determination of Sales at Less Than Fair Value: Certain Cut-to-Length Carbon Steel Plate From South Africa*, 62 FR 61731 (November 19, 1997).

In determining whether separate LOTs actually existed in the home market for Saarstahl, we examined whether the respondent's sales involved different marketing stages (or their equivalent) based on the channel of distribution, customer categories, and selling functions (or services offered) to each customer or customer category in both markets. Saarstahl claimed two LOTs in both the U.S. and home markets, corresponding with the two channels of distribution it identified in its response. *See* Saarstahl's January 22, 2002 Sections B, C, and D Response at B–18 and C–20.

In examining the selling activities associated with both channels of distribution, we note Saarstahl reported essentially identical selling activities for all sales in both markets, with one exception: inventory maintenance provided for channel 2 sales in the home market. *See* Saarstahl's December 20, 2001 Section A Response at Appendix A–9. It is not clear from the record whether the inventory maintenance described for these home market sales is properly classified as a ''sales function.'' With one exception, the unaffiliated customer bears all warehousing expenses, rendering moot these activities in our LOT discussion. For that one exception, the warehousing expenses are negligible. Therefore, we preliminarily find no significant differences in selling functions between the different claimed channels of distribution. Accordingly, for this preliminary determination, we find a single LOT exists for all sales in both

the home and U.S. market and, further, that these sales occurred at the same LOT. Therefore, we have not made a LOT adjustment to NV because all transactions are deemed at the same LOT, and an adjustment pursuant to section 773(a)(7)(A) of the Tariff Act is not appropriate. Finally, because we found the LOT in the home market matches the LOT of the CEP transactions, we did not provide a CEP offset to normal value as described at section 773(a)(7)(B) of the Tariff Act.

Currency Conversion

We made currency conversions into U.S. dollars based on the exchange rates in effect on the dates of the U.S. sales as certified by the Federal Reserve Bank, in accordance with section 773A(a) of the Tariff Act.

Verification

In accordance with section 782(i) of the Tariff Act, we intend to verify all information relied upon in making our final determination.

Suspension of Liquidation

In accordance with section 733(d)(2) of the Tariff Act, the Department will direct the U.S. Customs Service to suspend liquidation of all entries of wire rod from Germany that are entered, or withdrawn from warehouse, for consumption on after 90 days prior to the date of publication of this notice in the Federal Register. We will instruct the U.S. Customs Service to require a cash deposit or posting of a bond equal to the estimated preliminary dumping margin indicated in the chart below. This suspension of liquidation will remain in effect until further notice. The weighted-average dumping margins for this preliminary determination are as follows:

Exporter/manufacturer	Margin
Saarstahl AG	14.56 percent
All Others	14.56 percent

Commission Notification

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

Public Comment

Case briefs for this investigation must be submitted no later than one week after the issuance of verification reports. Rebuttal briefs must be filed within five dates after the deadline for submission of case briefs. A list of authorities used, a table of contents, and an executive summary of the issues, limited to five pages, should accompany any briefs submitted to the Department. In accordance with section 774 of the Tariff Act, the Department will hold a hearing, if requested, to afford interested parties an opportunity to comment on arguments raised in case or rebuttal briefs. Tentatively, such a hearing, if one is requested, will be held two days after the deadline for submission of rebuttal briefs, at the U.S. Department of Commerce, 14th Street and Constitution Avenue NW, Washington, DC 20230. In the event the Department receives requests for hearings from parties to several wire rod cases, the Department may schedule a single hearing to encompass all those cases. Parties should confirm by telephone or electronic mail the time, date, and place of the hearing at least 48 hours before the scheduled time. Interested parties who wish to request a hearing, or participate if one is requested, must submit a written request within 30 days of the publication of this notice. Requests should specify the number of participants and provide a list of the issues to be discussed. At any hearing each party may make an affirmative presentation only on issues raised in that party's case brief, and may make a rebuttal presentation only on arguments raised in that party's rebuttal brief. See 19 CFR 351.310(c). If this investigation proceeds normally, we will make our final determination no later than 75 days after the date of this preliminary determination.

This determination is issued and published in accordance with sections 733(f) and 777)i)(1) of the Tariff Act.

Dated: April 2, 2002

Faryar Shirzad,

Assistant Secretary for Import Administration.

[FR Doc. 02–8704 Filed 4–9–02; 8:45 am]

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DEPARTMENT OF COMMERCE

International Trade Administration

[A–122–840]

Notice of Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination: Carbon and Certain Alloy Steel Wire Rod from Canada

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

EFFECTIVE DATE: April 10, 2002.

FOR FURTHER INFORMATION CONTACT: Constance Handley or Edward Easton at (202) 482–0631 or (202) 482–3003, respectively; AD/CVD Enforcement Group II Office 5, Import Administration, Room 1870, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230.

SUPPLEMENTARY INFORMATION:

The Applicable Statute and Regulation

Unless otherwise indicated, all citations to the statute are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Tariff Act of 1930 (the Act) by the Uruguay Round Agreements Act (URAA). In addition, unless otherwise indicated, all citations to Department of Commerce (Department) regulations refer to the regulations codified at 19 CFR part 351 (2001).

Preliminary Determination

We preliminarily determine that carbon and certain alloy steel wire rod (steel wire rod) from Canada is being sold, or is likely to be sold, in the United States at less than fair value (LTFV), as provided in section 733 of the Act. The estimated margins of sales at LTFV are shown in the Suspension of Liquidation section of this notice.

Case History

This investigation was initiated on September 24, 2001.[1] *See Initiation of Antidumping Duty Investigations: Carbon and Certain Alloy Steel Wire Rod from Brazil, Canada, Egypt, Germany, Indonesia, Mexico, Moldova, South Africa, Trinidad and Tobago, Ukraine, and Venezuela*, 66 FR 50164 (October 2, 2001) (*Initiation Notice*). Since the initiation of the investigation, the following events have occurred:

On October 12, 2001, the United States International Trade Commission

[1] The petitioners in this investigation are Co-Steel Raritan, Inc., GS Industries, Inc., Keystone Consolidated Industries, Inc., and North Star Steel Texas, Inc.

(ITC) preliminarily determined that there is a reasonable indication that the domestic industry producing steel wire rod is materially injured by reason of imports from Brazil, Canada, Germany, Indonesia, Mexico, Moldova, Trinidad and Tobago, and Ukraine of carbon and certain alloy steel wire rod.[2] *See Determinations and Views of the Commission*, USITC Publication No. 3456, October 2001.

The Department issued a letter on October 16, 2001, to interested parties in all of the concurrent steel wire rod antidumping investigations, providing an opportunity to comment on the Department's proposed model match characteristics and its hierarchy of characteristics. The petitioners submitted comments on October 24, 2001. The Department also received comments on model matching from respondents Hysla S.A. de C.V. (Mexico), Ivaco, Inc. (Ivaco) (Canada), and Ispat Sidbec Inc. (ISI) (Canada). These comments were taken into consideration by the Department in developing the model matching characteristics and hierarchy for all of the steel wire rod antidumping investigations.

On January 17, 2002, the petitioners requested a 30–day postponement of the preliminary determinations in this investigation. On January 28, 2002, the Department published a Federal Register notice postponing the deadline for the preliminary determinations until March 13, 2002. *See Notice of Postponement of Preliminary Antidumping Duty Determinations: Carbon and Certain Alloy Wire Rod from Brazil, Canada, Indonesia, Germany, Mexico, Moldova, Trinidad and Tobago, and Ukraine*, 67 FR 3877 (January 28, 2002). On March 4, 2002, the petitioners requested an additional 20–day postponement of the preliminary determinations in this investigation. On March 7, 2002, the Department published a Federal Register notice postponing the deadline for the preliminary determinations until April 2, 2002. *Notice of Postponement of Preliminary Antidumping Duty Determinations: Carbon and Certain Alloy Steel Wire Rod From Brazil, Canada, Germany, Indonesia, Mexico, Moldova, Trinidad and Tobago, and Ukraine*, 67 FR 11674 (March 15, 2002).

[2] With respect to imports from Egypt, South Africa, and Venezuela, the ITC determined that imports from these countries during the period of investigation (POI) were negligible and, therefore, these investigations were terminated.

Postponement of Final Determination and Extension of Provisional Measures

Section 735(a)(2) of the Act provides that a final determination may be postponed until not later than 135 days after the date of the publication of the preliminary determination if, in the event of an affirmative preliminary determination, a request for such postponement is made by exporters who account for a significant proportion of exports of the subject merchandise. Section 351.210(e)(2) of the Department's regulations requires that exporters requesting postponement of the final determination must also request an extension of the provisional measures referred to in section 733(d) of the Act from a four-month period until not more than six months. We received a request to postpone the final determination from the petitioners, ISI and Ivaco. In their requests, ISI and Ivaco consented to the extension of provisional measures to no longer than six months. Since this preliminary determination is affirmative, the requests for postponement are made by exporters that account for a significant proportion of exports of the subject merchandise, and there is no compelling reason to deny the respondents' requests, we have extended the deadline for issuance of the final determination until the 135th day after the date of publication of this preliminary determination in the Federal Register and have extended provisional measures to no longer than six months.

Period of Investigation (POI)

The POI is July 1, 2000, through June 30, 2001. This period corresponds to the four most recent fiscal quarters prior to the month of the filing of the petition (i.e., August 2001).

Scope of Investigation

The merchandise covered by these investigations is certain hot-rolled products of carbon steel and alloy steel, in coils, of approximately round cross section, 5.00 mm or more, but less than 19.00 mm, in solid cross-sectional diameter.

Specifically excluded are steel products possessing the above-noted physical characteristics and meeting the Harmonized Tariff Schedule of the United States (HTSUS) definitions for (a) stainless steel; (b) tool steel; (c) high nickel steel; (d) ball bearing steel; and (e) concrete reinforcing bars and rods. Also excluded are (f) free machining steel products (i.e., products that contain by weight one or more of the following elements: 0.03 percent or more of lead, 0.05 percent or more of bismuth, 0.08 percent or more of sulfur, more than 0.04 percent of phosphorus, more than 0.05 percent of selenium, or more than 0.01 percent of tellurium).

Also excluded from the scope are 1080 grade tire cord quality wire rod and 1080 grade tire bead quality wire rod. This grade 1080 tire cord quality rod is defined as: (i) grade 1080 tire cord quality wire rod measuring 5.0 mm or more but not more than 6.0 mm in cross-sectional diameter; (ii) with an average partial decarburization of no more than 70 microns in depth (maximum individual 200 microns); (iii) having no inclusions greater than 20 microns; (iv) having a carbon segregation per heat average of 3.0 or better using European Method NFA 04–114; (v) having a surface quality with no surface defects of a length greater than 0.15 mm; (vi) capable of being drawn to a diameter of 0.30 mm or less with 3 or fewer breaks per ton, and (vii) containing by weight the following elements in the proportions shown: (1) 0.78 percent or more of carbon, (2) less than 0.01 percent of aluminum, (3) 0.040 percent or less, in the aggregate, of phosphorus and sulfur, (4) 0.006 percent or less of nitrogen, and (5) not more than 0.15 percent, in the aggregate, of copper, nickel and chromium.

This grade 1080 tire bead quality rod is defined as: (i) grade 1080 tire bead quality wire rod measuring 5.5 mm or more but not more than 7.0 mm in cross-sectional diameter; (ii) with an average partial decarburization of no more than 70 microns in depth (maximum individual 200 microns); (iii) having no inclusions greater than 20 microns; (iv) having a carbon segregation per heat average of 3.0 or better using European Method NFA 04–114; (v) having a surface quality with no surface defects of a length greater than 0.2 mm; (vi) capable of being drawn to a diameter of 0.78 mm or larger with 0.5 or fewer breaks per ton; and (vii) containing by weight the following elements in the proportions shown: (1) 0.78 percent or more of carbon, (2) less than 0.01 percent of soluble aluminum, (3) 0.040 percent or less, in the aggregate, of phosphorus and sulfur, (4) 0.008 percent or less of nitrogen, and (5) either not more than 0.15 percent, in the aggregate, of copper, nickel and chromium (if chromium is not specified), or not more than 0.10 percent in the aggregate of copper and nickel and a chromium content of 0.24 to 0.30 percent (if chromium is specified).

The designation of the products as ''tire cord quality'' or ''tire bead quality'' indicates the acceptability of the product for use in the production of tire

cord, tire bead, or wire for use in other rubber reinforcement applications such as hose wire. These quality designations are presumed to indicate that these products are being used in tire cord, tire bead, and other rubber reinforcement applications, and such merchandise intended for the tire cord, tire bead, or other rubber reinforcement applications is not included in the scope. However, should petitioners or other interested parties provide a reasonable basis to believe or suspect that there exists a pattern of importation of such products for other than those applications, end-use certification for the importation of such products may be required. Under such circumstances, only the importers of record would normally be required to certify the end use of the imported merchandise.

All products meeting the physical description of subject merchandise that are not specifically excluded are included in this scope.

The products under investigation are currently classifiable under subheadings 7213.91.3010, 7213.91.3090, 7213.91.4510, 7213.91.4590, 7213.91.6010, 7213.91.6090, 7213.99.0031, 7213.99.0038, 7213.99.0090, 7227.20.0010, 7227.20.0020, 7227.20.0090, 7227.20.0095, 7227.90.6051, 7227.90.6053, 7227.90.6058, and 7227.90.6059 of the HTSUS. Although the HTSUS subheadings are provided for convenience and customs purposes, the written description of the scope of this proceeding is dispositive.

See Carbon and Certain Alloy Steel Wire Rod: Requests for exclusion of various tire cord quality wire rod and tire bead quality wire rod products from the scope of antidumping duty (Brazil, Canada, Egypt, Germany, Indonesia, Mexico, Moldova, South Africa, Trinidad and Tobago, Ukraine, and Venezuela) and countervailing duty (Brazil, Canada, Germany, Trinidad and Tobago, and Turkey) investigations.

Selection of Respondents

Section 777A(c)(1) of the Act directs the Department to calculate individual dumping margins for each known exporter and producer of the subject merchandise. Where it is not practicable to examine all known producer/exporters of subject merchandise, section 777A(c)(2) of the Act permits us to investigate either 1) a sample of exporters, producers, or types of products that is statistically valid, based on the information available at the time of selection, or 2) exporters and producers accounting for the largest volume of the subject merchandise that can reasonably be examined. In the petition, the petitioners identified three producers of steel wire rod in Canada. Due to the limited resources available to the Department, we initially determined that we could investigate only the largest exporter, Ivaco. *See Respondent Selection Memorandum*, dated November 9, 2001. The second and third largest Canadian exporter/producers, ISI and Stelco Inc. (Stelco), volunteered to submit questionnaire responses.

On November 9, 2001, the Department issued the complete antidumping questionnaire to Ivaco.[3] In a letter to the Assistant Secretary of Import Administration, dated November 21, 2001, the Canadian Embassy requested that the Department also select ISI and Stelco as regular respondents and calculate a company-specific rate for each company. On December 26, 2001,the Department determined that it had the resources to investigate these additional companies and notified ISI and Stelco that they would be treated as mandatory respondents.

The responses to section A of the antidumping questionnaire were submitted to the Department in November, 2001. Responses to sections D through E of questionnaire were submitted in December, 2001. Responses to the Department's supplementary questionnaires were submitted in February and March, 2002.

Collapsing Corporate Affiliates

The Department's regulations provide that we will ''... treat two or more affiliated parties as a single entity where those producers have production facilities for similar or identical products ... and {the Department} concludes that there is a significant potential for the manipulation of price or production.'' *See* 19 CFR 351.401(f). This provision applies to the corporate affiliates of both Ivaco and Stelco.[4]

Ivaco

The management of the production and sales operations of Ivaco and Ivaco Rolling Mills (IRM) are closely intertwined.[5] In addition to producing finished rod for its own account from green rod purchased from IRM (IRM), Ivaco provides tolling services which allow IRM to ''produce'' finished rod for IRM's account. In effect, Ivaco and IRM rely on the same facilities to both produce both steel wire rod and further manufactured products. The respective production facilities do not require substantial retooling to restructure the companies' manufacturing priorities. Furthermore, the production and sales operations of these companies have the potential to manipulate prices and production within the meaning of section 351.401(f), therefore, and we have collapsed these affiliates into a single entity. As a result, we have not considered sales from IRM to divisions of Ivaco in calculating the margin. *See* Collapsing Memorandum.

Stelco

The management of the production and sales operations of Stelco and Stelwire, Ltd. (Stelwire) are also closely intertwined. Stelco and Stelwire are both producers of the subject steel wire rod merchandise, using the same facilities to produce identical or similar products. Furthermore, the production and sales operations of Stelco and Stelwire have the potential to manipulate prices and production within the meaning of section 351.401(f), therefore, we have collapsed these affiliates into a single entity for the purpose of this investigation. *See* Collapsing Memorandum.

Product Comparisons

In accordance with section 771(16) of the Act, all products produced by the respondents covered by the description in the *Scope of Investigation* section, above, and sold in Canada during the POI, are considered to be foreign like products for purposes of determining appropriate product comparisons to U.S. sales. We have relied on eight criteria to match U.S. sales of subject merchandise to comparison-market sales of the foreign like product or constructed value (CV): grade range, carbon content range, surface quality, deoxidation, maximum total residual content, heat treatment, diameter range, and coating. These characteristics have been weighted by the Department, where appropriate. Where there were no sales of identical merchandise in the

[3] Section A of the questionnaire requests general information concerning a company's corporate structure and business practices, the merchandise under investigation that it sells, and the manner in which it sells that merchandise in all of its markets. Section B requests a complete listing of all home market sales or, if the home market is not viable, of sales in the most appropriate third-country market (this section is not applicable to respondents in non-market economy (NME) cases). Section C requests a complete listing of U.S. sales. Section D requests information on the cost of production (COP) of the foreign like product and the constructed value (CV) of the merchandise under investigation. Section E requests information on further manufacturing.

[4] See Memorandum from Gary Taverman to Bernard Carreau, *Canadian Carbon and Certain Alloy Steel Wire Rod: Collapsing of Ivaco Inc. with Ivaco Rolling Mills and Stelco Inc. with Stelwire Ltd.*, April 2, 2002 (Collapsing Memorandum).

[5] Ivaco owns 99.999 percent of its subsidiary, Ivaco Rolling Mills.

home market to compare to U.S. sales, we compared U.S. sales to the next most similar foreign like product on the basis of the characteristics listed above.

Fair Value Comparisons

To determine whether sales of steel wire rod from Canada were made in the United States at less than fair value, we compared the export price (EP) and the constructed export price (CEP) to the normal value (NV), as described in the *Export Price and Constructed Export Price* and *Normal Value* sections of this notice. In accordance with section 777A(d)(1)(A)(i) of the Act, we calculated weighted-average EPs and CEPs. We compared these to weighted-average home market prices or CVs, as appropriate, in Canada.

Export Price and Constructed Export Price

For the price to the United States, we used, as appropriate, EP or CEP, as defined in sections 772(a) and 772(b) of the Act, respectively. Section 772(a) of the Act defines EP as the price at which the subject merchandise is first sold before the date of importation by the producer or exporter outside of the United States to an unaffiliated purchaser in the United States or to an unaffiliated purchaser for exportation to the United States, as adjusted under subsection 722(c) of the Act.

Section 772(b) of the Act defines CEP as the price at which the subject merchandise is first sold in the United States before or after the date of importation by or for the account of the producer or exporter of such merchandise or by a seller affiliated with the producer or exporter, to a purchaser not affiliated with the producer or exporter, as adjusted under subsections 772(c) and (d) of the Act.

For all respondents, we calculated EP and CEP, as appropriate, based on the packed prices charged to the first unaffiliated customer in the United States. We found that all the respondents made EP sales during the POI. These sales are properly classified as EP sales because they were made outside the United States by the exporter or producer to unaffiliated customers in the United States prior to the date of importation.

We also found that each respondent made CEP sales during the POI. These sales are properly classified as CEP sales because they were made after the date of importation.

In accordance with section 772(c)(2) of the Act, we made deductions from the starting price for movement expenses and export taxes and duties, where appropriate. Section 772(d)(1) of the Act provides for additional adjustments to calculate CEP. Accordingly, where appropriate, we deducted direct and indirect selling expenses related to commercial activity in the United States. Pursuant to section 772(d)(3) of the Act, where applicable, we made an adjustment for CEP profit.

A. ISI

As stated above, during the POI, ISI made both EP and CEP sales. We calculated an EP for sales where the merchandise was sold directly by ISI to the first unaffiliated purchaser in the United States prior to importation, and CEP was not otherwise warranted based on the facts on the record. We calculated a CEP for sales made by ISI's affiliated U.S. further processor after the importation of the subject merchandise into the United States. For both EP and CEP transactions, we made deductions from the starting price for movement expenses in accordance with section 772(c)(2)(A) of the Act. These included inland freight, warehousing expenses and brokerage fees.

For CEP sales, in accordance with section 772(d)(1) of the Act, we deducted from the starting price those selling expenses that were incurred in selling the subject merchandise in the United States, including direct expenses (credit expenses and warranty expenses), the cost of further manufacturing, and indirect selling expenses incurred by the affiliated further processor in the United States. We also deducted from CEP an amount for profit, in accordance with section 772(d)(3) of the Act.

B. Stelco

During the POI, Stelco made both EP and CEP sales. We calculated an EP for sales where the merchandise was sold directly by Stelco to the first unaffiliated purchaser in the United States prior to importation, and CEP was not otherwise warranted based on the facts on the record. We calculated a CEP for sales made by Stelco's affiliated U.S. further processor after the importation of the subject merchandise into the United States. For EP and CEP transactions, we made deductions from the starting price for billing adjustments and movement expenses in accordance with section 772(c)(2)(A) of the Act. Movement expenses included inland freight, warehousing expenses, and brokerage fees.

For CEP sales, in accordance with section 772(c)(2)(A), we deducted movement expenses, including inland freight, warehousing expenses, and brokerage fees. In accordance with section 772(d)(1) of the Act, we deducted from the starting price those selling expenses that were incurred in selling the subject merchandise in the United States, including direct expenses (credit expenses, advertising expenses, warranty expenses and technical services); indirect selling expenses incurred by an affiliated further processor in the United States; and further manufacturing costs. We also deducted from CEP an amount for profit, in accordance with section 772(d)(3) of the Act.

C. Ivaco

During the POI, Ivaco made both EP and CEP sales. We calculated an EP for sales where the merchandise was sold directly by Ivaco to the first unaffiliated purchaser in the United States prior to importation, and CEP was not otherwise warranted based on the facts on the record. We calculated a CEP for sales made by IRM and by Ivaco's two affiliated U.S. further processors after the importation of the subject merchandise into the United States. For EP sales, we made additions to the starting price (gross unit price), where appropriate, for freight revenue (reimbursement for freight charges paid by Ivaco) and for billing errors (debit-note price adjustments made by Ivaco), and deductions, where appropriate, for billing adjustments (including credit-note price adjustments made by Ivaco), early payment discounts and rebates, and movement expenses in accordance with section 772(c)(2)(A) of the Act. Movement expenses included inland freight, warehousing expenses, brokerage fees, U.S. customs duty, and U.S. merchandise processing fees.

For CEP sales, we made the same adjustments to the starting price as for the EP transactions described above. In accordance with sections 772(d) of the Act, we also made deductions, where appropriate, for direct and indirect selling expenses, further manufacturing costs, and CEP profit. Included in the indirect selling expenses we deducted are those expenses Ivaco and IRM incurred in Canada which were associated with economic activities in the United States; i.e., expenses incurred arranging transportation to unaffiliated U.S. customers, evaluating orders from such customers, and issuing invoices for CEP sales, and so forth. The preamble to *Antidumping Duties; Countervailing Duties; Final Rule*, 62 FR 27296, at 27351 (May 19, 1997), states that the Department will deduct all CEP expenses related to the first sale to the first unaffiliated U.S. customer ''... even if, for example, the foreign parent of the affiliated U.S. importer pays those expenses.'' *See*, also, the *Statement of*

Administrative Action (SAA) accompanying the URAA, H.R. Doc. 103–316, Vol. I (1994), at 823. The U.S. Court of International Trade has upheld such deductions. *See Mitsubishi Heavy Industry Ltd. v. United States*, 54 F. Supp. 2d 1183 (Ct. Int'l Trade 1999).

Normal Value

A. Selection of Comparison Markets

Section 773(a)(1) of the Act directs that NV be based on the price at which the foreign like product is sold in the home market, provided that the merchandise is sold in sufficient quantities (or value, if quantity is inappropriate), that the time of the sales reasonably corresponds to the time of the sale used to determine EP or CEP, and that there is no particular market situation that prevents a proper comparison with the EP or CEP. The statute contemplates that quantities (or value) will normally be considered insufficient if they are less than five percent of the aggregate quantity (or value) of sales of the subject merchandise to the United States.

We found that ISI, Ispat and Stelco each had a viable home market for steel wire rod. As such, the respondents submitted home market sales data for purposes of the calculation of NV.

In deriving NV, we made adjustments as detailed in the Calculation of Normal Value Based on Home Market Prices and Calculation of Normal Value Based on Constructed Value sections below.

B. Cost of Production Analysis

Based on allegations contained in the petition, and in accordance with section 773(b)(2)(A)(i) of the Act, we found reasonable grounds to believe or suspect that steel wire rod sales were made in Canada at prices below the cost of production (COP). See Initiation Notice, 66 FR at 50166. As a result, the Department has conducted an investigation to determine whether ISI, Ivaco and Stelco made home market sales at prices below their respective COPs during the POI within the meaning of section 773(b) of the Act. We conducted the COP analysis described below.

1. Calculation of Cost of Production

In accordance with section 773(b)(3) of the Act, we calculated a weighted-average COP based on the sum of the cost of materials and fabrication for the foreign like product, plus amounts for the home market general and administrative (G&A) expenses, including interest expenses, selling expenses, and packing expenses. We relied on the COP data submitted by ISI and Ivaco in their cost questionnaire responses.

For Stelco and Stelwire, we relied on the cost of production information submitted by the respondents in their questionnaire responses, except for the following adjustments:

a. We adjusted the reported cost of manufacture (COM) to reflect the highest of transfer price, market price and affiliated suppliers' COP for the inputs purchased from affiliated suppliers;

b. We calculated separate G&A rates (excluding interest expenses) for Stelco and Stelwire. We based Stelco and Stelwire's G&A rates on their fiscal year ended December 31, 2000, unconsolidated financial statements respectively. We then calculated a single G&A rate for Stelco and Stelwire by weight-averaging the two companies' individually-calculated G&A rates based on their reported shipment quantities;

c. We calculated Stelco's further manufacturing G&A expense rate based on the Stelco USA unconsolidated financial statements. We used the further processing cost component included in the cost of sales as a denominator to calculate the rate; and

d. We used the reported consolidated interest expense rate to calculate the total further manufacturing costs. *See Cost Calculation Memorandum* from Sheikh Hannan and Taija A. Slaughter to Neal Halper, Director Office of Accounting, dated April 2, 2002.

2. Test of Home Market Sales Prices

We compared the adjusted weighted-average COP for each respondent to the respective respondent's home- market sales prices of the foreign like product, as required under section 773(b) of the Act, to determine whether these sales had been made at prices below the COP within an extended period of time (*i.e.*, a period of one year) in substantial quantities and whether such prices were sufficient to permit the recovery of all costs within a reasonable period of time.

On a model-specific basis, we compared the revised COP to the home market prices, less any applicable movement charges, discounts, rebates, and direct and indirect selling expenses (which were also deducted from COP).

3. Results of the COP Test

Pursuant to section 773(b)(2)(C) of the Act, where less than 20 percent of a respondent's sales of a given product were at prices less than the COP, we did not disregard any below-cost sales of that product because we determined that the below-cost sales were not made in ''substantial quantities.'' Where 20 percent or more of a respondent's sales of a given product during the POI were at prices less than the COP, we determined such sales to have been made in ''substantial quantities'' within an extended period of time in accordance with section 773(b)(2)(B) of the Act. In such cases, because we compared prices to POI average costs, pursuant to section 773(b)(2)(D) of the Act, we also determined that such sales were not made at prices that would permit recovery of all costs within a reasonable period of time. Therefore, we disregarded comparison market sales for ISI, Ivaco and Stelco that failed the cost test

C. Calculation of Normal Value Based on Home Market Prices

We determined price-based NVs for the respondent companies as follows. For each respondent, we made adjustments for any differences in packing and deducted home market movement expenses pursuant to sections 773(a)(6)(A) and 773(a)(6)(B)(ii) of the Act. In addition, where applicable in comparison to EP transactions, we made adjustments for differences in circumstances of sale (COS) pursuant to section 773(a)(6)(C)(iii) of the Act.

The company-specific COS adjustments are described below.

1. ISI

We made COS adjustments for ISI's EP transactions by deducting direct selling expenses incurred for home market sales (credit expenses and warranty expenses) and adding U.S. direct selling expenses (credit expenses and warranty expenses). For matches of similar merchandise, we made adjustments, where appropriate, for physical differences in the merchandise in accordance with section 773(a)(6)(C)(ii) of the Act.

2. Stelco

We made COS adjustments for Stelco's EP transactions by deducting direct selling expenses incurred for home market sales (credit expenses, advertising expenses, warranty expenses and technical services) and adding U.S. direct selling expenses (credit expenses, advertising expenses, warranty expenses and technical services). For matches of similar merchandise, we made adjustments, where appropriate, for physical differences in the merchandise in accordance with section 773(a)(6)(C)(ii) of the Act.

3. Ivaco

We made COS adjustments for Ivaco's EP transactions by deducting direct selling expenses incurred for home market sales (credit expenses and

warranty expenses) and adding U.S. direct selling expenses (credit expenses and warranty expenses). For matches of similar merchandise, we made adjustments, where appropriate, for physical differences in the merchandise in accordance with section 773(a)(6)(C)(ii) of the Act.

Because Ivaco paid commissions on its EP sales, in calculating NV, we deducted the lesser of either (1) the weighted-average amount of commission paid on a U.S. sale for a particular product, or (2) the weighted-average amount of indirect selling expenses paid on the home market sales for a particular product. See preamble at 19 CFR 351.410(e), 62 FR at 27414 (May 19, 1997).

D. Arm's-Length Sales

The respondents each reported sales of the foreign like product to an affiliated customer. To test whether these sales to affiliated customers were made at arm's length, where possible, we compared the prices of sales to affiliated and unaffiliated customers, net of all movement charges, direct selling expenses, and packing. Where the price to the affiliated party was, on average, 99.5 percent or more of the price to unaffiliated parties, we determined that sales made to the affiliated party were at arm's length. *See Antidumping Duties; Countervailing Duties; Final Rule*, 62 FR 27296, 27355 (May 19, 1997) (preamble to the Department's regulations). Consistent with section 351.403(c) of the Department's regulations, we excluded from our analysis those sales where the price to the affiliated parties was less than 99.5 percent of the price to the unaffiliated parties.

E. Calculation of Normal Value Based on Constructed Value

Section 773(a)(4) of the Act provides that, where NV cannot be based on comparison-market sales, NV may be based on CV. Accordingly, for those models of steel wire rod for which we could not determine the NV based on comparison-market sales, either because there were no sales of a comparable product or all sales of the comparison products failed the COP test, we based NV on CV.

Section 773(e)(1) of the Act provides that CV shall be based on the sum of the cost of materials and fabrication for the imported merchandise plus amounts for selling, general, and administrative expenses (SG&A), profit, and U.S. packing expenses. We calculated the cost of materials and fabrication based on the methodology described in the COP section of this notice. We based SG&A and profit on the actual amounts incurred and realized by the respondents in connection with the production and sale of the foreign like product in the ordinary course of trade, for consumption in the comparison market, in accordance with section 773(e)(2)(A) of the Act. In addition, we used U.S. packing costs as described in the Export Price section of this notice, above.

We made adjustments to CV for differences in COS in accordance with section 773(a)(8) of the Act and 19 CFR 351.410. These involved the deduction of direct selling expenses incurred on home market sales from, and the addition of U.S. direct selling expenses to, CV.

Company-specific adjustments are described below.

1. Stelco

For CEP and EP comparisons, we deducted direct selling expenses incurred for home market sales (credit expenses, advertising expenses, warranty expenses and technical services). For EP sales, we added U.S. direct selling expenses (credit expenses, advertising expenses, warranty expenses and technical services) to the NV.

2. Ivaco

For CEP and EP comparisons, we deducted direct selling expenses incurred for home market sales (credit expenses and warranty expenses). For EP sales we added U.S. direct selling expenses (credit expenses and warranty expenses) to the NV.

Because Ivaco paid commissions on its EP sales, in calculating NV, we deducted the lesser of either (1) the weighted-average amount of commission paid on a U.S. sale for a particular product, or (2) the weighted-average amount of indirect selling expenses paid on the home market sales for a particular product. See preamble at 19 CFR 351.410(e), 62 FR at 27414 (May 19, 1997).

F. Level of Trade/Constructed Export Price Offset

In accordance with section 773(a)(1)(B) of the Act, to the extent practicable, we determine NV based on sales in the comparison market at the same level of trade as the EP or CEP transaction. The NV level of trade is that of the starting-price sales in the comparison market or, when NV is based on CV, that of the sales from which we derive SG&A expenses and profit. For EP sales, the U.S. level of trade is also the level of the starting-price sale, which is usually from exporter to importer. For CEP transactions, it is the level of the constructed sale from the exporter to the importer.

To determine whether NV sales are at a different level of trade than EP or CEP transactions, we examine stages in the marketing process and selling functions along the chain of distribution between the producer and the unaffiliated customer. If the comparison-market sales are at a different level of trade and the difference affects price comparability, as manifested in a pattern of consistent price differences between the sales on which NV is based and comparison-market sales at the level of trade of the export transaction, we make a level-of-trade adjustment under section 773(a)(7)(A) of the Act. For CEP sales, if the NV level is more remote from the factory than the CEP level and there is no basis for determining whether the difference in the levels between NV and CEP affects price comparability, we adjust NV under section 773(a)(7)(B) of the Act (the CEP-offset provision). *See Notice of Final Determination of Sales at Less Than Fair Value: Certain Cut-to-Length Carbon Steel Plate from South Africa*, 62 FR 61731, 61733, 61746 (November 19, 1997).

In implementing these principles in this investigation, we obtained information from ISI, Ivaco and Stelco about the marketing stages involved in the reported U.S. and home market sales, including a description of the selling activities performed by the respondents for each channel of distribution. In identifying levels of trade for EP and home market sales we considered the selling functions reflected in the starting price before any adjustments. For CEP sales, we considered only the selling activities reflected in the price after the deduction of expenses pursuant to section 772(d) of the Act.

In conducting our level-of-trade analysis for each respondent, we examined the specific types of customers, the channels of distribution, and the selling practices of the respondent. Generally, if the reported levels of trade are the same, the functions and activities of the seller should be similar. Conversely, if a party reports levels of trade that are different for different categories of sales, the functions and activities may be dissimilar. We found that, for ISI and Stelco, the pattern was very similar; Ivaco, however, was characterized by a different pattern. We found the following.

1. ISI

EP sales to the United States and sales in Canada were made to re-drawers and to parts manufacturers. For all these sales, the selling functions that ISI performed for its different customers and channels of distribution were very similar for both types of customers in each market. Although ISI reported that wire drawers required more of its metallurgical services and product development consulting than parts manufacturers do, both types of customers required these services in the home market and the U.S. market. Therefore, we found the EP and home market levels of trade to be the same and made no level-of-trade adjustment.

With regard to the U.S. sales of further manufactured products, which were all CEP sales, we considered only the selling activities reflected in the price after the deduction of expenses and profit covered in section 772(d) of the Act. After we deducted the expenses and profit covered in section 772(d), the NV level of trade was more remote from ISI than that of its U.S. sales of further manufactured products, as adjusted. In addition, there is only one level of trade in the home market and we have no other appropriate information on which to determine if there is a pattern of consistent price differences between the sales on which NV is based and comparison market sales at the level of trade of the export transactions. As a result, we are granting a CEP offset pursuant to section 773(a)(7)(B) of the Act.

2. Stelco

For all its home market and EP sales, the selling functions Stelco performed for its different customer categories and channels of distribution were virtually identical. Therefore, we found the EP and home market levels of trade to be the same and made no level-of-trade adjustment.

With regard to CEP sales, we considered only the selling activities reflected in the price after the deduction of expenses and profit covered in section 772(d) of the Act. After we deducted the expenses and profit covered in section 772(d), the NV level of trade was more remote from Stelco than that of its U.S. sales of further manufactured products, as adjusted. In addition, there is only one level of trade in the home market and we have no other appropriate information on which to determine if there is a pattern of consistent price differences between the sales on which NV is based and comparison market sales at the level of trade of the export transactions. As a result, we are granting a CEP offset pursuant to section 773(a)(7)(B) of the Act.

3. Ivaco

Ivaco reported two channels of distribution in the home market. The channels of distribution are: 1) direct sales by IRM and 2) direct sales by Sivaco. To determine whether separate levels of trade exist in the home market, we examined the stages in the marketing process and selling functions along the chain of distribution between Ivaco and its customers. Based on this examination, we preliminarily determine that Ivaco sold merchandise at two levels of trade in the home market during the POI. One level of trade is for sales made by Ivaco's steel wire rod manufacturing facility, IRM; the second level of trade is for sales made by Sivaco, Ivaco's customer service center, which is also a steel wire rod processing and drawing facility. From our analysis of the marketing process for these sales, we determined that sales by Sivaco are at a more remote marketing stage than that for sales by IRM. Sales by Sivaco have different, more complex, distribution patterns, involving substantially greater selling activities. Based on these differences, we concluded that two levels of trade exist in the home market, an IRM level of trade (''level one'') and a Sivaco level of trade (''level two'').

The Department analyzed Ivaco's selling functions in the home market, including inventory maintenance services, delivery services, handling services, freight services, sales administration services, bid assistance, technical services, and extension of credit.[6] With regard to inventory maintenance, Sivaco offers more extensive inventory services than IRM. Sivaco maintains a significant general inventory, which results in a significantly longer inventory turnover rate for Sivaco, and additional services. This allows Sivaco to offer its customers just-in-time (JIT) delivery services. Thereby, Sivaco assumes the inventory services that would normally be performed by the customer. IRM does not provide these additional services. As stated by the Department in *Pipe and Tube from Turkey*, '' inventory maintenance is a principal selling function'' and '' the additional responsibilities of maintaining merchandise in inventory also gives rise to related selling functions that are performed.''[7]

Specifically, Sivaco ships more often than IRM due to the fact that Sivaco offers its customers JIT inventory, while IRM produces and ships rod based on a quarterly rolling schedule. In addition, Sivaco provides more handling and freight services than IRM in that it offers smaller, more frequent shipments with more varied freight services. For example, IRM sells rod in either full truck load or rail car quantities, while Sivaco will arrange shipment for less than truck-load quantities. With regard to sales administration services, Sivaco has a smaller average shipment size than IRM, resulting in a higher proportional sales administrative service cost than IRM. Furthermore, Sivaco offers the following services to its customers, which IRM does not; 1) bid assistance to customers, 2) assistance with product specification and material/ processing review, and 3) a wider range of technical assistance, including helping customers solve usage problems and choose the best type of rod for their applications and machinery.

In the U.S. market, Ivaco reported two EP channels of distribution. The channels of distribution are: 1) direct sales by IRM to U.S. customers and 2) direct sales by Sivaco to U.S. customers. To determine whether separate levels of trade exist for EP sales to the U.S. market,we examined the selling functions, the chain of distribution, and the customer categories reported in the United States.

Specifically, we have found that direct sales by IRM to U.S. customers involve all the same selling functions as IRM's sales in the home market. Further, direct sales by Sivaco in the U.S. include all the same selling functions and are made at the same level of trade as those found in the home market. Sales by Ivaco's steel wire rod manufacturing facility, IRM, are made at level of trade one, the same as IRM's home market sales. EP sales by Sivaco are made at the second level of trade. Because the levels of trade in the United States for EP sales are identical to those in the home market, the preceding analysis with respect to the home market levels of trade applies equally to the U.S. market.

To the extent possible, we have compared U.S. EP transactions and home market sales at the same level of trade without making a level-of-trade adjustment. When we were unable to find sales of the foreign like product in

[6] Due to its proprietary nature, credit risk was analyzed in Ivaco ′s Calculation Memo, March 28, 2002.

[7] *See Certain Welded carbon steel Pipe and Tube From Turkey*, 63 Fed. Reg. 35, 190 (1998).

the home market at the same level of trade as the U.S. sale, we examined whether a level-of-trade adjustment was appropriate. When we compare U.S. sales to home market sales at a different level of trade, we make a level-of-trade adjustment if the difference in levels of trade affects price comparability. We determine any effect on price comparability by examining sales at different levels of trade in a single market, the home market. Any price effect must be manifested in a pattern of consistent price differences between home market sales used for comparison and sales at the equivalent level of trade of the export transaction. To quantify the price differences, we calculate the difference in the average of the net prices of the same models sold at different levels of trade. Net prices are used because any difference will be due to differences in level of trade rather than other factors. We use the average difference in net prices to adjust NV when NV is based on a level of trade different from that of the export sale. If there is no pattern of consistent price differences, the difference in levels of trade does not have a price effect and, therefore, no adjustment is necessary.

In addition, Ivaco has two CEP channels of distribution which constitute a single level of trade: 1) sales of goods manufactured by IRM that are not further manufactured before being sold to unaffiliated customers from inventory locations in the United States and 2) sales by IRM of products further manufactured in the United States by affiliated companies. For CEP sales, we examined the relevant functions after deducting the costs of further manufacturing, U.S. selling expenses and associated profit, as well as indirect selling expenses incurred in Canada associated with commercial activities incurred in the United States. As a result, there are no selling activities associated with Ivaco's CEP sales in either channel of distribution when effecting the level of trade comparison with home market sales. Therefore, we preliminarily find that the CEP level of trade is not comparable to either level of trade in the home market. We were unable to quantify the level of trade adjustment, in accordance with section 773(a)(7)(B) of the Act; therefore, we matched, where possible, to the closest home market level of trade, level of trade one, and granted a CEP offset pursuant to section 773(a)(7)(B) of the Act.

Currency Conversions

We made currency conversions into U.S. dollars in accordance with section 773A of the Act based on exchange rates in effect on the dates of the U.S. sale, as obtained from the Federal Reserve Bank (the Department's preferred source for exchange rates).

Verification

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

Suspension of Liquidation

In accordance with section 733(d) of the Act, we are directing the Customs Service to suspend liquidation of certain entries of carbon and certain alloy steel wire rod from Canada, that are entered, or withdrawn from warehouse, for consumption on or after the date of publication of this notice in the *Federal Register*. We are also instructing the Customs Service to require a cash deposit or the posting of a bond equal to the weighted-average amount by which the NV exceeds the EP or CEP, as indicated in the chart below. These instructions suspending liquidation will remain in effect until further notice. Because the estimated weighted-average dumping margin for Stelco is *de minimis*, we are not directing the Customs service to suspend the liquidation of entries for this company.

The weighted-average dumping margins are provided below:

Manufacturer/exporter	Margin (percent)
ISI	4.21
Ivaco	7.36
Stelco	1.32*
All Others	6.43

* *De minimis* - excluded from the calculation of the ''All Others'' rate.

Disclosure

The Department will disclose calculations performed within five days of the date of publication of this notice to the parties of the proceeding in this investigation in accordance with 19 CFR 351.224(b).

International Trade Commission Notification

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

Public Comment

Case briefs for this investigation must be submitted no later than one week after the issuance of the verification reports. Rebuttal briefs must be filed within five days after the deadline for submission of case briefs. A list of authorities used, a table of contents, and an executive summary of issues should accompany any briefs submitted to the Department. Executive summaries should be limited to five pages total, including footnotes. Further, we would appreciate it if parties submitting written comments would provide the Department with an additional copy of the public version of any such comments on diskette.

Section 774 of the Act provides that the Department will hold a hearing to afford interested parties an opportunity to comment on arguments raised in case or rebuttal briefs, provided that such a hearing is requested by any interested party. If a request for a hearing is made in an investigation, the hearing will tentatively be held two days after the deadline for submission of the rebuttal briefs, at the U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230. In the event that the Department receives requests for hearings from parties to more than one steel wire rod case, the Department may schedule a single hearing to encompass all those cases. Parties should confirm by telephone the time, date, and place of the hearing 48 hours before the scheduled time.

Interested parties who wish to request a hearing, or to participate if one is requested, must submit a written request within 30 days of the publication of this notice. Requests should specify the number of participants and provide a list of the issues to be discussed. Oral presentations will be limited to issues raised in the briefs.

We will issue our final determination no later than 135 days after the date of publication of this notice in the Federal Register. This determination is issued and published pursuant to sections 733(f) and 777(i)(1) of the Act.

Dated: April 2, 2002

Faryar Shizad,

Assistant Secretary for Import Administration.

[FR Doc. 02–8705 Filed 4–9–02; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

International Trade Administration

[A–201–830]

Notice of Preliminary Determination of Sales at Less Than Fair Value: Carbon and Certain Alloy Steel Wire Rod from Mexico

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

EFFECTIVE DATE: April 10, 2002.

FOR FURTHER INFORMATION CONTACT: Marin Weaver or Charles Riggle at (202) 482–2336 or (202) 482 – 0650, respectively; AD/CVD Enforcement Group II Office 5, Import Administration, Room 1870, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230.

SUPPLEMENTARY INFORMATION:

The Applicable Statute and Regulation

Unless otherwise indicated, all citations to the statute are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Tariff Act of 1930 (the Act) by the Uruguay Round Agreements Act (URAA). In addition, unless otherwise indicated, all citations to Department of Commerce (the Department) regulations refer to the regulations codified at 19 CFR part 351 (2001).

Preliminary Determination

We preliminarily determine that carbon and certain alloy steel wire rod (steel wire rod) from Mexico is being sold, or is likely to be sold, in the United States at less than fair value (LTFV), as provided in section 733 of the Act. The estimated margins of sales at LTFV are shown in the *Suspension of Liquidation* section of this notice.

Case History

This investigation was initiated on September 24, 2001.[1] *See Initiation of Antidumping Duty Investigations: Carbon and Certain Alloy Steel Wire Rod From Brazil, Canada, Egypt, Germany, Indonesia, Mexico, Moldova, South Africa, Trinidad and Tobago, Ukraine, and Venezuela*, 66 FR 50164 (October 2, 2001) (*Initiation Notice*). Since the initiation of these investigations, the following events have occurred:

On October 12, 2001, the United States International Trade Commission (ITC) preliminarily determined that there is a reasonable indication that the domestic industry producing steel wire rod is materially injured by reason of imports from Brazil, Canada, Germany, Indonesia, Mexico, Moldova, Trinidad and Tobago, and Ukraine of carbon and certain alloy steel wire rod.[2] *See Determinations and Views of the Commission*, USITC Publication No. 3456, October 2001.

The Department issued a letter on October 16, 2001, to interested parties in all of the concurrent steel wire rod antidumping investigations, providing an opportunity to comment on the Department's proposed model match characteristics and hierarchy. The petitioners submitted comments on October 24, 2001. The Department also received comments on model matching from Hysla S.A. de C.V. (Mexico), Ivaco, Inc,. and Ispat Sidbec Inc. (Canada). These comments were taken into consideration by the Department in developing the model matching characteristics and hierarchy for all of the steel wire rod antidumping investigations.

On November 7, 2001, the Department issued an antidumping questionnaire to Siderurgica Lazaro Cardenas Las Truchas S.A. (SICARTSA).[3] On December 5, 2001 the petitioners alleged that there that there was a reasonable basis to believe or suspect that critical circumstances exist with respect to imports of steel wire rod from Brazil, Germany, Mexico, Moldova, Turkey, and Ukraine.

On January 17, 2002, the petitioners requested a 30–day postponement of the preliminary determination in this investigation. On January 28, 2002, the Department published a Federal Register notice postponing the deadline for the preliminary determination until March 13, 2002. *See Notice of Postponement of Preliminary Antidumping Duty Determinations: Carbon and Certain Alloy Steel Wire Rod From Brazil, Canada, Indonesia, Germany, Mexico, Moldova, Trinidad and Tobago, and Ukraine*, 67 FR 3877 (January 28, 2002). On March 4, 2002, the petitioners requested an additional 20–day postponement of the preliminary determination in this investigation. On March 15, 2002, the Department published a Federal Register notice postponing the deadline for the preliminary determinations until April 2, 2002. *See Notice of Postponement of Preliminary Antidumping Duty Determinations: Carbon and Certain Alloy Steel Wire Rod From Brazil, Canada, Indonesia, Germany, Mexico, Moldova, Trinidad and Tobago, and Ukraine*, 67 FR 11674 (March 15, 2002).

On February 4, 2002, the Department preliminarily determined that critical circumstances exist with respect to imports of carbon and alloy steel wire rod from Mexico. *See* Memorandum to Faryar Shirzad Re: Antidumping Duty Investigation Carbon and Alloy Steel Wire Rod From Mexico and Trinidad and Tobago — Notice of Preliminary Determinations of Critical Circumstances (February 4, 2002); *see also Carbon and Alloy Steel Wire Rod From Germany, Mexico, Moldova, Trinidad and Tobago, and Ukraine: Notice of Preliminary Determination of Critical Circumstances*, 67 FR 6224 (February 11, 2002).

Period of Investigation

The POI is July 1, 2000, through June 30, 2001. This period corresponds to the four most recently completed fiscal quarters prior to the month of the filing of the petition (*i.e.*, August 2001).

Scope of Investigations

The merchandise covered by these investigations is certain hot–rolled products of carbon steel and alloy steel, in coils, of approximately round cross section, 5.00 mm or more, but less than 19.00 mm, in solid cross–sectional diameter.

Specifically excluded are steel products possessing the above–noted physical characteristics and meeting the Harmonized Tariff Schedule of the United States (HTSUS) definitions for (a) stainless steel; (b) tool steel; (c) high nickel steel; (d) ball bearing steel; and (e) concrete reinforcing bars and rods. Also excluded are (f) free machining steel products (*i.e.*, products that contain by weight one or more of the following elements: 0.03 percent or more of lead, 0.05 percent or more of bismuth, 0.08 percent or more of sulfur, more than 0.04 percent of phosphorus, more than 0.05 percent of selenium, or more than 0.01 percent of tellurium).

[1] The petitioners in this investigation are Co–Steel Raritan, Inc., GS Industries, Inc., Keystone Consolidated Industries, Inc., and North Star Steel Texas, Inc.

[2] With respect to imports from Egypt, South Africa, and Venezuela, the ITC determined that imports from these countries during the period of investigation (POI) were negligible and, therefore, these investigations were terminated.

[3] Section A of the questionnaire requests general information concerning a company's corporate structure and business practices, the merchandise under investigation that it sells, and the manner in which it sells that merchandise in all of its markets. Section B requests a complete listing of all home market sales or, if the home market is not viable, of sales in the most appropriate third–country market. Section C requests a complete listing of U.S. sales. Section D requests information on the cost of production (COP) of the foreign like product and the constructed value (CV) of the merchandise under investigation. Section E requests information on further manufacturing.

Also excluded from the scope are 1080 grade tire cord quality wire rod and 1080 grade tire bead quality wire rod. This grade 1080 tire cord quality rod is defined as: (i) grade 1080 tire cord quality wire rod measuring 5.0 mm or more but not more than 6.0 mm in cross–sectional diameter; (ii) with an average partial decarburization of no more than 70 microns in depth (maximum individual 200 microns); (iii) having no inclusions greater than 20 microns; (iv) having a carbon segregation per heat average of 3.0 or better using European Method NFA 04–114; (v) having a surface quality with no surface defects of a length greater than 0.15 mm; (vi) capable of being drawn to a diameter of 0.30 mm or less with 3 or fewer breaks per ton, and (vii) containing by weight the following elements in the proportions shown: (1) 0.78 percent or more of carbon, (2) less than 0.01 percent of aluminum, (3) 0.040 percent or less, in the aggregate, of phosphorus and sulfur, (4) 0.006 percent or less of nitrogen, and (5) not more than 0.15 percent, in the aggregate, of copper, nickel and chromium.

This grade 1080 tire bead quality rod is defined as: (i) grade 1080 tire bead quality wire rod measuring 5.5 mm or more but not more than 7.0 mm in cross–sectional diameter; (ii) with an average partial decarburization of no more than 70 microns in depth (maximum individual 200 microns); (iii) having no inclusions greater than 20 microns; (iv) having a carbon segregation per heat average of 3.0 or better using European Method NFA 04–114; (v) having a surface quality with no surface defects of a length greater than 0.2 mm; (vi) capable of being drawn to a diameter of 0.78 mm or larger with 0.5 or fewer breaks per ton; and (vii) containing by weight the following elements in the proportions shown: (1) 0.78 percent or more of carbon, (2) less than 0.01 percent of soluble aluminum, (3) 0.040 percent or less, in the aggregate, of phosphorus and sulfur, (4) 0.008 percent or less of nitrogen, and (5) either not more than 0.15 percent, in the aggregate, of copper, nickel and chromium (if chromium is not specified), or not more than 0.10 percent in the aggregate of copper and nickel and a chromium content of 0.24 to 0.30 percent (if chromium is specified).

The designation of the products as ''tire cord quality'' or ''tire bead quality'' indicates the acceptability of the product for use in the production of tire cord, tire bead, or wire for use in other rubber reinforcement applications such as hose wire. These quality designations are presumed to indicate that these products are being used in tire cord, tire bead, and other rubber reinforcement applications, and such merchandise intended for the tire cord, tire bead, or other rubber reinforcement applications is not included in the scope. However, should petitioners or other interested parties provide a reasonable basis to believe or suspect that there exists a pattern of importation of such products for other than those applications, end–use certification for the importation of such products may be required. Under such circumstances, only the importers of record would normally be required to certify the end use of the imported merchandise.

All products meeting the physical description of subject merchandise that are not specifically excluded are included in this scope.

The products under investigation are currently classifiable under subheadings 7213.91.3010, 7213.91.3090, 7213.91.4510, 7213.91.4590, 7213.91.6010, 7213.91.6090, 7213.99.0031, 7213.99.0038, 7213.99.0090, 7227.20.0010, 7227.20.0020, 7227.20.0090, 7227.20.0095, 7227.90.6051, 7227.90.6053, 7227.90.6058, and 7227.90.6059 of the HTSUS. Although the HTSUS subheadings are provided for convenience and customs purposes, the written description of the scope of this proceeding is dispositive.

See Carbon and Certain Alloy Steel Wire Rod: Requests for exclusion of various tire cord quality wire rod and tire bead quality wire rod products from the scope of antidumping duty (Brazil, Canada, Egypt, Germany, Indonesia, Mexico, Moldova, South Africa, Trinidad and Tobago, Ukraine, and Venezuela) and countervailing duty (Brazil, Canada, Germany, Trinidad and Tobago, and Turkey) investigations.

Selection of Respondents

Section 777A(c)(1) of the Act directs the Department to calculate individual dumping margins for each known exporter and producer of the subject merchandise. Where it is not practicable to examine all known producers/exporters of subject merchandise, section 777A(c)(2) of the Act permits us to investigate either 1) a sample of exporters, producers, or types of products that is statistically valid based on the information available at the time of selection, or 2) exporters and producers accounting for the largest volume of the subject merchandise that can reasonably be examined. In the petition, the petitioners identified seven producers/exporters of steel wire rod. The data on the record indicate that four of these producers/exporters sold subject merchandise to the United States during the period of investigation (*i.e.*, the period July 2000 through June 2001); however, due to limited resources we determined that we could investigate only the largest exporter. See Respondent Selection Memorandum dated November 9, 2001. Therefore, we chose SICARTSA as the mandatory respondent in this case.

Product Comparisons

In accordance with section 771(16) of the Act, all products produced by the respondents covered by the description in the *Scope of Investigation* section, above, and sold in Mexico during the POI are considered to be foreign like products for purposes of determining appropriate product comparisons to U.S. sales. We have relied on eight criteria to match U.S. sales of subject merchandise to comparison–market sales of the foreign like product or constructed value (CV): grade range, carbon content range, surface quality, deoxidization, maximum total residual content, heat treatment, diameter range, and coating. These characteristics have been weighted by the Department where appropriate. Where there were no sales of identical merchandise in the home market made in the ordinary course of trade to compare to U.S. sales, we compared U.S. sales to the next most similar foreign like product on the basis of the characteristics listed above.

Fair Value Comparisons

To determine whether sales of steel wire rod from Mexico were made in the United States at LTFV, we compared the export price (EP) and the constructed export price (CEP) to the normal value (NV), as described in the *Export Price and Constructed Export Price* and *Normal Value* sections of this notice. In accordance with section 777A(d)(1)(A)(i) of the Act, we calculated weighted–average EPs and CEPs. We compared these to weighted–average home market prices, as appropriate, in Mexico.

Export Price and Constructed Export Price

For the price to the United States, we used, as appropriate, EP or CEP as defined in sections 772(a) and 772(b) of the Act, respectively. Section 772(a) of the Act defines EP as the price at which the subject merchandise is first sold (or agreed to be sold before the date of importation by the producer or exporter of the subject merchandise outside of the United States to an unaffiliated purchaser in the United States or to an unaffiliated purchaser for exportation to the United States.

Section 772(b) of the Act defines CEP as the price at which the subject merchandise is first sold in the United States before or after the date of importation, by or for the account of the producer or exporter of such merchandise, or by a seller affiliated with the producer or exporter, to an unaffiliated purchaser, as adjusted under subsections 772(c) and (d) of the Act.

We found all of SICARTSA's sales to be EP since both SICARTSA and its affiliate CCC Steel made sales from outside the United States before the date of importation into the United Sates. For the respondent, we calculated EP based on the packed prices charged to the first unaffiliated customer in the United States. In accordance with section 772(c)(2) of the Act, we reduced the EP by movement expenses and export taxes and duties, where appropriate.

Normal Value

A. Selection of Comparison Markets

Section 773(a)(1) of the Act directs that NV be based on the price at which the foreign like product is sold in the home market, provided that the merchandise is sold in sufficient quantities (or value, if quantity is inappropriate) and that there is no particular market situation that prevents a proper comparison with the EP or CEP. The Act contemplates that quantities (or value) will normally be considered insufficient if they are less than 5 percent of the aggregate quantity (or value) of sales of the subject merchandise to the United States.

We found that SICARTSA has a viable home market of steel wire rod. SICARTSA submitted home market sales data for purposes of the calculation of NV.

In deriving NV, we made adjustments as detailed in the *Calculation of Normal Value Based on Home Market Prices* section below.

B. Cost of Production Analysis

On August 31, 2001, petitioners made a sales below cost allegation concerning SICARTSA. Based on this allegation and in accordance with section 773(b)(2)(A)(i) of the Act, we found reasonable grounds to believe or suspect that sales of steel wire rod manufactured in Mexico were made at prices below the COP. *See Initiation Notice.* As a result, the Department has conducted an investigation to determine whether SICARTSA made sales in its home market at prices below its COPs during the POI within the meaning of section 773(b) of the Act. We conducted the COP analysis described below.

1. Calculation of Cost of Production

In accordance with section 773(b)(3) of the Act, we calculated a weighted–average COP based on the sum of the cost of materials and fabrication for the foreign like product, plus amounts for the home market general and administrative (G&A) expenses, selling expenses, packing expenses and interest expenses. We relied on the COP data submitted by SICARTSA in its cost questionnaire response.

For iron ore and lime, major inputs in wire rod production, we determined that the affiliates' average COP exceeded the transfer price SICARTSA paid to its affiliated suppliers. Therefore, pursuant to section 773(f)(3) of the Act, we applied the major input rule and adjusted SICARTSA's reported cost of manufacturing to account for purchases of iron ore and lime from affiliated parties at non–arm's length prices. We used SICARTSA's G & A ratio based on its fiscal year 2000 financial statements. We have not used the fiscal year 2001 data, as suggested by SICARTSA, because the financial expense ratio for 2001 is unsupported by data on the record. We will consider the issue further for the final determination. We used the submitted financial expense ratio based on Siderurgica del Pacifico S.A.'s fiscal year 2000 consolidated financial statements.

In addition, we adjusted the net financial expenses to include the current portion of the net gain on monetary position and to exclude interest gained on investments and exchange gains on accounts and notes receivable. We also adjusted the reported cost of goods sold used as the denominator to exclude G&A related depreciation and POI packing costs. For further details, see Memorandum from Robert B. Greger to Neal M. Halper: Cost of Production and Constructed Vale Calculation Adjustments for the Preliminary Determination, date April 2, 2002. We did not adjust SICARTSA's reported deprecation expense, as suggested by the petitioners[4] because, based on our review of the information on the record we have accepted SICARTSA's depreciation expense allocation for purposes of the preliminary determination. We note, however, that the Department will examine the appropriateness of SICARTSA's reported depreciation expenses in detail at verification.

2. Test of Home Market Sales Prices

We compared the adjusted weighted–average COP to the home market sales of the foreign like product, as required under section 773(b) of the Act, in order to determine whether these sales had been made at prices below the COP within an extended period of time (*i.e.*, a period of one year) in substantial quantities and whether such prices were sufficient to permit the recovery of all costs within a reasonable period of time. On a model–specific basis, we compared the revised COP to the home market prices, less any applicable movement charges, discounts and rebates.

3. Results of the COP Test

Pursuant to section 773(b)(2)(C) of the Act, where less than 20 percent of a respondent's sales of a given product were at prices less than the COP, we did not disregard any below–cost sales of that product because we determined that the below–cost sales were not made in ''substantial quantities.'' Where 20 percent or more of a respondent's sales of a given product during the POI were at prices less than the COP, we determined such sales to have been made in ''substantial quantities'' within an extended period of time in accordance with section 773(b)(2)(B) of the Act. In such cases, because we compared prices to POI average costs, we also determined that such sales were not made at prices that would permit recovery of all costs within a reasonable period of time, in accordance with section 773(b)(2)(D) of the Act. Therefore, we disregarded the below–cost sales.

We found that, for certain models of steel wire rod, more than 20 percent of the home market sales were made within an extended period of time at prices less than the COP. Further, the prices did not provide for the recovery of costs within a reasonable period of time. We therefore disregarded these below–cost sales and used the remaining sales as the basis for determining NV, in accordance with section 773(b)(1) of the Act.

C. Calculation of Normal Value Based on Home Market Prices

We determined price–based NVs for the respondent company as follows. We made adjustments for any differences in packing, and we deducted movement expenses pursuant to section 773(a)(6)(B)(ii) of the Act. In addition, where applicable, we made adjustments for differences in circumstances of sale (COS) pursuant to section 773(a)(6)(C)(iii) of the Act. We made COS adjustments by deducting direct selling expenses incurred for home market sales (credit expense) and adding U.S. direct selling expenses (e.g.,

[4] See Letter from Petitioners dated March 20, 2002

credit expense). We also deducted discounts from home market sales. The petitioners argued that certain claimed rebates should be rejected because they are not supported by a pre–existing and consistently–applied policy. We recognize that there may be a question as to how these adjustments are labeled and note that SICARTSA acknowledged in its questionnaire response[5] that the Department may wish to characterize these as rebates rather than discounts. Regardless of whether we label them as discounts or rebates, there is no evidence on the record to indicate that we should not allow these adjustments in our preliminary determination. No other adjustments to NV were claimed or allowed.

D. Arm's–Length Sales

SICARTSA reported sales of the foreign like product to affiliated customers. To test whether these sales to affiliated customers were made at arm's length, where possible, we compared the prices of sales to affiliated and unaffiliated customers, net of all movement charges, direct selling expenses, discounts, and packing. Where the price to the affiliated party was on average 99.5 percent or more of the price to the unaffiliated parties, we determined that sales made to the affiliated party were at arm's length. *See Antidumping Duties; Countervailing Duties; Final Rule*, 62 FR 27296, 27355 (May 19, 1997) (preamble to the Department's regulations). Consistent with section 351.403(c) of the Department's regulations, we excluded from our analysis those sales where the price to the affiliated parties was less than 99.5 percent of the price to the unaffiliated parties.

E. Level of Trade

In accordance with section 773(a)(1)(B) of the Act, to the extent practicable, we determine NV based on sales in the comparison market at the same level of trade (LOT) as the EP transaction. The NV level of trade is that of the starting–price sales in the comparison market or, when NV is based on CV, that of the sales from which we derive SG&A expenses and profit. For EP sales, the U.S. level of trade is also the level of the starting–price sale, which is usually from exporter to importer.

To determine whether NV sales are at a different level of trade than EP transactions, we examine stages in the marketing process and selling functions along the chain of distribution between the producer and the unaffiliated customer. If the comparison market sales are at a different level of trade and the difference affects price comparability, as manifested in a pattern of consistent price differences between the sales on which NV is based and comparison market sales at the level of trade of the export transaction, we make a level–of–trade adjustment under section 773(a)(7)(A) of the Act.

In implementing these principles in this investigation, we obtained information from SICARTSA about the marketing stages involved in the reported U.S. and home market sales, including a description of the selling activities performed by the respondent for each channel of distribution. In identifying levels of trade for EP and home market sales we considered the selling functions reflected in the starting price before any adjustments.

In the home market, SICARTSA reported four channels of distribution, the first to affiliated distributors that resold the merchandise to unaffiliated resellers or end users, the second for sales to affiliated distributors who later sold the product to another affiliated reseller, who then resold to unaffiliated resellers or end users, the third representing direct sales to unaffiliated resellers, and the last, direct sales to unaffiliated industrial users.

SICARTSA claims two LOTs in the home market, which it names LOT 2 and LOT 3. SICARTSA describes its LOT 2 as direct sales to affiliated and unaffiliated customers and its LOT 3 as sales from SICARTSA's affiliates to their unaffiliated customers.

We examined the selling functions related to both sales by affiliated resellers and direct sales in the home market. We found discrepancies between SICARTSA's narrative discussion of its distribution process in its section A questionnaire response, a chart titled *Selling Activities and Services Offered in U.S. and Mexican Markets* provided as section A response exhibit 9, resubmitted in exhibit AA–4, and the narrative description of services and functions performed for U.S. and home market sales in exhibit BC–3. For this preliminary determination we used the more detailed information provided in Exhibit BC–3 over that in the chart from Exhibit AA–4. In reviewing SICARTSA's responses we have determined that there are two channels of distribution; 1) sales by affiliates and 2) directs sales. With respect to the first channel of distribution, by affiliates, SICARTSA provided handling of rejected merchandise, pre–sales engineering, salesmen visits, and advertising on behalf of the customer. For the second channel of distribution, direct sales, in the home market we found that the number and level of selling functions provided varied by customer category, of which SICARTSA has three: resellers, wire drawers, and other end users. Sales to resellers involved the following selling functions: inventory maintenance, handling of rejected merchandise, pre–sale engineering advice, salesmen visits, and advertising on behalf of the customer. For sales to wire drawers, SICARTSA preformed the following selling functions: inventory maintenance, handling of rejected merchandise, pre–sale engineering advise, custom designed products, salesmen visits to customers, and technical visits to customers. Finally, for sales to other end users selling functions included inventory maintenance and the handling of rejected merchandise. Based on an analysis of the customer categories, channels of distribution and differences in selling functions we preliminarily find that there are two LOTs in the home market, LOT 1, which consists of direct sales, and LOT 3, which consists of sales by affiliated parties.[6]

In the U.S. market SICARTSA reported two channels of distribution, one for sales made through its affiliated reseller, CCC Steel GmbH (CCC Steel), and the other for direct sales to unaffiliated customers. For sales made through its affiliate, while SICARTSA provides limited selling functions, CCC Steel performs the preponderance of the selling functions for sales to the unaffiliated customers: handling of rejected merchandise and salesmen visits to customers. For direct sales to unaffiliated customers SICARTSA performs the following selling functions: handling of rejected merchandise and salesmen visits to customers. SICARTSA claims that there is one U.S. LOT. Based on an analysis of the reported selling functions and the fact that all sales in the U.S. market are EP, the Department preliminarily finds that there is one LOT in the U.S. market.

The petitioners argue that there is no LOT difference between SICARTSA's home market sales and U.S. sales.[7] They claim that the selling functions that SICARTSA used to determine LOT represent either trivial or non–existent distinctions and that many of the services have been captured by other expenses reported by SICARTSA.

[5] See Response to Sections B, C, and D of the Departments questionnaire from January 2, 2002 at page 21

[6] SICARTSA identified its two claimed home market LOTs as LOT 2 and LOT 3.

[7] See Letter from Petitioners dated March 20, 2002

SICARTSA claims that sales at both LOTs in the home market are at a more advanced LOT than the LOT in the United States.

In determining whether home market sales are at a different LOT than U.S. EP sales, we examined the channels of distribution, customer categories, and selling functions reported in the home market and in the United States. On the basis of this analysis we preliminarily find that sales at both home market LOTs are more advanced than sales at the LOT in the U.S. market. Although there are two levels of trade in the home market, neither is equivalent to with the U.S. LOT. Therefore, we have no appropriate information on which to determine if there is a pattern of consistent price differences between the comparison sales on which NV is based and sales at the LOT of the export transactions. Accordingly, we will match U.S. sales to the LOT we find to be closest to the U.S. LOT (*i.e.*, home market LOT 1), where possible.

Currency Conversions

We made currency conversions into U.S. dollars in accordance with section 773A of the Act based on exchange rates in effect on the dates of the U.S. sales, as obtained from the Federal Reserve Bank (the Department's preferred source for exchange rates).

Verification

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

Final Critical Circumstances Determination

We will make a final determination concerning critical circumstances in this case when we make our final determination regarding sales at LTFV in this investigation.

Suspension of Liquidation

Because of our preliminary affirmative critical circumstances findings in this case, we are directing the Customs Service to suspend liquidation of any unliquidated entries of steel wire rod from Mexico entered, or withdrawn from warehouse, for consumption on or after the date which is 90 days prior to the date on which this notice is published in the *Federal Register*. We are instructing the Customs Service to require a cash deposit or the posting of a bond equal to the weighted–average amount by which the NV exceeds the EP, as indicated in the chart below for imports from Mexico. These instructions suspending liquidation will remain in effect until further notice.

The weighted–average dumping margins are provided below:

Manufacturer/exporter	Margin (percent)
SICARTSA	25.70
All Others	25.70

Disclosure

The Department will normally disclose calculations performed within five days of the date of publication of this notice to the parties of the proceeding in this investigation in accordance with 19 CFR 351.224(b).

International Trade Commission Notification

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

Public Comment

Case briefs for this investigation must be submitted no later than one week after the issuance of the verification reports. Rebuttal briefs must be filed within five days after the deadline for submission of case briefs. A list of authorities used, a table of contents, and an executive summary of issues should accompany any briefs submitted to the Department. Executive summaries should be limited to five pages total, including footnotes. Further, we would appreciate it if parties submitting written comments would provide the Department with an additional copy of the public version of any such comments on diskette.

Section 774 of the Act provides that the Department will hold a hearing to afford interested parties an opportunity to comment on arguments raised in case or rebuttal briefs, provided that such a hearing is requested by any interested party. If a request for a hearing is made in an investigation, the hearing will tentatively be held two days after the deadline for submission of the rebuttal briefs, at the U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230. In the event that the Department receives requests for hearings from parties to more than one steel wire rod case, the Department may schedule a single hearing to encompass all those cases. Parties should confirm by telephone the time, date, and place of the hearing 48 hours before the scheduled time.

Interested parties who wish to request a hearing, or to participate if one is requested, must submit a written request within 30 days of the publication of this notice. Requests should specify the number of participants and provide a list of the issues to be discussed. Oral presentations will be limited to issues raised in the briefs.

This determination is issued and published pursuant to sections 733(f) and 777(i)(1) of the Act.

Dated: April 2, 2002

Faryar Shizad,

Assistant Secretary for Import Administration.

[FR Doc. 02–8706 Filed 4–9–02; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

International Trade Administration

[A–841–805]

Carbon and Certain Alloy Steel Wire Rod from Moldova: Notice of Preliminary Determination of Sales at Less Than Fair Value

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

SUMMARY: We preliminarily determine that carbon and certain alloy steel wire rod (wire rod) from Moldova is being, or is likely to be, sold in the United States at less than fair value (LFTV), as provided in section 733 of the Tariff Act of 1930, as amended. The estimated margin is shown in the ''Suspension of Liquidation'' section of this notice.

DATES: April 10, 2002.

FOR FURTHER INFORMATION CONTACT: Thomas Gilgunn or Scott Lindsay, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230; telephone: (202) 482–4236 or (202) 482–0780, respectively.

SUPPLEMENTARY INFORMATION:

The Applicable Statute

Unless otherwise indicated, all citations to the Tariff Act of 1930, as amended (''the Act''). In addition, unless otherwise indicated, all citations to the Department of Commerce (''the Department'') regulations are to the regulations at 19 CFR Part 351 (2001).

Period of Investigation

The period of investigation (POI) is January 1, 2001 through June 30, 2001.

Scope of Investigation

The merchandise covered by these investigations is certain hot-rolled products of carbon steel and alloy steel, in coils, of approximately round cross section, 5.00 mm or more, but less than 19.00 mm, in solid cross-sectional diameter.

Specifically excluded are steel products possessing the above-noted physical characteristics and meeting the Harmonized Tariff Schedule of the United States (HTSUS) definitions for (a) stainless steel; (b) tool steel; (c) high nickel steel; (d) ball bearing steel; and (e) concrete reinforcing bars and rods. Also excluded are (f) free machining steel products (*i.e.*, products that contain by weight one or more of the following elements: 0.03 percent or more of lead, 0.05 percent or more of bismuth, 0.08 percent or more of sulfur, more than 0.04 percent of phosphorus, more than 0.05 percent of selenium, or more than 0.01 percent of tellurium).

Also excluded from the scope are 1080 grade tire cord quality wire rod and 1080 grade tire bead quality wire rod. This grade 1080 tire cord quality rod is defined as: (i) grade 1080 tire cord quality wire rod measuring 5.0 mm or more but not more than 6.0 mm in cross-sectional diameter; (ii) with an average partial decarburization of no more than 70 microns in depth (maximum individual 200 microns); (iii) having no inclusions greater than 20 microns; (iv) having a carbon segregation per heat average of 3.0 or better using European Method NFA 04–114; (v) having a surface quality with no surface defects of a length greater than 0.15 mm; (vi) capable of being drawn to a diameter of 0.30 mm or less with 3 or fewer breaks per ton, and (vii) containing by weight the following elements in the proportions shown: (1) 0.78 percent or more of carbon, (2) less than 0.01 percent of aluminum, (3) 0.040 percent or less, in the aggregate, of phosphorus and sulfur, (4) 0.006 percent or less of nitrogen, and (5) not more than 0.15 percent, in the aggregate, of copper, nickel and chromium.

This grade 1080 tire bead quality rod is defined as: (i) grade 1080 tire bead quality wire rod measuring 5.5 mm or more but not more than 7.0 mm in cross-sectional diameter; (ii) with an average partial decarburization of no more than 70 microns in depth (maximum individual 200 microns); (iii) having no inclusions greater than 20 microns; (iv) having a carbon segregation per heat average of 3.0 or better using European Method NFA 04–114; (v) having a surface quality with no surface defects of a length greater than 0.2 mm; (vi) capable of being drawn to a diameter of 0.78 mm or larger with 0.5 or fewer breaks per ton; and (vii) containing by weight the following elements in the proportions shown: (1) 0.78 percent or more of carbon, (2) less than 0.01 percent of soluble aluminum, (3) 0.040 percent or less, in the aggregate, of phosphorus and sulfur, (4) 0.008 percent or less of nitrogen, and (5) either not more than 0.15 percent, in the aggregate, of copper, nickel and chromium (if chromium is not specified), or not more than 0.10 percent in the aggregate of copper and nickel and a chromium content of 0.24 to 0.30 percent (if chromium is specified).

The designation of the products as ''tire cord quality'' or ''tire bead quality'' indicates the acceptability of the product for use in the production of tire cord, tire bead, or wire for use in other rubber reinforcement applications such as hose wire. These quality designations are presumed to indicate that these products are being used in tire cord, tire bead, and other rubber reinforcement applications, and such merchandise intended for the tire cord, tire bead, or other rubber reinforcement applications is not included in the scope. However, should petitioners or other interested parties provide a reasonable basis to believe or suspect that there exists a pattern of importation of such products for other than those applications, end-use certification for the importation of such products may be required. Under such circumstances, only the importers of record would normally be required to certify the end use of the imported merchandise.

All products meeting the physical description of subject merchandise that are not specifically excluded are included in this scope.

The products under investigation are currently classifiable under subheadings 7213.91.3010, 7213.91.3090, 7213.91.4510, 7213.91.4590, 7213.91.6010, 7213.91.6090, 7213.99.0031, 7213.99.0038, 7213.99.0090, 7227.20.0010, 7227.20.0020, 7227.20.0090, 7227.20.0095, 7227.90.6051, 7227.90.6053, 7227.90.6058, and 7227.90.6059 of the HTSUS. Although the HTSUS subheadings are provided for convenience and customs purposes, the written description of the scope of this proceeding is dispositive.

See ''Carbon and Certain Alloy Steel Wire Rod: Requests for exclusion of various tire cord quality wire rod and tire bead quality wire rod products from the scope of antidumping duty (Brazil, Canada, Egypt, Germany, Indonesia, Mexico, Moldova, South Africa, Trinidad and Tobago, Ukraine, and Venezuela) and countervailing duty (Brazil, Canada, Germany, Trinidad and Tobago, and Turkey) investigations.''

Case History

On September 24, 2002, the Department initiated antidumping investigations of wire rod from Brazil, Canada, Egypt, Germany, Indonesia, Mexico, Moldova, South Africa, Trinidad and Tobago, Ukraine, and Venezuela. (*See Notice of Initiation of Antidumping Duty Investigations: Carbon and Certain Alloy Steel Wire Rod From Brazil, Canada, Egypt, Germany, Indonesia, Mexico, Moldova, South Africa, Trinidad and Tobago, Ukraine, and Venezuela*, 66 FR 50164 (October 2, 2001) (''*Notice of Initiation*'')). The petitioners in this investigation are Co-Steel Raritan, Inc., GS Industries, Keystone Consolidated Industries, Inc., and North Star Steel Texas, Inc. (''petitioners''). Since the initiation of these investigations, the following events have occurred.

On October 9, 2001, petitioners requested that the scope of the investigation be amended to exclude high carbon, high tensile 1080 grade tire cord and tire bead quality wire rod actually used in the production of tire cord and bead, as defined by specific dimensional characteristics and specifications. On November 28, 2001, the five largest U.S. tire manufacturers and the industry trade association, the Rubber Manufacturers Association, submitted a letter to the Department in response to petitioners' October 9, 2001, submission regarding the exclusion of certain 1080 grade tire cord and tire bead wire rod used in the production of tire cord and bead. Additionally, the tire manufacturers requested clarification from the Department if 1090 grade is included in petitioners' October 9, 2001, scope exclusion request. The tire manufacturers requested an exclusion from the scope of this investigation for 1070 grade wire rod and related grades, citing a lack of domestic production capacity to meet the requirements of the tire industry. On November 28, 2001, petitioners further clarified and modified their October 9, 2001 amendment of the scope of the petition. Finally, on January 21, 2002, Tokusen U.S.A., Inc. submitted a request that grade 1070 tire cord wire rod, and tire cord wire rod more generally, be excluded from the scope of the antidumping duty and countervailing duty investigations. The Department's analysis of scope issues and exclusion requests is discussed in the *Scope Memo.*

On October 15, 2001, the United States International Trade Commission

(USITC) notified the Department of its affirmative preliminary injury determination on imports of subject merchandise from Brazil, Canada, Germany, Indonesia, Mexico, Moldova, Trinidad and Tobago, and Ukraine. On October 29, 2001, the USITC published its preliminary determination stating that there is a reasonable indication that an industry in the United States is materially injured by reason of imports of the subject merchandise from Brazil, Canada, Germany, Indonesia, Mexico, Moldova, Trinidad and Tobago, and Ukraine. *See Carbon and Certain Alloy Steel Wire Rod From Brazil, Canada, Egypt, Germany, Indonesia, Mexico, Moldova, South Africa, Trinidad and Tobago, Turkey, Ukraine, and Venezuela*. 66 FR 54539 (October 29, 2001).

The Department issued a letter on October 16, 2001 to interested parties in all of the concurrent wire rod antidumping investigations, providing an opportunity to comment on the Department's proposed model match characteristics and hierarchy. Petitioners submitted comments on October 24, 2001. The Department also received comments on model matching from respondents Hysla S.A. de C.V. (Mexico), Ivaco, Inc,. and Ispat Sidbec Inc. (Canada).

On January 17, 2002, petitioners requested that the Department extend the deadline for issuance of the preliminary determinations by 30 days. On January 28, 2002, the Department published in the **Federal Register** the notice postponing the preliminary determinations to March 13, 2002 (*see Notice of Postponement of Preliminary Antidumping Duty Determinations: Carbon and Certain Alloy Steel Wire Rod From Brazil, Canada, Germany, Indonesia, Mexico, Moldova, Trinidad and Tobago, and Ukraine*, (67 FR 3877). On March 4, 2002, petitioners submitted a letter to the Department requesting the Department to extend the deadline for issuance of the preliminary determinations by an additional 20 days. The Department published in the Federal Register the notice postponing the preliminary determinations an additional 20 days until April 2, 2002 (*see Notice of Postponement of Preliminary Antidumping Duty Determinations: Carbon and Certain Alloy Steel Wire Rod From Brazil, Canada, Germany, Indonesia, Mexico, Moldova, Trinidad and Tobago, and Ukraine*, 67 FR 11674(March 15, 2002).

With respect to the investigation involving Moldova, the following events have occurred. On November 2, 2001, the Department issued a letter to the Embassy of Moldova in Washington, D.C. (Moldovan Embassy), requesting quantity and value information for all Moldovan producers/exporters who manufactured or exported subject merchandise to the United States during the POI. The Department requested that the Moldovan Embassy forward this request to all Moldovan producers and exporters of wire rod that was sold to the United States during the period of investigation (''POI''). On November 27, 2001, the Moldovan Embassy submitted a letter confirming that the Government of the Republic of Moldova (GORM) had distributed the ''questionnaire to all Moldovan companies who manufacture and export the wire rod to the United States'' and asking for an extension of the deadline for a response to the questionnaire. On December 3, 2001, Department officials telephoned the Moldovan Embassy to ascertain how many Moldovan companies manufactured and exported wire rod to the United States during the POI and to inform the GORM that the Department could not grant any extension of the deadline for responses until the GORM notified the Department of names of the companies requesting extensions (*see* Memorandum from the Team to the File regarding ''Carbon and Certain Alloy Steel Wire Rod from Moldova,'' dated December 3, 2001 on file in the Central Records Unit, Room B099 of the Department of Commerce (CRU)). The GORM has not identified any wire rod producers or exporters other than Moldova Steel Works (MSW).

On November 2, 2001, the Department issued an antidumping questionnaire to MSW, the only Moldovan producer/exporter named in the petition. On November 8, 2001, the Department issued minor revisions to the questionnaire. (*See* ''Memorandum to the File,'' from Scott Lindsay through Dana Mermelstein, dated November 8, 2001, on file in the CRU.)

On November 28, 2001, the Department invited interested parties to comment on surrogate country selection and to provide publicly available information for valuing the factors of production. We received comments regarding surrogate country selection from MSW and the petitioners on December 4, 2001. Petitioners submitted surrogate value information on January 11, 2002 and March 19, 2002.

On November 30, 2001 and December 27, 2001, respectively, the Department received MSW's section A questionnaire response and sections C and D responses. The Department issued supplemental questionnaires on December 20, 2001, January 25, 2002, and February 7, 2002. MSW submitted supplemental questionnaire responses on January 16, 2002, February 21, 2002, and March 4, 2002. As requested by MSW, the Department granted several extensions of deadlines for filing questionnaire responses. Petitioners submitted comments on MSW's questionnaire responses on December 10, 2001, January 23, 2002, March 4, 2002, and March 19, 2002.

On November 14, 2001, MSW submitted a request for, and information in support of, graduation to market economy status for Moldova, effective January 1, 2001. On November 30, 2001, MSW requested that the Department apply market-economy methodology in all antidumping proceedings initiated against Moldova on or after January 1, 2001. On December 6, 2001, petitioners submitted comments regarding the request for market economy graduation. On December 13, 2001, MSW submitted a letter from the GORM requesting that the Department revoke Moldova's non-market-economy (NME) status. On December 21, 2001, MSW submitted a letter reiterating its view that the Department should graduate Moldova to market economy status and issue a market-economy questionnaire. Although the Department did not issue a market-economy questionnaire to MSW, MSW filed its market economy questionnaire responses on December 28, 2001.

On December 21, 2001, the GORM clarified its request for revocation of NME status. On January 9, 2002, the GORM further clarified its request for revocation of NME status. These two letters were placed on the record by the Department on January 14, 2002. *See* ''Memorandum regarding Telephone Conversation with Victor Chirella from the Embassy of Moldova,'' dated January 14, 2002. On January 15, 2002, Department officials met with representatives from the Moldovan Embassy to discuss the status of Moldova's market economy request (*see* ''Memorandum to the File regarding Ex-Parte Meeting: Antidumping Duty Investigation of Carbon and Certain Alloy Steel Wire Rod from Moldova,'' dated January 25, 2002). On January 16, 2001, petitioners commented on the GORM's December 21, 2001, and January 15, 2002, letters. On January 29, 2002 and February 28, 2002, MSW commented on the GORM's letters and urged the Department to apply market economy methodology to MSW.

On February 5, 2002, Department officials met with an official of the GORM's WTO Division to discuss procedural questions regarding graduation from NME status (*see* ''Memorandum regarding Meeting with Official from the Republic of Moldova

Ministry of Economy,'' dated February 6, 2002). On February 25, 2002, Department officials met with counsel to MSW to discuss MSW's request that the Department proceed with its NME revocation analysis as quickly as possible (*see* ''Memorandum regarding Ex-Parte Meeting on the Antidumping Investigation of Carbon Steel Wire Rod from Moldova,'' dated February 27, 2002.)

Critical Circumstances

On December 5, 2001, petitioners alleged that there that there was a reasonable basis to believe or suspect that critical circumstances exist with respect to imports of wire rod from Brazil, Germany, Mexico, Moldova, Turkey, and Ukraine. On December 21, 2001 the petitioners further alleged that there was a reasonable basis to believe or suspect that critical circumstances exist with respect to imports of wire rod from Trinidad and Tobago. On February 4, 2002, the Department preliminarily determined that critical circumstances exist with respect to wire rod from Moldova. *See Memorandum to Faryar Shirzad Re: Antidumping Duty Investigation of Carbon and Certain Alloy Steel Wire Rod from Moldova - Preliminary Affirmative Determination of Critical Circumstances* (February 4, 2002); *See also Carbon and Alloy Wire Rod from Germany, Mexico, Moldova, Trinidad and Tobago, and Ukraine: Notice of Preliminary Determination of Critical Circumstances*, 67 FR 6224 (February 11, 2002).

Non-Market-Economy Country Status

The Department has treated Moldova as a non-market-economy (NME) country in all past antidumping investigations. *See, e.g., Notice of Final Determination of Sales at Less Than Fair Value: Steel Reinforcing Bars from Moldova*, 66 FR 33525 (June 22, 2001). This NME designation remains in effect until it is revoked by the Department (*see* section 771(18)(C) of the Act). As noted above, MSW has requested revocation of Moldova's NME status. The Department is currently analyzing this request. For the purposes of this preliminary determination, we have continued to treat Moldova as an NME country.

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

Separate Rates

It is the Department's policy to assign all exporters of subject merchandise in an NME country a single rate, unless an exporter can demonstrate that it is sufficiently independent so as to be entitled to a separate rate. The Department's separate rates test is not concerned, in general, with macroeconomic/border-type controls (e.g., export licenses, quotas, and minimum export prices), particularly if these controls are imposed to prevent dumping. Rather, the test focuses on controls over export-related investment, pricing, and output decision-making process at the individual firm level. *See Notice of Final Determination of Sales at Less than Fair Value: Certain Cut-to-Length Carbon Steel Plate from Ukraine*, 62 FR 61754, 61757 (November 19, 1997); *Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, from the People's Republic of China: Final Results of Antidumping Duty Administrative Review*, 62 FR 61276, 61279 (November 17, 1997); and *Notice of Preliminary Determination of Sales at Less than Fair Value: Honey from the People's Republic of China*, 60 FR 14725, 14727 (March 20, 1995). To establish whether a firm is sufficiently independent to be entitled to a separate rate, the Department analyzes each exporting entity under the test established in the *Final Determination of Sales at Less Than Fair Value: Sparklers from the People's Republic of China*, 56 FR 20588 (May 6, 1991) (*Sparklers*), and amplified in *Final Determination of Sales at Less-Than-Fair-Value: Silicon Carbide from the People's Republic of China*, 59 FR 22585, 22587 (May 2, 1994) (*Silicon Carbide*). Under this test, the Department assigns separate rates in NME cases only if an exporter can affirmatively demonstrate the absence of both (1) *de jure* and (2) *de facto* governmental control over export activities. *See Silicon Carbide*, 59 FR at 22587, and *Final Determination of Sales at Less Than Fair Value: Furfuryl Alcohol from the People's Republic of China*, 60 FR 22544 (May 8, 1995).

MSW has submitted separate rates information in its section A responses, and has requested a separate, company-specific rate. In the context of analyzing this request, the Department has asked MSW to clarify its relationship with the GORM and the ''Transnistrian Moldovan Republic'' (TMR). In response to the Department's requests for information and documentation addressing the relationship between MSW and the GORM, MSW provided copies of legislative enactments and other supporting documentation discussing the relationship between MSW and the TMR. Further, MSW has stated that its business operations ''are governed only by legislation in the TMR, not Moldova.'' The national authority or country recognized by the United States is the Republic of Moldova, not the TMR. Thus, it is not possible to conduct the type of separate rates analysis envisioned in the practice as set forth in *Sparklers* and amplified in *Silicon Carbide* because the facts here do not permit an evaluation of MSW in the context of the laws of Moldova. As such, and as discussed in more detail below, we are unable to analyze MSW's claim for a separate rate; accordingly, for purposes of this preliminary determination, we cannot grant MSW a separate rate.

The Department considers the following *de jure* criteria in determining whether an individual company may be granted a separate rate: (1) an absence of restrictive stipulations associated with an individual exporter's business and export licenses; (2) any legislative enactments decentralizing control of companies; and (3) any other formal measures by the government decentralizing control of companies.

During the course of this investigation, the Department has repeatedly asked MSW to provide copies of GORM legislation or regulations (e.g., business licenses, export laws, business laws, export control lists, price control lists, etc.) which relate to its export operations and which address the three criteria listed above. While MSW did provide, in its November 14, 2001, request for NME revocation, copies of the GORM's constitution, labor laws, and investment laws, these documents do not address the issue of export operations or decentralized control of companies. In its November 30, 2001, January 16, 2002, and March 4, 2002 questionnaire responses, MSW indicated that all of its business operations, including its export operations, are conducted in accordance with the relevant legislation of the TMR, which is neither the principle government authority with which our analysis must be concerned, nor a ''country'' recognized by the United States. Indeed, as a member of the World Trade Organization and the United Nations, GORM, and not the TMR, is recognized by these international bodies as the sovereign authority in Moldova. Specifically, in response to a request for legislative enactments or other measures by the GORM centralizing or decentralizing control of MSW's export activities, MSW stated ''MSW's export activities

are governed only by legislation in [TMR], not Moldova'' (MSW's March 4, 2002 supplemental response at 15).

In general, in applying the separate rates test to companies operating in NME countries, the Department 's goal is to determine whether the company, on a de jure and de facto basis, operates outside of the control of the government of the country under investigation. In this investigation, that country is the Republic of Moldova, and its government is identified as the GORM. Therefore, the separate rates test requires us to examine whether MSW operates outside the control of the GORM. Because MSW has reported that its export activities are governed only by the legislation of the TMR, and has not provided any of the relevant legislation and other documentation as issued by the GORM, the facts on the record in this case do not permit the analysis required by our separate rates test.

Moldova-Wide Rate

For all NME cases, the Department has implemented a policy by which there is a rebuttable presumption that all exporters or producers comprise a single exporter under common government control, the ''NME entity.'' The Department assigns a single NME rate to the NME entity, unless an exporter can demonstrate eligibility for a separate rate. Information on the record of this investigation indicates that MSW was the only Moldovan producer and exporter to sell the subject merchandise to the United States during the POI. Since the only Moldovan producer and exporter of the subject merchandise responded to the Department's questionnaire, and we have no reason to believe that there are other non-responding exporters/producers of the subject merchandise during the POI, we calculated a Moldova-wide rate based on the weighted- average margin determined for MSW. This Moldova-wide rate applies to all entries of subject merchandise.

Fair Value Comparisons

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

On March 19, 2002, in a letter to the Department, petitioners requested that the Department apply total adverse facts available to determine the dumping margin for MSW for the preliminary determination. In their letter, petitioners make the following allegations: 1) MSW's responses have been intentionally misleading in material respects; 2) MSW has refused to provide information concerning possible market economy inputs; and 3) MSW has refused to provide information concerning its parent company and other affiliates. Moreover, petitioners maintain that substantial record evidence demonstrates a pattern of uncooperative behavior warranting application of adverse facts available. The Department has examined MSW's submissions and data, and preliminarily finds that they are adequate for purposes of calculating a dumping margin.

In its responses, MSW has provided sufficient information upon which to base a preliminary analysis. While there appear to be some gaps in the record, such as incomplete information pertaining to affiliation, we do not find those gaps significant enough to render MSW's questionnaire responses unusable for our preliminary determination. Moreover, currently there is no indication on the record that MSW failed to cooperate to the best of its ability.

We disagree with petitioners concerning certain of their claims about MSW's refusal to provide the information as requested. For example, MSW did provide adequate information on its purchase of inputs from market economies to use in the preliminary determination. Although petitioners argue that it is insufficient because no translated invoices were provided to support the reported prices, we find that for the purposes of a preliminary determination, such invoices are not essential to our use of these reported prices. Before verification, the Department will seek clarification on certain issues, particularly on affiliation, and the Department will conduct a complete verification before reaching a final determination. However, for the purposes of this preliminary determination, we are relying on the information submitted by MSW to determine the export price and NV.

Export Price

For MSW, we used EP methodology for this preliminary determination in accordance with section 772(a) of the Act because the subject merchandise was sold directly to unaffiliated customers in the United States prior to importation, and constructed export price (''CEP'') methodology was not otherwise appropriate. We calculated EP based on FOB prices. Where appropriate, we made deductions from the starting price (gross unit price) for inland freight from the plant/warehouse to the port of export and domestic brokerage and handling. Because the domestic inland freight and brokerage were paid in a nonmarket economy currency, we based these charges on surrogate values from India. (*See* ''Normal Value'' section below for further discussion.)

We note that the petitioner has raised the issue of MSW's potential affiliation with its reported customers and has argued that MSW's sales should be treated as CEP sales. After an examination of the record and in accordance with Departmental practice, we have preliminarily treated MSW's sales as EP sales. However, we will continue to examine the nature of the relationship between MSW and its customers for the purposes of the final antidumping determination.

Date of Sale

Under our current practice, as codified in the Department's regulations at section 351.401(i), in identifying the date of sale of the subject merchandise, the Department will normally use the date of invoice, as recorded in the producer's records kept in the ordinary course of business. *See Certain Welded Carbon Steel Pipes and Tubes from Thailand: Final Results of Administrative Review*, 63 FR 55578, 55587 (October 16, 1998). However, in some instances, it may not be appropriate to rely on the date of invoice as the date of sale, because the evidence may indicate that the material terms of sale were established on some date other than invoice date. *See Antidumping Duties; Countervailing Duties: Preamble to the Department's Final Regulations* at 19 CFR Part 351, 62 FR 27296, 24349 (May 19, 1997). Thus, despite the general presumption that the invoice date constitutes the date of sale, the Department may determine that this is not an appropriate date of sale where the evidence of the respondent's selling practice points to a different date on which the material terms of sale were set.

MSW reported its U.S. sales based on the payment order date. The payment order date occurs before the date of the commercial invoice, and according to MSW is the proximate date on which all material terms of sale are set. In the investigation of concrete steel reinforcing bar from Moldova, the Department determined that the payment order serves the same function as a commercial sales invoice: it is used to notify the customer that payment is due; it is used to record monies due to

MSW; it serves as the basis for accounting for sales in MSW's records; and it is generally issued within a day of shipping the merchandise. *See Notice of Final Determination of Sales at Less Than Fair Value: Steel Concrete Reinforcing Bars from Moldova*, 66 FR 33525 (June 21, 2001) (Rebar from Moldova) and accompanying Decision Memorandum at Comment 6. Therefore, for purposes of the preliminary determination we are using payment order date as the date of sale.

Normal Value

1. Surrogate Country

Section 773(c)(4) of the Act requires the Department to value the NME producer's factors of production, to the extent possible, in one or more market economy countries that: (1) are at a level of economic development comparable to that of the NME, and (2) are significant producers of comparable merchandise. Regarding the first criterion, the Department has determined that Pakistan, India, Ghana, Bangladesh, and Nigeria are countries comparable to Moldova in terms of overall economic development (see memorandum from Jeff May, Director, Office of Policy, to Dana Mermelstein, Program Manager, AD/CVD Enforcement, Group III, Office 7 dated November 20, 2001 (''*Surrogate Country Memorandum*'')).

MSW has claimed that Indonesia is the most appropriate surrogate. Petitioners have claimed that India is the most appropriate surrogate and submitted publicly-available data showing Indian values. We note that MSW has argued that:1) India is not a significant producer of wire rod; and 2) Indonesia is at a level of economic development comparable to Moldova. However, Indonesia is not among the countries identified by the Department as comparable to Moldova, and MSW has not provided any information for the record to support its claim that we should depart from the countries identified in the *Surrogate Country Memorandum*. Petitioners have provided information for the record which indicates that there at least fourteen producers of wire rod in India. The record also shows that, as noted in the *Surrogate Country Memorandum*, India is economically comparable to Moldova. Moreover, there is sufficient publicly-available information on Indian values on the record of the instant case. Accordingly, we have calculated normal value using publicly available information from India to value MSW's factors of production, except as noted below.

In accordance with section 351.301(c)(3)(i) of the Department's regulations, for the final determination in an antidumping investigation, interested parties may submit publicly available information to value factors of production within 40 days after the date of publication of the preliminary determination.

2. Factors of Production

In accordance with section 773(c) of the Act, we calculated NV based on the factors of production reported by MSW using Indian values, except where noted below.

In selecting the surrogate values, we considered the quality, specificity, and contemporaneity of the data. For those values not contemporaneous with the POI, unless otherwise noted below, we adjusted for inflation using price indices published in the International Monetary Fund's *International Financial Statistics*. As appropriate, we adjusted input values to make them delivered prices. For factor values where we used Indian import statistics, we did not include data pertaining to imports from non-market economy countries. *See e.g., Notice of Final Results of the Antidumping Duty Administrative Review of Chrome-Plated Lug Nuts from the People's Republic of China*, 63 FR 53872 (October 7, 1998). We also did not include imports from Indonesia, Korea, and Thailand because these countries maintain non-specific export subsidies. *See Notice of Final Determination of Sales at Less Than Fair Value: Certain Automotive Replacement Glass Windshields From the People's Republic of China*,67 FR 6482 (February 12, 2002). For a detailed analysis of surrogate values, see Memorandum regarding ''Factors of Production Valuation for Preliminary Determination,'' dated April 2, 2002 (public version on file in the CRU).

Material Inputs: For those raw material inputs purchased from a market economy supplier and paid for in a convertible currency, we used the purchase price reported by MSW. For all other inputs that were not self-produced by MSW, we valued the material input by Harmonized Tariff Schedule (''HTS'') number, using cumulative *Monthly Statistics of Foreign Trade of India* or from other Indian sources.

Packing Materials: For all inputs, we valued the material input by HTS number, using cumulative Indian imports from the *Monthly Statistics of Foreign Trade of India*.

By-Products: Consistent with the Department's practice, we have not granted an offset for any of MSW's reported by-products since they either: 1) reentered the production process; or 2) were not sold during the POI. (*See Final Determination of Sales at Less Than Fair Value: Bulk Aspirin from the People's Republic of China*, 65 FR 33805 (May 25, 2000) and accompanying Decision Memorandum at Comment 13.)

Energy: For electricity, we used a value from the International Energy Agency Energy Prices and Taxes (First Quarter 2001). For natural gas, we used a value based on the value calculated in the ''Factors of Production Valuation for the Preliminary Determination: Antidumping Investigation of Steel Reinforcing Bar from Moldova,'' dated January 16, 2001. (*See Notice of Preliminary Determination of Sales at Less Than Fair Value: Steel Concrete Reinforcing Bars from Moldova*, 66 FR 8338, (January 30, 2001); as affirmed by *Notice of Final Determination of Sales at Less Than Fair Value: Steel Concrete Reinforcing Bars from Moldova*, 66 FR 33525 (June 21, 2001) (*Rebar from Moldova*).) For industrial water, we used the surrogate value based on the value cited in ''Factors of Production Valuation for the Preliminary Determination: Antidumping Investigation of Steel Wire Rope from the People's Republic of China,'' dated September 25, 2000. (*See Notice of Preliminary Determinations of Sales at Less Than Fair Value: Steel Wire Rope From India and the People's Republic of China; Notice of Preliminary Determination of Sales at Not Less Than Fair Value: Steel Wire Rope From Malaysia*, 65 FR 58736 (October 1, 2000); as affirmed by *Notice of Final Determinations of Sales at Less Than Fair Value: Steel Wire Rope From India and the People's Republic of China; Notice of Final Determination of Sales at Not Less Than Fair Value: Steel Wire Rope From Malaysia*, 66 FR 12759 (February 28, 2001).) For oxygen, nitrogen, and argon, we based the surrogate values on 1997 price information (adjusted for inflation) from Bhouka Gases Limited, an Indian manufacturer of industrial gases.

Direct, Indirect and Packing Labor: To value the labor input, we used Moldova's regression-based wage rate published by Import Administration on its website, http://ia.ita.doc.gov/. The source of the wage rate data on the Import Administration website is the 2000 Yearbook of Labour Statistics, published by the International Labour Office (''ILO'') (Geneva: 2000), Chapter 5B: Wages in Manufacturing.

Factory Overhead, Selling General & Administrative (''SG&A''), Interest and Profit: To value depreciation, SG&A, interest, and profit, we used data from

the 2001 financial statements of TATA Iron and Steel Company Limited (TATA), an Indian steel company which produces the wire rod.

Inland Freight and domestic brokerage : For all instances in which respondent reported domestic inland freight (rail) and domestic brokerage, we used surrogate values based on the values cited in Rebar from Moldova.

Verification

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

Suspension of Liquidation

In accordance with section 733(d)(2) of the Act, we are directing the Customs Service to suspend liquidation of all imports of subject merchandise from Moldova entered, or withdrawn from warehouse, for consumption on or after the date of publication of this notice in the **Federal Register**. In addition, based on our preliminary determination that critical circumstances exist with respect to imports of wire rod from Moldova (67 FR 6224), we are directing Customs to suspend liquidation of any unliquidated entries of subject merchandise entered, or withdrawn from warehouse, for consumption on or after the date which is 90 days prior to the date on which this notice is published in the **Federal Register**. We will instruct the Customs Service to require a cash deposit or the posting of a bond equal to the weighted-average amount by which the NV exceeds the EP as indicated in the chart below. The suspension of liquidation will remain in effect until further notice.

Exporter/manufacturer	Weighted-average margin percentage
Moldova-wide rate	369.10

The Moldova-wide rate applies to all entries of the subject merchandise.

ITC Notification

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

Public Comment

Unless otherwise informed by the Department, case briefs in six copies must be submitted to the Assistant Secretary for Import Administration no later than 50 days after the date of publication of this notice, and rebuttal briefs no later than 55 days after the date of publication of this notice. We request that a list of authorities used and an executive summary of issues accompany any briefs submitted to the Department. Such summary should be limited to five pages total, including footnotes. In accordance with section 774 of the Act, we will hold a public hearing, if requested, to afford interested parties an opportunity to comment on arguments raised in case or rebuttal briefs. If a hearing is requested, the Department will notify parties of the date, time, and location of the hearing. Parties should confirm by telephone the time, date, and place of the hearing 48 hours before the scheduled time.

Interested parties who wish to request a hearing, or to participate if one is requested, must submit a written request to the Assistant Secretary for Import Administration, U.S. Department of Commerce, Room 1870, within 30 days of the publication of this notice. Requests should contain: (1) the party's name, address, and telephone number; (2) the number of participants; and (3) a list of the issues to be discussed. Oral presentations will be limited to issues raised in the briefs. If this investigation proceeds normally, we will make our final determination not later than 75 days after the date of this preliminary determination.

This determination is issued and published in accordance with sections 733(d) and 777(i)(1) of the Act.

Dated: April 2, 2002

Faryar Shirzad,

Assistant Secretaryfor Import Administration.

[FR Doc. 02–8707 Filed 4–9–02; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

International Trade Administration

Application for Duty-Free Entry of Scientific Instrument

Pursuant to Section 6(c) of the Educational, Scientific and Cultural Materials Importation Act of 1966 (Pub. L. 89–651; 80 Stat. 897; 15 CFR part 301), we invite comments on the question of whether an instrument of equivalent scientific value, for the purposes for which the instrument shown below is intended to be used, is being manufactured in the United States.

Comments must comply with 15 CFR 301.5(a)(3) and (4) of the regulations and be filed within 20 days with the Statutory Import Programs Staff, U.S. Department of Commerce, Washington, DC 20230. Applications may be examined between 8:30 a.m. and 5 p.m. in Suite 4100W, U.S. Department of Commerce, Franklin Court Building, 1099 14th Street, NW., Washington, DC.

Docket Number: 02–008. *Applicant:* Department of Health and Human Services, Centers for Disease Control and Prevention, Infectious Disease Pathology Activity, 1600 Clifton Road, NE., Mailstop G–32, Atlanta, GA 30333. *Instrument:* Electron Microscope, Model Tecnai 12 TWIN. *Manufacturer:* FEI Company, The Netherlands. *Intended Use:* The instrument is intended to be used to study material of a biological nature in order to investigate pathogens, viruses, bacteria, fungi and parasites within a variety of specimens including human and animal tissue specimens, cellular extracts, tissue-culture cells, viral constructs, cell culture supernatant fluid preparations and other biological specimens. The objectives in the course of scientific investigations are to determine the cause of illness, achieve a diagnosis, and develop rapid diagnostic capacity and study the pathogens of the disease for the detection of specific bioterrorism microorganisms. Application accepted by Commissioner of Customs: March 13, 2002.

Gerald A. Zerdy,

Program Manager, Statutory Import Programs Staff.

[FR Doc. 02–8710 Filed 4–9–02; 8:45 am]

BILLING CODE 3510–05–M

DEPARTMENT OF COMMERCE

International Trade Administration

Emory University; Notice of Decision on Application for Duty-Free Entry of Scientific Instrument

This decision is made pursuant to Section 6(c) of the Educational, Scientific, and Cultural Materials Importation Act of 1966 (Pub. L. 89–651, 80 Stat. 897; 15 CFR part 301). Related records can be viewed between 8:30 a.m. and 5 p.m. in Suite 4100W, U.S. Department of Commerce, Franklin Court Building, 1099 14th Street, NW, Washington, DC.

Docket Number: 01–026. *Applicant:* Emory University, Atlanta, GA 30322. *Instrument:* High Speed CCD Camera System Set, Model MiCAM 001. *Manufacturer:* SciMedia Ltd., Japan. *Intended Use:* See notice at 67 FR 8938, February 27, 2002.

Comments: None received. *Decision:* Approved. No instrument of equivalent scientific value to the foreign

instrument, for such purposes as it is intended to be used, is being manufactured in the United States. Reasons: The foreign instrument incorporates a digital camera with a sophisticated software package specifically designed and integrated to monitor neuronal activities. The National Institutes of Health advises in its memorandum of December 18, 2001 that (1) this capability is pertinent to the applicant's intended purpose and (2) it knows of no domestic instrument or apparatus of equivalent scientific value to the foreign instrument for the applicant's intended use.

We know of no other instrument or apparatus of equivalent scientific value to the foreign instrument which is being manufactured in the United States.

Gerald A. Zerdy,

Program Manager, Statutory Import Programs Staff.

[FR Doc. 02–8709 Filed 4–9–02; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 040202B]

Endangered and Threatened Species; Take of Anadromous Fish

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

ACTION: Notice of application for Incidental Take Permit with a Habitat Conservation Plan and availability for public comment; Notice of Availability of Draft Environmental Assessment.

SUMMARY: Notice is hereby given that NMFS has received an application for an incidental take permit (Permit) from the Grants Pass Irrigation District (GPID) pursuant to the Endangered Species Act (ESA). As required by the ESA, GPID has also prepared a habitat conservation plan (Plan) designed to minimize and mitigate any such take of endangered and threatened species. The Permit application is related to the operation of Savage Rapids Dam in Josephine and Jackson Counties, in the State of Oregon. The dam is owned and operated by GPID for the sole purpose of providing irrigation water to its customers. The effective dates of the permit will be from May 7, 2002, until November 1, 2005. The permit may be extended for 1 year, until November 1, 2006, in accordance with the provisions of the Consent Decree in *United States* v. *Grants Pass Irrigation District*, Civil No. 98-3034-HO (D. Or., August 27, 2001). The Permit application includes the Plan. The Permit application is for the incidental take of ESA listed salmonids associated with otherwise lawful activities. NMFS also announces the availability of a draft Environmental Assessment (EA) for proposed issuance of the Permit. NMFS is furnishing this notification in order to allow other agencies and the public an opportunity to review and comment on these documents. All comments received will become part of the public record and will be available for review pursuant to the ESA.

DATES: Written comments from interested parties on the permit application, the Plan and the draft EA must be received at the appropriate address or fax number (see **ADDRESSES**) no later than 5 p.m. Pacific Standard Time on May 10, 2002.

ADDRESSES: See **SUPPLEMENTARY INFORMATION** for specific addresses where copies of the Permit application, plan, and draft EA can be viewed. Comments on the permit application, Plan or draft EA and requests for information should be directed to Frank Bird, Project Biologist, Habitat Conservation Division, National Marine Fisheries Service, 525 NE Oregon Street, Suite 210, Portland, OR 97232–2778. Comments may also be sent via fax to 541-957-3386. Comments will not be accepted if submitted via e-mail or the internet. Requests for copies of the permit application, Plan and draft EA should be directed to the Habitat Conservation Division, NMFS Roseburg Office, 2900 Stewart Parkway N.W., Roseburg, OR 97470 or by calling NMFS at (503) 231–2377. The documents are also available electronically on the Internet at http://www.nwr.noaa.gov/1habcon/habweb/hcp.htm. Comments received will also be available for public inspection, by appointment, during normal business hours by calling (503) 231–2377 or (541) 957–3383.

FOR FURTHER INFORMATION CONTACT: Frank Bird, Roseburg, OR (ph: 541/957–3383, fax: 541/957–3386, e-mail: Frank.Bird@noaa.gov).

SUPPLEMENTARY INFORMATION: Address for Documents and for Comments Regarding This Action Copies are available for viewing, or partial or complete duplication, at the following libraries: Medford Headquarters Library, Headquarters Regional Services, 413 West Main Street, Medford, OR 97501, Tel 541–774-8689; Rogue River Regional Library, West County Regional Services, 412 East Main Street, Rogue River, Oregon 97537, Tel 541–582–1714; Josephine County Library Services, Main Library, 200 N.W. 'C' Street, Grants Pass, OR 97526, Tel (541) 474–5480.

Authority

Section 9 of the ESA and Federal regulations prohibit the taking of a species listed as endangered or threatened. The term ''take'' is defined under the ESA to mean harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect, or to attempt to engage in any such conduct. NMFS may issue permits under section 10(a)(1)(B) of the ESA, under limited circumstances, to take listed species incidental to, and not the purpose of, otherwise lawful activities. Authority to take listed species is subject to conditions set forth in the permits. Permits are issued in accordance with and are subject to the ESA and NMFS regulations governing threatened and endangered species (50 CFR 222.307).

Species Covered in This Notice

The following species are covered in this Notice:

Southern Oregon/Northern California coho salmon (*Oncorhynchus kisutch*); as well as one proposed species (Klamath Mountain Province steelhead) under specific provisions of the Permit, should this species be listed in the future.

Background

GPID currently provides irrigation water to approximately 8,000 customers who own a total of 7,700 acres in Jackson and Josephine counties. Savage Rapids Dam provides GPID with its primary water supply. Water is delivered through 160 miles (257 Kilometers) of canals in the greater Grants Pass, Oregon area. The water provided by GPID is not treated and, thus, is not used for human consumption. Of the 8,000 customers, about 300 own more than 5 acres and the remaining 7,700 own less than 5 acres. The customers with more than 5 acres represent a variety of agricultural interests as well as some industrial interests. Of the 7,700 customers owning less than 5 acres, most use GPID water for small hayfields and/or personal vegetable gardens.

Fish passage has been an issue at Savage Rapids Dam since the dam was constructed in 1921 by GPID. Currently, there are fish ladders located at both the north and south sides of the dam to provide for upstream and downstream fish migration. The north fish ladder is a rectangular, concrete structure containing pools 8 feet (2.4 meters) long and 9 feet (2.7 meters) wide. The south fish ladder is a concrete structure approximately 100 feet (30.5 meters)

long and divided into 10 pools. Extending from the bottom of the south ladder to the river are a series of fish resting pools and attraction channels.

GPID has agreed to remove the dam and replace it with electric powered pumping facilities to provide water to its customers. GPID will operate the dam with the conservation measures developed in previous years during the interim period of May 7, 2002, until November 1, 2005. The permit may be extended for 1 year, until November 1, 2006, in accordance with the provisions of the Consent Decree in *United States* v. *Grants Pass Irrigation District*, Civil No. 98–3034-HO (D. Or., August 27, 2001).

Habitat Conservation Plan

GPID proposes to operate the dam consistent with conservation measures developed during 1998-2000 and as set forth in its permit application and the Plan to reduce take, with further operational modifications based on the timing of fish runs and additional alterations which may be provided from annual operations. From May 7, 2002, until November 1, 2005 (or November 1, 2006), GPID will continue to pursue Federal authorization and funding for dam removal, and will install and operate a replacement pumping system. At the end of or during this interim period, a new incidental take permit application with a new habitat conservation plan, and National Environmental Policy Act (NEPA) review will be prepared to cover the long-term operation of the replacement pumping facility.

The permit and Plan for the interim operation period would allow GPID to divert 150 cubic feet per second (cfs) of water from the Rogue River into GPID's distribution system during the inclusive irrigation seasons, from April to October each year. Activities associated with the north turbine/pump intake, south gravity intake and the fish ladders have the potential to affect listed species subject to protection under the ESA. The Plan for GPID's operation of Savage Rapids Dam, and the activities proposed for inclusion in this permit include the following: All aspects of operating the dam including opening and closing the radial gates, installation and removal of the stoplogs, operation of the fish ladders, operation of the turbine and the screens, operation of the fish sampling trap, and operation of the diversion facilities. The Plan and the permit application also cover monitoring activities, related scientific experiments in the Plan area and sources of adequate funding for the Plan.

Environmental Assessment

The EA package contains a draft EA and Finding of No Significant Impact (FONSI). Four Federal action alternatives have been analyzed in the draft EA: (1) The no action alternative, (2) the proposed action, issue an incidental take permit from May 7, 2002 until November 1, 2005 (or November 1, 2006 with a 1 year extension) with conditions included in the Plan, (3) issue an incidental take permit for 1 year with conditions included in the Plan with shut down triggers similar to alternative 2; and (4) issue an incidental take permit for 99 years with a habitat conservation plan that would include replacing the north irrigation screens in compliance with NMFS screen criteria, and no removal of Savage Rapids Dam or its water-powered turbine pumps.

This notice is provided pursuant to section 10(a) of the ESA. NMFS will evaluate the application, associated documents, and comments submitted thereon to determine whether the application meets the requirements of section 10(a) of the ESA and NEPA regulations. If it is determined that the requirements are met, a permit will be issued for the incidental takes of listed species under the jurisdiction of NMFS. The final NEPA and permit determinations will not be completed until after the end of the 30-day comment period and NMFS will fully consider all public comments received during the comment period.

Dated: April 5, 2002.

Susan Pultz,

Acting Chief, Endangered Species Division, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 02–8693 Filed 4–9–02; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 030402C]

Small Takes of Marine Mammals Incidental to Specified Activities; Seismic Retrofit Project in Humboldt County, CA

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

ACTION: Notice of receipt of application and proposed incidental harassment authorization; request for comments.

SUMMARY: NMFS has received a request from the California Department of Transportation (CALTRANS) for an authorization to take small numbers of marine mammals by harassment incidental to a project to seismically retrofit three bridges at Humboldt Bay in Humboldt County, CA. Under the Marine Mammal Protection Act (MMPA), NMFS is requesting comments on its proposal to authorize CALTRANS to incidentally take, by harassment, small numbers of Pacific harbor seals in Humboldt Bay for a 1–year period.

DATES: Comments and information on CALTRANS' request and NMFS' proposal must be received no later than May 10, 2002.

ADDRESSES: Comments on the request and proposed authorization should be addressed to Donna Wieting, Chief, Marine Mammal Conservation Division, Office of Protected Resources, 1315 East-West Highway, Silver Spring, MD 20910–3282. Copies of CALTRANS' request may be obtained by writing to this address or by telephoning one of the contacts listed below. Comments will not be accepted if submitted via e-mail or the Internet.

FOR FURTHER INFORMATION CONTACT: Simona Perry Roberts, Office of Protected Resources, (301) 713–2322 ext. 106 or Christina Fahy, Southwest Regional Office, (562) 980–4023.

SUPPLEMENTARY INFORMATION:

Background

Sections 101(a)(5)(A) and (D) of the MMPA (16 U.S.C. 1361 *et seq.*) direct the Secretary of Commerce to allow, upon request, the incidental, but not intentional, taking of small numbers of marine mammals by U.S. citizens who engage in a specified activity (other than commercial fishing) within a specified geographical region if certain findings are made and either regulations are issued or, if the taking is limited to harassment, notice of a proposed authorization is provided to the public for review.

Permission may be granted if NMFS finds that the taking will have no more than a negligible impact on the species or stock(s) and will not have an unmitigable adverse impact on the availability of the species or stock(s) for subsistence uses and that the permissible methods of taking and requirements pertaining to the monitoring and reporting of such taking are set forth. NMFS has defined ''negligible impact'' in 50 CFR 216.103 as:

> ...an impact resulting from the specified activity that cannot be reasonably expected to, and is not reasonably likely to, adversely affect the species or stock through effects on annual rates of recruitment or survival.

Subsection 101(a)(5)(D) of the MMPA established an expedited process by which citizens of the United States can apply for an authorization to incidentally take small numbers of marine mammals by harassment. The MMPA defines ''harassment'' as:

...any act of pursuit, torment, or annoyance which (i) has the potential to injure a marine mammal or marine mammal stock in the wild [''Level A harassment'']; or (ii) has the potential to disturb a marine mammal or marine mammal stock in the wild by causing disruption of behavioral patterns, including, but not limited to, migration, breathing, nursing, breeding, feeding, or sheltering [''Level B harassment''].

Subsection 101(a)(5)(D) establishes a 45–day time limit for NMFS review of an application followed by a 30–day public notice and comment period on any proposed authorizations for the incidental harassment of small numbers of marine mammals. Within 45 days of the close of the comment period, NMFS must either issue or deny issuance of the authorization.

Summary of Request

On January 28, 2002, NMFS received a request from CALTRANS for an IHA to incidentally take, by harassment, small numbers of Pacific harbor seals (*Phoca vitulina richardsii*) during a project to seismically retrofit three bridges in Humboldt County, CA.

Project Description

The purpose of the project is to reduce the safety hazard caused by probable seismic activity through reinforcement of bridge footings and encasing of pier columns. Work will be on three bridges spanning Humboldt Bay, the Eureka Channel Bridge (ECB), Middle Channel Bridge (MCB), and the Samoa Channel Bridge (SCB). In general, work on the three bridges will include: driving 0.91 meter (m) (36 inch, in) and 1.52 m (60 in) diameter cast-in-steel shell (CISS) piles; placement of reinforced concrete casings at each pier column; concrete topping of each pier; construction and removal of temporary trestles; installation and removal of cofferdams; placement and removal of silt curtains; and, movements of shallow draft barges and tender boats. Because work will be simultaneous at all three bridges there is a high likelihood that more than one pile driving episode will be occurring in the Bay at any given time. CALTRANS estimates work will last approximately 560 days on an 8–hour a day, 5 day a week work schedule. The project start date is scheduled for summer of 2002 and the entire project will end in the winter of 2004. The proposed IHA will only authorize the incidental take of marine mammals for a 1–year period.

Marine Mammal Species Potentially Impacted

Pacific harbor seals are the most abundant marine mammal species found within Humboldt Bay. Seals are regularly seen within the three channels: Eureka, Middle, and Samoa. Their average abundance increases in the winter and spring (Andrea Gemmer, unpublished data, Humboldt State University, 2001). Two main haul-out locations have been identified in North Humboldt Bay, or Arcata Bay, closest to the project area. These haul-outs are Daby Island (402 m or a 1/4 mile (mi) North of ECB) and Mad River Slough (3.2 kilometers (km) or 2 mi North of SCB). Other recognized haul-outs in and near the Bay include: Indian Island, mud flats surrounding the terminal ends of Arcata Channel, Hookton Channel (12.9 km (8 mi) south of the project), Eel River (19.3 km (12 mi) south of the project), and the mouth of Mad River (12.9 km (8 mi) north of the project).

Although it is unlikely that any other species of marine mammal will be impacted by this CALTRANS project, California sea lions (*Zalophus californianus*) are present near the channel entrance and are occasionally seen within the lower Bay and there is a low probability that they will be present near the proposed project. However, no known California sea lion haul-out sites exist in the upper Bay, islands, or in the Eureka, Middle, or Samoa channels.

General information on Pacific harbor seals, California sea lions and other marine mammal species found in California waters can be found in Forney *et al.* (2000) and Barlow *et al.*(1998).

Potential Impact on Marine Mammals and their Habitat

At this time, NMFS considers that underwater sound pressure levels (SPLs) above 190 dB re 1 micro-Pa RMS (impulse) could cause temporary hearing impairment (Level B harassment) in harbor seals and sea lions. The effects of elevated SPLs on marine mammals may include avoidance of an area, tissue rupture, hearing loss, disruption of echolocation, masking, habitat abandonment, aggression, pup abandonment, and annoyance. During pile driving, the level of sound produced from the impact hammering may be affected by the size and maximum operating energy level of the hammer, the size and length of the piles, soil conditions, water depth, bathymetry, salinity, and temperature. For the Humboldt Bay project described here, pile installation will occur from shallow (less than 1 m, 3.28 feet (ft)) to deep (16 m, 52.5 ft) water, with several different types and sizes of piles. Low frequency sounds, such as those that dominate in pile driving, tend to attenuate more rapidly in relatively shallow water (i.e., 6–10 m, 19.7–32.8 ft) than in deeper waters. Although underwater SPL measurements for pile driving in Humboldt Bay have not been collected and are difficult to estimate, marine mammal reactions to previous pile driving activities in other geographic locations (i.e., San Francisco Bay) have led CALTRANS to a determination that the pile driving outlined in the project description has the potential to harass Pacific harbor seals that may be swimming, foraging, or resting in the area where activities will be taking place. In discussions with Structures Engineering Staff, CALTRANS determined that the type and size of pile driver that would be used on the Humboldt Bay retrofit project would be comparable to a Delmag Model D80–23 with a maximum energy per blow of 635 kiloJoules (kJ) (212,420 foot pounds (ft.lbs.)) and a minimum energy per blow of 377 kJ (126,192 ft.lbs.) (CALTRANS, 2002). The impact of the pile driver on the piling will result in substantial noise energy propagation within the water column. Although there will be attenuation of the noise energy due to substrate, currents, other pre-existing piles and other factors, the attenuation level is impossible to accurately predict. In their request, CALTRANS provided an analysis of the potential 160 dB and 190 dB re 1 micro-Pa RMS (impulse) noise contours based on the hammer energy to be used in Humboldt Bay on the larger diameter (1.52 m, 60 in) CISS piles and the underwater sound propagation characteristics in shallow Humboldt Bay waters. The results of this analysis showed that a hammer energy of 635 kJ (212,420 ft.lbs.) would result in a 160 dB noise contour at a distance of 670 m (2,198 ft) and a 190 dB noise contour at a distance of 185 m (607 ft). For a hammer energy of 377 kJ, the results showed that a 160 dB noise contour would occur at a distance of 625 m (2,051 ft) and a 190 dB noise contour would occur at a distance of 130 m (427 ft). Based on these results, marine mammals that are within the 190 dB contour could be subject to temporary hearing threshold shift or other non-lethal injury that has the potential to cause injury. Marine mammals within the 160 dB contour would also be likely

to demonstrate avoidance behaviors (level B harassment), but would not be likely to sustain hearing threshold shifts or other potential injuries associated with exposure to a loud sound source. The seals most likely to be affected by the pile driving activities would be those at the Daby Island haul-out site. Temporary abandonment of this one site could occur, but the animals are expected to return once construction is completed.

CALTRANS expects pile driving noise will be substantially less for the placement of the small diameter pilings used to support the temporary trestles and for the smaller diameter CISS piles that will be driven within the cofferdam enclosures. For these smaller pilings (0.91 m, 36 in), CALTRANS did not conduct calculations of estimated noise energy since there is no experimental data available to verify the calculations and there are so many different variables, such as water depth, proximity to shoreline, substrate, and pile material.

In addition, noise and visual stimulus resulting from activities such as construction, removals of temporary structures, and the movement of barges, boats, and people all have the potential to harass harbor seals in the area.

With regard to habitat, temporary structures may provide new haul-out locations for seals, increasing the potential for harassment of marine mammals when construction stops (i.e., at night) and is then re-initiated (i.e., at sunrise). At the same time, the placement of piles will permanently fill a small area of substrate, thus removing a minor amount of benthic forage habitat; however, the mid-water structure created by pilings may create an additional foraging habitat. This minor change in habitat is not likely to affect the harbor seal population within Humboldt Bay.

Numbers of Marine Mammals Expected to be Harassed

Only Pacific harbor seals are expected to be harassed by the project. Seals are expected to be present in the construction area and impacts are most likely to those animals at the Daby Island haul-out site. Due to their irregular occurrence and the intermittent nature of the proposed pile driving, CALTRANS did not provide an estimate of the number of animals potentially affected. Crude estimates of the average seal abundance in the entire North Humboldt Bay area during September 2000-August 2001 show that the number of animals found in the area ranges from 93 to 18 per month. Therefore, NMFS conservatively estimates that between 200 to 1,100 harbor seals may be harassed during a 1–year period.

Proposed Mitigation Measures

Attenuation devices such as air blankets and bubble curtains are commercially available products that are designed to decrease the noise level by placing an air/water interface around the sound source (i.e., pile driver). However, due to the high velocity tidal currents within the three channels, CALTRANS has determined that these devices will not work for mitigating the noise from this project.

Establishment of Safety/Buffer Zones

Prior to commencement of pile driving involving the large diameter pilings (1.52 m or 60 in), safety and buffer zones will be designated around each driving site depending on the hammer energy per blow predicted. The safety zones will be based on calculations CALTRANS provided in its request to NMFS for the 190 dB re 1 micro-Pa RMS (impulse) noise contour. That is, for a hammer energy of 635 kJ the safety zone will be out to a distance of 185 m (607 ft) and for a hammer energy of 377 kJ the safety zone will be out to a distance of 130 m (427 ft). The safety zone is intended to include all areas where the underwater SPLs are anticipated to equal or exceed 190 dB re 1 micro-Pa RMS (impulse). If marine mammals are seen within the safety zone, pile driving must not commence or must stop immediately and not restart until the marine mammal has moved beyond the 190 dB contour, either verified through sighting by a qualified observer outside the contour or by waiting until enough time has elapsed (15 minutes) to assume that the animal has moved beyond the safety zone. In addition, a buffer zone will be established around large diameter pilings based on calculations CALTRANS provided in its request to NMFS for the 160 dB re 1 micro-Pa RMS (impulse) noise contour. These buffer zones would be monitored closely during all pile driving activities for the presence and potential disturbance of marine mammals. If marine mammals are sighted within these zones, behavior of the mammals would be documented by observers and reported to NMFS, but operations would not need to cease.

Proposed Monitoring Plan

Qualified biologist(s) will be present during all CISS pile driving to observe for marine mammals in the vicinity of pile driving activity. Biological observers will position themselves so that they have an unobstructed view up and down the channel. The observer(s) will have direct communication with the job foreman so that stop-work and start-work directions can be relayed effectively. If CISS pile driving is occurring at more than one bridge at a time, each bridge location will have a biologist assigned to monitor for the presence of marine mammals. The observer(s) will record the date, time, location, distance, direction of travel, species, approximate age class, type of project activity occurring at time of sighting, and apparent behavior of marine mammals. Such records will serve as a means for documenting the species, numbers, and frequency of marine mammals incidentally harassed during the project.

Reporting Requirements

NMFS' Southwest Regional Administrator will be notified prior to the initiation of the East Span Project, and coordination with NMFS will occur on a weekly basis, or more often as necessary. Monitoring reports will be faxed to NMFS on a monthly basis during pile driving activity. The monthly report will include a summary of the previous month's monitoring activities and an estimate of the number of seals that may have been disturbed as a result of pile driving activities.

Because the Humboldt Bay project is expected to continue beyond the date of expiration of this IHA (under a new IHA or under regulations pursuant to section 101(a)(5)(A) of the MMPA), CALTRANS will provide NMFS' Southwest Regional Administrator with a draft final report before 90 days after expiration of this IHA. This report should detail the monitoring protocol, summarize the data recorded during monitoring, and estimate the number of marine mammals that may have been harassed due to pile driving. If comments are received from the Regional Administrator on the draft final report, a final report must be submitted to NMFS within 30 days. If no comments are received from NMFS, the draft final report will be considered to be the final report.

Preliminary Determination

NMFS has preliminarily determined that the short-term impact of pile driving and other activities associated with the seismic retrofit of three bridges in Humboldt Bay in Humboldt County, CA, as described in this document, should result, at worst, in the temporary modification in behavior of Pacific harbor seals. While behavioral modifications, including temporarily vacating haul-out sites and other areas, may be made by these species to avoid

the resultant visual and acoustic disturbance, the availability of alternate haul-out sites (including pupping sites) and feeding areas within the Bay has led NMFS to the preliminary conclusion that this action will have a negligible impact on Pacific harbor seal populations in Humboldt Bay and along the California coast.

In addition, no take by serious injury or death is anticipated and harassment takes should be at the lowest level practicable due to incorporation of the mitigation measures mentioned previously in this document.

Proposed Authorization

NMFS proposes to issue an IHA to CALTRANS for the potential harassment of small numbers of Pacific harbor seals incidental to the seismic retrofit of three bridges in Humboldt County, CA provided the previously mentioned mitigation, monitoring, and reporting requirements are incorporated.

Information Solicited

NMFS requests interested persons to submit comments, information, and suggestions concerning this proposed authorization to Donna Wieting, Chief, Marine Mammal Conservation Division, Office of Protected Resources, NMFS, 1315 East-West Highway, Silver Spring, MD 20910–3225.

Dated: April 3, 2002.

David Cottingham,

Deputy Director, Office of protected Resources, National Marine Fisheries Service.

[FR Doc. 02–8692 Filed 4–9–02; 8:45 am]

BILLING CODE 3510–22–S

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Designations under the Textile and Apparel Short Supply Provisions of the African Growth and Opportunity Act (AGOA) and the United States-Caribbean Basin Trade Partnership Act (CBTPA)

April 4, 2002.

AGENCY: Committee for the Implementation of Textile Agreements (CITA)

ACTION: Determination.

SUMMARY: The Committee for the Implementation of Textile Agreements (Committee) has determined, under the AGOA and CBTPA, that cuprammonium rayon filament yarn, classified in subheading 5403.39 of the Harmonized Tariff Schedule of the United States (HTS) for use in fabric for apparel, cannot be supplied by the domestic industry in commercial quantities in a timely manner. The Committee hereby designates apparel articles that are both cut (or knit-to-shape) and sewn or otherwise assembled in an eligible country, from fabric formed in the United States containing cuprammonium rayon filament yarn not formed in the United States, as eligible for quota-free and duty-free treatment under the textile and apparel short supply provisions of the AGOA and the CBTPA, and eligible under HTS subheadings 9819.11.24 or 9820.11.27 to enter free of quotas and duties, provided all other yarns are U.S. formed and all other fabrics are U.S. formed from yarns wholly formed in the U.S.

FOR FURTHER INFORMATION CONTACT: Philip J. Martello, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–3400.

SUPPLEMENTARY INFORMATION:

Authority: Section 112(b)(5)(B) of the AGOA and Section 211 of the CBTPA, amending Section 213(b)(2)(A)(v)(II) of the Caribbean Basin Economic Recovery Act (CBERA); Presidential Proclamations 7350 and 7351 of October 2, 2000; Executive Order No. 13191 of January 17, 2001.

Background:

The short supply provision of the AGOA provides for duty-free and quota-free treatment for apparel articles that are both cut (or knit-to-shape) and sewn or otherwise assembled in one or more beneficiary sub-Saharan African countries from fabric or yarn that is not formed in the United States or a beneficiary sub-Saharan African country if it has been determined that such yarns or fabrics cannot be supplied by the domestic industry in commercial quantities in a timely manner and certain procedural requirements have been met. In Presidential Proclamation 7350, the President proclaimed that this treatment would apply to such apparel articles from fabrics or yarns designated by the appropriate U.S. government authority in the **Federal Register**. In Executive Order 13191, the President authorized the Committee to determine whether particular yarns or fabrics cannot be supplied by the domestic industry in commercial quantities in a timely manner under the AGOA.

Similarly, the short supply provision of the CBTPA provides for duty-free and quota-free treatment for apparel articles that are both cut (or knit-to-shape) and sewn or otherwise assembled in one or more beneficiary CBTPA country from fabric or yarn that is not formed in the United States or a beneficiary CBTPA country if it has been determined that such yarns or fabrics cannot be supplied by the domestic industry in commercial quantities in a timely manner and certain procedural requirements have been met. In Presidential Proclamation 7351, the President proclaimed that this treatment would apply to such apparel articles from fabrics or yarns designated by the appropriate U.S. government authority in the **Federal Register**. In Executive Order 13191, the President authorized the Committee to determine whether particular yarns or fabrics cannot be supplied by the domestic industry in commercial quantities in a timely manner.

On November 20, 2001, the Committee received a petition alleging that cuprammonium rayon filament yarn, classified in subheading 5403.39 of the HTS for use in fabric for apparel, cannot be supplied by the domestic industry in commercial quantities in a timely manner under the AGOA and CBTPA and requesting that apparel articles from U.S.-formed fabric containing such yarns be eligible for preferential treatment under the AGOA and CBPTA. On November 26, 2001, the Committee requested public comment on the petition (66 FR 59006). On December 12, 2001, the Committee and the U.S. Trade Representative (USTR) sought the advice of the Industry Sector Advisory Committee for Wholesaling and Retailing and the Industry Sector Advisory Committee for Textiles and Apparel (collectively, the ISACs). On December 12, 2001, the Committee and USTR offered to hold consultations with the Committee on Ways and Means of the House of Representatives and the Committee on Finance of the Senate (collectively, the Congressional Committees). On January 7, 2002, the U.S. International Trade Commission (USITC) provided advice on the petition. Based on the information and advice received and its understanding of the industry, the Committee determined that the yarn set forth in the petition cannot be supplied by the domestic industry in commercial quantities in a timely manner. On January 18, 2002, the Committee and USTR submitted a report to the Congressional Committees that set forth the action proposed, the reasons for such action, and advice obtained. A period of 60 calendar days since this report was submitted has expired, as required by the AGOA and CBTPA.

The Committee hereby designates as eligible for preferential treatment under subheading 9819.11.24 of the HTS (for purposes of the AGOA), and under subheading 9820.11.27 of the HTS (for purposes of the CBTPA), apparel articles that are both cut (or knit-to-shape) and sewn or otherwise assembled in one or

more eligible beneficiary sub-Saharan African countries, or one or more eligible CBTPA beneficiary countries, from fabric formed in the United States containing cuprammonium rayon filament yarn not formed in the United States, provided that all other yarns are wholly formed in the United States and that all other fabrics are wholly formed in the United States from yarns wholly formed in the United States, that are imported directly into the customs territory of the United States from an eligible beneficiary sub-Saharan African country or an eligible CBTPA beneficiary country.

An ''eligible beneficiary sub-Saharan African country'' means a country which the President has designated as a beneficiary sub-Saharan African country under section 506A of the Trade Act of 1974 (19 U.S.C. 2466a) and which has been the subject of a finding, published in the **Federal Register**, that the country has satisfied the requirements of section 113 of the AGOA (19 U.S.C. 3722) and resulting in the enumeration of such country in U.S. note 1 to subchapter XIX of chapter 98 of the HTS. An ''eligible CBTPA beneficiary country'' means a country which the President has designated as a CBTPA beneficiary country under section 213(b)(5)(B) of the CBERA (19 U.S.C. 2703(b)(5)(B)) and which has been the subject of a finding, published in the **Federal Register**, that the country has satisfied the requirements of section 213(b)(4)(A)(ii) of the CBERA (19 U.S.C. 2703(b)(4)(A)(ii)) and resulting in the enumeration of such country in U.S. note 1 to subchapter XX of chapter 98 of the HTS.

James C. Leonard III,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc.02–8607 Filed 4–9–02; 8:45 am]

BILLING CODE 3510–DR–S

CORPORATION FOR NATIONAL AND COMMUNITY SERVICE

Proposed Information Collection; Comment Request

AGENCY: Corporation for National and Community Service.

ACTION: Notice.

SUMMARY: The Corporation for National and Community Service (hereinafter the ''Corporation''), as part of its continuing effort to reduce paperwork and respondent burden, conducts a preclearance consultation program to provide the general public and Federal agencies with an opportunity to comment on proposed and/or continuing collections of information in accordance with the Paperwork Reduction Act of 1995 (PRA95) (44 U.S.C. Sec. 3506(c)(2)(A)). This program helps to ensure that requested data can be provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the impact of collection requirement on respondents can be properly assessed. This form is available in alternate formats. Individuals who use a telecommunications device for the deaf (TTY/TDD) may call (202) 606–5256 between the hours of 9:00 a.m. and 4:30 p.m. Eastern time, Monday through Friday.

Currently, the Corporation is soliciting comments concerning a web-based senior service recruitment system, called ''Join Senior Service Now'' (JASON), that will enable older Americans who are interested in volunteering to match their interests and talents with community homeland security and other critical community needs that have been identified by local National Senior Service Corps (Senior Corps) grant projects. Use of the system is entirely voluntary. This system was deployed April 3, 2002, under emergency approval from the Office of Management and Budget and can be accessed by the public at the following website: *www.joinseniorservice.org.*

Copies of the information collection request can be obtained by contacting the office listed below in the **ADDRESSES** section of this notice.

DATES: Written comments must be submitted to the office listed in the **ADDRESSES** section by June 10, 2002.

ADDRESSES: Send comments to the Corporation for National and Community Service, National Senior Service Corps, Attn: Peter L. Boynton, Program Officer, 1201 New York Avenue, NW, Washington, DC, 20525.

FOR FURTHER INFORMATION CONTACT: Peter L. Boynton, (202) 606–5000, ext. 499.

SUPPLEMENTARY INFORMATION:

The Corporation is particularly interested in comments which:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the Corporation, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submissions of responses.

Background

Americans over the age of 50 are the fastest growing segment of the population, and the 60-plus population will double during the first quarter of this century. Concurrently, older Americans are one of the fastest growing cohorts utilizing the Internet for a myriad of purposes. A logical extension of these facts is that seniors will increasingly turn to the Internet to locate volunteer opportunities.

The Senior Corps' programs enroll Americans ages 55 and over, and more than 1,300 local Foster Grandparent, Senior Companion, and RSVP projects are engaged in ongoing volunteer recruitment. Many local Senior Corps project directors have indicated that a viable and identity-specific presence on the Internet would be beneficial to their recruitment efforts. The majority of Senior Corps projects indicate that they experience difficulties in recruiting, even with the expanding population of eligible participants. A web-based system can help to tap more efficiently into the target population.

The Corporation's current recruitment and communication vehicles with potential volunteers are outdated, inadequate, and expensive. Senior Corps has long relied on ''paper products'' such as brochures, posters, and fact sheets, in an increasingly electronic age. The number of ''hits'' on the Senior Corps pages of the Corporation web site (which increased more than 78% from 2000 to 2001), along with e-mail messages of interest, indicate that seniors are increasingly searching for opportunities online. The Corporation believes that Senior Corps is the appropriate entity to develop and launch such a vehicle. The success of the AmeriCorps national web-recruitment site, that uses an AmeriCorps OMB-approved application form, provides encouraging results that demonstrate how extensively potential volunteers and members of all ages are turning to the Internet to locate such opportunities.

Overview of ''Join Senior Service Now''

Senior Corps volunteers serve with local projects of the Retired and Senior

Volunteer Program (RSVP), the Foster Grandparent Program (FGP) and the Senior Companion Program (SCP). Individuals learn about these opportunities through a variety of means, including public service announcements, posters, advertisements, and visits to the Corporation's website and websites of local projects. These media and others will be used to direct interested individuals to the JASON website at *www.joinseniorservice.org.*

When they use JASON, prospective volunteers have the opportunity to find senior service projects of interest to them in two ways.

Fast Match. By using the system's ''Fast Match'' feature, individuals can search for projects by selecting the senior service program(s) they are interested in and providing their ZIP code and the distance they are willing to travel. They also have the option to narrow their search by selecting one or more areas of service and/or entering one or more key words. They receive a listing of opportunities within the Senior Corps grantee network that match their service, distance, and/or other specifications and preferences.

Registration. Individual seniors can also register with the system. Registration allows individuals the option of expressing interest in volunteering with senior service projects of their choosing and of sending certain information about themselves to the volunteer recruiters of those projects.

To register, individuals enter the following four required data elements into a web-based form: (1) An e-mail address where they can be contacted that also serves as their unique User ID; (2) a password of their choosing that must be correctly entered before allowing access to information; their current age by pre-defined age ranges and categories; and (4) the age at which they began volunteering. Individuals are required to provide their age because different programs have different minimum age requirements. After registering, prospective volunteers have two options. They may immediately complete their registration and search for volunteer opportunities by clicking on a ''Register and Log-In'' button. This takes them to a screen where they can use the ''Fast Match'' feature. However, unlike an unregistered user of Fast Match, the registered user is offered the opportunity to express their interest in volunteering directly to specific projects by way of an e-mail message generated automatically by the system. Their second option is to use the system's ''Custom Match'' feature.

Custom Match. If, after registering, an individual wishes to do so, he or she may complete an optional interest profile through an on-line form. The form has six parts, each serving a different purpose, and includes: (a) The names of the senior service programs the individual is interested in, (b) the volunteer's service interests, (c) the geographic areas where he or she wishes to serve, (d) the volunteer's general interests and skill information, (e) demographic information, (f) descriptive information and comments, and (g) contact information.

Items under (a), (b), (c), and (d) are used by the system in ''Custom Matches,'' where project information is matched to the individual's criteria. Demographic information under (e) is requested to help the Corporation understand the general aggregate profile of demographics of users, in particular, seniors using web-based tools. Descriptive information and comments provided in (f) are intended to allow a potential volunteer to tell the project's recruiter any additional information they wish to, as well as to provide the project and the Corporation with information on the effectiveness of various ways of advertising the website. Contact information in (g) is provided for the sole purpose of permitting the recruiter from projects to which the registrant has expressed interest to contact the individual about the particular volunteer opportunities they are interested in.

When prospective volunteers have finished filling out all or part of the profile, they save it and search for matching projects. When they use the ''Custom Match'' feature to identify opportunities and express interest in a volunteer opportunity, the e-mail message sent to the project will provide their e-mail address and whatever other contact information they have entered on the Volunteer Interest Profile form. It will also provide a link to their Volunteer Interest Profile so that the volunteer recruiters can view the information they have provided about themselves.

Current Action

The Corporation is seeking public comment pursuant to final approval of a web-based senior service recruitment system, called ''Join Senior Service Now'' (JASON), that will enable older Americans who are interested in volunteering to match their interests and talents with community homeland security and other critical community needs that have been identified by local National Senior Service Corps (Senior Corps) grant projects. This system was deployed on April 3, 2002 under emergency approval procedures and can be accessed by the public at the following website: www.joinseniorservice.org.

Type of Review: New information collection.

Agency: Corporation for National and Community Service.

Title: National Senior Service Corps ''Join Senior Service Now'' (JASON).

OMB Number: 3045–0078.

Agency Number: None.

Affected Public: Prospective senior volunteers.

Total Respondents: 2,340,000.

Frequency: At the discretion of respondents.

Average Time Per Response: 0.25 hours for initial response; 0.7 hours for subsequent responses.

Estimated Total Burden Hours: 413,400 hours.

Total Burden Cost (capital/startup): None.

Total Burden Cost (operating/maintenance): None

Comments submitted in response to this notice will be summarized and/or included in the request for Office of Management and Budget approval of the information collection request; they will also become a matter of public record.

Dated: April 4, 2002.

Tess Scannell,

Director, National Senior Service Corps.

[FR Doc. 02–8583 Filed 4–9–02; 8:45 am]

BILLING CODE 6050–$$–P

DEPARTMENT OF DEFENSE

Office of the Secretary

The Joint Staff; National Defense University Board of Visitors Meeting

AGENCY: Department of Defense.

ACTION: Notice of meeting.

SUMMARY: The President, National Defense University (NDU) has scheduled a meeting of the Board of Visitors (BOV).

DATES: The meeting will be held on April 25th and 26th 2002, from 11:00 to 17:00 on the 25th and continuing on the 26th from 08:30 to 11:30.

ADDRESSES: The meeting will be held in Room 155B, Okinawa Hall, building number, Joint Forces Staff College (JFSC), 7800 Hampton Boulevard, Norfolk, VA. 23511–1702.

FOR FURTHER INFORMATION CONTACT: NDU Deputy Chief of Staff, National Defense University, Fort Lesley J. McNair, Washington, DC 20319–6200. To reserve space, interested persons

should contact the JFSC POC, Mr.Kenneth Fritz at (757) 443–6212.

SUPPLEMENTARY INFORMATION: The agenda will include present and future educational and research issues for the National Defense University and its components. The meeting is open to the public, but the limited space available for observers will be allocated on a first come, first served basis. POC: Michael Mann, BOV Executive Secretary, *mannm@ndu.edu,* (202) 685–3903.

Dated: April 3, 2002.

Patricia L. Toppings,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 02–8587 Filed 4–9–02; 8:45 am]

BILLING CODE 5001–08–M

DEPARTMENT OF DEFENSE

Office of the Secretary

Strategic Environmental Research and Development Program, Scientific Advisory Board Meeting

AGENCY: Department of Defense.

ACTION: Notice.

SUMMARY: In accordance with section 10(a)(2) of the Federal Advisory Committee Act (P.L. 92–463), announcement is made of the following Committee meeting:

DATES: June 11, 2002 from 0830 a.m. to 1710 p.m., and June 12, 2002 from 0830 a.m. to 1620 p.m.

ADDRESSES: Executive Conference Center, One Virginia Square, 3601 Wilson Blvd, Suite 600, Jefferson Room, Arlington, VA 22201.

FOR FURTHER INFORMATION CONTACT: Ms. Veronica Rice, SERDP Program Office, 901 North Stuart Street, Suite 303, Arlington, VA or by telephone at (703) 696–2119.

SUPPLEMENTARY INFORMATION:

Matters To Be Considered

Research and Development proposals and continuing projects requesting Strategic Environmental Research and Development Program funds in excess of $1M will be reviewed.

This meeting is open to the public. Any interested person may attend, appear before, or file statements with the Scientific Advisory Board at the time and in the manner permitted by the Board.

Dated: April 4, 2002.

Patricia L. Toppings,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 02–8588 Filed 4–9–02; 8:45 am]

BILLING CODE 5001–08–M

DEPARTMENT OF DEFENSE

Department of the Army

Military Traffic Management Command; Change in Acquisition Policy—Satellite Motor Surveillance Service.

AGENCY: Department of the Army, DOD.

ACTION: Notice.

SUMMARY: On December 17, 2001 the Military Traffic Management Command (MTMC) published a notice in the **Federal Register** (66 FR 64961) concerning a proposal to incorporate any charges for Satellite Motor Surveillance Service (SNS) into the basic transportation rate for motor freight shipments. This proposal applied to the movement of arms, ammunition and explosives (AA&E) shipments. Interested parties were asked to submit comments on that proposal. As explained below, MTMC carefully and thoroughly reviewed industry comments and has determined that it is in the public interest to put this proposal into effect and has determined that this will protect the fiscal requirements of the Department of Defense (DOD).

DATES: Effective June 1, 2002.

FOR FURTHER INFORMATION CONTACT: Mr. Frank Galluzzo, MTMC, (703) 428–2327.

SUPPLEMENTARY INFORMATION: The following comments were received from industry in response to the **Federal Register** notice of December 17, 2001. Each comment is listed below along with a response.

(1) *Industry Comment:* A comment that is typical of others on this particular facet stated:

''Reference the United States District Court for the District of Columbia, Civil Case Number 93–2176NHJ, The Munitions Carriers Conference Inc. versus United States of America, et al: To wit, the Stipulation of Settlement and Dismissal subparagraph states, Defendants represent that the DOD current policy is that Satellite monitoring will be continued as a separate accessorial service for motor carriers and will neither be combined with other transportation protection services or folded into the linehaul rate. We trust the Commander MTMC will honor the commitment in this regard.''

Response: This comment refers to a 1993 case in which it was agreed that the DOD ''current policy'' in 1993 was to continue the satellite monitoring charge as a separate service. However, this agreement contained several other provisions, one of which stated ''Nothing in this Agreement shall prevent or limit Department of Defense agencies or MTMC from making such policy, program or acquisition decisions as are required to protect the national defense, the public interest, or the fiscal and operational requirements of the Department of Defense as determined exclusively by those governmental agencies consistent with the law and policies applicable to DOD.'' The DOD has determined that continuance of satellite monitoring as a separate charge is not in the public interest, nor does it meet the fiscal and operational requirements of the DOD. We note, however, that costs for this service can still be included in the basic transportation rates charged by the carrier industry.

(2) *Industry Comment:* Without a distinctive accessorial service charge for SNS, the panic button and visibility of AA&E shipments will not be readily available, thus placing shipments at greater risk.

Response: This change will only affect the way in which the carrier is reimbursed for SNS services provided. The carrier is still contractually obligated to provide all services as stipulated in Item 47 of the Military Freight Traffic Rules Publication (MFTRP) 1B. Additionally, SNS can still be requested by the shipping installation and annotated appropriately on the Bill of Lading. This change has no bearing on the safety or security currently provided AA&E shipments.

(3) *Industry Comment:* SNS application to multiple shipments on a trailer should cease with the advent of the closing of ammunition terminals and more direct shipments versus dromedary trains.

Response: Current rules do not overly restrict a carrier from consolidating AA&E shipments and moving multiple shipments in units commonly called dromedary trains. MTMC rules do restrict the method and location that consolidation may occur.

(4) *Industry Comment:* There are no means to convert accessorial charges into ''line haul rate'' charges on dromedary train shipments (distance-based versus weight-based rate applications).

Response: Carriers may wish to consider the use of the ''DZ'' rate qualifier in order to express a mileage-based rate for dromedary shipments. Information on the ''DZ'' rate qualifier, as contained in the MTMC tender instructions (MSTIP 364–C), allows the carrier to submit a dromedary rate based upon a per-hundredweight per-mile charge.

(5) *Industry Comment:* This will result in unfair competition between rail and

motor as rail continues to charge for Rail Security Service as an accessorial charge.

Response: The Rail Security Service (RSS), as a separate accessorial service for rail, was cancelled on July 1, 2000, combined with tank surveillance service and redesignated as rail inspection service. Rail Inspection Service is a physical inspection and/or surveillance requirement for rail shipments. Satellite monitoring is a technology that is integral to the vehicle. There is little comparison between a rail security inspector performing physical inspections of rail cars at every stop and satellite monitoring. These are distinctive and different types of services.

(6) *Industry Comment:* Future Defense Transportation Tracking System (DTTS) enhancement requirements will drive up costs to motor carriers that they will be unable to recoup.

Response: Carriers should consider all costs incurred in transportation and traffic management services when preparing rate and pricing submissions to MTMC. Costs associated with providing satellite monitoring service should be included with other costs such as fuel, insurance and labor. The DOD does not imply or intend that a carrier industry provide requested services without fair and equitable reimbursement. As such carriers are free to include costs associated with satellite monitoring in the rate structure.

(7) *Industry Comment:* MTMC intends to keep SNS as a separate accessorial service but not for AA&E.

Response: MTMC intends to retain a satellite monitoring service for non-AA&E shipments. The service will be used on a case-by-case basis where the shipper has determined in-transit tracking is necessary. However, MTMC does not intend to separately reimburse carriers for this service. Carriers will be permitted to voluntarily offer this service and shippers may use this as a factor, along with rates and similar service factors, when selecting a best value carrier. This change will be announced at a later date.

(8) *Industry Comment:* The GFM system is not capable of identifying carriers who can provide SNS, except by the publishing of the SNS accessorial code in the tenders, resulting in shippers requesting AA&E service from motor carriers not able to provide SNS service. Also, there is no information on how the change will be accomplished technically.

Response: MTMC intends to continue the practice of requiring the carrier to submit the SNS accessorial code within the protective service section of the carrier's applicable tender. However, the carrier will not be able to enter a specific rate for the accessorial service as any costs associated with SNS are to be incorporated into the carrier's linehaul transportation rate. The use of the SNS code will allow existing automated systems to identify carriers eligible to provide SNS from non-SNS eligible carriers. This practice is consistent with existing MTMC procedures in accordance with Item 701 (Security and Accessorial Services for Non Guaranteed Traffic) of the MSTIP 364–C and is a standard carrier practice for tenders with exclusive use rates.

(9) *Industry Comment:* MTMC incorrectly assumes that all AA&E transportation requires SNS service.

Response: MTMC is fully aware that small quantity shipments of low risk AA&E do not require SNS, but require constant surveillance service. This proposal will affect only those shipments that are satellite-monitored. The requirements for small shipments are articulated in the Defense Transportation Regulation Vol II and in the MTMC Military Freight Traffic Rules Publications 1B.

(10) *Industry Comment:* The proposal disadvantages small carriers, as SNS equipment is not readily available to them due to costs.

Response: The proposed change has no impact on small carrier's as they would be required to acquire the same technology regardless of how the carrier is reimbursed for SNS services. In addition, DOD shipments of AA&E require satellite tracking to ensure they move safely and securely from origin to destination.

(11) *Industry Comment:* SNS is different from other accessorial services (tarping, chains, and dual river) because satellite equipment is not readily interchangeable. It is an accessorial service that replaced two other accessorial services (armed guards and security escorts).

Response: MTMC understands that satellite-monitoring devices are not readily transferable from one conveyance (power unit) to another. However, since, the inception of SNS the carrier industry has had almost 10 years to equip conveyances with satellite tracking devices.

(12) *Industry Comment:* The change is viewed as being precedent for future changes.

Response: Technology and equipment improvements associated with the motor carrier industry are continually evolving. Accordingly, MTMC will periodically review and assess the program and rules which apply to the surface movement of AA&E shipments by motor and rail carriers and make program changes as warranted.

Luz D. Ortiz,

Army Federal Register Liaison Officer.

[FR Doc. 02–8680 Filed 4–9–02; 8:45 am]

BILLING CODE 3710–08–M

DEPARTMENT OF DEFENSE

Department of the Army

Availability for Non-Exclusive, Exclusive, or Partially Exclusive Licensing of U.S. Patent Application Concerning Angiogenesis Inhibitors Specific for Methionine Aminopeptidase 2 as Antiparasitic Drugs

AGENCY: Department of the Army, DoD.

ACTION: Notice.

SUMMARY: In accordance with 37 CFR 404.6, announcement is made of the availability for licensing of U.S. Patent Application Serial No. 60/354,280 entitled ''Angiogenesis Inhibitors Specific for Methionine Aminopeptidase 2 as Antiparasitic Drugs'' and, filed January 29, 2002. The United States Government as represented by the Secretary of the Army has rights in this invention.

ADDRESSES: Commander, U.S. Army Medical Research and Material Command, ATTN: Command Judge Advocate, MCMR–JA, 504 Scott Street, Fort Detrick, Frederick, Maryland 21702–5012.

FOR FURTHER INFORMATION CONTACT: For patent issues, Ms. Elizabeth Arwine, Patent Attorney, (301) 619–7808. For licensing issues, Dr. Paul Mele, Office of Research & Technology Assessment, (301) 619–6664, both at telefax (301) 619–5034.

SUPPLEMENTARY INFORMATION: Methionine aminopeptidase 2 (MetAP2) is responsible for hydrolysis of the initiator, methionine residues from the majority of newly synthesized proteins. A malaril MetAP2 gene has been cloned from *Plasmodium falciparum* (GenBank accession number AF34820). The cloned *P. falciparum* MetAP2 (PfMetAP2) has a length of 1544 bp and encoded a protein of 354 amino acid residues. A multiple sequence alignment shows that the *P. falciparum* MetAP2 has 40% homology with human MetAP2 and 45% homology with yeast MetAP2. The gene of *P. falciparum* MetAP2 locates in chromosome 14. The 3D structure of *P. falciparum* MetAP2 has been modeled based on human MetAP2 crystal structure. The specific MetAP2 inhibitors, fumagillin and

TNP–440 have been found to potently block the in vitro growth of *P. falciparum* and to a lesser degree against that of *Leishmania donavani.*

Luz D. Ortiz,

Army Federal Resister Liaison Officer.

[FR Doc. 02–8678 Filed 4–9–02; 8:45 am]

BILLING CODE 3710–08–M

DEPARTMENT OF DEFENSE

Department of the Army

Availability for Non-Exclusive, Exclusive, or Partially Exclusive Licensing of U.S. Patent Application Concerning Method of Diagnosing Stage or Aggressive of Breast and Prostate Cancer Based on Levels of Fatty Acids Binding Proteins

AGENCY: Department of the Army, DoD.

ACTION: Notice.

SUMMARY: In accordance with 37 CFR 404.6, announcement is made of the availability for licensing of U.S. Patent Application No. 09/451,513 entitled ''Method of Diagnosing Stage or Aggressiveness of Breast and Prostate Cancer Based on Levels of Fatty Acids Binding Proteins'' filed Nov. 30, 1999. Foreign rights are also available (PCT/US99/28314), filed Nov. 30, 1999. The United States Government as represented by the Secretary of the Army has rights in this invention.

ADDRESSES: Commander, U.S. Army Medical Research and Materiel Command, ATTN: Command Judge Advocate, MCMR–JA, 504 Scott Street, Fort Detrick, Frederick, Maryland 21702–5012.

FOR FURTHER INFORMATION CONTACT: For patent issues, Ms. Elizabeth Arwine, Patent Attorney, (301) 619–7808. For licensing issues, Dr. Paul Mele, Office of Research & Technology Assessment, (301) 619–6664, both at telefax (301) 619–5034.

SUPPLEMENTARY INFORMATION: A method of diagnosing the stage or aggressiveness of cancer and particularly breast and prostate cancer by measuring the deviation of levels of fatty acid binding proteins in mammalian tissue or body fluids from normal levels of fatty acid binding proteins. The invention relates to a family of key proteins levels of fatty acid binding proteins. The invention relates to a family of key proteins called fatty acid binding proteins, which are involved in metabolism of AA and other lipids and how they affect the proliferation of cancer cells.

Luz D. Ortiz,

Army Federal Register Liaison Officer.

[FR Doc. 02–8677 Filed 4–9–02; 8:45 am]

BILLING CODE 3710–08–M

DEPARTMENT OF DEFENSE

Department of the Army

Availability for Non-Exclusive, Exclusive, or Partially Exclusive Licensing of U.S. Patent Application Concerning Chimeric Filovirus Glycoprotein

AGENCY: Department of the Army, DoD.

ACTION: Notice.

SUMMARY: In accordance with 37 CFR 404.6, announcement is made of the availability for licensing of U.S. Patent Application No. 10/066,506 entitled ''Chimeric Filovirus Glycoprotein'' filed January 31, 2002. The United States Government as represented by the Secretary of the Army has rights in this invention.

ADDRESSES: Commander, U.S. Army Medical Research and Materiel Command, ATTN: Command Judge Advocate, MCMR–JA, 504 Scott Street, Fort Detrick, Frederick, Maryland 21702–5012.

FOR FURTHER INFORMATION CONTACT: For patent issues, Ms. Elizabeth Arwine, Patent Attorney, (301) 619–7808. For licensing issues, Dr. Paul Mele, Office of Research & Technology Assessment, (301) 619–6664, both at telefax (301) 619–5034.

SUPPLEMENTARY INFORMATION: Chimeric GP molecules were constructed which contain portions of both the EBOV and MBGV GP proteins by swapping the subunits between EBOV and MBGV. The chimeric molecules were cloned into an alphavirus replicon, which offers the advantage of high protein expression levels in mammalian cells and is a proven vaccine vector. These chimeric molecules fully protected guinea pigs from MBGV challenge, and conversely protected the animals from EBOV challenge. These results indicate that a protective epitope resides within the GP2 subunit of the MBGV GP protein and at least partially within the GP2 subunit of the EBOV GP protein. Additionally these results show that a construction of a single-component bivalent vaccine protective in guinea pigs is achievable.

Luz D. Ortiz,

Army Federal Register Liaison Officer.

[FR Doc. 02–8675 Filed 4–9–02; 8:45 am]

BILLING CODE 3710–08–M

DEPARTMENT OF DEFENSE

Department of the Army

Availability for Non-Exclusive, Exclusive, or Partially Exclusive Licensing of U.S. Patent Application Concerning Securing Device for an Endotracheal Tube

AGENCY: Department of the Army, DOD.

ACTION: Notice.

SUMMARY: In accordance with 37 CFR 404.6, announcement is made of the availability for licensing of U.S. Patent Application No. 09/789,708 entitled ''Securing Device for an Endotracheal Tube'' filed February 22, 2001. Foreign rights are also available (PTC/US01/05558). The United States Government as represented by the Secretary of the Army has rights in this invention.

ADDRESSES: Commander, U.S. Army Medical Research and Materiel Command, ATTN: Command Judge Advocate, MCMR–JA, 504 Scott Street, Fort Detrick, Frederick, Maryland 21702–5012.

FOR FURTHER INFORMATION CONTACT: For patent issues, Ms. Elizabeth Arwine, Patent Attorney, (301) 619–7808. For licensing issues, Dr. Paul Mele, Office of Research & Technology Assessment, (301) 619–6664, both at telefax (301) 619–5034.

SUPPLEMENTARY INFORMATION: A securing device for an endotracheal tube includes a shield having an opening through which the endotracheal tube can pass and a clamp mounted on the shield for holding the endotracheal tube. A bite block for preventing occlusion of the endotracheal tube by a patient's teeth may be mounted on an opposite surface of the shield from the clamp.

Luz D. Ortiz,

Army Federal Register Liaison Officer.

[FR Doc. 02–8676 Filed 4–9–02; 8:45 am]

BILLING CODE 3710–08–M

DEPARTMENT OF DEFENSE

Department of the Army

Availability for Non-Exclusive, Exclusive, or Partially Exclusive Licensing of U.S. Patent Application Concerning High-Throughput Assays for the Proteolytic Activities of Clostridial Neurotoxins

AGENCY: Department of the Army, DOD.

ACTION: Notice; correction.

SUMMARY: The notice published on Tuesday, March 12, 2002, at 67 FR 111106 announcing the availability for licensing of U.S. patent application provided the incorrect patent application number, the patent application number should read: ''09/962,360''.

ADDRESSES: Commander, U.S. Army Medical Research and Materiel Command, ATTN: Command Judge Advocate, MCMR–JA, 504 Scott Street, Fort Detrick, Frederick, Maryland 21702–5012.

FOR FURTHER INFORMATION CONTACT: For patent issues, Ms. Elizabeth Arwine, Patent Attorney, (301) 619–7808. For licensing issues, Dr. Paul Mele, Office of Research & Technology Assessment, (301) 619–6664. Both at telefax (301) 619–5034.

SUPPLEMENTARY INFORMATION: None.

Luz D. Ortiz,

Army Federal Register Liaison Officer.

[FR Doc. 02–8674 Filed 4–9–02; 8:45 am]

BILLING CODE 3710–08–M

DEPARTMENT OF DEFENSE

Department of the Army; Corps of Engineers

Availability of a Draft Environmental Impact Statement To Consider Issuance of a Department of the Army Permit Pursuant to Section 404 of the Clean Water Act for Hobet Mining, Inc.'s Proposed Surface Coal Mining Operation in Conjunction With Its Spruce No. 1 Surface Mine, Near Blair in Logan County, WV

AGENCY: Department of the Army, Army Corps of Engineers, DoD.

ACTION: Notice.

SUMMARY: In accordance with the requirements of the National Environmental Policy Act (NEPA), the U.S. Army Corps of Engineers (USACE) Huntington District, in cooperation with U.S. Environmental Protection Agency, the U.S. Fish and Wildlife Service, the Office of Surface Mining and the West Virginia Department of Environmental Protection, has prepared a Draft Environmental Impact Statement (DEIS). This DEIS evaluates potential impacts to the natural, physical and human environment as a result of the proposed mining activities associated with Hobet's Spruce No. 1 Surface Mine. The USACE regulates this proposed project pursuant to Section 404 of the Clean Water Act. The proposed activity is to construct valley fills to dispose of excess overburden spoil into waters of the United States. The overburden is generated by surface mining operations in order to achieve optimal recovery of available coal reserves within the project area in a safe, cost-effective and environmentally sound manner.

DATES: Submit comments by June 10, 2002.

ADDRESSES: Send written comments and suggestions concerning this proposal to Teresa (Hughes) Spagna, U.S. Army Corps of Engineers, Huntington District, Attn: Regulatory Branch–OR–FS, 502 8th Street, Huntington, West Virginia 25701. Telephone (304) 529–5710 or e-mail at *Teresa.D.Hughes@Lrh01.usace.army.mil.* Requests to be placed on the mailing list should also be sent to this address.

FOR FURTHER INFORMATION CONTACT: Teresa (Hughes) Spagna, U.S. Army Corps of Engineers, Huntington District, Attn: Regulatory Branch–OR–FS, 502 8th Street, Huntington, West Virginia 25701. Telephone (304) 529–5710 or electronic mail at *Teresa.D.Hughes@Lrh01.usace.army.mil.*

SUPPLEMENTARY INFORMATION: Discharges of fill material into the jurisdictional waters of the United States are regulated under Section 404 of the Clean Water Act, with the permitting responsibility administered by the USACE. The proposed project must also address environmental impacts relative to the Clean Air Act, Clean Water Act, Endangered Species Act and the Fish and Wildlife Coordination Act (FWCA). In accordance with the NEPA, the DEIS evaluated reasonable alternatives for the USACE's decision making process. As required by NEPA, the USACE also analyzes the ''no action'' alternative as a baseline for gauging potential impacts.

As part of the public involvement process, notice is hereby given by the USACE–Huntington District of a public hearing to be held at the Chief Logan State Park, in Logan, Logan County, West Virginia, from 6:30 to 10 p.m. on April 24, 2002. The public hearing will allow participants the opportunity to comment on the DEIS prepared for the proposed Spruce No. 1 Mine project. Written comments should be sent to: Mr. James M. Richmond, Chief, Regulatory Branch, Huntington District, U.S. Army Corps of Engineers. 502 Eighth Street, Huntington, West Virginia 25701–2070 or by e-mail at *Teresa.D.Hughes@Lrh01.usace.army.mil.* The comments are due 60 days from the date of publication of this notice. Copies of the document may be obtained by contacting USACE Huntington District Regulatory Branch at 304–529–5210 or 304–529–5710.

Copies of the DEIS are also available for inspection at the locations identified below:

(1) Blair Post Office, P.O. Box 9998, Blair, WV 25022–9998.

(2) Kanawha County Public Library, 123 Capitol Street, Charleston, WV 25301.

(3) Logan County Public Library, 16 Wildcat Way, Logan, WV 25601.

After the public comment period ends, USACE will consider all comments received, revise the DEIS as appropriate, and issue a final Environmental Impact Statement.

Luz D. Ortiz,

Army Federal Register Liaison Officer.

[FR Doc. 02–8681 Filed 4–9–02; 8:45 am]

BILLING CODE 3710–GM–M

DEPARTMENT OF DEFENSE

Department of the Navy

Record of Decision for the Renewal of Authorization to Use Pinecastle Range, Ocala National Forest, FL

AGENCY: Department of the Navy, DOD.

ACTION: Notice.

SUMMARY: The Department of Navy announces its decision to continue operations at Pinecastle Range, Ocala National Forest, Florida.

SUPPLEMENTARY INFORMATION: Pursuant to Section 102(2)(c) of the National Environmental Policy Act (NEPA) of 1969, 42 U.S.C. Sections 4321 *et seq.*, the regulations of the Council on Environmental Quality that implement NEPA procedures, 40 CFR parts 1500–1508, and Navy regulations implementing NEPA procedures (32 CFR 775), the Department of the Navy announces its decision to continue operations at the Pinecastle Range in the Ocala National Forest for a 20-year period, if U.S. Forest Service (USFS) renews the Interagency Agreement or ''special use permit'', as it is now called. This action will enable the Navy to meet current and projected training requirements. The U.S. Department of

Agriculture (USDA) and the U.S. Forest Service (USFS) are cooperating agencies in the preparation of this Environmental Impact Statement (EIS).

Background And Issues: Pinecastle Range (the Range) has been in continuous operation by Department of the Navy (Navy) since the early 1950s to train aircrews and support personnel in the delivery of ordnance. The Range is located within the boundaries of the Ocala National Forest, which is managed by the USDA and the USFS. The USFS, as the controlling agency for National Forest land, is responsible for issuing authorization for use of the land.

The Navy is currently authorized to operate and utilize the Range under an Interagency Agreement (IA) with USFS. The IA was to expire in December 1999, but was extended until July 2002, to allow for completion of the NEPA process. The IA specifies USFS and Navy responsibilities, defines terms of mutual agreement, and contains exhibits depicting Range boundaries and defining explosive ordnance restrictions.

Alternatives: A screening process, based upon criteria identified in the EIS, was conducted to determine a reasonable range of alternatives that would satisfy the Navy's purpose and need. Recommendations received from the public during scoping were also taken into consideration. The process used to identify feasible alternatives was thoroughly discussed in Draft and Final EIS. Ultimately, two alternatives were analyzed in detail in the EIS. The Preferred Alternative for continued use of the Range (pending USFS's decision to issue a special use permit) and No-Action alternative. The Preferred Alternative would retain and continue use of the existing range assets and restricted air space. Aircraft would continue to use the Range to meet fleet air-to-ground strike warfare training requirements for strafing, explosive ordnance delivery, and laser target designation. Naval aircraft operating in the Jacksonville Fleet Concentration Area would be the principal users of the Range; however, other military aircraft hosted by the Navy would continue to use the Range. Operations are projected at about 10,200 annually. If operations are exceeded by 10 percent, the Navy will prepare supplemental NEPA documentation.

With the No Action Alternative, the Navy would not pursue issuance of a special use permit, and the existing IA would expire, returning control of the Range to the USFS. The Navy would return control of the Range pursuant to the 1994 IA, as extended. The Navy would provide explosive ordnance disposal services if any bombs are found on or off the Range.

Environmental Impacts: Potential environmental impacts of continuing operations at the Range for a 20 year period are analyzed in the FEIS. The analysis demonstrates that environmental impacts associated with the continued use of the Range are less than significant. While no significant impacts are projected, impacts to resources of greatest concern to regulatory agencies and the public are briefly discussed below.

There are potential impacts to groundwater. Groundwater could be contaminated by the release of constituents and by-products of explosives used in live ordnance, spotting charges, and by the release of pollutants from bombing targets such as motor vehicles. While tests of groundwater have not revealed the presence of contaminants above established maximum regulatory levels, and the small size of the range relative to the aquifer recharge area decrease the likelihood of contamination, the Navy, in conjunction with the USFS, will develop and implement a groundwater monitoring plan.

The potential presence of unexploded ordnance (UXO) on and off the Range was a matter of concern to the public. The potential for UXO to accumulate on the Live Target or in its vicinity is minimal because Range maintenance procedures do not allow UXO to remain in place for an extended period of time. Spotters observe all aircraft approaches and weapons deliveries involving live ordnance. All unexploded ordnance on-range is rendered safe by contractor UXO personnel. Any bombs dropped ''off-range'' will be rendered safe by the Navy. Since the inception of the current spotter program in 1992, no live ordnance has been dropped outside of the Range boundary.

The scrub habitat on the Range supports several threatened or endangered species. This type of vegetative habitat would mature and decrease without the cooperation of the USFS's and Navy's Range activities. The U.S. Fish and Wildlife Service (USFWS) in a Biological Opinion prepared in conjunction with the EIS, determined that the continuation of military operations on the Range for 20 years would not likely adversely affect the wood stork, Florida bonamia, scrub buckwheat, and scrub milkwort.

With regard to the Florida scrub-jay, Eastern indigo snake, and sand skink, the USFWS determined that although there is a possibility that the use of the target areas may result in the incidental take of these three species, the level of anticipated takes is not likely to result in jeopardizing the continued existence of those species. The USFWS did recommend the Navy adopt specific ''reasonable and prudent measures'' for the Florida scrub-jay, the sand skink, and the Eastern indigo snake. These measures include a monitoring program conducted by the Forest Service for all three listed species on the Range.

There would be no significant impacts on public safety associated with continued use of the Range. There are no permanent residents in areas considered incompatible for residential use within Range safety zones. Although impacts on public safety are not significant, the Navy has incorporated measures into the operations of the Range to mitigate safety issues. The physical layout of the Range isolates the training activities and limits potential impacts to the public and natural environments; the airspace ingress and egress routes to the airspace is laid out to avoid population centers and recreational areas; Range safety zone boundaries will be marked by signs where possible; and USFS will post detailed locational information about safety zones to ensure that the public will avoid the zones during military training activities.

While USFS is expected to continue to allow hunting and hiking activities in areas near the Range boundary, the mitigation in place is sufficient to prevent significant safety risks. No injuries or fatalities to Government employees or members of the public have occurred as a result of Range activities since the Navy began using the Range over 50 years ago.

The Navy developed noise contours associated with aircraft operations at the Range. No incompatible land uses were identified in any of the modeled noise contours. While there are no incompatible land uses relative to the noise contours associated with continued operation of the Range, people in the surrounding areas will continue to hear noise from aircraft and occasional impulse noise from the explosion of ordnance. The Naval Air Station Jacksonville Public Affairs Office will continue to contact local newspapers and broadcast media prior to the use of explosive ordnance on the Range. The Navy and USFS will inform campers and recreational users who may not have access to the local newspapers or broadcast announcements.

Comments Received on the EIS: The Navy received comments from Environmental Protection Agency Region 4 (EPA), Florida Department of Environmental Protection (FDEP) and a

private citizen. EPA stated that its concerns had been adequately addressed in the FEIS. FDEP requested additional information regarding development of the groundwater monitoring plan. The Navy will continue to partner with FDEP and will keep the agency informed as the plan is developed. The private citizen supported Navy's continued training on the Range.

Conclusion: After considering the analysis contained in the EIS, the final Range Air Installation Compatible Use Zone study, and the comments received from Federal, state, and local agencies, non-governmental organizations, and individual members of the public; I have concluded that continuing operations at Pinecastle Range meets the Navy's purpose and need to maintain fully trained aircrews and support personnel to meet training requirements, and to achieve an acceptable level of readiness prior to deploying independently or as part of a Carrier Battle Group. Although this alternative will result in prominent, but insignificant noise impacts to the surrounding populations, it will not result in potentially significant adverse impacts to endangered species due to maturation and ultimate loss of the scrub habitat. It is therefore considered the environmentally preferable alternative.

Dated: March 29, 2002.

Donald R. Schregardus,

Deputy Assistant Secretary of the Navy (Environment).

[FR Doc. 02–8652 Filed 4–9–02; 8:45 am]

BILLING CODE 3810–FF–P

DEPARTMENT OF ENERGY

[Number DE–PS03–02SF22516]

Solicitation for Financial Assistance Applications; Nuclear Explosion Monitoring Research and Engineering Program

AGENCY: National Nuclear Security Administration (NNSA), Oakland Operations Office, Department of Energy (DOE).

ACTION: Notice of solicitation for financial assistance applications.

SUMMARY: The DOE/NNSA, through the Oakland Operations Office is seeking applications to increase nuclear explosion monitoring effectiveness through improved understanding of basic earthquake and explosion phenomenology. Research of a fundamental nature is sought to answer the question of how the seismic energy is generated from these phenomena (including distributed and single point explosions, double-couple earthquakes and other modes of rock failure) and how this energy is partitioned between P and S waves.

ADDRESSES: The formal solicitation document, Nuclear Explosion Monitoring Research and Engineering Program (DE–PS03–02SF22516), is available through the Industry Interactive Procurement System (IIPS) located at the following URL: *http://e-center.doe.gov.* IIPS provides the medium for disseminating solicitations, receiving financial assistance applications and evaluating applications in a paperless environment. Completed applications are required to be submitted via IIPS. Individuals who have the authority to enter their university or academic institution into a financial assistance award and intend to submit applications via the IIPS system must register and receive confirmation that they are registered prior to being able to submit an application on the IIPS system. An IIPS ''User Guide for Contractor'' can be obtained by going to the IIPS Homepage at the following URL: *http://e-center.doe.gov* and then clicking on the ''Help'' button. Questions regarding the operation of IIPS may be e-mailed to the IIPS Help Desk at *IIPSHelpDesk@e-center.doe.gov* or call the help desk at (800) 683–0751.

FOR FURTHER INFORMATION CONTACT: Gloria Abdullah-Lewis, Contract Specialist, U.S. Department of Energy, National Nuclear Security Administration, 1301 Clay Street (Room 700N), Oakland, CA 94612–5208; email *gloria.abdullah-lewis@oak.doe.gov*

SUPPLEMENTARY INFORMATION: Research of a fundamental nature is sought to answer the question of how the seismic energy is generated from these phenomena (including distributed and single point explosions, double-couple earthquakes and other modes of rock failure) and how this energy is partitioned between P and S waves. Specifically:

- How is the generation and partitioning of the seismic energy affected by properties such as (1) source region medium and overburden, (2) the local structure and (3) the surrounding tectonic province;
- What are the significant measurable effects of the partitioning of the seismic energy into various regional P and S phases, especially at high frequency; and
- What is the physical basis for a measurable property, such as magnitude that can be directly related to the yield of a fullycoupled explosion, and how do emplacement conditions effect the observation?

The solicitation document contains all the information relative to this action for prospective applicants. The North American Industry Classification System (NAICS) number for this program is 5417.

Issued in Oakland, CA, on April 2, 2002.

Georgia M. McClelland,

Acting Director, Financial Assistance Center, Oakland Operations Office.

[FR Doc. 02–8617 Filed 4–9–02; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EL02–75–000]

Duke Energy Trading and Marketing, L.L.C. v. Entergy Arkansas, Inc., Entergy Gulf States, Inc., Entergy Louisiana, Inc., Entergy Mississippi, Inc., Entergy New Orleans, Inc., and Entergy Services, Inc.; Notice of Complaint Requesting Fast Track Processing

April 4, 2002.

Take notice that on April 3, 2002, Duke Energy Trading and Marketing, LLC, (DETM) filed a Complaint Requesting Fast Track Processing against Entergy Arkansas, Inc., Entergy Gulf States, Inc., Entergy Louisiana, Inc., Entergy Mississippi, Inc., Entergy New Orleans, Inc., and Entergy Services, Inc. (collectively, Entergy). The Complaint asserts that Entergy, in violation of the terms of its Open Access Transmission Tariff (OATT), has failed to process DEMT's application, as agent for the City of North Little Rock, for network transmission service on the Entergy system according to the procedures and time frames set forth in Entergy's OATT.

Copies the Complaint have been served by e-mail, messenger, or overnight delivery on Entergy, as well as the Arkansas Public Service Commission.

Any person desiring to intervene or to protest this filing should file 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). 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. All such

motions or protests should be filed on or before the comment date, and, to the extent applicable, must be served on the applicant and on any other person designated on the official service list. This filing is available for review at the Commission or may be viewed on the Commission's web site at http://www.ferc.gov using the ''RIMS'' link, select ''Docket #'' and follow the instructions (call 202–208–2222 for assistance). 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.

Comment Date: April 15, 2002.

Linwood A. Watson, Jr.,

Deputy Secretary.

[FR Doc. 02–8648 Filed 4–9–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP00–6–004]

Gulfstream Natural Gas System, L.L.C.; Notice of Tariff Compliance Filing

April 4, 2002.

Take notice that on March 27, 2002, Gulfstream Natural Gas System, L.L.C. (Gulfstream), tendered for filing as part of its FERC Gas Tariff, Original Volume No. 1, the tariff sheets listed in Appendix B to the filing, to be effective June 1, 2002.

Gulfstream states that it is submitting its Tariff in advance of the requirements set out in the Commission's orders issued on April 28, 2000, and February 22, 2001, in order to give parties additional time for review. The February 22, 2001 Commission order in Docket No. CP00–6–000, *et al.* granted Gulfstream's request for certificate authority to construct a new 744-mile interstate transmission system to transport up to 1.13 Bcf per day of natural gas to central and eastern Florida. On March 28, 2002, the Commission subsequently issued an order in Docket No. CP00–6–003 amending the certificate. Gulfstream states that its Tariff complies with Commission's Order No. 637 and NAESB requirements, but requests a waiver until January 1, 2003, to accommodate full segmentation and a waiver until June 1, 2003, to accommodate partial day recalls and releases.

Gulfstream states that complete copies of this filing are being mailed to all parties on the Commission's Official Service List in Docket No. CP00–6–000, *et al.*

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with section 385.211 of the Commission's rules and regulations. All such protests must be filed on or before April 12, 2002. 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.,

Deputy Secretary.

[FR Doc. 02–8647 Filed 4–9–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. EC02–60–000 and ER02–1298–000]

KeySpan-Ravenswood, Inc.; Notice of Filing

April 3, 2002.

Take notice that on March 29, 2002, KeySpan-Ravenswood, Inc. (Ravenswood) filed with the Federal Energy Regulatory Commission (Commission) an application under section 203 of the Federal Power Act seeking authorization for an intracorporate reorganization, by change of its corporate form, which will result in the nominal transfer of its jurisdictional facilities to KeySpan-Ravenswood LLC, which will be A newly formed affiliated limited liability company (the Transaction). The Transaction may constitute the disposition of jurisdictional facilities associated with the generation facilities it owns and operates (e.g., market-based rate schedule of Ravenswood and the arrangements entered into thereunder, limited transmission interconnection facilities and jurisdictional books and records). Ravenswood has also submitted A form of A notice of succession for KeySpan-Ravenswood LLC as successor to Ravenswood's rate schedules and agreements entered into thereunder and revised tariff sheets for its market-based rate schedule.

Any person desiring to intervene or to protest this filing should file 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). 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. All such motions or protests should be filed on or before the comment date, and, to the extent applicable, must be served on the applicant and on any other person designated on the official service list. This filing is available for review at the Commission or may be viewed on the Commission's web site at *http://www.ferc.gov* using the ''RIMS'' link, select ''Docket #'' and follow the instructions (call 202–208–2222 for assistance). 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.

Comment Date: April 23, 2002.

Magalie R. Salas,

Secretary.

[FR Doc. 02–8646 Filed 4–9–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project Nos. 20–019, 2401–007, and 472–017]

PacifiCorp; Notice Granting Late Intervention

April 4, 2002.

On March 15, 2000, the Commission issued a notice of new major license applications filed by PacifiCorp for the Bear River Hydroelectric Projects—Soda Hydroelectric Project No. 20–019, Grace-Cove Hydroelectric Project No. 2401–007, and Oneida Hydroelectric Project No. 472–017, located on the Bear River in Caribou and Franklin Counties, Idaho. The notice established May 15, 2000, as the deadline for filing motions to intervene in the proceeding.

On March 4, 2002, a late motion to intervene was filed by the United States Department of Agriculture, Forest Service. Granting the late motion to intervene will not unduly delay or disrupt the proceeding or prejudice other parties to it. Therefore, pursuant to Rule 214,[1] the late motion to intervene filed in this proceeding by the Forest Service is granted, subject to the Commission's rules and regulations.

Linwood A. Watson, Jr.,

Deputy Secretary.

[FR Doc. 02–8649 Filed 4–9–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 2042–013]

Public Utility District No. 1 of Pend Oreille County; Notice Granting Late Intervention

April 4, 2002.

On July 14, 2000, the Commission issued a notice of a new major license application filed by Public Utility District No. 1 of Pend Oreille County for the Box Canyon Hydroelectric Project No. 2042–013, located on the Pend Oreille River in Pend Oreille County, Washington and Bonner County, Idaho. The notice established September 13, 2000, as the deadline for filing motions to intervene in the proceeding.

On October 3, 2000, a late motion to intervene was filed by the State of Idaho. Granting the late motion to intervene will not unduly delay or disrupt the proceeding or prejudice other parties to it. Therefore, pursuant to Rule 214,[1] the late motion to intervene filed in this proceeding by the State of Idaho is granted, subject to the Commission's rules and regulations.

Linwood A. Watson, Jr.,

Deputy Secretary.

[FR Doc. 02–8650 Filed 4–9–02; 8:45 am]

BILLING CODE 6717–01–P

[1] 18 CFR 385.214 (2001).

[1] 18 CFR 385.214 (2001).

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EC02–111–000, et al.]

AlphaGen Power LLC, et al.; Electric Rate and Corporate Regulation Filings

April 4, 2002.

Take notice that the following filings have been made with the Commission. Any comments should be submitted in accordance with Standard Paragraph E at the end of this notice.

1. AlphaGen Power LLC

[Docket No. EG02–111–000]

Take notice that on March 29, 2002, AlphaGen Power LLC (AlphaGen), a Delaware special purpose limited liability company, with its principal place of business at c/o Newcourt Capital Securities, Inc., filed with the Federal Energy Regulatory Commission (Commission) an application for determination of exempt wholesale generator (EWG) status pursuant to Part 365 of the Commission's regulations and a request for expedited action to approve this application before June 1, 2002.

AlphaGen states that it will be engaged directly and exclusively in the business of owning or operating, or both owning and operating, a 535 MW gas-fired combined-cycle power generation facility located in Jackson, Michigan (Facility). AlphaGen will lease the Facility to Triton Power Michigan LLC, which will sell the capacity exceeding its capacity exclusively at wholesale pursuant to a capacity sales and tolling agreement with Williams Energy Marketing & Trading Company. A copy of the filing was served upon the Securities and Exchange Commission, the Michigan Public Service Commission.

Comment Date: April 25, 2002.

2. Colton Power, L.P., and City of Colton, California, Complainants, v. Southern California Edison Company, Respondent

[Docket No. EL02–74–000]

Take notice that on April 3, 2002, Colton Power, L.P. and the City of Colton, California (together, Complainants) filed a complaint against Southern California Edison Company (SCE) alleging that SCE's interconnection cost allocation procedures are unjust and unreasonable under Section 206 of the Federal Power Act, 16 USC 824e (1994).

Comment Date: April 24, 2002.

3. Shell Energy Services Company, L.L.C.

[Docket No. ER99–2109–004]

Take notice that on April 1, 2002, Shell Energy Services Company, L.L.C. (Shell Energy) filed with the Federal Energy Regulatory Commission (Commission) a triennial updated market power analysis in compliance with the Commission's April 7, 1999 Order in Docket No. ER99–2109–000, which authorized Shell Energy to sell power at market-based rates.

Comment Date: April 22, 2002.

4. Mirant Neenah, L.L.C.

[Docket No. ER01–1264–002]

Take notice that on March 29, 2002, Mirant Neenah, L.L.C. (Mirant Neenah) tendered for filing an updated market-power analysis in compliance with the requirement of the order granting it authority to make power sales at market-based rates.

Comment Date: April 19, 2002.

5. Mirant California, L.L.C., Mirant Delta, L.L.C., Mirant Potrero, L.L.C.

[Docket Nos. ER01–1267–002, ER01–1270–002, and ER01–1278–002]

Take notice that on March 29, 2002, Mirant California, L.L.C., Mirant Delta, L.L.C., and Mirant Potrero, L.L.C. (collectively the Mirant California Companies) tendered for filing an updated market-power analysis in compliance with the requirement of the order granting them authority to make power sales at market-based rates.

Comment Date: April 19, 2002.

6. Midwest Independent Transmission System Operator, Inc.

[Docket No. ER02–1420–000]

Take notice that on March 29, 2002, the Midwest Independent Transmission System Operator, Inc. (Midwest ISO) pursuant to section 205 of the Federal Power Act, tendered for filing proposed changes to the Midwest ISO Open Access Transmission Tariff (Midwest ISO Tariff) and Appendices, which are necessary to incorporate the members of the Southwest Power Pool, Inc. (SPP) into the Midwest ISO Tariff in connection with the combination of the Midwest ISO and SPP (the Transaction), as set forth in the Purchase and Assumption Agreement by and between Midwest Independent Transmission System Operator, Inc. and Southwest Power Pool, Inc. dated as of March 4, 2002, and for any further approvals and authorizations, as the Commission may deem necessary, in order that the Midwest ISO and SPP may close the Transaction.

Copies of the filing were served upon the members of the Midwest ISO and the members of the SPP.

Comment Date: April 19, 2002.

7. Midwest Independent Transmission System Operator, Inc.

[Docket No. ER02–1421–000]

Take notice that on March 29, 2002, the Midwest Independent Transmission System Operator, Inc. (Midwest ISO) filed with the Commission a compliance filing of the Midwest ISO Open Access Transmission Tariff (OATT), FERC Electric Tariff, Second Revised Volume No. 1, pursuant to the Commission's January 30, 2002 Order (Midwest Independent Transmission System, 98 FERC ¶ 61,076.

The Midwest ISO requested that the Commission accept the compliance filing and subsequent changes to the OATT as effective April 1, 2002.

Copies of this filing were electronically served upon 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.

Comment Date: April 19, 2002.

8. Louisville Gas and Electric Company

[Docket No. ER02–1423–000]

Take notice that on March 29, 2002, Ohio Edison Company. (dba FirstEnergy Solutions Corp.) filed with the Federal Energy Regulatory Commission (Commission) a termination notice for Power Sales Service with Kentucky Utilities Company. The terminated services are KU's Rate PS Power Services executed 4/29/97 and accepted by the Commission in Docket ER97–854–000.

Comment Date: April 19, 2002.

9. Arizona Public Service Company

[Docket No. ER02–1424–000]

Take notice that on March 29, 2002, Arizona Public Service Company (APS) filed with the Federal Energy Regulatory Commission (Commission) effective midnight March 31, 2002, Service Agreement No. 170 under FERC Electric Tariff, Volume No. 2, effective date April 1, 2001 is to be canceled.

Comment Date: April 19, 2002.

10. Arizona Public Service Company

[Docket No. ER02–1425–000]

Take notice that on March 29, 2002, Arizona Public Service Company (APS) filed with the Federal Energy Regulatory Commission (Commission) effective midnight the May 31, 2002, Service Agreement No. 204 under FERC Electric Tariff, Tenth Revised Volume No. 2, effective date April 1, 2002 is to be canceled.

Comment Date: April 19, 2002.

11. Arizona Public Service Company

[Docket No. ER02–1426–000]

Take notice that on March 29, 2002, Arizona Public Service Company (APS) tendered for filing a Service Agreements to provide Short-Term Firm Point-to-Point Transmission Service to Southwest Transmission Cooperative under APS'' Open Access Transmission Tariff.

A copy of this filing has been served on Southwest Transmission Cooperative and the Arizona Corporation Commission.

Comment Date: April 19, 2002.

12. Illinois Power Company

[Docket No. ER02–1427–000]

Take notice that on March 29, 2002, Illinois Power Company (Illinois Power), filed with the Federal Energy Regulatory Commission (Commission) a Firm Short-Term Point-to-Point Transmission Service Agreement entered into by Illinois Power and Entergy-Koch Trading, LP.

Illinois Power requests an effective date of March 1, 2002 for the Agreements and accordingly seeks a waiver of the Commission's notice requirement. Illinois Power states that a copy of this filing has been sent to the customer.

Comment Date: April 19, 2002.

13. Illinois Power Company

[Docket No. ER02–1428–000]

Take notice that on March 29, 2002, Illinois Power Company (Illinois Power),filed with the Federal Energy Regulatory Commission (Commission) two Emergency Energy Service Agreements entered into with Wisconsin Electric Power Company and City Water Light and power Office of Public Utilities pursuant to Illinois Power's Emergency Energy Tariff.

Illinois Power requests an effective date of February 1, 2002, for both Agreements and accordingly seeks a waiver of the Commission's notice requirement. Illinois Power states that a copy of this filing has been sent to all five customers.

Comment Date: April 19, 2002.

14. California Independent System Operator Corporation

[Docket No. ER02–1429–000]

Take notice that on March 29, 2002, the California Independent System Operator Corporation (ISO) submitted for Commission filing and acceptance an amendment (Amendment No. 1) to the Utility Distribution Company Operating Agreement (UDC Operating Agreement) between the ISO and the City of Anaheim, California, as well as the revised UDC Operating Agreement incorporating the terms of Amendment No. 1 to the UDC Operating Agreement. The ISO requests that the filing be made effective as of March 15, 2002. The ISO requests privileged treatment, pursuant to 18 CFR 388.112, with regard to portions of the filing.

The ISO has served copies of this filing upon the City of Anaheim, California, the Public Utilities Commission of the State of California, and all parties in Docket No. ER98–1923.

Comment Date: April 19, 2002.

15. Commonwealth Edison Company

[Docket No. ER02–1430–000]

Take notice that on March 29, 2002, Commonwealth Edison Company (ComEd) submitted for filing an unexecuted Service Agreement for Short-Term Firm Point to Point Transmission Service and a corresponding Dynamic Scheduling Agreement with Exelon Generation Company, LLC (Exelon) under ComEd's FERC Electric Tariff, Second Revised Volume No. 5.

ComEd seeks an effective date of April 1, 2002 and, accordingly, seeks waiver of the Commission's notice requirements. ComEd states that a copy of this filing has been served on Exelon, ORMET Corporation and the Illinois Commerce Commission.

Comment Date: April 19, 2002.

16. Commonwealth Edison Company

[Docket No. ER02–1431–000]

Take notice that on March 29, 2002, Commonwealth Edison Company (ComEd) submitted for filing a Service Agreement for Network Integration Transmission Service and a corresponding Network Operating Agreement between ComEd and Exelon Generation Company (Exelon) under ComEd's FERC Electric Tariff, Second Revised Volume No. 5.

ComEd seeks an effective date of March 1, 2002 and, accordingly, seeks waiver of the Commission's notice requirements. ComEd states that a copy of this filing has been served on Exelon and the Illinois Commerce Commission.

Comment Date: April 19, 2002.

17. Central Illinois Light Company

[Docket No. ER02–1432–000]

Take notice that on March 29, 2002, Central Illinois Light Company (CILCO), filed an Interconnection Agreement with Corn Belt Energy Corporation.

Copies of the filing were served on the affected customer and the Illinois Commerce Commission.

Comment Date: April 19, 2002.

18. Midwest Independent Transmission System Operator, Inc.

[Docket No. ER02–1433–000]

Take notice that on March 29, 2002, the Midwest Independent Transmission System Operator, Inc. (Midwest ISO), the Administrator of the Mid-Continent Area Power Pool (MAPP) Tariff, submitted for filing with the Federal Energy Regulatory Commission (Commission) pursuant to Section 205 of the Federal Power Act an unexecuted Service Agreement for transmission service for Western Area Power Administration under MAPP Schedule F.

A copy of this filing was sent to Western Area Power Administration.

Comment Date: April 19, 2002.

19. Midwest Independent Transmission System Operator, Inc.

[Docket No. ER02–1434–000]

Take notice that on March 29, 2002, the Midwest Independent Transmission System Operator, Inc. (Midwest ISO), the Administrator of the Mid-Continent Area Power Pool (MAPP) Tariff, submitted for filing with the Federal Energy Regulatory Commission (Commission) pursuant to Section 205 of the Federal Power Act an unexecuted Service Agreement for transmission service for Minnesota Municipal Power Agency under MAPP Schedule F.

A copy of this filing was sent to Minnesota Municipal Power Agency .

Comment Date: April 19, 2002.

20. Midwest Independent Transmission System Operator, Inc.

[Docket No. ER02–1435–000]

Take notice that on March 29, 2002, the Midwest Independent Transmission System Operator, Inc. (Midwest ISO), the Administrator of the Mid-Continent Area Power Pool (MAPP) Tariff, submitted for filing with the Federal Energy Regulatory Commission (Commission) pursuant to Section 205 of the Federal Power Act an unexecuted Service Agreement for transmission service for North Point Energy Solutions, Inc., under MAPP Schedule F.

A copy of this filing was sent to North Point Energy Solutions, Inc.

Comment Date: April 19, 2002.

21. Midwest Independent Transmission System Operator, Inc.

[Docket No. ER02–1436–000]

Take notice that on March 29, 2002, the Midwest Independent Transmission System Operator, Inc. (Midwest ISO), the Administrator of the Mid-Continent Area Power Pool (MAPP) Tariff, submitted for filing with the Federal Energy Regulatory Commission (Commission) pursuant to Section 205 of the Federal Power Act an unexecuted Service Agreement for transmission service for Alliant Energy under MAPP Schedule F.

A copy of this filing was sent to Alliant Energy.

Comment Date: April 19, 2002.

22. Triton Power Michigan LLC

[Docket No. ER02–1437-000]

Take notice that on March 29, 2002, Triton Power Michigan LLC (TP Michigan) tendered for filing with the Federal Energy Regulatory Commission (Commission) an application for waivers and blanket approvals under various regulations of the Commission and for an order accepting TP Michigan's FERC Electric Rate Schedule No. 1. TP Michigan requests waiver of the 60-day prior notice requirement to permit TP Michigan's Rate Schedule to be effective June 1, 2002, and requests expeditious Commission approval of this Application prior to that date.

TP Michigan intends to engage in electric power and energy transactions through a tolling agreement with Williams Energy Marketing & Trading Company. In transactions where TP Michigan sells electric energy, it proposes to make such sales on rates, terms and conditions to be mutually agreed to with the purchasing party. TP Michigan's proposed Rate Schedule also permits it to reassign transmission capacity.

Comment Date: April 19, 2002.

23. Florida Power & Light Company

[Docket No. ER02–1438–000]

Take notice that on March 29, 2002, Florida Power & Light Company (FPL) tendered for filing with the Federal Energy Regulatory Commission (Commission) proposed service agreements with UBS AG, London Branch, for Non-Firm transmission service and Firm transmission service under FPL's Open Access Transmission Tariff.

FPL requests that the proposed service agreements become effective on April 1, 2002. FPL states that this filing is in accordance with Section 35 of the Commission's regulations.

Comment Date: April 19, 2002.

24. PJM Interconnection, L.L.C.

[Docket No. ER02–1439–000]

Take notice that on March 29, 2002, PJM Interconnection, L.L.C. (PJM), tendered for filing with the Federal Energy Regulatory Commission (Commission) the following executed agreements: (I) An umbrella agreement for short-term firm point-to-point service with Allegheny Power; and (ii) an umbrella agreement for non-firm point-to-point transmission service with Allegheny Power.

PJM requested a waiver of the Commission's notice regulations to permit effective date of April 1, 2002 for the agreements, consistent with the implementation of PJM West. Copies of this filing were served upon Allegheny Power, as well as the state utility regulatory commissions within the PJM control area.

Comment Date: April 19, 2002.

25. PJM Interconnection, L.L.C.

[Docket No. ER02–1440–000]

Take notice that on March 29, 2002, PJM Interconnection, L.L.C. (PJM) tendered for filing with the Federal Energy Regulatory Commission (Commission) sixteen executed and unexecuted signature pages of the PJM West Reliability Assurance Agreement among Load Serving Entities in the PJM West Region (RAA West) making the following entities parties to the RAA West: AES NewEnergy, Inc.; Allegheny Electric Cooperative, Inc.; Allegheny Power; Borough of Chambersburg; Borough of Tarentum; BP Energy Co.; FirstEnergy Solutions Corp.; Hagerstown; Old Dominion Electric Cooperative; Town of Front Royal; Town of Thurmont; Town of Williamsport; City of New Martinsville; City of Philippi; Harrison REA Inc.; Letterkenny Industrial Development Authority—PA.

PJM also tendered for filing a revised RAA West Schedule 9 to include the new parties to the list of RAA West parties.

PJM requests a waiver of the Commission's notice requirements to permit an effective date of April 1, 2002 for the RAA West signature pages and the revised RAA West Schedule 9, which is consistent with the April 1, 2002 implementation date of RAA West.

PJM states that it served a copy of its filing on all parties to the RAA West, including the parties for which a signature page is being tendered with

this filing, the PJM members, and each of the state electric regulatory commissions within the PJM region.

Comment Date: April 19, 2002.

26. PJM Interconnection, L.L.C.

[Docket No. ER02–1441–000]

Take notice that on March 29, 2002, PJM Interconnection, L.L.C. (PJM), tendered for filing with the Federal Energy Regulatory Commission (Commission) fifteen executed and unexecuted service agreements for network integration transmission service with the following thirteen entities: Harrison REA Inc.; City of New Martinsville; City of Philippi; Letterkenny Industrial Development Authority-PA; Old Dominion Electric Cooperative; Town of Front Royal; Hagerstown; Borough of Chambersburg; Town of Williamsport; Town of Thurmont; Allegheny Electric Cooperative, Inc.; Borough of Tarentum; and Allegheny Power. These agreements are being entered into, and filed, in connection with the implementation of PJM West on April 1, 2002.

PJM requested a waiver of the Commission's notice requirement to permit an April 1, 2002 effective date for the agreements, consistent with the effective date for PJM West.

Copies of this filing were served upon all parties to the service agreements and the state commissions within the PJM region.

Comment Date: April 19, 2002.

27. Southwestern Electric Power Company

[Docket No. ER02–1442–000]

Take notice that on March 29, 2002, Southwestern Electric Power Company (SWEPCO) submitted for filing revisions to its PSAs with Northeast Texas Electric Cooperative, Inc. (NTEC), the City of Bentonville, Arkansas (Bentonville), the City of Hope, Arkansas (Hope), Rayburn County Electric Cooperative (Rayburn), Tex-La Electric Cooperative of Texas, Inc. (Tex-La), and East Texas Electric Cooperative, Inc. (ETEC) and the Restated and Amended Electric System Interconnection Agreement between Louisiana Generating, LLC (LaGen) and SWEPCO.

SWEPCO seeks an effective date of March 31, 2002 and, accordingly, seeks waiver of the Commission's notice requirements. SWEPCO states that a copy of this filing has been served on NTEC, Bentonville, Hope, Rayburn, LaGen, Tex-La, ETEC, the Arkansas Public Service Commission, the Louisiana Public Service Commission and the Public Utilities Commission of Texas.

Comment Date: April 19, 2002.

28. California Independent System Operator Corporation

[Docket No. ER02–1443–000]

Take notice that on March 29, 2002, the California Independent System Operator Corporation (ISO) filed Second Revised Service Agreement No. 256 Under ISO Rate Schedule No. 1, which is a Participating Generator Agreement (PGA) between the ISO and The Regents of the University of California on Behalf of Its Davis Campus Medical Center (UCDMC). The ISO has revised the PGA to update the list of generating units listed in Schedule 1 of the PGA. The ISO requests an effective date for the revision of August 2, 2001.

The ISO states that the present filing has been served on the California Public Utilities Commission and The Regents of the University of California on Behalf of its David Campus Medical Center.

Comment Date: April 19, 2002.

29. Conectiv Bethlehem, Inc.

[Docket No. ER02–1444–000]

Take notice that on March 29, 2002, Conectiv Bethlehem, Inc. (CBI) tendered for filing under the provisions of Section 205 of the Federal Power Act (FPA) a Power Purchase Agreement (PSA) and transaction agreement (collectively the Tolling Agreement) under CBI's Wholesale Market-Based Rate Tariff, FERC Electric Tariff, Original Volume No. 1. The PSA and the transaction agreement are service agreements No. 1 and 2, respectively, under CBI's Market-Based Rate Tariff.

CBI asks for an effective date of May 20, 2002.

Comment Date: April 19, 2002.

30. Allegheny Energy Service Corporation, on behalf of Monongahela Power Company, The Potomac Edison Company, and West Penn Power Company (Allegheny Power)

[Docket No. ER02–1445–000]

Take notice that on March 29, 2002, Allegheny Energy Service Corporation on behalf of Monongahela Power Company, The Potomac Edison Company, and West Penn Power Company (Allegheny Power), filed Interconnection Agreements (Agreements) with Allegheny Energy Supply Company, LLC—Dam No. 4 (Service Agreement No. 387), Allegheny Energy Supply Company, LLC—Dam No. 5 (Service Agreement No. 388), Allegheny Energy Supply Company, LLC—Luray (Service Agreement No. 389), Allegheny Energy Supply Company, LLC—Millville (Service Agreement No. 390), Allegheny Energy Supply Company, LLC—Newport (Service Agreement No. 391), Allegheny Energy Supply Company, LLC—Shenandoah (Service Agreement No. 392) and Allegheny Energy Supply Company, LLC—Warren (Service Agreement No. 393) under Allegheny Power's Open Access Transmission Tariff. The proposed effective date under the Agreements is March 30, 2002.

Copies of the filing have been provided to the Public Utilities Commission of Ohio, the Pennsylvania Public Utility Commission, the Maryland Public Service Commission, the Virginia State Corporation Commission, the West Virginia Public Service Commission, and all parties of record.

Comment Date: April 19, 2002.

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.

Magalie R. Salas,

Secretary.

[FR Doc. 02–8645 Filed 4–9–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Application Ready for Environmental Analysis and Soliciting Comments, Recommendations, Terms and Conditions, and Prescriptions

April 4, 2002.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection.

a. *Type of Application:* Original Major License.

b. *Project No.:* P–12020–000.

c. *Date filed:* May 14, 2001.

d. *Applicant:* Marseilles Hydro Power, LLC.

e. *Name of Project:* Marseilles Hydroelectric Project.

f. *Location:* On the Illinois River, in the Town of Marseilles, La Salle County, Illinois. The project affects 0.6 acres of public lands owned by the U.S. Army Corps of Engineers.

g. *Filed Pursuant to:* Federal Power Act 16 USC 791 (a)—825(r).

h. *Applicant Contact:* Mr. Loyal Gake, P.E., Marseilles Hyro Power, LLC, 116 State Street, P.O. Box 167, Neshkoro, WI 54960.

i. *FERC Contact:* Steve Kartalia, (202) 219–2942 or *stephen.kartalia@ferc.gov*

j. *Deadline for filing comments, recommendations, terms and conditions, and prescriptions:* 60 days from the issuance of this notice.

All documents (original and eight copies) should be filed with: Magalie R. Salas, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426.

The Commission's rules of practice require all intervenors filing documents with the Commission to serve a copy of that document on each person on the official service list for the project. Further, if an intervenor files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

Comments, recommendations, terms and conditions, and prescriptions may be filed electronically via the Internet in lieu of paper. See 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site (http://www.ferc.gov) under the ''e-Filing'' link.

k. This application has been accepted and is now ready for environmental analysis.

l. The Marseilles Hydroelectric Project utilizes the Marseilles Dam and Reservoir which is owned and operated by the U.S. Army Corps of Engineers. The existing run-of-river project consists of: (1) A 55-foot-high by 40-foot-wide by 229-foot-long reinforced concrete powerhouse, housing thirteen generating units for a total installed capacity of 4,745-kW; (2) a head gate structure consisting of a fixed dam approximately 95 feet long on the left (west) side and two steel 15-foot-high and 60-foot-wide gates on the right (east) side; (3) the North Channel Headrace which is approximately 2,730-foot-long, 15-foot-deep, and varies between 80- to 200-foot-wide and conveys water from the head gates to the powerhouse; (4) a new 210-foot-long trash racks along the upstream side of the forebay area set at 10-degree angle in 18 feet of water with an additional set of 40-foot-long trash racks along the wall between the turbine forebay and the sluiceway on the right (west) side of the powerhouse and set vertically in 15 feet of water; and (5) appurtenant facilities.

The applicant proposes to rebuild the project in two phases: (a) In the first phase, seven generating units will be restored to operation; and (b) in the second phase, six generating units will be purchased and installed in restored turbine bays. The total project capacity will be 4,745 kW with an annual average generation of 34,000 MWh.

m. A copy of the application is on file with the Commission and is available for public inspection. This filing may also be viewed on the web at *http://www.ferc.gov* using the ''RIMS'' link—select ''Docket #'' and follow the instructions (call 202–208–2222 for assistance). A copy is also available for inspection and reproduction at the address in item h above.

n. Public notice of the filing of the initial development application, which has already been given, established the due date for filing competing applications or notices of intent. Under the Commission's regulations, any competing development application must be filed in response to and in compliance with public notice of the initial development application. No competing applications or notices of intent may be filed in response to this notice.

The Commission directs, pursuant to Section 4.34(b) of the Regulations (see Order No. 533 issued May 8, 1991, 56 FR 23108, May 20, 1991) that all comments, recommendations, terms and conditions and prescriptions concerning the application be filed with the Commission within 60 days from the issuance date of this notice. All reply comments must be filed with the Commission within 105 days from the date of this notice.

Anyone may obtain an extension of time for these deadlines from the Commission only upon a showing of good cause or extraordinary circumstances in accordance with 18 CFR 385.2008.

All filings must (1) bear in all capital letters the title ''COMMENTS'', ''REPLY COMMENTS'', ''RECOMMENDATIONS,'' ''TERMS AND CONDITIONS,'' or ''PRESCRIPTIONS;'' (2) set forth in the heading the name of the applicant and the project number of the application to which the filing responds; (3) furnish the name, address, and telephone number of the person submitting the filing; and (4) otherwise comply with the requirements of 18 CFR 385.2001 through 385.2005. All comments, recommendations, terms and conditions or prescriptions must set forth their evidentiary basis and otherwise comply with the requirements of 18 CFR 4.34(b). Agencies may obtain copies of the application directly from the applicant. Each filing must be accompanied by proof of service on all persons listed on the service list prepared by the Commission in this proceeding, in accordance with 18 CFR 4.34(b), and 385.2010.

Linwood A. Watson, Jr.,

Deputy Secretary.

[FR Doc. 02–8651 Filed 4–9–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Western Area Power Administration

Sacramento Valley Right-of-Way Maintenance Project

AGENCY: Western Area Power Administration, DOE.

ACTION: Notice of floodplain/wetlands involvement.

SUMMARY: The Western Area Power Administration (Western), a power marketing administration of the U.S. Department of Energy (DOE), owns, operates, and maintains all or a portion of six 230-kilovolt (kV) transmission lines and one 115-kV transmission line in Placer, Sacramento, and Sutter counties, California.

Western's Sierra Nevada Customer Service Region is preparing an Environmental Assessment addressing rights-of-way (ROW) maintenance on these transmission lines and associated access roads. Western has determined that segments of the transmission line

and access road maintenance on ROWs are located within floodplains and wetlands areas. Per DOE's Floodplain/Wetlands Review Requirements, Western will prepare a floodplain/wetlands assessment.

DATES: Comments on the proposed floodplain/wetlands action are due to the address below no later than April 25, 2002.

ADDRESSES: Comments should be addressed to Mr. Steve Tuggle, Environmental Specialist, Sierra Nevada Region, Western Area Power Administration, 114 Parkshore Drive, Folsom, CA 95630–4710, fax (916) 985–1936, e-mail *tuggle@wapa.gov.*

FOR FURTHER INFORMATION CONTACT: Mr. Steve Tuggle, Environmental Specialist, at the address noted above or telephone (916) 353–4549. 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: Western owns, operates, and maintains high-voltage transmission facilities in California and Nevada. As part of its mission, Western uses its transmission system to reliably deliver Federal power from points of generation to and between delivery points. Western's system in California's Sacramento Valley includes all, or a portion of, six 230-kV and one 115-kV transmission lines. These transmission lines are located in Placer, Sacramento, and Sutter counties, California. Most portions of the lines are located in rural, agriculturally dominated areas. However, major portions of the transmission lines are located in suburban/urban areas in or near the cities of Sacramento, Roseville, and Folsom.

Western needs to maintain its transmission line and access road ROWs. Vegetation growing in the ROWs could create a safety hazard to line crews and the public, as well as interfere with the reliable transmission of electricity. Western proposes to expand its vegetation maintenance methods to include expanded use of herbicides in combination with manual and mechanical methods. Western plans to adopt a more progressive management approach for vegetation and access road maintenance that would promote low-growing plant communities. The proposed action would be cost effective and ensure that system reliability and safety remain at acceptable levels, while extending the lifetime of transmission components.

Based on a review of available Federal Emergency Management Agency flood hazard maps for Placer, Sacramento, and Sutter counties, Western has determined that the proposed action would be located within several 100- and 500-year floodplains, including the American River. Also, based on a review of national and state wetland inventories and the Natural Resource Conservation Service soil maps, Western has determined that the proposed action would be located in areas with wetlands.

Per DOE's Floodplain/Wetlands Review Requirements (10 CFR 1022.12), Western will prepare a floodplain/wetlands assessment. Removal of vegetation along the ROWs within 100- or 500-year floodplains is not expected to influence flow of water during 100- or 500-year flows but will be the subject of the floodplain/wetlands assessment. Maps and further information are available from the Western contact above.

Dated: March 25, 2002.

Michael S. Hacskaylo,

Administrator.

[FR Doc. 02–8618 Filed 4–9–02; 8:45 am]

BILLING CODE 6450–01–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–7169–4]

Clean Air Act Advisory Committee Meeting

ACTION: Clean Air Act Advisory Committee notice of meeting.

SUMMARY: The Environmental Protection Agency (EPA) established the Clean Air Act Advisory Committee (CAAAC) on November 19, 1990, to provide independent advice and counsel to EPA on policy issues associated with implementation of the Clean Air Act of 1990. The Committee advises on economic, environmental, technical, scientific, and enforcement policy issues.

Open Meeting Notice: Pursuant to 5 U.S.C. App. 2 Section 10(a)(2), notice is hereby given that the Clean Air Act Advisory Committee will hold its next open meeting on Thursday, May 30, 2002, from approximately 8:30 a.m. to 3:30 p.m. at the Loews Ventana Canyon Hotel, 7000 North Resort Drive, Tucson Arizona. Seating will be available on a first come, first served basis. Three of the CAAAC's four Subcommittees (the Linking Energy, Land Use, Transportation, and Air Quality Concerns Subcommittee; the Permits/NSR/Toxics Integration Subcommittee; and the Economics Incentives and Regulatory Innovations Subcommittee) will hold meetings on Wednesday, May 29, 2002 from approximately 8:30 a.m. to 11:30 a..m. at the Loews Ventana Hotel, the same location as the full Committee. The Energy, Clean Air and Climate Change Subcommittee will not meet at this time. The three Subcommittees will meet concurrently.

Inspection of Committee Documents: The Committee agenda and any documents prepared for the meeting will be publicly available at the meeting. Thereafter, these documents, together with CAAAC meeting minutes, will be available by contacting the Office of Air and Radiation Docket and requesting information under docket item A–94–34 (CAAAC). The Docket office can be reached by telephoning 202–260–7548; FAX 202–260–4400.

FOR FURTHER INFORMATION CONTACT: Paul Rasmussen, Office of Air and Radiation, US EPA (202) 564–1306, FAX (202) 564–1352 or by mail at US EPA, Office of Air and Radiation (Mail code 6102 A), 1200 Pennsylvania Avenue, NW., Washington, DC 20004. For information on the Subcommittee meetings, please contact the following individuals: (1) Permits/NSR/Toxics Integration—Debbie Stackhouse, 919–541–5354; and (2) Linking Transportation, Land Use and Air Quality Concerns—Robert Larson, 734–214–4277; and (3) Economic Incentives and Regulatory Innovations—Carey Fitzmaurice, 202–564–1667.

Additional information on these meetings and the CAAAC and its Subcommittees can be found on the CAAAC Web site: *www.epa.gov/oar/caaac/*

Dated: April 3, 2002.

Robert D. Brenner,

Principal Deputy Assistant Administrator for Air and Radiation.

[FR Doc. 02–8687 Filed 4–9–02; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[OPPT–2002–0003; FRL–6832–4]

Forum on State and Tribal Toxics Action; Notice of Public Meeting

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA is announcing the spring meeting of the Forum on State and

Tribal Toxics Action (FOSTTA) to collaborate on environmental protection and chemical and prevention issues. The Chemical Information and Management, Pollution Prevention, and Tribal Affairs Projects, components of FOSTTA, will hold meetings May 14–15, 2002. The Toxics Release Inventory Project will not be participating in these meetings. This notice announces the location and times for the meetings and sets forth some tentative agenda topics. EPA invites all interested parties to attend the public meetings.

DATES: The three projects will meet concurrently May 14, 2002, from 10 a.m. to 5 p.m. and May 15, 2002, from 8 a.m. to noon. A plenary session is being planned for the participants on Tuesday, May 14, 2002, from 8 a.m. to 9:30 a.m.

Requests to participate in the spring FOSTTA meeting must be received by EPA on or before May 9, 2002. Your request must be submitted by mail or electronically to one of the technical persons listed under **FOR FURTHER INFORMATION CONTACT**.

ADDRESSES: The meetings will be held at the Crystal City Marriott, 1999 Jefferson Davis Highway, Arlington, VA. The hotel is located at the Crystal City metro stop on the blue and yellow lines.

You may respond to this notice by mail, electronically, or in person. Please follow the detailed instructions for each method as provided in Unit I. of the **SUPPLEMENTARY INFORMATION**. To ensure proper receipt by EPA, it is imperative that you identify docket control number OPPT–2002–0003.

FOR FURTHER INFORMATION CONTACT: *For general information contact*: Barbara Cunningham, Acting Director, Environmental Assistance Division (7408M), Office of Pollution Prevention and Toxics, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone number: (202) 554–1404; e-mail address: TSCA-Hotline@epa.gov.

For technical information contact: Darlene Harrod, Environmental Assistance Division (7408M), Office of Pollution Prevention and Toxics, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone number: (202) 564–8814; fax number: (202) 564–8813; e-mail address: harrod.darlene@epa.gov.

Christine Eppstein, Environmental Council of the States, 444 North Capitol St., NW., Suite 445, Washington, DC 20001; telephone number: (202) 624–3661; fax number: (202) 624–3666; e-mail address: ceppstein@sso.org.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

This action is directed to the public in general. This action may, however, be of interest to all parties interested in FOSTTA and hearing more about the perspectives of the states and tribes on EPA programs and information exchange regarding important issues related to human health and environmental exposure to toxics. Since other entities may be interested, the Agency has not attempted to describe all the specific entities that may be affected by this action. However, in the interest of time and efficiency, the meetings are structured to provide maximum opportunity for state, tribal, and EPA participants to discuss items on the predetermined agenda. At the discretion of the chair, an effort will be made to accommodate participation by observers attending the proceedings. If you have any questions regarding the applicability of this action to a particular entity, consult the technical persons listed under **FOR FURTHER INFORMATION CONTACT**.

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

1. *Electronically*. You may obtain electronic copies of this document, and certain other related documents that might be available electronically, from the EPA Internet Home Page at http://www.epa.gov/. To access this document, on the Home Page select ''Laws and Regulations,'' ''Regulations and Proposed Rules,'' and then look up the entry for this document under the ''**Federal Register**—Environmental Documents.'' You can also go directly to the **Federal Register** listings at http://www.epa.gov/fedrgstr/.

2. *In person*. The Agency has established an official record for this action under docket control number OPPT–2002–0003. The official record consists of the documents specifically referenced in this action, any public comments received during an applicable comment period, and other information related to this action, including any information claimed as Confidential Business Information (CBI). This official record includes the documents that are physically located in the docket, as well as the documents that are referenced in those documents. The public version of the official record does not include any information claimed as CBI. The public version of the official record, which includes printed, paper versions of any electronic comments submitted during an applicable comment period, is available for inspection in the TSCA Nonconfidential Information Center, North East Mall Rm. B–607, Waterside Mall, 401 M St., SW., Washington, DC. The Center is open from noon to 4 p.m., Monday through Friday, excluding legal holidays. The telephone number of the Center is (202) 260–7099.

II. Background

The Toxic Substances Control Act, 15 U.S.C. 2609 section 10(g), authorizes EPA and other federal agencies to establish and coordinate a system for exchange among federal, state, and local authorities of research and development results respecting toxic chemical substances and mixtures, including a system to facilitate and promote the development of standard data format and analysis and consistent testing procedures. Through FOSTTA, the Chemical Information and Management Project (CIMP) focuses on EPA's Chemical Right-to-Know Program and works to develop a more coordinated effort involving federal, state, and tribal agencies. The Pollution Prevention Project (P2) promotes the prevention ethic across society, helping companies incorporate P2 approaches and techniques and integrating P2 into mainstream environmental activities at both the federal level and among the states. Under the Emergency Planning and Community Right-to-Know Act, EPA, the states, and the tribes share responsibility for handling toxic chemical release information and making it available to the public through the Toxics Release Inventory. The Tribal Affairs Project (TAP) concentrates on chemical and prevention issues that are most relevant to the tribes, including lead control and abatement, subsistence lifestyles, and hazard communications and outreach. FOSTTA's vision is to reinvigorate the projects, focus on major policy-level issues, recruit more senior state and tribal leaders, increase outreach to all 50 states and some 560 federally recognized tribes, and vigorously seek ways to engage the states and tribes in ongoing substantive discussions on complex and oftentimes controversial environmental issues that states and tribes resolve at their respective levels of government.

In January 2002, the Environmental Council of the States (ECOS), in cooperation with the National Tribal Environmental Council (NTEC), was awarded the new FOSTTA cooperative agreement. ECOS, NTEC, and EPA's Office of Pollution Prevention and Toxics (OPPT) are co-sponsoring the meetings. As part of a cooperative agreement, ECOS facilitates ongoing efforts of the state and tribal leaders and

OPPT to increase understanding and improve collaboration on toxics and pollution prevention issues and to continue a dialogue on how federal environmental programs can best be implemented among the states, tribes, and EPA.

The fall FOSTTA meeting is scheduled October 21–22, 2002.

III. Purpose of Meeting

The FOSTTA representatives and EPA will collaborate on environmental protection and chemical and prevention issues. The tentative agenda items identified by the states and the tribes follow:

1. Pilot project ideas for interfacing environment and public health (CIMP).
2. How to integrate the High Production Volume Challenge Program/ Voluntary Children's Chemical Evaluation Program data with existing tools (e.g., risk screening environmental indicators) (CIMP).
3. The cumulative risk exposure initiative (CIMP).
4. Future directions for pollution prevention incentives for state grant programs (P2).
5. Pollution prevention and compliance assistance (P2).
6. Tribal risk assessment (TAP).
7. Tribal science council (TAP).

During the first half hour of the plenary session, ECOS and NTEC will discuss their plans for interacting with FOSTTA. At the remainder of the plenary, another topic of mutual interest to the approximately 30 state and tribal leaders will be discussed.

List of Subjects

Environmental protection, Chemicals, Pollution prevention.

Dated: March 27, 2002.

Barbara Cunningham,

Acting Director, Environmental Assistance Division, Office of Pollution Prevention and Toxics.

[FR Doc. 02–8421 Filed 4–9–02; 8:45 am]

BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

[OPP–50894; FRL–6825–7]

Issuance of an Experimental Use Permit

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA has granted an experimental use permit (EUP) to the following pesticide applicant. An EUP permits use of a pesticide for experimental or research purposes only in accordance with the limitations in the permit.

FOR FURTHER INFORMATION CONTACT: By mail: Anne Ball, Biopesticides and Pollution Prevention Division (7511C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460. Office location, telephone number, and e-mail address: 1921 Jefferson Davis Hwy., Rm. 910, Crystal Mall #2, Arlington, VA; (703) 308–8717; e-mail address: ball.anne@epa.gov.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

This action is directed to the public in general. Although this action may be of particular interest to those persons who conduct or sponsor research on pesticides, the Agency has not attempted to describe all the specific entities that may be affected by this action. If you have any questions regarding the information in this action, consult the designated contact person listed for the individual EUP.

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

You may obtain electronic copies of this document, and certain other related documents that might be available electronically, from the EPA Internet Home Page at http://www.epa.gov/. To access this document, on the Home Page select ''Laws and Regulations,'' ''Regulations and Proposed Rules,'' and then look up the entry for this document under the ''**Federal Register**—Environmental Documents.'' You can also go directly to the **Federal Register** listings at http://www.epa.gov/fedrgstr/.

II. EUP

EPA has issued the following EUP:

7501–EUP–3. Issuance. Gustafson LLC, 1400 Preston Road, Suite 400, Plano, TX 75093. This EUP allows the use of 2.290 grams of the technical active ingredient contained in 114.54 grams concentrate of the fungicide *Bacillus pumilus* GB 34 to treat the soybean seed to be planted on 67 acres to evaluate the control of the fungal diseases *Rhizoctonia* and *Fusarium*. The program is authorized only in the States of Arizona, Illinois, Indiana, Iowa, Kansas, Louisiana, Maryland, Massachusetts, Minnesota, Missouri, Nebraska, Ohio, Oklahoma, Texas, and Wisconsin. The EUP is effective from March 1, 2002 to February 28, 2003.

Persons wishing to review this EUP are referred to the designated contact person. Inquiries concerning this permit should be directed to the person cited above. It is suggested that interested persons call before visiting the EPA office, so that the appropriate file may be made available for inspection purposes from 8 a.m. to 4 p.m., Monday through Friday, excluding legal holidays.

Authority: 7 U.S.C. 136.

List of Subjects

Environmental protection, Experimental use permits.

Dated: March 19, 2002.

Kathleen F. Knox,

Acting Director, Biopesticides and Pollution Prevention Division, Office of Pesticide Programs.

[FR Doc. 02–8537 Filed 4–9–02; 8:45 am]

BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

[OPPTS–44654; FRL–6831–5]

TSCA Chemical Testing; Receipt of Test Data

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces EPA's receipt of test data on 1,1,2-Trichloroethane (1,1,2-TCE) (CAS No. 79–00–5). These data were submitted pursuant to an enforceable testing consent agreement/order issued by EPA under section 4 of the Toxic Substances Control Act (TSCA).

FOR FURTHER INFORMATION CONTACT: Barbara Cunningham, Acting Director, Environmental Assistance Division (7408M), Office of Pollution Prevention and Toxics, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone number: (202) 554–1404; e-mail address: TSCA-Hotline@epa.gov.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

This action is directed to the public in general. This action may, however, be of interest to those persons who are concerned about data on health and/or environmental effects and other characteristics of this chemical. Since other entities may also be interested, the Agency has not attempted to describe all the specific entities that may be affected

by this action. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT.**

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

1. *Electronically.* You may obtain electronic copies of this document, and certain other related documents that might be available electronically, from the EPA Internet Home Page at http://www.epa.gov/. To access this document, on the Home Page select ''Laws and Regulations,'' ''Regulations and Proposed Rules,'' and then look up the entry for this document under ''**Federal Register**—Environmental Documents.'' You can also go directly to the **Federal Register** listings at http://www.epa.gov/fedrgstr/.

2. *In person.* The Agency has established an official record for this action under docket control number OPPTS–44654. The official record consists of the documents specifically referenced in this action, any public comments received during an applicable comment period, and other information related to this action, including any information claimed as Confidential Business Information (CBI). This official record includes the documents that are physically located in the docket, as well as the documents that are referenced in those documents. The public version of the official record does not include any information claimed as CBI. The public version of the official record, which includes printed, paper versions of any electronic comments submitted during an applicable comment period, is available for inspection in the TSCA Nonconfidential Information Center, North East Mall Rm. B–607, Waterside Mall, 401 M St., SW., Washington, DC. The Center is open from noon to 4 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Center is (202) 260–7099.

II. Test Data Submissions

Under 40 CFR 790.60, all TSCA section 4 enforceable consent agreements/orders must contain a statement that results of testing conducted pursuant to enforceable consent agreements/orders will be announced to the public in accordance with section 4(d) of TSCA.

Test data for 1,1,2-Trichloroethane (TCE), a hazardous air pollutant (HAP) listed under section 112 of the Clean Air Act Amendments of 1990, were submitted by the HAP Task Force. These data were submitted pursuant to a TSCA section 4 enforceable consent agreement/order and were received by EPA on February 7, 2002. The submission includes a final report entitled ''Acute Inhalation Toxicity (with Histopathology) Study of 1,1,2-Trichloroethane (1,1,2-TCE) in Rats by WIL Research Laboratories, Inc.'' 1,1,2 TCE is used as a feedstock intermediate in the production of vinylidene chloride and some tetrachloroethanes. It is used as a solvent where its high solvency for chlorinated rubbers and other substances is needed, and for pharmaceuticals and electronic components.

EPA has initiated its review and evaluation process for this submission. At this time, the Agency is unable to provide any determination as to the completeness of the submission.

Authority: 15 U.S.C. 2603.

List of Subjects

Environmental protection, Hazardous substances, Toxic substances.

Dated: April 2, 2002.

Ward Penberthy,

Acting Director, Chemical Control Division, Office of Pollution Prevention and Toxics.

[FR Doc. 02–8536 Filed 4–9–02; 8:45 am]

BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

[OPPTS–2002–0009; FRL–6833–1]

TSCA Chemical Testing; Receipt of Test Data

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces EPA's receipt of test data on dimethyl glutarate (DMG) (CAS No. 1119–40–0). These data were submitted pursuant to an enforceable testing consent agreement/order issued by EPA under section 4 of the Toxic Substances Control Act (TSCA).

FOR FURTHER INFORMATION CONTACT: Barbara Cunningham, Acting Director, Environmental Assistance Division (7408M), Office of Pollution Prevention and Toxics, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone number: (202) 554–1404; e-mail address: TSCA-Hotline@epa.gov.

SUPPLEMENTARY INFORMATION:

I. Does this Action Apply to Me?

This action is directed to the public in general. This action may, however, be of interest to those persons who are concerned about data on health and/or environmental effects and other characteristics of this chemical. Since other entities may also be interested, the Agency has not attempted to describe all the specific entities that may be affected by this action. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT.**

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

1. *Electronically.* You may obtain electronic copies of this document, and certain other related documents that might be available electronically, from the EPA Internet Home Page at http://www.epa.gov/. To access this document, on the Home Page select ''Laws and Regulations,'' ''Regulations and Proposed Rules,'' and then look up the entry for this document under ''**Federal Register**—Environmental Documents.'' You can also go directly to the **Federal Register** listings at http://www.epa.gov/fedrgstr/.

2. *In person.* The Agency has established an official record for this action under docket control number OPPTS–2002–0009. The official record consists of the documents specifically referenced in this action, any public comments received during an applicable comment period, and other information related to this action, including any information claimed as Confidential Business Information (CBI). This official record includes the documents that are physically located in the docket, as well as the documents that are referenced in those documents. The public version of the official record does not include any information claimed as CBI. The public version of the official record, which includes printed, paper versions of any electronic comments submitted during an applicable comment period, is available for inspection in the TSCA Nonconfidential Information Center, North East Mall Rm. B–607, Waterside Mall, 401 M St., SW., Washington, DC. The Center is open from noon to 4 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Center is (202) 260–7099.

III. Test Data Submissions

Under 40 CFR 790.60, all TSCA section 4 enforceable consent agreements/orders must contain a statement that results of testing conducted pursuant to enforceable consent agreements/orders will be announced to the public in accordance with section 4(d) of TSCA.

Test data for dimethyl glutarate were submitted by the Dibasic Esters Group comprised of the following companies: Aceto Corporation, E.I. duPont de Nemours and Company, and Solutia, Inc. These data were submitted pursuant to a TSCA section 4 enforceable consent agreement/order and were received by EPA on February 25, 2002. The submission includes a final report titled ''Dimethyl Glutarate Mammalian Cell Mutation Assay.'' Dimethyl glutarate is one of three component chemicals that make up the class of chemicals known as dibasic esters (DBEs). DBEs are used in paint stripping formulations that are sold to the general public. Consumers can be significantly exposed to DBEs during use of these formulations.

EPA has initiated its review and evaluation process for this submission. At this time, the Agency is unable to provide any determination as to the completeness of the submission.

Authority: 15 U.S.C. 2603.

List of Subjects

Environmental protection, Hazardous substances, Toxic substances.

Dated: April 3, 2002

Ward Penberthy,

Acting Director, Chemical Control Division, Office of Pollution Prevention and Toxics.

[FR Doc. 02–8538 Filed 4–9–02; 8:45 am]

BILLING CODE 6560–50–S

FEDERAL MARITIME COMMISSION

Notice of Agreement(s) Filed

The Commission hereby gives notice of the filing of the following agreement(s) under the Shipping Act of 1984. Interested parties can review or obtain copies of agreements at the Washington, DC offices of the Commission, 800 North Capitol Street, NW., Room 940. Interested parties may submit comments on an agreement to the Secretary, Federal Maritime Commission, Washington, DC 20573, within 10 days of the date this notice appears in the **Federal Register**.

Agreement No.: 010979–037.

Title: Caribbean Shipowners Association.

Parties:

A.P. Moller-Maersk Sealand
Bernuth Lines, Ltd.,
CMA—CGM SA, CMA–CGM The French Line
Crowley Liner Services, Inc.,
Interline Connection, NV,
Seaboard Marine, Ltd.,
Seafreight Line, Ltd.,
Tecmarine Lines, Inc.,
Tropical Shipping & Construction Co., Ltd.

Synopsis: The proposed agreement amendment changes the basic agreement from a conference agreement to a discussion agreement. The amendment also deletes King Ocean Services S.A. as a member of the agreement.

Agreement No.: 201022–002.

Title: New Orleans/Coastal Terminal Agreement.

Parties: The Board of Commissioners of the Port of New Orleans Coastal Cargo Company, Inc.

Synopsis: The proposed amendment changes the annual guarantee from a tonnage basis to a financial basis. The agreement runs through March 31, 2007.

Agreement No.: 201101–002.

Title: Tampa/Tampa Bay Marine Terminal Wharfage Incentive Agreement.

Parties:

Tampa Port Authority
Tampa Bay International Terminals, Inc.

Synopsis: The amendment extends the terms of the agreement through March 31, 2003.

Dated: April 5, 2002.

By order of the Federal Maritime Commission.

Bryant L. VanBrakle,

Secretary.

[FR Doc. 02–8722 Filed 4–9–02; 8:45 am]

BILLING CODE 6730–01–P

FEDERAL MARITIME COMMISSION

Ocean Transportation Intermediary License Revocations

The Federal Maritime Commission hereby gives notice that the following Ocean Transportation Intermediary licenses have been revoked pursuant to section 19 of the Shipping Act of 1984 (46 U.S.C. app. 1718) and the regulations of the Commission pertaining to the licensing of Ocean Transportation Intermediaries, effective on the corresponding date shown below:

License Number: 2794F.

Name: Florida Overseas Services, Inc.

Address: 7236 NW 70th Street, Miami, FL 33166.

Date Revoked: March 21, 2002.

Reason: Failed to maintain a valid bond.

License Number: 3024F.

Name: S.A. Chiarella dba S.A. Chiarella Forwarding Co.

Address: 1650 W. Linda Vista Drive, Suite 107, San Marcos, CA 90269.

Date Revoked: March 13, 2002.

Reason: Failed to maintain a valid bond.

Sandra L. Kusumoto,

Director, Bureau of Consumer Complaints and Licensing.

[FR Doc. 02–8721 Filed 4–9–02; 8:45 am]

BILLING CODE 6730–01–P

FEDERAL MARITIME COMMISSION

Ocean Transportation Intermediary License Reissuances

Notice is hereby given that the following Ocean Transportation Intermediary licenses have been reissued by the Federal Maritime Commission pursuant to section 19 of the Shipping Act of 1984, as amended by the Ocean Shipping Reform Act of 1998 (46 U.S.C. app. 1718) and the regulations of the Commission pertaining to the licensing of Ocean Transportation Intermediaries, 46 CFR part 515.

License No.	Name/address	Date reissued
3886F	Goodship International, Inc., 1058 Tower Lane, Bensenville, IL 60106	February 27, 2002.
16083F	Palmetto Freight Forwarding Corp., 2577 West 80 Street, Hialeah, FL 33016	December 6, 2001.
3406F	Simmons International Express, Inc., 101 E. Clarendon Street, Prospect Heights, IL 60070	January 4, 2002.

Sandra L. Kusumoto,

Director, Bureau of Consumer Complaints and Licensing.

[FR Doc. 02–8723 Filed 4–9–02; 8:45 am]

BILLING CODE 6730–01–P

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR Part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the

assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. The application also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act (12 U.S.C. 1843). Unless otherwise noted, nonbanking activities will be conducted throughout the United States. Additional information on all bank holding companies may be obtained from the National Information Center website at www.ffiec.gov/nic/.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than May 6, 2002.

A. Federal Reserve Bank of St. Louis (Randall C. Sumner, Vice President) 411 Locust Street, St. Louis, Missouri 63166–2034:

1. ESB Bancorp, Inc., Elberfeld, Indiana; to become a bank holding company by acquiring 100 percent of the voting shares of The Elberfeld State Bank, Elberfeld, Indiana.

Board of Governors of the Federal Reserve System, April 5, 2002.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. 02–8694 Filed 4–9–02; 8:45 am]

BILLING CODE 6210–01–S

FEDERAL RESERVE SYSTEM

Notice of Proposals to Engage in Permissible Nonbanking Activities or to Acquire Companies that are Engaged in Permissible Nonbanking Activities

The companies listed in this notice have given notice under section 4 of the Bank Holding Company Act (12 U.S.C. 1843) (BHC Act) and Regulation Y (12 CFR Part 225) to engage *de novo*, or to acquire or control voting securities or assets of a company, including the companies listed below, that engages either directly or through a subsidiary or other company, in a nonbanking activity that is listed in § 225.28 of Regulation Y (12 CFR 225.28) or that the Board has determined by Order to be closely related to banking and permissible for bank holding companies. Unless otherwise noted, these activities will be conducted throughout the United States.

Each notice is available for inspection at the Federal Reserve Bank indicated. The notice also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether the proposal complies with the standards of section 4 of the BHC Act. Additional information on all bank holding companies may be obtained from the National Information Center website at www.ffiec.gov/nic/.

Unless otherwise noted, comments regarding the applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than May 6, 2002.

A. Federal Reserve Bank of Dallas (W. Arthur Tribble, Vice President) 2200 North Pearl Street, Dallas, Texas 75201–2272:

1. Texas United Bancshares, Inc., La Grange, Texas, and Texas United Nevada, Carson City, Nevada; to acquire The Bryan-College Station FHC, Bryan, Texas, and thereby indirectly acquire First Federal Savings Bank, FSB, Bryan, Texas, and engage in owning or operating a savings association, pursuant to § 225.28(b)(4)(ii) of Regulation Y.

Board of Governors of the Federal Reserve System, April 5, 2002.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc.02–8695 Filed 4–9–02; 8:45 am]

BILLING CODE 6210–01–S

FEDERAL RESERVE SYSTEM

Government in the Sunshine Meeting Notice

AGENCY HOLDING THE MEETING: Board of Governors of the Federal Reserve System.

TIME AND DATE: 11:00 a.m., Monday, April 15, 2002.

PLACE: Marriner S. Eccles Federal Reserve Board Building, 20th and C Streets, NW., Washington, DC 20551.

STATUS: Closed.

MATTERS TO BE CONSIDERED: 1. Personnel actions (appointments, promotions, assignments, reassignments, and salary actions) involving individual Federal Reserve System employees.

2. Any items carried forward from a previously announced meeting.

FOR FURTHER INFORMATION CONTACT: Michelle A. Smith, Assistant to the Board; 202–452–2955.

SUPPLEMENTARY INFORMATION: You may call 202–452–3206 beginning at approximately 5 p.m. two business days before the meeting for a recorded announcement of bank and bank holding company applications scheduled for the meeting; or you may contact the Board's Web site at *http://www.federalreserve.gov* for an electronic announcement that not only lists applications, but also indicates procedural and other information about the meeting.

Dated: April 5, 2002.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. 02–8769 Filed 4–5–02; 5:04 pm]

BILLING CODE 6210–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[60Day–02–39]

Proposed Data Collections Submitted for Public Comment and Recommendations

In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 for opportunity for public comment on proposed data collection projects, the Centers for Disease Control and Prevention (CDC) will publish periodic summaries of proposed projects. To request more information on the proposed projects or to obtain a copy of the data collection plans and instruments, call the CDC Reports Clearance Officer on (404) 498–1210.

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 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. Send comments to Seleda Perryman, CDC Assistant Reports Clearance Officer, 1600 Clifton Road, MS–D24, Atlanta, GA 30333. Written comments should be received within 60 days of this notice.

Proposed Project: National Surveillance of Dialysis-Associated Diseases (0920–0033)—Extension—National Center for Infectious Diseases (NCID), Centers for Disease Control and Prevention (CDC). The Division of Healthcare Quality Promotion (DHQP; formerly Hospital Infections Program), is proposing a extension of a yearly survey of dialysis practices and dialysis-associated diseases at U.S. outpatient hemodialysis centers. The rehabilitation of individuals in the United States who suffer from chronic renal failure has been identified as an important national priority; since 1973, chronic hemodialysis patients have been provided financial support by the Federal Government. DHQP and the Division of Viral Hepatitis have responsibility for formulating strategies for the control of hepatitis, bacteremia, and other hemodialysis-associated diseases.

In order to devise such control measures, it is necessary to determine the extent to which the incidence of these dialysis-associated diseases changes over time. This request is to continue surveillance activities among chronic hemodialysis centers nationwide. In addition, once control measures are recommended it is essential that such measures be monitored to determine their effectiveness. The survey is conducted once a year by a mailing to all chronic hemodialysis centers licensed by the Health Care Financing Administration. The types of dialysis practices surveyed include the use of hepatitis B vaccine in patients and staff members, the types of vascular access and dialyzers used, whether certain dialysis items are disinfected for reuse, and whether the dialysis center has any policy for insuring judicious use of antimicrobial agents. Among dialysis-associated diseases, the survey includes hepatitis B virus infection, antibody to hepatitis C virus, antibody to human immunodeficiency virus, and vancomycin-resistant enterococci. There are no costs to respondents.

Respondents	Number of respondents	Number of responses/ respondent	Avg. burden/ response (in hours)	Total burden (in hours)
Chronic Hemodialysis Centers	3,800	1	1	3,800
Total				3,800

Dated: April 1, 2002.

Nancy E. Cheal,

Acting Associate Director for Policy, Planning and Evaluation, Centers for Disease Control and Prevention.

[FR Doc. 02–8593 Filed 4–9–02; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[60Day–02–38]

Proposed Data Collections Submitted for Public Comment and Recommendations

In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 for opportunity for public comment on proposed data collection projects, the Centers for Disease Control and Prevention (CDC) will publish periodic summaries of proposed projects. To request more information on the proposed projects or to obtain a copy of the data collection plans and instruments, call the CDC Reports Clearance Officer on (404) 498–1210.

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 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. Send comments to Anne O'Connor, CDC Assistant Reports Clearance Officer, 1600 Clifton Road, MS–D24, Atlanta, GA 30333. Written comments should be received within 60 days of this notice.

Proposed Project: Report of Verified Case of Tuberculosis (RVCT) (CDC 72.9A, 72.9B, 72.9C) OMB No. 0920–0026—Extension—National Center for HIV, STD, and TB Prevention (NCHSTP), Centers for Disease Control and Prevention (CDC).

The Centers for Disease Control and Prevention (CDC), National Center for HIV, STD, and TB Prevention (NCHSTP), Division of Tuberculosis Elimination (DTBE), proposes to continue data collection for the Report of Verified Case of Tuberculosis (RVCT) (CDC 72.9A, 72.9B, 72.9C), previously approved under OMB No. 0920–0026 in 1992, 1995, 1998, and 2001. This request is for a 3-year revision of OMB clearance approval beginning January 1, 2003 (current OMB No. 0920–0026 expiration date is December 31, 2002). CDC is requesting OMB clearance for revision of the RVCT which will change the race and ethnicity variables on the RVCT form to comply with the OMB ''Standards for Maintaining, Collecting, and Processing Federal Data on Race and Ethnicity''.

To accomplish the CDC goal of eliminating tuberculosis (TB) in the United States, CDC maintains the national TB surveillance system. The system, initiated in 1953, has been modified several times to better monitor and respond to changes in TB morbidity. The most recent modification was implemented in 1993 when the RVCT was expanded in response to the TB epidemic of the late 1980s and early 1990s and incorporated into a CDC software for electronic reporting of TB case reports to CDC. The expanded system improved the ability of CDC to monitor important aspects of TB epidemiology in the United States, including drug resistance, TB risk factors, including HIV coinfection, and treatment. The timely system also enabled CDC to monitor the recovery of the nation from the resurgence and identify that current TB epidemiology supports the renewed national goal of elimination. To measure progress in achieving this goal, as well as continue to monitor TB trends and potential TB outbreaks, identify high risk populations for TB, and gauge program performance, CDC proposes to extend use of the RVCT.

Data are collected by 60 Reporting Areas (the 50 states, the District of Columbia, New York City, Puerto Rico, and 7 jurisdictions in the Pacific and Caribbean) using the RVCT. An RVCT is completed for each reported TB case and contains demographic, clinical, and laboratory information. A comprehensive software package, the Tuberculosis Information Management

System (TIMS) is used for RVCT data entry and electronic transmission of TB case reports to CDC. TIMS provides reports, query functions, and export functions to assist in analysis of the data. CDC publishes an annual report summarizing national TB statistics and also periodically conducts special analyses for publication in peer-reviewed scientific journals to further describe and interpret national TB data. These data assist public health officials and policy makers in program planning, evaluation, and resource allocation. Reporting Areas also review and analyze their RVCT data to monitor local TB trends, evaluate program success, and assist in focusing resources to eliminate TB.

No other federal agency collects this type of national TB data. In addition to providing technical assistance for use of the RVCT, CDC also provides Reporting Areas with technical support for the TIMS software. There is no cost to respondents.

Respondents	Number of respondents	Number of responses per respondent	Average burden per response (in hours)	Total response burden (in hours)
Local/State/Territorial Health Department	60	278	30/60	8340
Total				8340

Dated: April 2, 2002.

Nancy E. Cheal,

Acting Associate Director for Policy, Planning and Evaluation, Centers for Disease Control and Prevention.

[FR Doc. 02–8594 Filed 4–9–02; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

Drug Information Association and Food and Drug Administration on the Fourth Project Management Workshop: Effective Agency/Industry Interactions to Expedite Drug Development; Public Workshop

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice of public workshop.

SUMMARY: The Food and Drug Administration (FDA) in cosponsorship with the Drug Information Association (DIA) is announcing a public workshop entitled ''The Fourth Project Management Workshop: Effective Agency/Industry Interactions to Expedite Drug Development.'' The workshop will focus on facilitating drug development and drug review processes.

Date and Time: The workshop will be held on April 30, 2002, from 8:30 a.m. to 5 p.m., May 1, 2002, from 8:30 a.m. to 5 p.m., and May 2, 2002, from 8:30 a.m. to 12:30 p.m.

Location: The workshop will be at the Hyatt Regency Bethesda, 1 Bethesda Metro Center, Bethesda, MD.

Contacts: For information about this notice: Michael D. Anderson, Center for Biologics Evaluation and Research (CBER) (HFM–17), Food and Drug Administration, 1401 Rockville Pike, Rockville, MD 20852, 301–827–6210, FAX 301–594–1944, e-mail: Andersonm@cber.fda.gov.

For information about the workshop: David Roeder, Center for Drug Evaluation and Research (CDER) (HFD-104), Food and Drug Administration, 9201 Corporate Blvd. Rockville, MD 20850, 301–827–2488, FAX 301–827–2520, e-mail: Roederd@cder.fda.gov, or Gail Sherman, Center for Biologics Evaluation and Research (HFM–42), Food and Drug Administration, 1401 Rockville Pike, Rockville, MD 20852, 301–827–2000, FAX 301–827–3079, e-mail: Sherman@cber.fda.gov, or Camela Pastorius, Drug Information Association (DIA), 501 Office Center Dr., suite 450, Fort Washington, PA 19034, 215–591–3303, FAX 215–641–1229, e-mail: Camela.Pastorius@diahome.org. If you need special accommodations due to a disability, please contact Camela Pastorius (address above) by April 23, 2002.

Registration: Mail or fax your registration information and registration fee to DIA, P.O. Box 7777–W8405, Philadelphia, PA 19175. You may obtain registration forms from DIA (see contact information) or from FDA at http://www.fda/gov/cber/meetings.htm. Additional information regarding registration fees and online registration can be found at http:/ www.diahome.org/docs/Events/ Events—search—detail.cfm?EventID=0201.

SUPPLEMENTARY INFORMATION: FDA (CBER and CDER) and DIA are cosponsoring a workshop as part of a continuing effort to develop higher levels of teamwork, communication, and procedural knowledge to facilitate drug development and review in the United States. The workshop's target audience is FDA regulatory project managers and pharmaceutical industry project management and regulatory teams who have mid-level experience and are involved in daily agency-industry interactions.

The workshop will present three major themes:

- Planning and Teamwork—attendees will participate in activities designed to highlight the value of teamwork, and to exchange ideas about team organization and management;
- Understanding the Process of Regulatory Project Management—the workshop will explore parallel objectives and activities within industry and FDA and identify opportunities for effective interaction. Attendees will also share ideas for optimizing working relationships between project management and regulatory professionals and between industry representatives and FDA regulatory project managers;
- Key Factors for Success—the workshop will present a set of experience-based factors for successful FDA/industry interaction.

Dated: April 4, 2002.

Margaret M. Dotzel,

Associate Commissioner for Policy.

[FR Doc. 02–8612 Filed 4–9–02; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

Advisory Committee on Training in Primary Care Medicine and Dentistry; Notice of Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Public Law 92–463), announcement is made of the following National Advisory body scheduled to meet during the month of May 2002.

Name: Advisory Committee on Training in Primary Care Medicine and Dentistry (ACTPCMD).

Date and Time: May 13, 2002; 8:30 a.m.—5 p.m., May 14, 2002; 8:30 a.m.—5 p.m.,

Place: The Radisson Barcelo Hotel, 2121 P Street, NW., Washington, DC 20037.

The meeting is open to the public.

Purpose: The Advisory Committee will address policy recommendations and needs for program development to improve the public health by enhancing the interface between primary care practitioners and the public health infrastructure in the United States. The contents of this meeting will provide the basis for the second report of the Advisory Committee, which will be submitted to Congress and the Secretary of the Department of Health and Human Services in November 2002.

Agenda: The meeting on Monday, May 13 will begin with welcoming and opening comments from the Chair and Executive Secretary. A plenary session will follow, in which two speakers will characterize critical issues relating to needs for improving the incorporation of public health into primary care education and training to create practitioners who will function in close collaboration with the public health infrastructure. Three speakers will then provide introductions to workgroup sessions which will follow. The Advisory Committee will then divide into three workgroups which will focus on developing recommendations for changes in education and training that will strengthen the primary care-public health interface, specifically in relation to access to care, interdisciplinary teamwork, and acute and chronic public health issues.

On May 14, workgroups will reconvene in the morning to finalize recommendations. A plenary session will follow, with reports by workgroup chairs, general discussion, and decisions by the Advisory Committee on their official recommendations. The Advisory Committee will also discuss plans for future work, and will close following an opportunity for public comments.

Anyone interested in obtaining a roster of members or other relevant information should write or contact Stan Bastacky, D.M.D., M.H.S.A., Deputy Executive Secretary, Advisory Committee on Training in Primary Care Medicine and Dentistry, Parklawn Building, Room 9A–21, 5600 Fishers Lane, Rockville, Maryland 20857, Telephone (301) 443–6326. The web address for information on the Advisory Committee is *http://www.bhpr.hrsa.gov/dm/actpcmd.htm.*

Dated: April 4, 2002.

Jane M. Harrison,

Director, Division of Policy Review and Coordination.

[FR Doc. 02–8613 Filed 4–9–02; 8:45 am]

BILLING CODE 4165–15–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Office of Refugee Resettlement Grant to the New York Office of Temporary and Disability Assistance, Bureau of Refugee and Immigrant Affairs

AGENCY: Office of Refugee Resettlement, HHS.

ACTION: Grant award announcement.

SUMMARY: Notice is hereby given that an award is being made to the New York Office of Temporary and Disability Assistance, Bureau of Refugee and Immigrant Affairs, Albany, New York in the amount of $3,000,000 to provide funds to refugees in the New York City area in need of employment assistance due to the economic impact of the September 11, 2001 attack on the World Trade Center. The events of September 11th have caused disruptions in refugee employment as a result of the economic downturn in New York City. Many of the New York City businesses that traditionally provide employment to refugees are located in lower Manhattan. A number of hotels and restaurants that employ refugees were damaged or destroyed. Many refugees have experienced lay-offs in the hotel and service industry. These unemployed refugees are now unable to find new jobs because newly unemployed skilled workers have begun to compete for entry level jobs.

Many of these refugees arrived in the United States some time ago and are no longer eligible for refugee cash assistance (RCA) and refugee medical assistance (RMA). The New York Bureau of Refugee and Immigrant Affairs will provide funds to New York City refugee service providers for mental health services, employment training and assistance for displaced workers, community and employer outreach and education, transportation assistance, and direct assistance.

After the appropriate reviews, it has been determined that the need for additional services is compelling. The period of this funding will extend through July 31, 2003.

FOR FURTHER INFORMATION CONTACT: Gayle Smith, Office of Refugee Resettlement, Administration for Children and Families, 370 L'Enfant Promenade, SW., Washington, DC 20447, telephone (202) 205–3590.

Dated: March 26, 2002.

Nguyen Van Hanh,

Director, Office of Refugee Resettlement.

[FR Doc. 02–8616 Filed 4–9–02; 8:45 am]

BILLING CODE 4184–01–M

DEPARTMENT OF THE INTERIOR

Notice of Availability of the Finding of No Significant Impact (FONSI) on the Final Environmental Assessment for the Diamond Fork System 2002 Proposed Action Modifications

AGENCY: Office of the Assistant Secretary—Water and Science, Department of the Interior.

ACTION: Notice of availability of the Finding of No Significant Impact (FONSI) on the Final Environmental Assessment for the Diamond Fork System 2002 Proposed Action Modifications.

SUMMARY: On March 29, 2002, Ronald Johnston, Program Director, Central Utah Project Completion Act Office, Department of the Interior (Interior), signed the Finding of No Significant Impact (FONSI) which documents the selection of the Proposed Action Modifications as presented in the Final Environmental Assessment for the Diamond Fork System 2002 Proposed Action Modifications (2002 Modifications EA). Interior has determined that implementing the modifications to the Proposed Action Alternative described in the 2002 Modifications EA will not have a significant impact on the quality of the human environment and that an environmental impact statement is not required.

The following features will be constructed as part of the modifications to the Proposed Action: (1) Sixth Water Connection; (2) Tanner Ridge Tunnel; (3) Upper Diamond Fork Pipeline; (4) Upper Diamond Fork Flow Control Structure; (5) Upper Diamond Fork Shafts; (6) Aeration Chamber and Connection to Upper Diamond Fork Tunnel; (7) Upper Diamond Fork Tunnel; and (8) Diamond Fork Flow Control Faciility.

The Proposed Action Modifications will be operated on an interim basis the same as described in the July 1999 Diamond Fork System Final Supplement to the Final Environmental Impact Statement, including the quantity and timing of minimum streamflows and the flexibility to other operational scenarios, except for the dischange location of the minimum streamflows into Diamond Fork Creek. The potential for generating

hydroelectric power would remain the same as described in the FS–FEIS.

FOR FURTHER INFORMATION CONTACT: Additional information on matters related to this Federal Register notice can be obtained from Mr. Reed R. Murray, Deputy Program Director, CUP Completion Act Office, Department of the Interior, 302 East 1860 South, Provo UT 84606–6154, (801) 379–1237, murray@uc.usbr.gov.

Dated: March 29, 2002.

Ronald Johnston,

Program Director, Department of the Interior.

[FR Doc. 02–8640 Filed 4–9–02; 8:45 am]

BILLING CODE 4310–RK–M

DEPARTMENT OF INTERIOR

Office of the Secretary

John H. Chafee Blackstone River Valley National Heritage Corridor Commission; Notice of Meeting

Notice is hereby given in accordance with section 552b of Title 5, United States Code, that a meeting of the John H. Chafee Blackstone River Valley National Heritage Corridor Commission will be held on Thursday, April 18, 2002.

The Commission was established pursuant to Public Law 99–647. The purpose of the Commission is to assist federal, state and local authorities in the development and implementation of an integrated resource management plan for those lands and waters within the Corridor.

The meeting will convene at 7 p.m. at the Stadium Theatre Foundation located at 28 Monument Square in Woonsocket, RI for the following reasons:

1. Approval of Minutes
2. Chairman's Report
3. Executive Director's Report
4. Financial Budget
5. Public Input

It is anticipated that about twenty people will be able to attend the session in addition to the Commission members.

Interested persons may make oral or written presentations to the Commission or file written statements. Such requests should be made prior to the meeting to: Michael Creasey, Executive Director, John H. Chafee Blackstone River Valley National Heritage Corridor Commission, One Depot Square, Woonsocket, RI 02895, Tel.: (401) 762–0250.

Further information concerning this meeting may be obtained from Michael Creasey, Executive Director of the Commission at the aforementioned address.

Michael Creasey,

Executive Director, Blackstone River Valley National Heritage Corridor Commission.

[FR Doc. 02–8603 Filed 4–9–02; 8:45 am]

BILLING CODE 4310–RK–M

DEPARTMENT OF THE INTERIOR

Geological Survey

National Satellite Land Remote Sensing Data Archive Advisory Committee; Committee Meeting

AGENCY: Geological Survey.

ACTION: Notice of meeting.

SUMMARY: Pursuant to Public Law 92-463, the National Satellite Land Remote Sensing Data Archive (NSLRSDA) Advisory Committee will meet at the U.S. Geological Survey (USGS) Earth Resources Observation Systems (EROS) Data Center (EDC) near Sioux Falls, South Dakota. The Committee, comprised of 15 members from academia, industry, government, information science, natural science, social science, and policy/law will provide the USGS EDC management with advice and consultation of defining and accomplishing the NSLRSDA's archiving and access goals to carry out the requirements of the Land Remote Sensing Policy Act; on priorities of the NSLRSDA's tasks; and, on issues of archiving, data management, science, policy, and public-private partnerships.

Topics to be reviewed and discussed by the Committee include determining the content of and upgrading the basic data set as identified by the Congress; metadata content and accessibility; product characteristics, availability, and delivery; and archiving, data access, and distribution policies.

DATES: May 1, 2002 commencing at 9 a.m. and adjourning at 12 noon on May 3, 2002.

FOR FURTHER INFORMATION CONTACT: Mr. John Faundeen, Archivist, U.S. Geological Survey, EROS Data Center, Sioux Falls, South Dakota, 57198 at (605) 594–6142 or email at *faundeen@usgs.gov*

SUPPLEMENTARY INFORMATION: Meetings of the National Satellite Land Remote Sensing Data Archive Advisory Committee are open to the public. Previous Committee meetings minutes are available for public review at *http://edc.usgs.gov/programs/nslrsda/advcomm.html*

Dated: March 28, 2002.

Barbara J. Ryan,

Associate Director for Geography.

[FR Doc. 02–8568 Filed 4–9–02; 8:45 am]

BILLING CODE 4310–Y7–M

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

Indian Gaming

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Notice of extension to 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. On January 6, 1998, the Assistant Secretary—Indian Affairs, Department of the Interior, through his delegated authority, approved the Compact between the Pyramid Lake Paiute Tribe and the State of Nevada, which was executed on August 4, 1997. Article X of that compact allows for automatic extensions of up to 20 years upon the mutual written consent of the parties. On November 1, 2001, the Pyramid Lake Paiute Tribe and the State of Nevada agreed to a 2-year extension of the existing compact. This 2-year period will extend the compact until November 1, 2003.

DATES: This action is effective April 10, 2002.

FOR FURTHER INFORMATION CONTACT: George T. Skibine, Director, Office of Indian Gaming Management, Bureau of Indian Affairs, Washington, DC 20240, (202) 219–4066.

Dated: April 1, 2002.

Neal A. McCaleb,

Assistant Secretary—Indian Affairs.

[FR Doc. 02–8584 Filed 4–9–02; 8:45 am]

BILLING CODE 4310–4N–M

DEPARTMENT OF THE INTERIOR

National Park Service

60-Day Notice of Intent To Request Clearance of Information Collection, Issuance of a Commercial Use Authorization, Opportunity for Public Comment

AGENCY: National Park Service, Interior.

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 (Public Law 104–13, 44 U.S.C. 3507) the National Park Service (NPS) invites public comment on a request for the information collection requirements of NPS Commercial Use Authorization Form. The Authorization is a result of Section 418 of the National Park Omnibus Act of 1998 that gave the NPS legislative authority to issue Commercial Use Authorizations to persons to provide commercial services to visitors. This is a new information collection.

DATES: Public comments will be accepted until June 10, 2002.

ADDRESSES: Send comments to Cynthia Orlando, National Park Service, 1849 C Street NW., Room 7311, Washington, DC 20240. Fax: (202) 565–1224. All responses to this notice will be summarized and included in the request for Office of Management and Budget (OMB) approval.

FOR FURTHER INFORMATION CONTACT: Cynthia Orlando at (202) 208–1214 or fax to (202) 565–1224.

SUPPLEMENTARY INFORMATION: Section 418 of the National Parks Omnibus Management Act of 1998, Public Law 105–591, authorizes the NPS to issue commercial use authorizations to persons to provide commercial services to visitors of areas of the National Park System. There are two types of commercial use authorizations, incidental activity commercial use authorizations and in-park commercial use authorizations. When proposed regulations are finalized it will assure that all NPS commercial use authorizations are issued or solicited and awarded consistently and that the private sector will be aware of NPS authorizing procedures. The information gathered in conjunction with a commercial use authorization is to be used by NPS officials to determine whether to approve and issue a commercial use authorization for specified commercial services in accordance with this part and whether the applicant is qualified to provide the services. Without such information, the NPS would be unable to objectively evaluate requests for issuance of a commercial use authorization.

Estimated annual number of respondents: 3,500.

Estimated annual number of responses: 3,500.

Estimated average burden hours per response: 2 hours.

Estimated frequency of response: The collection information must be provided each time a member of the public wants to apply for a commercial use authorization to provide commercial services in the NPS. Frequency of response will depend on number of applications to a park annually.

Estimated annual reporting burden: 7,000 hours per year.

The NPS specifically invites public comments as to:

a. Whether the collection of information is necessary for the proper performance of the functions of the Service, including whether the information will have practical utility;

b. The accuracy of the Service's estimate of the burden of the collection of information, including the validity of the methodology and assumptions used;

c. The quality, utility, and clarity of the information to be collected; and

d. How to minimize the burden of the collection of information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other forms of information technology.

Richard Cripe,

Acting Information Collection Clearance Officer, National Park Service.

[FR Doc. 02–8578 Filed 4–9–02; 8:45 am]

BILLING CODE 4310–70–P

DEPARTMENT OF THE INTERIOR

National Park Service

60-Day Notice of Intent To Request Clearance of Information Collection, Commercial Use Authorizations Annual Reporting Requirement, Opportunity for Public Comment

AGENCY: National Park Service, Interior.

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 (Public Law 104–13, 44 U.S.C. 3507) the National Park Service (NPS) invites public comment on a request for the information collection requirements of NPS Commercial Use Authorization Annual Reporting Requirement. The Authorization is a result of Section 418 of the National Park Omnibus Act of 1998 that gave the NPS legislative authority to issue Commercial Use Authorizations to persons to provide commercial services to visitors and to report their activities to the NPS annually. This is a new information collection.

DATES: Public comments will be accepted until June 10, 2002.

ADDRESSES: Send comments to Cynthia Orlando, National Park Service, 1849 C Street NW., Room 7311, Washington, DC 20240. Fax: (202) 565–1224. All responses to this notice will be summarized and included in the request for Office of Management and Budget (OMB) approval.

FOR FURTHER INFORMATION: Contact Cynthia Orlando at (202) 208–1214 or fax to (202) 565–1224.

SUPPLEMENTARY INFORMATION: Section 418 of the National Parks Omnibus Management Act of 1998, Public Law 105–591, authorizes the NPS to issue commercial use authorizations to persons to provide commercial services to visitors of areas of the National Park System. When proposed regulations are finalized it will assure that all NPS commercial use authorizations are issued or solicited and awarded consistently and that the private sector will be aware of NPS authorizing procedures and reporting requirements. That information includes a statement of gross receipts for the prior year's activities and other information that the Director may require including without limit, visitor use statistics and resource impact assessments. There is no specified format for providing that information to the NPS. Without such information, the NPS would be unable to assess the impact of commercial use authorizations on the resources and, in the case of in-park commercial use authorizations, would be unaware when a permittee exceeded the $25,000 limitation in annual gross receipts.

Estimated annual number of respondents: 3,500.

Estimated annual number of responses: 3,500.

Estimated average burden hours per response: 1 hour.

Estimated frequency of response: The collection information must be provided once by each commercial use authorization holder at the end of each year.

Estimated annual reporting burden: 3,500 hours per year.

The NPS specifically invites public comments as to:

a. Whether the collection of information is necessary for the proper performance of the functions of the Service, including whether the information will have practical utility;

b. The accuracy of the Service's estimate of the burden of the collection of information, including the validity of the methodology and assumptions used;

c. The quality, utility, and clarity of the information to be collected; and

d. How to minimize the burden of the collection of information on those who are to respond, including the use of appropriate automated, electronic,

mechanical, or other forms of information technology.

Richard Cripe,

Acting Information Collection Clearance Officer, National Park Service.

[FR Doc. 02–8579 Filed 4–9–02; 8:45 am]

BILLING CODE 4310–70–P

DEPARTMENT OF THE INTERIOR

National Park Service

Notice of Intent To Issue a Temporary of Concession Lodging, Campground, Food and Beverage Sevices, Merchandise, Gas Services, Boat Tours and Employee Housing at Crater Lake National Park

SUMMARY: Pursuant to the National Park Service Concessions Management Improvement Act of 1998, notice is hereby given that the National Park Service intends to issue a temporary concession contract authorizing continued operation of lodging, campground, food and beverage services, merchandise, gas services, boat Tours and Employee Housing within Crater Lake National Park. The temporary concession contract will be for a term of one year. This short-term concession contract is necessary to avoid interruption of visitor services while negotiations for the purchase of possessory interest and personal property is conducted between the previous concessioner and the newly selected concessioner. This short-term contract will be for a one-year operating period beginning April 1, 2002 and ending March 30, 2003. This notice is in pursuant to 36 CFR part 51, section 51.24(a).

SUPPLEMENTARY INFORMATION: The previous long-term concession contract at Crater Lake National Park expired on October 31, 2001. Under the solicitation and selection process pursuant to 36 CFR part 51 a new concessioner has been selected to provide commercial services under a new long-term concession contract. Negotiations for the purchasing of possessory interest and personal property have not resolved between the previous concessioner and the newly selected concessioner. Before the new long-term concession contract can be awarded, negotiations for the purchasing of possessory interest and personal property must be resolved. In order to avoid the interruption of commercial services to the public a short-term concession contract will allow for this action to take place to avoid a long-term delay in service to the public.

Information about this notice can be sought from: National Park Service, Chief, Concession Program Management Office, Pacific West Region, Attn: Mr. Tony Sisto, 1111 Jackson Street, Suite 700, Oakland, California 94607, or call (510) 817–1369.

Dated: March 8, 2002.

John J. Reynolds,

Regional Director, Pacific West Region.

[FR Doc. 02–8582 Filed 4–9–02; 8:45 am]

BILLING CODE 4310–70–P

DEPARTMENT OF THE INTERIOR

National Park Service

Concession Contracts and Permits; Extension of Expiring Contracts for Up to One Year

AGENCY: National Park Service, Interior.

ACTION: Public Notice.

SUMMARY: Pursuant to 36 CFR 51.23, public notice is hereby given that the National Park Service proposes to extend the following concession contracts for a period of up to one year, or until such time as a new contract is awarded, whichever occurs sooner.

SUPPLEMENTARY INFORMATION: The National Park Service has determined that the proposed short-term extensions are necessary in order to avoid interruption of visitor services and has taken all reasonable and appropriate steps to consider alternatives to avoid such interruption. These extensions will allow the National Park Service to complete the competitive selection of concessioners for new long-term concession contracts covering these operations.

Concessioner ID No.	Concessioner name	Park
CANY031	Holiday River Expeditions, Inc.	Canyonlands National Park.
CANY032	Kaibab Trails, Inc.	Canyonlands National Park.
CANY033	Nichols Expeditions, Inc.	Canyonlands National Park.
CANY034	Rim Tours, Inc	Canyonlands National Park.
CANY035	Western Spirit Cycling, Inc.	Canyonlands National Park.

EFFECTIVE DATE: April 10, 2002.

FOR FURTHER INFORMATION CONTACT: Cynthia Orlando, Concession Program Manager, National Park Service, Washington, DC 20240, Telephone 202/565–1210.

Dated: March 10, 2002.

Richard G. Ring,

Associate Director, Park Operations and Education.

[FR Doc. 02–8572 Filed 4–9–02; 8:45 am]

BILLING CODE 4310–70–M

DEPARTMENT OF THE INTERIOR

National Park Service

Concession Contracts and Permits; Extension of Expiring Contracts for Up to One Year

AGENCY: National Park Service, Interior.

ACTION: Public Notice.

SUMMARY: Pursuant to the terms of existing concession permits, with the exception of construction on National Park Service lands, public notice is hereby given that the National Park Service intends to provide visitor services under the authority of a temporary concession contract with a term of up to one year from the date of permit expirations.

SUPPLEMENTARY INFORMATION: The permit listed below has been extended to the maximum allowable under 36 CFR 51.23. Under the provisions of the current concession permit, with one exception, and pending the development and public solicitation of a prospectus for a new concession permit, the National Park Service authorizes continuation of visitor services under a temporary concession contract for a period of up to one year from the expiration of the current concession permit. The exception precludes construction on National Park Service lands, regardless of whether the current permit authorizes such activity, the temporary contract does not affect any rights with respect to selection for award of a new concession contract.

Concessioner ID No.	Concessioner name	Park
DEWA002	BACKAT, Inc.	Delaware Water Gap National Recreation Area.

EFFECTIVE DATE: January 2, 2002.

FOR FURTHER INFORMATION CONTACT: Cynthia Orlando, Concession Program Manager, National Park Service, Washington, DC, 20240, Telephone, 202/565–1210.

Dated: February 6, 2002.

Charles W. Mayo,

Acting Associate Director, Park Operations and Education.

[FR Doc. 02–8580 Filed 4–9–02; 8:45 am]

BILLING CODE 4310–70–P

DEPARTMENT OF THE INTERIOR

National Park Service

Concession Contracts and Permits; Extension of Expiring Contracts for Up to One Year

AGENCY: National Park Service, Interior.

ACTION: Public Notice.

SUMMARY: Pursuant to 36 CFR 51.23, public notice is hereby given that the National Park Service proposes to extend the following expiring concession contracts for a period of up to one year, or until such time as a new contract is awarded, whichever occurs sooner.

SUPPLEMENTARY INFORMATION: The listed concession authorizations will expire by their terms on or before December 31, 2001. The National Park Service has determined that the proposed short-term extensions are necessary in order to avoid interruption of visitor services and has taken all reasonable and appropriate steps to consider alternatives to avoid such interruption. These extensions will allow the National Park Service to complete and issue prospectuses leading to the competitive selection of concessioners for new long-term concession contracts covering these operations.

Concessioner Id No.	Concessioner name	Park
SAHI001	Friends of Sagamore Hill	Sagamore Hill National Historical Site.
STEA001	Steamtown Volunteer Association	Steamtown National Historic Site.

EFFECTIVE DATE: January 2, 2002.

FOR FURTHER INFORMATION CONTACT: Cynthia Orlando, Concession Program Manager, National Park Service, Washington, DC, 20240, Telephone 202/565–1210.

Dated: February 6, 2002.

Charles W. Mayo,

Acting Associate Director, Park Operations and Education.

[FR Doc. 02–8581 Filed 4–9–02; 8:45 am]

BILLING CODE 4310–70–P

DEPARTMENT OF THE INTERIOR

National Park Service

Golden Gate National Recreation Area, Marin Headlands and Fort Baker Transportation Infrastructure and Management Plan, San Francisco and Marin Counties, CA; Notice of Intent To Prepare an Environmental Impact Statement

SUMMARY: In accordance with § 102 (2)(C) of the National Environmental Policy Act (42 U.S.C. 4321 et. seq.), the National Park Service (NPS) is undertaking a conservation planning and environmental impact analysis process to identify and assess potential impacts of alternative transportation management concepts and transportation infrastructure improvements for the Marin Headlands and Fort Baker area of the Golden Gate National Recreation Area. The Environmental Impact Statement (EIS) and Transportation Infrastructure and Management Plan (Plan) will assess alternative modes of travel to and within these areas with the goal of minimizing the intrusion of automobiles and encouraging alternative modes of transportation. Notice is hereby given that a public scoping process has been initiated, with the purpose of eliciting public comment regarding the full spectrum of issues and concerns, including a suitable range of alternatives, the nature and extent of potential environmental impacts, and appropriate mitigation strategies which should be addressed in the EIS process.

Background

The study focus for this Plan and EIS covers transportation issues related to the Marin Headlands and Fort Baker subregion of the Golden Gate National Recreation Area (GGNRA) just north of the Golden Gate Bridge in Marin County. The area includes Ft. Baker and the Rodeo Valley area and the Point Bonita coastline of the southern Marin Headlands, including West Ft. Baker, Ft. Cronkhite and Ft. Barry. The Tennessee Valley area is excluded from this effort.

In June 2000, the NPS began a public planning process to evaluate current and future transportation conditions in the Marin Headlands and Fort Baker subregion of the GGNRA. A transportation planning team was retained to collect data, assess current and future conditions, identify problem areas, and assist in conceptualizing alternative solutions to transportation challenges. Two documents have been completed at this time: Transportation Management Plan for the Marin Headlands and Fort Baker—Existing Conditions Report (available on the GGNRA website) and Transportation Management Plan for the Marin Headlands and Fort Baker—Conceptual Alternatives. Two other planning efforts are underway, the Marin Headlands and Fort Baker Transportation Demand Management Program Recommendations, and the Marin Headlands and Fort Baker Transportation Management Plan Report. The implementation of the Fort Baker Plan consistent with the requirements of the FEIS and approved Record of Decision are an important foundation for developing alternatives for the study area. All documents relevant to this planning effort are available for review at the GGNRA Marin Headlands Visitor Center, Building 948, Fort Barry, Sausalito, CA and at the City of Sausalito Public Library, 420 Litho Street, Sausalito, CA (or may be accessible at the GGNRA website (http:/www.nps.gov/goga/admin/transportation).

Public Process to Date

The Existing Conditions Report details existing transportation related characteristics of the study area and forms the foundation of the first stage of an 18-month planning process to develop short, medium, and long term strategies for transportation improvements. The Existing Conditions Report presents data collected and evaluations about the physical characteristics (roadway network, parking distribution, transit service, pedestrian network, bicycle use, and signage); operational characteristics (daily vehicle trips, intersection volumes and geometry, individual roadway analysis, parking utilization, and destination volumes); visitor intercept surveys; and park partner surveys. The Existing Conditions Report can be downloaded from the GGNRA website or consulted at the GGNRA Marin Headlands Visitor Center and City of Sausalito Public Library.

GGNRA developed a draft set of goals and objectives drawn from NPS

documents. Three workshops were held during the summer of 2000 to assist in the development of goals and objectives of the Transportation Management Plan. All three workshops featured a presentation of the general transportation problems and opportunities and breakout sessions for workshop participants to explore a wide range of options and build consensus. Workshops were attended by NPS staff, representatives from public agencies, park partner organizations, and the general public. Based on the results of the three workshops, the draft goals and objectives were revised to reflect the areas of general consensus and concerns. The revised goals and objectives were used to evaluate strategic alternatives in the Conceptual Alternatives phase of the planning.

A second series of two workshops were held to develop conceptual transportation alternatives. The first workshop in December 2000 was attended by NPS staff, GGNRA Citizen Advisory Commission and Fort Baker Ad Hoc Implementation Committee members, public agencies, park partner organizations, and the project team. The second workshop in March 2001 presented the draft alternatives (including No Action) to the public. After the public workshops, five conceptual alternative transportation plans were identified for further evaluation in the EIS. The conceptual alternatives were developed based on the review of existing planning studies and data, supplemental data collection in 2000 and 2001, and input from the public, interested groups, and other agencies.

GGNRA anticipates that any or all of the draft alternatives will continue to be refined, and new and/or hybrid alternatives may be developed through the scoping process. The five conceptual alternatives are:

No Action

This alternative fulfills National Environmental Policy Act requirements, and represents the existing environmental conditions and provides an environmental baseline against which the potential impacts of the other alternatives may be compared. All transportation improvements associated with the approved Fort Baker Plan, including mitigation measures, would be implemented as part of this alternative.

Alternative One: Basic Improvements

This alternative proposes modest improvements that can be implemented quickly to address existing problems. Recommended changes include changes to Park signage and the information system, as well as minor bike and pedestrian improvements.

Alternative Two: Circulation Enhancements

This alternative focuses on operational changes to the Park's vehicular, bicycle, and pedestrian circulation network. The primary component of this alternative in a one-way road system in the Headlands.

Alternative Three: Parking Consolidation and Shuttle Service

This alternative proposes consolidating visitor parking and implementing a shuttle system to transport visitors throughout the Park. Visitors would be able to drive to the study area, but not within the most sensitive cultural, natural, and recreational areas. If authorized, parking fees could encourage use of alternative modes of access.

Alternative Four: Maximum Auto Reduction

This alternative seeks to reduce the number of cars in the study area to the greatest extent practicable, while still allowing the NPS and park partners to meet their maintenance needs and program goals. Expanded transit and shuttle services would enable visitors to access the Park and move between popular destinations inside the Park without an automobile. A bus transfer facility on US 101 would provide connections between bus services and Park shuttles. Most parking areas would be eliminated, prioritizing use of the Park's roads for pedestrians and bicyclists.

Major issues under evaluation in each alternative include: transportation management, preservation of natural and cultural resources, visitor experience, park partnerships, regional transportation impacts and implementation. It is also anticipated that any alternative selected would include varying degrees of road rehabilitation.

Comments and Public Scoping

In addition to the extensive public involvement undertaken to date, formal scoping for the Plan and EIS is hereby initiated. Beginning in early 2002, three public scoping meetings will be conducted in the vicinity of the study area. The location, date, and time of scoping meetings will be announced on the NPS website and via local and regional media. All interested individuals, organizations, and agencies are invited to attend any meeting to comment orally and/or provide written comments or suggestions. Comments provided previously do not need to be resubmitted, rather, comments concerning new issues to be analyzed within the EIS are encouraged. Additional comments, suggestions, or relevant information (or requests to be added to the mailing list) should send written correspondence to the attention of Marin Headlands and Fort Baker Transportation Management Plan, National Park Service, Golden Gate Recreation Area, Building 201, Fort Mason, San Francisco, CA 94123 (phone 415/461–4936). All written comments must be postmarked not later than May 1, 2002.

Our practice is to make comments, including names and home addresses of respondents, available for public review during regular business hours. Individual respondents may request that we withhold their home address from the record, which we will honor to the extent allowable by law. There also may be circumstances in which we would withhold from the record a respondent's identity, as allowable by law. If you wish us to withhold your name and/or address, you must state this prominently at the beginning of your comment. We will make all submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, available for public inspection in their entirety.

Decision Process

Availability of the draft EIS and Plan for review and written comment will be announced by **Federal Register** notice, as well as local and regional news media, GGNRA website, and direct mailing to the project mailing list. At this time the draft EIS is anticipated to be available for public review in late 2002. To afford further opportunity to comment on the draft EIS after it is distributed, additional public meetings will be held (dates and locations to be determined). Notice of the availability of the final EIS will likewise be published in the **Federal Register**. As a delegated EIS, the official responsibility for the final decision is the Regional Director, Pacific West Region. Subsequently, the official responsible for implementation will be the Superintendent, Golden Gate National Recreation Area.

Dated: December 31, 2001.

James R. Shevock,

Acting Regional Director, Pacific West.

[FR Doc. 02–8699 Filed 4–9–02; 8:45 am]

BILLING CODE 4310–70–P

DEPARTMENT OF THE INTERIOR

National Park Service

Notice of Availability for Little Rock Central High School National Historic Site, Arkansas

AGENCY: National Park Service, Department of the Interior.

ACTION: Notice of availability of the final general management plan and final environmental impact statement for Little Rock Central High School National Historic Site, Arkansas.

SUMMARY: Pursuant to section 102(2) of the National Environmental Policy Act (NEPA) of 1969, the National Park Service (NPS) announces the availability of the final general management plan and final environmental impact (FGMP/FEIS) for Little Rock Central High School National Historic Site (NHS), Arkansas. This notice is being furnished as required by NEPA Regulations 40 CFR 1501.7.

DATES: The required no-action period on this FGMP/FEIS will expire 30 days after the Environmental Protection Agency has published a notice of availability of the FEIS in the **Federal Register**.

ADDRESSES: Copies of the FEIS/FGMP are available from the Superintendent, Little Rock Central High School National Historic Site, 2125 Daisy L. Gatson Bates Drive, Little Rock, Arkansas, 72202. Telephone 501–374–1957.

SUPPLEMENTARY INFORMATION: The purpose of the general management plan is to set forth the basic management philosophy for the NHS and to provide the strategies for addressing issues and achieving identified management objectives. The FGMP/FEIS describes and analyzes the environmental impacts of a proposed action and two action alternatives for the future management direction of the NHS. A no action alternative is also evaluated.

The draft general management plan and draft environmental impact statement for Little Rock Central High School was released to the public on October 20, 2001. The public comment period ended January 6, 2002. No substantive comments were received on the draft document; consequently, no changes were made to the alternatives or environmental consequences.

The responsible official is Mr. William W. Schenk, Regional Director, Midwest Region.

Dated: March 19, 2002.

David N. Given,

Acting Regional Director, Midwest Region.

[FR Doc. 02–8629 Filed 4–9–02; 8:45 am]

BILLING CODE 4310–70–P

DEPARTMENT OF THE INTERIOR

National Park Service

General Management Plan Abbreviated Final Environmental Impact Statement Mojave National Preserve, California; Notice of Approval of Record of Decision

SUMMARY: The Department of the Interior, National Park Service has approved a Record of Decision for the General Management Plan and Abbreviated Final Environmental Impact Statement for Mojave National Preserve. The Record of Decision details the overall background of the conservation planning effort, a description of the decision made, synopses of alternatives considered, identification of the environmentally preferable alternative, the basis for the decision, findings on impairment of park resources and values, a discussion of measures to minimize environmental harm, and an overview of public and agency involvement in the information and analysis supporting preparation of the environmental impact statement (EIS).

The impetus for this planning effort was the passage of the California Desert Protection Act (CDPA) on October 31, 1994, which transferred over 3 million acres of California desert lands from the Bureau of Land Management (BLM) to the National Park Service and designated nearly 8 million acres of Wilderness on NPS and BLM lands. CDPA created Mojave National Preserve (Preserve) and redesignated Death Valley and Joshua Tree National Monuments as national parks. In response to anticipated changes in public lands management in the California desert, as well as the listing of the desert tortoise, increasing development, various public use pressures, and other factors, the National Park Service, BLM, and U.S. Fish and Wildlife Service (USFWS) desert managers decided to prepare updated or new management plans.

Decision (Selected Action)

As detailed in the Record of Decision, the National Park Service (NPS) will implement Alternative 1, the proposed general management plan (described in the Revised Draft Environmental Impact Statement and General Management Plan, dated July 2000, and as amended by the Abbreviated Final Environmental Impact Statement and General Management Plan, dated June 2001). Some adjustments to the hunting portion of the proposal have been made as a result of concerns expressed during the no-action period and in consultation with the California Department of Fish and Game and the USFWS. Changes in the hunting regulations will require further regulatory action. Cottontails and jackrabbits would be added to the list of species that may be hunted, and the NPS would seek to adjust the seasons to allow hunting only from September through January, in keeping with the goals of the Desert Tortoise Recovery Plan. The one-mile safety zone around developed areas has been dropped (except for Kelso Depot and Kelso Dunes) in favor or existing State and County regulations of 150 yards. The language regarding safety zones will be modified to adopt State and County regulations. The NPS would seek special regulations for the Preserve through the California Fish and Game Commission to implement the proposed hunting changes.

The selected plan was found to contain the best mix of programs, strategies, and actions for managing the Preserve, given varying mandates and diverse public opinion. The new General Management Plan (GMP) envisions the Preserve as a cultural landscape and natural environment (i.e., an arid ecosystem influenced by successive eras of human use dating back in historic and prehistoric time), where native desert ecosystems and processes are restored and protected for present and future generations. Protecting and perpetuating native species in a self-sustaining environment is a primary long-term goal. The GMP seeks to manage the Preserve to perpetuate the sense of discovery and adventure that currently exists, minimizing new development inside the Preserve to avoid proliferation of directional signs and new campgrounds or interpretive exhibits. The GMP envisions adjacent ''gateway'' communities as providing most visitor support services. The GMP also seeks to retain current opportunities for roadside and backcountry camping, and access to backcountry via existing primitive roads, consistent with the NPS mission. Planning of actions consistent with Wilderness will also be undertaken. Rehabilitation and partial restoration of the historic Kelso Depot and its use as a museum and interpretive facility is planned. The GMP also recognizes obligations to continue grazing, hunting,

and existence of major utility corridors, where specifically charged to do so by Congress. The GMP acknowledges landowner capacity to develop private property, provided such development is not detrimental to the integrity of the Preserve or otherwise incompatible with the CDPA. Nearly 130,000 acres within the Preserve are in nonfederal ownership, and the GMP sets a goal of seeking funding to purchase property from willing sellers.

Other Alternatives Considered

In addition to Alternative 1 (selected actions highlighted above), other alternatives considered include existing management, and an optional management approach. The existing management alternative (Alternative 2) describes the continuation of current management strategies. It is commonly referred to as the no-action or status quo alternative. It provides a baseline from which to compare other alternatives, to evaluate the magnitude of proposed changes, and to measure the environmental effects of those changes. This no-action concept follows the guidance of the Council on Environmental Quality (CEQ), which describes such alternatives as no change from the existing management direction or level of management intensity. However, an agency not acting to adopt a general management plan does not mean that no management actions are taken. Since the Preserve is a relatively new unit of the national park system and no general management plan was in place, management of the unit has been done in accord with applicable federal regulations, NPS servicewide management policies, and subject-specific manuals and guidelines.

Consistent with the no-action alternative, no comprehensive cultural or natural resource protection program is in place. However, the Preserve has hired several staff, and funding for managing some programs, such as minerals management and burro removal, has been received. Existing staff cooperate on resource inventory and monitoring with neighboring desert parks, and staff also are involved with the Molycorp spill abatement, the Cadiz groundwater storage proposal, and the AT&T cable removal project. Such efforts are reactive to concerns after they arise, rather than being a part of a comprehensive program that is planned and funded. Existing visitor-administrative support services and facilities are being maintained in current locations, water systems have been improved, and vault toilets and picnic tables have been installed. There have been few improvements to existing structures and no change in road maintenance, although some minor road improvements have been done. No significant changes in existing recreation use would occur under this alternative. No action has occurred to protect Kelso Depot from fire or earthquakes, although planning for rehabilitation and partial restoration is underway, and the building is secured to prevent vandalism. Efforts continue for obtaining funding to acquire property from willing sellers and for properties where development is potentially detrimental to the integrity of the Preserve or otherwise incompatible with the CDPA.

The optional approach (Alternative 3) varies from the selected action in several respects, not limited to those noted below. Alternative 3 identifies additional tortoise recovery measures, including fencing of 100 miles of paved roads prevent tortoise from crossing roadways, designation of critical habitat in the Preserve as Desert Wildlife Management Areas (DWMA), not allowing dogs off leash for any purpose in DWMA's, permanently reducing the speed limit on park paved roads to 45 mph, and immediate action to begin raven removals. Areas of designated desert tortoise critical habitat currently subject to cattle grazing would be converted to ephemeral pastures and grazing would not be allowed on these pastures until ephemeral forage is at 230 lbs. per acre (and perennial AUM's reduced accordingly). In lieu of fencing the entire Clark Mountain unit boundary to exclude feral burros, this alternative proposes to fence springs and other water sources to limit attracting burros from adjacent BLM lands. Hunting of all species allowed under State law could occur from July to January. Power drill usage by rock climbers outside designated Wilderness would be allowed, and new bolts could be installed in Wilderness using hand tools. Recreational rock climbing would not be restricted in the vicinity of the Hole-in-the-Wall visitor center, except for the placement of bolts.

Alternative 3 would not restore the Kelso Depot; it would be modified to provide improved protection from fire and earthquakes, permanent comfort stations would be added, and exterior interpretive exhibits and panels would be installed. Existing information centers in Baker and Needles would be expanded in cooperation with other agencies, a visitor contact center would be established in the Cima area, and the NPS would seek to locate an interpretive ranger at Soda Springs to provide tours of the area.

Alternative 3 provides significantly more infrastructure inside the Preserve than any other alternative by increasing the number of sites at the existing Midhills and Hole-in-the-Wall campgrounds, and by developing three new semi-primitive campgrounds. This alternative also would construct a central field operations facility in the Cima area to provide office space, shop and storage space, housing and fire engine garage space for all park functions, and provide for constructing new employee housing throughout the Preserve to place employees closer to work sites. Emphasis would also be placed on constructing several formal wayside exhibits, interpretive displays, and formal hiking trails. However, adding such infrastructure was deemed to be inconsistent with the goals of retaining the Preserve visitor experience as it is now, which was also espoused by the Advisory Commission and local communities and reflected in public comment.

Environmentally Preferable Alternative

Alternatives which are ''environmentally preferable'' are considered by CEQ to be those actions or/and programs that in combination will entail least damage to the biological and physical environment, and which best protects, preserves, and enhances historic, cultural, and natural resources. Goals that characterize ''environmentally preferable'' were originally set forth in § 101 of the National Environmental Policy Act (NEPA). The environmentally preferable alternative for the Mojave National Preserve General Management Plan is based on these national environmental policy goals.

Alternative 1 was found to best realize the provisions of the national environmental policy stated in NEPA. This GMP will protect and enhance natural and cultural resources by laying out strategies, planning, inventorying and monitoring, and restoring disturbed ecosystems and historic resources. These actions will attain the widest range of beneficial uses of the environment without degradation, preserve important resources, and maintain a variety of individual choice for Preserve visitors. It will implement recovery measures for the threatened desert tortoise, fully removes exotic feral burros, presents strategies for management of grazing, mining and hunting, and provides for the rehabilitation and partial restoration of the nationally significant Kelso Depot. Alternative 1 also best reflects the expressed interests of the public in minimizing development in the

Preserve that would detract from the setting and sense of self-discovery and adventure that currently exists. A summary of the comparative analysis of this alternative and others considered with respect to ''environmentally preferred'' is detailed in the Record of Decision.

Basis for Decision

The selected GMP provides overall direction for managing resources, facilities and development, and use of the Preserve. The GMP presents a logical, systematic and proactive approach to management of the Preserve in compliance with NPS laws, regulations and policies. The rationale for selection of alternative 1 over the no-action (alternative 2) is based on the environmental impacts that would be lessened by seeking funds and implementing activities identified in the proposed plan. Public comment was also considered in formulating the NPS preferred approach over alternative 3; in particular, funding of full removal of burros, implementing Desert Tortoise and Mojave Tui chub recovery actions, establishment of a cultural resource protection program, and development of visitor information centers and interpretive media to inform the public on desert ecosystems and protection measures. In addition, a strategy is outlined for the interim management of cattle grazing.

Protect and Enhance Cultural and Natural Resources: The selected GMP identifies goals and strategies to inventory and protect, where possible, air quality, visibility, night sky and natural ambient sound. These resources are key elements of the desert environment that are critical to an enjoyable visit to the Preserve. The GMP strives to protect water resources and water rights by seeking to restore damaged natural water sources and protect groundwater. The GMP describes cultural resource protection and management responsibilities, and proposes to inventory, preserve and protect paleontological, geological, cave and soil resources. Research would be encouraged to improve the means by which enhanced protection could be accomplished. These proactive strategies would also yield valuable interpretive and scientific data.

The GMP provides a more proactive approach to perpetuate native plant life (such as vascular plants, ferns, mosses, algae, fungi, and bacteria) as critical components of natural desert ecosystems. The GMP calls for inventory of all native plants and wildlife, and seeks to restore disturbed ecosystems, enhance habitat for sensitive species, eliminate exotic species where feasible and establish monitoring programs to serve as early warning systems for health of the system. Two key components of the natural resource protection strategy include the complete removal of all feral burros and the adoption of threatened desert tortoise and endangered Mojave tui chub recovery strategies. Since the burro is an exotic species and its presence is inconsistent with NPS management policies and the goal of a native, self-sustaining ecosystem, the GMP would result in fewer impacts to natural desert ecosystems. The complete fencing of Clark Mountains would further control impacts to natural resources from burros.

The GMP addresses numerous activities and strategies for implementing the desert tortoise recovery plan, and adopts recommendations of the 1994 Recovery Plan where feasible and not inconsistent with the CDPA. In addition, the NPS is to manage desert tortoise habitat inside the Preserve according to the recommendations of the Recovery Plan in partnership with BLM in an identical manner as the BLM's DWMA-classified lands. All drivers of vehicles are to be informed about tortoise presence, and the need for reduced speeds in limited areas or during spring rainy days when tortoises are more likely to be out on the roads. It's anticipated that this approach would result in more compliance with speed reductions than would universal speed limits throughout the paved road network. A coordinated interagency strategy is to be implemented desert-wide to foster greater consistency in dealing with raven populations throughout the area, potentially benefiting much more tortoise habitat. Finally, under the GMP cattle grazing could occur in critical habitat, except from March 15 to June 15, even in the absence of ephemeral forage, provided perennial utilization is below 30% (as determined through annual monitoring protocols). During this period desert tortoise are typically in their burrows.

The GMP outlines interim standards that must be followed by ranchers while a detailed grazing management plan is being developed by the Preserve. It also states the NPS preference to permanently retire grazing by working with third party conservation groups to acquire permits from willing sellers and donate them back to the NPS. The strategy also limits cattle grazing in desert tortoise critical habitat whenever sufficient ephemeral and perennial forage is not present. The GMP provides the greatest level of protection for park resources consistent with varying conflicting mandates: to allow grazing (CDPA); to remove grazing from critical habitat (Desert Tortoise Recovery Plan recommendation); and the NPS Organic Act to * * * conserve the scenery and the natural and historic objects and the wildlife therein * * * unimpaired for the enjoyment of future generations.''

Enhance Visitor Experience: The GMP provides for visitor use and enjoyment while encouraging opportunities for development in gateway communities. The public and advisory commission supported this direction rather than concentrating new visitor support facilities and ancillary infrastructure inside the Preserve. The GMP retains existing facilities, and even improves some, but would limit any new development in lieu of relying on gateway communities for visitor facilities. The GMP sets forth the goal that the Preserve remain a primitive place of self-discovery with new facilities primarily in gateway communities, but also calls for restoring the Kelso Depot to be used as a visitor center.

The GMP entails continuing recreational climbing activity while providing for resource protection by eliminating the use of power drills and limiting the replacement of anchors in wilderness areas. This also reduces visibility of climbing features by imposing restrictions on leaving of climbing support apparatus and blending of anchors. The GMP protects bighorn sheep during lambing through climbing limits on Clark Mountain at certain times of the year. These management actions would reduce impacts from climbing on park resources more than either the no action (under which none of these restrictions would occur) or optional approach (which would allow power drill use outside wilderness and would not limit replacement of existing bolts and other fixed anchors). The GMP enhances visitor enjoyment by providing for potential use of commercial guided tours on the Mojave Road for visitors not having an appropriate vehicle.

The GMP most effectively reconciles diverse public concerns relating to hunting by regulated hunting for upland game birds and big game during their established state seasons, and a limited season for small game (cottontails and jackrabbits only) consistent with desert tortoise recovery and the mission of the NPS to protect wildlife for future generations. Hunting throughout the Preserve is retained for most game species under state law, while eliminating non-game and furbearer (predator) hunting. The GMP more fully achieves the intent of the Recovery Plan

with regard to hunting in the Preserve. USFWS has determined that small game hunting could be allowed, along with upland game birds and big game, without substantially altering the analysis of effects on the desert tortoise in the biological opinion.

Provide Effective Operations: The GMP emphasizes maximum use of existing structures and provides for limited new construction of facilities inside the Preserve, and proposes to use existing and acquired structures, improving and upgrading them where appropriate. Housing obtained via grazing permit acquisitions would be utilized for employee housing and interpretive facilities in order to provide onsite maintenance and security of the facilities. The GMP incurs the least impacts to currently undisturbed desert habitat and cultural landscape of the park, while still providing needed administrative facilities.

In summary, the selected GMP (Alternative 1) includes the most actions that are beneficial to the cultural and natural resources of Mojave and to the enjoyment of the Preserve. It is also the most responsive alternative to public input received during scoping and alternative development. The one exception is on hunting. Hunters generally supported alternative 2, while a substantial number of other commenters wanted hunting eliminated completely, an option not represented in the DEIS because of the CDPA mandate. A comparison of decision rationales pertaining to all three alternatives is detailed in the Record of Decision.

Findings on Impairment of Park Resources and Values

The NPS may not allow the impairment of park resources and values unless directly and specifically provided for by legislation or by the proclamation establishing the park. Impairment that is prohibited by the NPS Organic Act and the General Authorities Act is an impact that would harm the integrity of park resources or values, including opportunities that otherwise would be present for enjoyment of those resources or values (NPS Management Policies 2001). This policy does not prohibit impacts to park resources and values. The NPS has the discretion to allow a limited degree of impact when necessary and appropriate to fulfill the purposes of a park, so long as the impacts do not constitute impairment. In the case of the Preserve, it is noted that human activity and past development have resulted in the ongoing disruption of natural systems and processes for many years.

The NPS has determined that implementing Alternative 1 will not constitute an impairment to the Preserve's resources and values. This conclusion is based on thorough analysis of the environmental impacts described in the Revised Draft EIS/GMP, the Abbreviated Final EIS/GMP, with due consideration of public and agency comments and relevant research (pursuant to direction in NPS Management Policies, section 1.4). While the GMP may entail some minor negative impacts, in all cases these adverse impacts are the result of proactive strategies intended to quickly implement the NPS mission, policies and regulations in the management of the Preserve. None of the selected actions would result in impacts that would impair the integrity of park resources or values, including opportunities that would otherwise be present for the enjoyment of those resources or values. Overall, the GMP results in major benefits to park resources and values, opportunities for their enjoyment, and it does not result in their impairment.

The collective actions encompassed in Alternative 1 will serve as a means to manage the Preserve in a manner that would result in a protected native desert ecosystem that functions without interference from human activities, while allowing visitor use and Congressionally mandated resource consumptive activities. While some of these activities could result in resource impacts that seem contrary to the NPS preservation mission (e.g. hunting, grazing, mining), Congress specifically provides for these activities in the CDPA, still subject to other applicable laws and regulations. For example, any future mining operations would be required to undergo NPS review and environmental impact analysis under 36 CFR Part 9, Subpart A. A grazing management plan would be developed to manage cattle grazing activities so that park resources are protected. Constructing wayside exhibits, maintaining existing developments, or rehabilitating Kelso Depot could create minor impacts on some resources locally, but would not result in impairment. A summary of the comparative analysis of this alternative and others considered with respect to ''impairment'' is detailed in the Record of Decision.

Measures To Minimize Environmental Harm

The NPS has investigated all practical means to avoid or minimize environmental impacts that could result from implementing the selected action. The measures are incorporated into Alternative 1, and are addressed in both the Revised Draft EIS/GMP and Abbreviated Final EIS/GMP. A consistent set of desert tortoise mitigation measures would be applied to actions that result from this plan (see Appendix E in Revised Draft EIS/GMP). Monitoring and enforcement programs will oversee the implementation of mitigation measures. These programs will assure compliance monitoring; biological and cultural resource protection; traffic management, noise, and dust abatement; noxious weed control; pollution prevention measures; visitor safety and education; and other mitigation measures. Mitigation measures will also be applied to future actions that are guided by this plan. In addition, the NPS will conduct appropriate compliance reviews (i.e., National Environmental Policy Act, Endangered Species Act, National Historic Preservation Act, Wilderness Act, and so forth) for all future actions.

Background of Public and Interagency Involvement

Immediately following enactment of CDPA on October 31, the Preserve had no existing management plans or general ''blueprint'', under which more detailed activity or implementation plans could occur. While not specific in nature, the new GMP focuses on purposes of the Preserve, its significant attributes, its mission in relation to the overall mission of the NPS, what activities are appropriate within these constraints, and resource protection strategies. It also provides guidelines for visitor use and development of facilities for visitor enjoyment and administration of the preserve. The goal of the GMP is to best manage the new unit to meet the Congressional intent as expressed in the CDPA and the mission of the NPS. It was the stated intention of this conservation planning effort to explore only alternatives that would result in an implementable management plan for the Preserve. Alternatives were ruled out of full consideration if they needed legislation before they could be implemented, are contrary to specific Congressional direction, were inconsistent with NPS regulations or policy, or could be financially infeasible—these would not serve the need of creating an immediate management plan for this new unit. These were among the considerations weighed in developing the purpose and need section for the EIS.

The conservation planning process began in 1995 with the selection of a GMP/EIS planning team, which was stationed at the Preserve headquarters in

Barstow. The Notice of Intent for this effort was published in the **Federal Register** on September 5, 1995 announcing the beginning of the conservation planning process. The planning team conducted 20 public scoping meetings in September 1995 and April 1997 to gather information about public concerns and issues on management direction for the Preserve and BLM lands. In addition, a number of agency scoping meetings were also held. From this data and meetings with interested parties (such as county departments, special interest groups, state agencies, Native American tribes, etc.) and discussions with NPS and BLM staff, proposed management plans were developed.

In September 1998 the Mojave National Preserve Draft Environmental Impact Statement and General Management Plan was released for public review. Approximately 450 printed and 100 CD–ROM copies of the Draft EIS/GMP were distributed for review. The entire document was also posted on the Internet with links from the park's homepage and the Northern and Eastern Mojave planning page. A notice of filing of the Draft EIS/GMP was published in the **Federal Register** by the Environmental Protection Agency (EPA) on September 11, 1998 (FR 48727). Written comments were accepted from September 11, 1998 through January 15, 1999, a period of 127 days. Eleven public meetings were held in October 1998 throughout the planning region of southern California and southern Nevada. In addition, the planning team attended and participated in numerous meetings of the Mojave Advisory Commission to obtain their feedback, concerns, and direction regarding the development of the general management plan. The NPS received approximately 390 comment letters from government agencies, tribes, interest groups, and individuals. In addition, members of environmental groups (National Parks and Conservation Association, The Sierra Club, and The Wilderness Society) sent in approximately 1,800 identical postcards. Several additional letters and postcards were received after the closing date for public comments.

Due to the large number of substantial changes required as a result of public comment on the 1998 Draft EIS/GMP, the NPS decided to rewrite the document. In September 2000, a Revised Draft Environmental Impact Statement and General Management Plan was released for 92 days of public review. Responses to all written substantive comments on the 1998 Draft EIS/GMP were addressed in a separately bound report. The EPA published a notice of filing in the **Federal Register** on September 6, 2000 (FR 54064–54065). Eleven more public meetings on the revised draft plan were held in southern California and southern Nevada during October and November 2000. During the public comment period, a total of 202 written comments were received.

Upon review of public and agency comments regarding the Revised EIS/GMP, it was determined that no new substantive issues were raised, therefore, the NPS decided to prepare an Abbreviated Final EIS/GMP, dated June 2001. The abbreviated format for the Final EIS/GMP was used because the changes to the revised document were minor and confined primarily to factual corrections, which did not modify the analysis. Use of this format is in accord with regulations implementing the 1969 National Environmental Policy Act (40 CFR 1503.4[c]). This abbreviated format requires that the material in this document be integrated with the Revised Draft Environmental Impact Statement and General Management Plan to comprise a full and complete record of the environmental impact analysis, public and agency comment, and decisionmaking process.

Conclusion

Following the signing of this Record of Decision, the NPS will excerpt and print the final General Management Plan as a stand-alone document, which can be readily used by park staff and interested individuals and organizations as the ''blueprint'' for managing the Preserve over the next 10–15 years. The selected alternative was the agency preferred alternative and the environmentally preferred alternative as documented in the Abbreviated Final Environmental Impact Statement and General Management Plan, dated June 2001. Persons desiring a copy of the Presentation Plan when it becomes available, or the complete Record of Decision at this time, may contact the Superintendent, Mojave National Preserve, 222 E. Main St., Ste. 202, Barstow, California, 92311.

September 28, 2001.

Patricia L. Neubacher,

Acting Regional Director

[FR Doc. 02–8700 Filed 4–9–02; 8:45 am]

BILLING CODE 4310–70–P

DEPARTMENT OF THE INTERIOR

National Park Service

Final Environmental Impact Statement/General Management Plan, Mount Ranier National Park, Pierce and Lewis Counties, WA; Notice of Approval of Record of Decision

Summary

Pursuant to § 102(2)(C) of the National Environmental Policy Act of 1969 (Public Law 91–190, as amended) and the regulations promulgated by the Council on Environmental Quality (40 CFR part 1505.2), the Department of the Interior, National Park Service has prepared and approved a Record of Decision for the Final Environmental Impact Statement/General Management Plan for Mount Rainier National Park. The no-action period was initiated November 9, 2001, with the U.S. Environmental Protection Agency's **Federal Register** (V66, N218, P56673) notification of the filing of the Final Environmental Impact Statement (FEIS).

Decision

As soon as practical the National Park Service will begin to implement the General Management Plan described as the Preferred Alternative (Alternative 2) contained in the FEIS, issued in October 2001. This alternative was deemed to be the ''environmentally preferred'' alternative, and it was further determined that implementation of the selected actions will not constitute an impairment of park values or resources. This course of action and two alternatives were identified and analyzed in the Final and Draft Environmental Impact Statements (the latter was distributed in November 2000). The full ranges of foreseeable environmental consequences were assessed, and appropriate mitigation measures identified.

Copies

Interested parties desiring to review the Record of Decision may obtain a copy by contacting the Superintendent, Mount Rainier National Park, Tahoma Woods, Star Route, Ashford, Washington 98304–9751; or via telephone request at (360) 589–2211 ext. 2332.

Dated: February 7, 2002.

John J. Reynolds,

Regional Director, Pacific West Region.

[FR Doc. 02–8697 Filed 4–9–02; 8:45 am]

BILLING CODE 4310–70–P

DEPARTMENT OF THE INTERIOR

National Park Service

Notice of Availability of a Draft Environmental Impact Statement for the National Coal Heritage Area, Management Action Plan

AGENCY: National Park Service, Department of the Interior.

ACTION: Availability of draft environmental impact statement for the National Coal Heritage Area Management Plan.

SUMMARY: Pursuant to section 102(2)(C) of the National Environmental Policy Act of 1969, the National Park Service announces the availability of a Draft Environmental Impact Statement (DEIS) for the National Coal Heritage Area (NCHA) in West Virginia. The National Coal Heritage Area Act of 1996 requires the NCHA, with guidance from the National Park Service, to prepare a management plan for the heritage area. The purpose of the Management Action Plan is to (1) set forth the integrated cultural, historical, and land resource management policies and programs in order to retain, enhance, and interpret the significant values of the lands, water, and structures of the Area. (2) describe the guidelines and standards for projects that involve preservation, restoration, maintenance, operations, interpretation, and promotion of buildings, structures, facilities, and sites; and (3) set forth the responsibilities of the State of West Virginia, units of local government, nonprofit entities, in order to further historic preservation and compatible economic revitalization.

The study area, designated as the National Coal Heritage Area, includes the following eleven counties in the southern region of West Virginia Boone, Cabell, Fayette, Logan, McDowell, Mercer, Mingo, Raleigh, Summers, Wayne, and Wyoming.

The National Park Service (NPS) maintains three park sites within the region: New River Gorge National River, The Bluestone National Scenic River and the Gauley National Recreation Area. Otherwise the majority of land is non-federal and the NPS assumes a management role only within their park units. Instead, conservation, interpretation and other activities are managed by partnerships among federal, state, and local governments and private nonprofit organizations. The national heritage area is managed by the State of West Virginia Division of Culture and History, and Division of Tourism. The National Park Service has been authorized by Congress to provide technical and financial assistance for a limited period to the state (up to 10 years from the time of the designation in 1996).

DATES: The DEIS will remain on Public Review through April 30th. Public Meetings will be scheduled and notice will be made of the meeting through a broad public mailing and publication in the local newspaper.

FOR FURTHER INFORMATION CONTACT: Peter Samuel, Project Leader, Philadelphia Support Office, National Park Serve, U.S. Custom House, 200 Chestnut Street, Philadelphia, PA 19106, *peter_samuel@nps.gov,* 215–597–1848.

(If you correspond using the internet, please include you name and return address in your e-mail message. Our practice is to make comments, including names and home addresses of respondents, available for public review. Individual respondents may request that we withhold their home address from the record, which we will honor to the extent allowable by law. There also may be circumstances in which we would withhold from the record a respondent's identity, as allowable by law. If you wish us to withhold your name and/or address, you must state this prominently at the beginning of your comment. However, we will not consider anonymous comments. We will make all submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, available for public inspection in their entirety.)

Dated: February 20, 2002.

Len Emerson,

Assistant Regional Director, Northeast Region.

[FR Doc. 02–8624 Filed 4–9–02; 8:45 am]

BILLING CODE 4310–70–M

DEPARTMENT OF THE INTERIOR

National Park Service

Non-Native Deer Management Plan, Point Reyes National Seashore, Marin County, CA; Notice of Scoping

SUMMARY: Notice is hereby given, in accordance with the provisions of the National Environmental Policy Act (42 U.S.C. 4321 *et seq.*) that public scoping has been initiated for a conservation planning and environmental impact analysis process for preparing a non-native deer management plan for Point Reyes National Seashore. The purpose of the scoping process is to elicit early public comment regarding issues and concerns, a suitable range of alternatives and appropriate mitigating measures, and the nature and extent of potential environmental impacts that should be addressed.

Background: Point Reyes National Seashore is a unit of the National Park System. It was established by Congress on September 13, 1962 ''to save and preserve, for the purpose of public recreation, benefit, and inspiration, a portion of the diminishing seashore of the United States that remains undeveloped'' (Pub. L. 87–657). Fallow deer (*Dama dama*) and axis deer (*Axis axis*) from the San Francisco Zoo were introduced to Point Reyes in the mid 1940s prior to the establishment of the National Seashore. They are native to Mediterranean Europe and southern Asia, respectively. Their populations were controlled by hunting until commencement of park management operations by the National Park Service in 1971. Subsequently, national park rangers culled non-native deer in an attempt to control their populations. This culling decreased after 1995, and numbers of the non-native deer have apparently increased. The native cervid fauna at Point Reyes comprises two species, black-tailed deer (*Odocoileus hemionus columbianus*) and tule elk (*Cervus elaphus nannodes*). The latter was extirpated in the 19th Century, reintroduced to the area in 1978, and currently is the subject of a program to establish a free-ranging herd within designated wilderness area in the park.

Point Reyes National Seashore has never formulated or published a management plan for the non-native deer within its boundaries. Large population sizes of the two species of non-native deer, the ongoing management program to re-establish and favor the two native deer species, and potential adverse effect of forage competition with and disease transmission from the non-native to the native deer necessitate the development and implementation of a non-native deer management plan for Point Reyes National Seashore.

Comment Process: As noted, the National Park Service will undertake an environmental analysis effort to address issues and alternatives for non-native deer management at Point Reyes National Seashore. At this time, it has not been determined whether an Environmental Assessment or Environmental Impact Statement will be prepared; however, this scoping process will aid in the preparation of either document.

As the first step in this undertaking, a public scoping and information meeting will be held May 4, 2002 at the Dance Palace in Point Reyes Station. For those unable to attend the meeting, a scoping document will be available through the park. At this time its anticipated that the primary topics to be

addressed at the public meeting include: background information on the non-native deer management program; a review of relevant policy and law affecting the non-native deer management program; an assessment of current non-native deer management needs; and the identification of issues and concerns, alternative courses of action related to non-native deer management in the park, and potential impacts and appropriate mitigation strategies. All interested individuals, organizations, and agencies are invited to provide comments or suggestions. Written comments regarding the exotic deer management program must be postmarked no later than July 5, 2002. To provide comments, inquire about the scoping meeting, or to request a copy of the scoping background material and provide comments, please contact: Superintendent, Point Reyes National Seashore; Attn: Exotic Deer Management Plan; Point Reyes Station, California 94956; telephone (415) 464–5102.

If individuals submitting comments request that their name or/and address be withheld from public disclosure, it will be honored to the extent allowable by law. Such requests must be stated prominently in the beginning of the comments. There also may be circumstances wherein the NPS will withhold a respondent's identity as allowable by law. As always: NPS will make available to public inspection all submissions from organizations or businesses and from persons identifying themselves as representatives or officials of organizations and businesses; and, anonymous comments may not be considered.

Decision: The draft non-native deer management plan and environmental document are expected to be available for public review in the late fall of 2002. At this time it is anticipated that the final plan and environmental document are to be completed in Spring 2003. Following the conclusion of the scoping period the determination of whether to prepare an Environmental Assessment or Environmental Impact Statement will be made by the Superintendent, Point Reyes National Seashore. Subsequently, the official responsible for approval of either a Finding of No Significant Impact or a Record of Decision is the Regional Director, Pacific West Region; and then the Superintendent, Point Reyes National Seashore would be responsible for implementing the approved management actions.

Dated: January 14, 2002.

John J. Reynolds,

Regional Director, Pacific West Region.

[FR Doc. 02–8698 Filed 4–9–02; 8:45 am]

BILLING CODE 4310–70–P

DEPARTMENT OF THE INTERIOR

National Park Service

Record of Decision, General Management Plan/Visitor Use and Facilities Plan and Environmental Impact Statement, Voyageurs National Park, Minnesota

AGENCY: NPS, Interior.

SUMMARY: The Department of the Interior, National Park Service (NPS), has prepared this record of decision (ROD) on the final environmental impact statement (EIS) for the general management plan (GMP) and visitor use and facilities plan (VUFP), Voyageurs National Park in Koochiching and St. Louis Counties, Minnesota. This ROD is a statement of the decision made, the background of the project, other alternatives considered, the environmentally preferred alternative, the basis for the decision, measures to minimize environmental harm, whether any actions in the plan constitute an impairment of park resources and values, and public involvement in the decision making process.

The Regional Director, NPS, Midwest Region approved the ROD on January 18, 2002.

FOR FURTHER INFORMATION CONTACT: Superintendent, Voyageurs National Park, 3131 Highway 53, International Falls, Minnesota 56649–8904.

SUPPLEMENTARY INFORMATION: The NPS will implement a slightly modified version of the proposed action described and analyzed in the draft EIS. The modifications made to the proposed action will either not result in any additional or changed environmental impacts from those analyzed in the draft, or will result in impacts similar to those reported in the draft EIS for another alternative.

The selected alternative, referred to in the final EIS as the ''modified proposed action'' and in the remainder of this ROD as the GMP or ''plan,'' contains elements of alternatives 1, 2, and 3 and the original proposed action as analyzed in the draft EIS, and presents a balanced approach to resource protection and visitor use. It is also responsive to public comments, many of which indicated the park should not significantly change existing types and levels of recreational use. Although very few changes to existing uses will occur, the plan includes additional trails, including one that links the communities of Kabetogama and Ash River. It will also result in a moderate increase in the number of overnight sites and new day use and visitor destination sites. It further anticipates an upper limit for the number of houseboats that may overnight in the park at one time. Houseboat use will continue at existing levels, and could increase. The specific number of houseboats permitted—the park's carrying capacity for houseboats as directed in 16 U.S.C. 1a–7(b)(3)—will be determined in a subsequent houseboat management plan. That plan will be initiated when the number of overnight houseboats reaches 60 per basin. No sooner than the summer of 2002, the park will begin to require a no-fee, self-registration permit for any overnight use in the park to gather information to guide future decisions.

The plan includes efforts intended to intensify natural resource protection through research and management. The NPS will complete an inventory of natural resources and develop a comprehensive inventory, monitoring and research program. A revised fire management plan will be developed to support a broader range of resource management objectives and to reestablish natural fire regimes without unduly reducing visitation or visitor enjoyment. The park will continue as it does now, to identify, evaluate for significance, plan for, protect and share information about cultural resources, including structures, cultural landscapes, archeological resources, ethnographic resources and collections. Historic properties that represent each cultural resource theme and focus on the park's mission, purpose, significance and interpretive themes will be retained. A monitoring program to determine visitor use, need for resource protection and the quality of the visitor experience will be initiated, and the information gathered from the program used for future, more site-specific planning.

Specifics of the Selected Alternative

Natural and Cultural Resource Management. The NPS intends to implement the alternative identified as ''modified proposed action'' in the final GMP/EIS. This alternative will expand and intensify natural resource protection efforts through increased inventory and monitoring programs, partnerships, and research. Resource management plans will be revised as needed (such as the *Wildland Fire Management Plan* and the *Lakecountry and Backcountry Site Management*

Plan) or completed. The park's fire management policy will support a broader range of resource management objectives, including reestablishing natural fire regimes without unduly reducing visitation or visitor enjoyment.

The park will continue to identify, evaluate for significance, plan for, protect, and share information about cultural resources, including structures, cultural landscapes, archeological resources, ethnographic resources, and collections. Cultural resource management will be more proactive with the development and implementation of treatment plans, a formal monitoring program, and more focused public education efforts. The park will retain historic properties that represent each cultural resource theme and focus on the park's mission, purpose, significance, and interpretive themes.

Visitor Use and Facilities. A no-fee, self-registration permit system for overnight summer and winter use will be implemented no sooner than 2002 (use-and-occupancy residents and private landowners would be exempt). Permits will be easy to obtain and will not direct visitors to specific overnight sites. The purpose of the system is to gather information about site use and to educate visitors about park conditions, activities, and rules. A feasibility study, which will be conducted with public input, will be completed within three years to determine if a more formal overnight permit system is warranted.

Also, the feasibility of implementing facility use fees for camping and parking will be studied. Entrance fees are not proposed. A monitoring program for visitor experience and resource protection will be established and be based on information from the no-fee permit system and the overnight permit feasibility study.

Integrated motorized and nonmotorized uses, including fixed-wing aircraft (private and one commercial permit) will be allowed to continue on the four major lakes and the seven designated interior lakes. As is currently the case, only nonmotorized use will be allowed on the other interior lakes. No areas for no-wake boating will be established.

The park will initiate a houseboat management plan when funding and staffing allow and the no-fee, self registration permit information shows overnight houseboat use has reached 60 boats per basin. The plan will address topics such as commercial and private houseboat use, graywater management, users' needs and desires, and the appropriate number of houseboats at one time. Upon completion of the plan, appropriate use limits may be established.

The special use zone near the Kabetogama resort community will be continued, but special events will require a permit and would have to be consistent with the purpose and significance of the park.

The park will continue to provide boats on interior lakes; a fee will be charged beginning in the summer of 2002.

The selected alternative establishes an upper limit for the number of developed sites. Fewer day and overnight use sites (280–320 total sites) will be built than called for under existing plans. The effects of overnight use at undeveloped sites will be studied, and if they are found to be damaging resources or negatively affecting other visitors, these sites will be phased out or other strategies implemented to prevent such damage. Starting in the summer of 2005, fires will be allowed only in metal fire rings at developed sites.

Visitor destination sites that feature special natural or cultural features that could be interpreted will be developed to enhance visitors' appreciation of the park. The park will establish 15 to 20 such visitor destination sites.

In cooperation with partners, a mainland, nonmotorized summer and winter trail will be developed between the Kabetogama Lake and Ash River communities, and the feasibility of extending the trail to Crane Lake studied. Several hiking trails will be built on the Kabetogama Peninsula, and some will link to visitor destinations. Facility expansion at visitor centers will be minimized, and the park will use alternative methods such as outdoor and temporary facilities instead. Visitor information materials will be expanded. A multi-agency visitor center will be developed at Crane Lake. Both the Rainy Lake visitor center and the Crane Lake multi-agency center will operate year-round, while operational hours at the Ash River and Kabetogama Lake visitor centers will be based on demand.

Interpretation, Visitor Services, and Education. A more comprehensive interpretive program will be provided. Visitor services, resource protection, and emergency response will be expanded and improved with increased staffing. A proposed educational institute to provide special programs and to supplement the park's interpretive program will be formed through partnerships.

Park Operations, Facilities, and Partnerships. Park operational facilities will be improved through the development of a Namakan District plan and expanded facilities at Ash River. Ranger and interpretive operations will be expanded into the Kabetogama Ranger Station Historic District. The park will actively pursue partnerships with public, institutional, and private entities to help protect resources and provide for quality visitor experiences and facilities.

Background of the Project

The Planning Process: The planning team, composed of NPS personnel and their contractors, began the planning process by first soliciting comments from the public, agencies and interest groups through newsletters, meetings and presentations. Most of this initial ''scoping'' was focused on issues facing the park, or visions for the park's future. These issues and those developed by the planning team were used in guiding the appropriate range of alternatives. In addition, the team reviewed NPS policies and guidelines; the mission, purpose and significance statements for Voyageurs; existing plans completed for the park; enabling and subsequent legislation for the park and any other relevant laws and regulations in defining constraints on the range of alternatives.

Each of the alternatives was developed to respond to public desires and concerns, to support the park's mission, purpose and significance, and to avoid unacceptable impacts to resources. Since the majority of commentors indicated during the scoping phase they like the way the park is currently managed and do not feel any major changes are needed, all of the action alternatives reflect this philosophy.

No action, or baseline conditions, is an alternative that the National Environmental Policy Act requires agencies to develop and analyze in environmental documents. The team also initially developed two action alternatives for public review. Alternative 2 (alternative 1 is no action) would focus on resource preservation, partnerships and balanced use. Alternative 3 would emphasize a wide variety of visitor experiences and recreational opportunities. This package was released for public review and comment in May 1999. The input received was used to craft a draft proposed action and to refine the other two action alternatives for analysis in the draft EIS. The official release of this draft GMP/EIS and its required 60-day public review began June 23, 2000 with a notice in the **Federal Register**. Included in this document was the draft ''visitor use and facilities plan,'' which includes proposals identical to the proposed action in the GMP/EIS.

The interdisciplinary team responded to all substantive comments on the draft GMP/EIS, and changed the text of the GMP/EIS as necessary. It also reviewed all elements of the draft proposed action to determine whether any changes were warranted either as a result of public comments or additional information. Several small changes were made. For example, a no-fee, self-registration permit system for overnight use was added; the 60 houseboat per basin limit in the selected alternative was changed to allow for the development of a houseboat management plan when overnight use reaches 60 per basin; no day use will be allowed at houseboat sites; no entrance fees will be implemented or studied in the feasibility study; and uses of the park for special events would necessarily be consistent with the purpose and significance of the park. The selected alternative would not result in more than negligible or minor differences in impacts from those analyzed in the draft EIS.

Responses to substantive comments were organized by issue or topic and similar or identical comments were combined. These responses were indexed both by author and by topic and answered in a separate volume (volume 2) of the final GMP/EIS. These letters were also reprinted in this same volume. Volume 1 is the corrected and updated version of information released as the draft GMP/EIS. The full final GMP/EIS was released to the public for a 30-day waiting period beginning October 12, 2001. Thirty-nine comments were received. No new issues or questions were raised in public comments on the final GMP/EIS.

Purpose and Need for Action

Park Mission, Legislative Purpose, and Key Mission Goals: As part of the compliance requirements with the Government Performance and Results Act (Act) of 1993, the NPS developed a legislative mission statement for each unit of the national park system. The Act also requires a purpose statement and mission goals be developed. These were developed in consultation with the public, the Minnesota State Historic Preservation Office, the Minnesota Environmental Protection Agency, other interested agencies and organizations.

The mission statement for Voyageurs National Park is as follows:

Voyageurs National Park preserves the landscapes and scenic waterways that shaped the route of the North American fur traders and defined the border between the United States and Canada. The park and its diverse resources provide outstanding opportunities for outdoor recreation, scientific study, sportfishing, education, and appreciation of the northwoods lake country setting.

The purposes of Voyageurs National Park, according to its legislation, are as follows:

Preserve the scenery, geologic conditions, and interconnected waterways within the park for the inspiration and enjoyment of people now and in the future.

Commemorate the voyageurs' routes and fur trade with the Native peoples of the north, which contributed significantly to the opening of northwestern North America to European settlement.

Preserve, in an unimpaired condition, the ecological processes, biological and cultural diversity, and history of the northwoods lakecountry border we share with Canada.

Provide opportunities for people to experience, understand, and treasure the lakecountry landscape—its clean air and water, forests, islands, wetlands, and wildlife—in a manner that is compatible with the preservation of park values and resources.

The mission goals are desired future conditions for the park. These statements describe what the park should be like and how it should be managed over the next 20 years to achieve these conditions. The key mission goals are:

Voyageurs is restored and protected in a manner that allows natural processes, functions, cycles, and biota to be maintained in perpetuity. An adaptive, ecosystem-based approach to resource preservation has been implemented, with essential data and tools to support a scientifically based management program.

The park's wilderness resources, values, and characteristics are unimpaired, and its suitability for wilderness designation remain undiminished.

Voyageurs' cultural resources, including archeological sites, historic structures, ethnographic resources, cultural landscapes, and historic objects that offer evidence of the long-term human relationship with the environment are preserved.

Visitors continue to find a diversity of quality opportunities in Voyageurs, allowing each person to enjoy the park in a safe and respectful manner, with only minimal conflicts between visitors.

Visitors to Voyageurs National Park have many opportunities to experience solitude and tranquillity, to appreciate the expansive and undeveloped lakeshore and wetlands, and to see and enjoy the abundance and diversity of native plants and wildlife.

The park is nationally and internationally recognized for its unique educational opportunities both at the park and through communications technologies.

Visitor experiences are enhanced by a unified partnership between the park, park concessionaires and incidental business permit holders, and adjacent private and public entities who understand and appreciate the significance of the park and its surrounding lands and people.

The Need for a New GMP

The park's current *Master Plan,* which was approved in 1980, is no longer adequate to address the policy and operational issues now facing Voyageurs National Park. While the *Master Plan* guided the NPS's initial efforts in managing the park, conditions have changed over the last 20 years, and that plan does not provide sufficient direction for protecting natural and cultural resources or providing for visitor use. The purpose of this *final GMP/EIS and VUFP* is to set forth a basic management philosophy for Voyageurs National Park and to provide a framework for future decision making for the next 15 to 20 years.

This project is unique because it also includes a VUFP, in addition to the GMP for Voyageurs National Park. In 1983 Congress passed legislation directing the park to complete a VUFP, but the directive was never funded. In 1996–97 a Federal mediation process was conducted to address numerous issues about visitor use and management of the park. As a result of this process, the mediation panel recommended the VUFP could be accomplished through the NPS's GMP process. Therefore, the *VUFP* has been developed in conjunction with the *final GMP/EIS. The VUFP* addresses the same visitor facilities and uses in the park outlined in the selected alternative, plus it takes a more comprehensive look at the Voyageurs region related to tourism, surrounding visitor use and facilities, and opportunities for working with others outside the park. Since the *VUFP* proposes the same actions as the selected alternative, the environmental consequences, including cumulative impacts and impairment, are identical.

Other Alternatives Considered

The team analyzed four alternatives, including the no action alternative, which would continue the implementation of existing plans and policies. In each alternative, the park was divided into specific management

areas. Land management areas include a developed area, a lakecountry area, a backcountry trail area, and a primitive area. Water management areas include an integrated use area, a nonmotorized use area, and in alternative 2, a no-wake water area. Each management area had a specific set of desired resource conditions and visitor experiences associated with it. The management areas were applied to the entire area of the park, but the locations and extent of each management area depended on the particular emphasis of an alternative. For example, one alternative emphasized more resource preservation with fewer developed facilities for visitor use, while another emphasizes the development of more visitor facilities.

In all management areas and alternatives, motorized uses include the use of motorboats, electric motors, planes (fixed-wing aircraft), houseboats, and snowmobiles. Nonmotorized uses include canoeing, kayaking, paddleboating, rowboating, sailboating, skiing, snowshoeing, and hiking. In all alternatives, the four major lakes remain open for motorized uses.

Alternative 1: Present Course of Action (No Action)

Natural and Cultural Resource Management. Under this alternative the NPS would continue to manage the park to protect natural and cultural resources in accordance with approved current plans and NPS policies as allowed by staffing and funding. Some, but not all, of the park's historic properties would be preserved.

Visitor Use and Facilities. A no-fee permit for all overnight use would be required. Only limited visitor use monitoring would occur.

The four major lakes would continue to have integrated use (motorized and nonmotorized); motorized use would continue on seven interior lakes (Locator, War Club, Quill, Loiten, Shoepack, Little Trout, and Mukooda). The number of houseboats could increase without limitations. The special use zone would remain, but snowmobile ''radar runs'' would continue to be illegal. All other management areas would be the same as now.

Day and overnight sites would continue to be built to meet the development criteria outlined in the approved 1988 *Lakecountry and Backcountry Site Management Plan* (about 400 sites total). The use of undeveloped sites would continue. Summer hiking trails would continue to be built as shown in the *final EIS for a Wilderness Recommendation* (1992), with numerous small loops plus linkages to Peninsula destinations. No changes would be made to the existing winter trail system.

Existing visitor facilities would be retained; year-round visitor interpretive services would be offered at the Rainy Lake visitor center; and seasonal services would be provided at the Ash River and Kabetogama Lake visitor centers.

Interpretation, Visitor Services, and Education. Visitor contact, resource protection, monitoring, and emergency services would remain limited, with heavy dependence on established partnerships.

Park Operations, Facilities, and Partnerships. Park operations would continue in current areas with a limited preventive maintenance program and a strong dependence on volunteers. Existing partnerships would continue; however, only limited partnerships would continue related to fishery and wildlife management and for cultural resource preservation involving educational, institutional, or private entities.

Alternative 2: Resource Preservation, Partnerships, Balanced Uses

Natural and Cultural Resource Management. Under alternative 2 natural and cultural resource protection would be similar to the selected alternative. However, natural fire regimes would be reestablished to the greatest extent possible, even if it caused temporary inconveniences to visitors or a temporary reduction in visitor enjoyment. For cultural resources a greater number of historic properties would be preserved, and fewer sites would be designated as visitor destinations.

Visitor Use and Facilities. Entry/user fees and an overnight permit system with an educational component would be implemented. A visitor experience and resource monitoring program would be established, the same as the selected alternative.

A houseboat permit system would be developed, with a total of 50 overnight houseboats allowed per basin (40 commercial and 10 private houseboats), for a park total of 100. No-wake boating areas would be designated in bays on the four major lakes. Commercial fixed-wing aircraft use would be stopped in the park, and private fixed-wing aircraft use and the use of motors would be prohibited on all interior lakes except Mukooda Lake. Boat rentals on Mukooda Lake would be discontinued. The special use zone would be discontinued.

Fewer day and overnight sites would be built (250–275 total sites) than in any other alternative, and no overnight use at undeveloped sites would be allowed. Day use at overnight sites would be discontinued. Fires would be allowed only in metal fire rings at developed sites. Between 10 and 15 visitor destinations, with interpretive and day use facilities, would be developed.

The proposed Kabetogama–Ash River trail would be developed as described for the selected alternative, but no additional trails would be added to the existing trail system on the Kabetogama Peninsula. A multi-agency visitor center at Crane Lake and an educational institute would be developed (the same as the selected alternative). All visitor centers would operate year-round.

Interpretation, Visitor Services, and Education. Interpretive programs, visitor contact, resource protection, and emergency response would be expanded, as described for the selected alternative. Under alternative 2, however, concession boat rentals would be eliminated at Mukooda Lake.

Park Operations, Facilities, and Partnerships. Park operation facilities and partnerships would be the same as described for the selected alternative.

Alternative 3: Emphasis on Visitor Experience and Opportunities

Natural and Cultural Resource Management. Alternative 3 would build on and incorporate many of the natural and cultural resource elements from the selected alternative and most of the visitor use and facility measures identified in alternative 1. This alternative would be the most aggressive in developing visitor facilities, yet it would also enhance resource preservation efforts to ensure a quality visitor experience. Except for minor changes, natural resource preservation would be the same as the selected alternative. For example, natural fire regimes would be reestablished only when it would not reduce visitor enjoyment or visitor use. Cultural resource actions would be similar to alternative 1, except that visitor facilities and interpretation would be provided at more properties.

Visitor Use and Facilities. A study would be completed to determine the feasibility of an entry/user fee system. The system would only be implemented if needed to offset park operations costs. An overnight permit/reservation system with an educational component would be implemented; however, some sites would be retained for first-come, first-served use. Houseboaters would not be required to make reservations, but would need overnight permits.

A houseboat permit system would be implemented, and a total of 70 overnight houseboats per basin would be allowed (60 commercial and 10 private houseboats), for a park total of 140. The number of houseboats allowed under this alternative would be greater than under alternative 2 or the selected alternative. The four major lakes and all interior lakes would be managed the same as alternative 1, except that expanded commercial fixed-wing aircraft use would be allowed on Kabetogama Lake.

The number of day and overnight sites would be the same as alternative 1 (about 400 total sites); however, the distribution of sites would be different. There would be fewer tent sites, more small campgrounds, more houseboat sites, and more day use destination sites than under alternative 1. There would be more of all types of sites than under the selected alternative (day use sites excepted) or alternative 2. Day use with fires would only be allowed at developed day use sites; day use without fires could occur at undeveloped sites, and day use would not be allowed at overnight sites. No tent camping would be allowed at undeveloped sites; however, houseboaters could moor at developed or undeveloped sites for the night. From 15 to 20 visitor destinations would be developed (the same as the selected alternative).

All summer and winter trails outlined in alternative 1 and the selected alternative would be developed under this alternative. Visitor center expansion would be the same as the selected alternative, plus an environmental education facility would be considered at the Ash River visitor center. At the Kabetogama Lake visitor center the historic structures would be used for visitor education and interpretation, the same as the selected alternative; additional space for interpretation and rangers would also be considered. Year-round operations would be provided at all visitor centers (the same as alternative 2), plus the Crane Lake visitor center would be developed.

Interpretation, Visitor Services, and Education. Interpretive programs, visitor contact, resource protection, and emergency response would be expanded, as described for the selected alternative.

Park Operations, Facilities, and Partnerships. At Ash River facilities for park operations would be expanded the most of any alternative. Partnership development would be the same as the selected alternative.

Environmentally Preferred Alternative

The environmentally preferred alternative is defined by the Council on Environmental Quality as the alternative that best meets the criteria or objectives set out in section 101 of the National Environmental Policy Act. The Council on Environmental Quality interprets these criteria as meaning the alternative that ''* * * causes the least damage to the biological and physical environment and best protects, preserves and enhances historic, cultural and natural resources.'' The NPS is not obliged to select the environmentally preferred alternative, but is required to identify it in the ROD. The planning team has identified alternative 2 as environmentally preferred.

Specific actions in this alternative are expected to result in benefits for resources relative to the other alternatives include the restriction of overnight tent campers and houseboaters to developed sites only, build out of the fewest developed sites of any alternative; and prohibiting motorized use on all interior lakes except Mukooda. These actions would help vegetation, wildlife, water quality, air quality, species of special concern, soils, and archeological resources.

Parkwide natural and cultural resource management policies that are part of alternative 2 would also result in the greatest benefits of all alternatives to resources in the park. These include vegetation and fire management policies geared toward reestablishing natural fire regimes to the greatest extent possible, maximum preservation of historic structures, and a focus on completing cultural landscape descriptions.

Basis for Decision

The selected alternative (or plan) was chosen because it provides the most desirable combination of resource preservation, visitor interpretation and experience, and cost effectiveness among the alternatives considered. It is most responsive to the legislative mission, purpose, and mission goals of Voyageurs National Park as stated above under ''Background.'' It also best addresses the issues identified during public scoping but continues to protect important park resources and values.

Public comments gathered during scoping and the review of the draft GMP/EIS were used extensively by the team in defining and revising the proposed action. The majority of the comments indicated visitors wanted the park to offer a broad diversity of visitor experiences while at the same time providing ample opportunities to experience solitude and tranquility. While most comments indicated visitors wanted to retain much of the existing visitor experience, they also requested additional day and overnight sites, trails, visitor destinations and interpretive and educational facilities and services. Many people indicated a concern that the park not become overdeveloped, and stated the level of development in alternative 1 (no action, or implementing existing plans) was too extreme. At the same time, many public comments indicated that alternative 2 was too restrictive and did not develop an adequate number of facilities or provide a broad enough diversity of visitor experiences. The visitor uses and experiences are greater and more diverse than in alternative 2, yet less intensive and/or more restrictive than alternative 1. Where the team was unable to determine with accuracy whether greater or lesser visitor use was appropriate, it spelled out additional data gathering and planning efforts the park would undertake before making these decisions. No actions in the plan will impair or diminish the park's suitability for wilderness designation.

Specifically, the plan will result in more day and overnight sites than had alternative 2 been selected (a maximum of 275 in alternative 2 verses 320 in the plan), but fewer than alternative 1 (~400 sites). It will also result in 3 more group campsites than alternative 2, but 1 fewer than alternative 1. At-large camping in primitive areas for groups of up to 6 people would be allowed; no group limit is imposed in alternative 1, and at-large camping is prohibited in alternative 2. Overnight use of undeveloped sites will continue to be allowed, but the park will initiate a monitoring program to determine whether traditional use has caused unacceptable resource damage, and will consider closing undeveloped sites if this is the case.

Unless the proposed *houseboat management plan* shows otherwise, more houseboats will be permitted in the selected alternative than alternative 2, but fewer will be allowed than in alternative 1 (100 houseboats per basin in alternative 2, 120 interim permits at one time in the plan and unlimited use in alternative 1).

Since the plan will result in the vast majority of the lakecountry area being developed at a moderate to low density, most visitors will have the opportunity to stay in an area that will feel well separated from other users. Alternative 1 would have meant many more miles of moderate to high-density zoning. A reduction in the maximum group party size from 72 in alternative 1 to 30 will

also help ensure visitors have a tranquil experience.

Rather than removing the ''Boats on Interior Lakes program'' (BOIL) as identified in alternative 2, the plan will continue to provide boats to visitors on several interior lakes, however a fee will be required to encourage visitor responsibility for the boats. In comparison to alternative 2, the plan will allow more interior lakes to remain open to integrated use (same as alternative 1); a few more visitor destinations to the park's natural and cultural resources will be provided; several additional trails will be developed; and either bike lanes or separate bike paths will be provided to park visitor centers. In the plan, the continued integrated use of seven designated interior lakes will allow diverse opportunities for visitors to experience several different backcountry areas and will not be as restrictive as alternative 2. Trail system expansion, as identified in the plan, will afford much greater opportunities for summer and winter access to the backcountry than alternative 2, improve linkages to park destinations and broader visitor exposure to park amenities. These diverse trails will provide access from water and land. Rather than removing the special use zone, as shown in alternative 2, uses in this zone will continue to be allowed when they have a meaningful association between the park area and the event, and the event contributes to visitor understanding of the significance of the park area. In summary, the plan will provide visitors with diverse opportunities to utilize the park during the day and overnight while having a tranquil experience in a natural setting. The plan allows visitors to enjoy the park in a safe and respectful manner, with only minimal conflicts between users.

Interpretive opportunities will be significantly enhanced. Seasons and hours of operation at visitor centers will be expanded (as needed) and a new multi-agency visitor center will be developed at Crane Lake, which is one of the largest visitor entry areas to the park and adjacent regional recreational areas. The development of an educational institute through partnering with other entities will encourage diverse visitation, research, education, and park programming. The institute will likely help expand recognition of the park and provide programs for a wide diversity of people and age groups throughout the nation. Developing a comprehensive interpretive plan focusing on the park's mission, purpose, and significance to a greater depth will help ensure interpretive programs foster in visitors a greater appreciation of park resources. Visitor experiences will be enhanced through opportunities to navigate and understand historic trade routes and to participate in programs that focus on the history of the voyageurs. This will help focus park recreation on one of the most important reasons for the establishment of Voyageurs as a national park. The expansion of educational and outreach programs and the development of new curricula and new communication technologies will help increase visitor participation.

An increased focus on strengthening partnerships will improve communication between the NPS and others for the protection of resources and the development of visitor services. Closer cooperation with the Minnesota Department of Natural Resources and the Ontario Ministry of Natural Resources and the development of a joint fisheries management plan will facilitate unified management actions and enhance the park's natural fisheries. The pursuit of additional partnerships for cultural resources will increase the means and number of people available to conduct treatment and maintenance actions, as well as develop sites for visitor use. Support of cooperative agencies and partnerships for visitor safety will reduce emergency response times, provide increased patrol for everyday activities, help increase a sense of safety for park visitors, and protect resources. Active NPS participation in and support of other agencies' and organizations' planning, zoning, and land use activities will help protect park viewsheds and other values that affect visitor experiences.

The plan will also improve resource preservation and protection, and many of these preservation actions are the same as those spelled out in alternative 2. However, the plan adopts a more cautious approach to decision-making until reliable data clearly justify it, and focuses instead on providing more diversified visitor use without harmful resource consequences. As examples, the plan identifies the need for more intensive study and monitoring before final management decisions are made related to overnight use at undeveloped sites, houseboat management, and facility and overnight fees and reservation systems. These issues are of significant interest to the public with strong representation on both sides of each topic, and the park requires additional visitor use and related resource impact data to make the most appropriate decisions in these areas.

Needed data will be collected via a no-fee overnight permit system to determine visitor use patterns and related resource impacts. Park staff will also be able to educate visitors about park conditions, activities, and rules when permits are issued. In addition, a visitor monitoring system will be implemented to better understand the resource impacts of day and overnight use, restoration needs and visitor use patterns and needs. Indicators and standards for monitoring park resource conditions and visitor experiences in both summer and winter will be established based on findings. The information from these studies will be used in establishing the most appropriate management procedures for natural and cultural resource preservation related to visitor use, carrying capacities, visitor needs and desires, and facility development. The results of these studies will provide much needed information to make justifiable and defensible decisions related to resource preservation and visitor management.

Implementing the plan will also have net benefits for resources in many areas of the park relative to no action. Parkwide actions or policies (see ''Measures to Minimize Environmental Harm'' below) particularly will help natural and cultural resources. Some of the specific actions in the plan, such as less dense zoning, fewer overnight sites, limiting party sizes, requiring permits for overnight use, and the possibility that undeveloped sites may be closed to prevent resource damage, will also offer benefits for soils, vegetation, water quality, wildlife and archeological resources.

Measures To Minimize Environmental Harm (Mitigation)

Many of the actions described in the final GMP/EIS for the modified proposed action (e.g. the selected alternative, or plan) are geared toward minimizing harm to the park's environmental resources or values. These are listed below:

Parkwide or Policy Measures

Additional inventories of natural resources in the park would be completed to provide accurate baseline data.

A comprehensive inventory, monitoring and research program, including a monitoring program to track resource impacts related to park use, would be implemented.

Nonhistoric cabins that are vacated would be removed so the sites could be restored to natural conditions, although evidence of habitation in the form of chimneys, foundations or similar

remnants would remain to preserve the cultural resource.

Resource management plans for fisheries, water resources, vegetation, primitive area management, disturbed land restoration, trails, developed site management, inventory and monitoring, fire management, houseboat management and land protection would be completed or revised and updated as needed to more effectively manage and protect resources and preserve the existing visitor experience.

The park would act to shorten the time for forest communities to retain their natural ecological characteristics and processes and would aggressively combine prescribed fire and planting or seeding of native pine and mixed wood forests to promote these species and improve conditions in park wetlands.

The management of cultural resources would be more proactive than it is currently, particularly through the development and implementation of treatment plans. The most significant resources would be protected through formal monitoring and public education.

Information about overnight visitor use would be collected via a free required permit. This information would help park managers determine how best to accommodate demand without damaging resources.

The requirement to have a permit for overnight use of the park would be used to educate visitors on the practices of low-impact camping and park rules and regulations regarding fire use and campsites. This would help minimize disturbance to vegetation, wildlife, and water quality.

The existing special use zone would be continued. However, a permit would only be issued for activities that contribute to visitor understanding of the significance of the park area and have a meaningful association between the park area and the event would be allowed. Even these activities would be denied if they would impair park resources, create an unsafe or unhealthful environment or unreasonably interfere with the peace or natural soundscape or other park values. Snowmobile ''radar runs'' would be prohibited.

Pre-park campsites would be examined to ensure they meet the criteria to provide a particular visitor experience and avoid damage to critical resources. Sites that do not meet these criteria would be restored to reverse resource damage, rehabilitated with proper visitor facilities, or closed if needed.

Wetlands

Wetlands would be identified and delineated. Adverse impacts would be avoided or mitigated, as required by law and NPS policy. Restoration for damaged or degraded wetlands would be considered.

Vegetation and Wildlife

Expansion of visitor centers and parking lots would be minimized to reduce impacts to vegetation, wildlife, the visitor experience of a natural area and other resources.

A monitoring study of undeveloped sites to determine whether use was causing unacceptable resource damage to vegetation, soils, wildlife habitat or other resources would be conducted for three years. If the study finds use causes unacceptable adverse impacts, the use of undeveloped sites for overnight stays would be phased out or other strategies implemented.

No open fires in the primitive area of the park would be allowed starting in 2002, and all primitive campers would be required to obtain a permit where they would be educated on leave-no-trace practices.

Water Resources and Water Quality

Sanitation system compliance certificates for blackwater containment would be required for all houseboats in park waters.

The NPS will continue to collect water quality data, and will use adaptive management practices to assure continued ecosystem integrity in park waters.

The park will study the effects of graywater discharge from houseboats in a houseboat management plan.

Fisheries

The park would work more closely with the Minnesota Department of Natural Resources (MDNR), the U.S. Forest Service, the Ontario Ministry of Natural Resources and other agencies to develop cooperative approaches to both fisheries and wildlife management.

The park would partner with the MDNR to develop a fisheries management plan emphasizing the maintenance and reestablishment of native, self-sustaining fish populations.

Threatened or Endangered Species

The selected alternative is not likely to adversely affect listed, candidate, or proposed threatened or endangered species as the ''adversely affect'' is defined in the regulations implementing the Endangered Species Act. The NPS has received concurrence on this determination from the Twin Cities Field Office of the U.S. Fish and Wildlife Service (FWS). However, implementation of the plan may involve specific projects or additional plans requiring consultation with the FWS and the MDNR. Any action anticipated or conducted by the park that has the potential to adversely affect any listed, proposed or candidate threatened or endangered species would require such consultation and impacts avoided, minimized or otherwise mitigated.

The park intends to continue to use its authorities to protect wildlife of special concern when needed.

Measures to protect wildlife of special concern will continue to be implemented as needed.

Surveys to determine the presence of any federally listed, proposed or candidate plant species or state rare or sensitive species would be conducted for projects implemented as a result of adopting the plan. Any such plants discovered in project areas would be avoided and protected from human disturbance if possible. If not, consultation with the FWS to mitigate impacts would be initiated.

Scenic Quality

When the number of overnight houseboats reaches 60 per basin, a houseboat management plan will be developed to minimize the visual impact to those not occupying houseboats.

Visitor Experience of Solitude

Fewer developed sites than called for in existing plans would be built to provide a less crowded and more secluded lakeshore camping experience. All new sites must meet criteria in existing plans designed to provide this kind of experience and minimize impacts to critical resources.

The park would require groups to keep the party size at tent sites to between 9 and 18, depending on the individual site. The party size of houseboat groups would also be restricted.

The number of shoreline miles zoned to accommodate a high density of campsite development would be reduced from 270 miles to 130 miles.

Camping in the park's primitive areas would be restricted to groups no larger than six people per party.

Cultural Resources

Voyageurs National Park has consulted with the Minnesota State Historic Preservation Office as required and has completed compliance for this stage of the process. Individual actions referred to in *the GMP/EIS/VUFP* will require additional section 106 compliance.

The park staff would seek greater involvement with Native Americans in planning, resource management and interpretation, and cultural resources associated with the history of tribes in the park would be protected.

All eligible cultural landscapes in the park would be documented.

Recommendations in the *Historic Waterway Study* would be implemented to protect and interpret significant features along the fur trade route.

Cultural ruins would be actively managed through vegetation control to slow their decline.

Impacts to archeological resources would be prevented by avoiding the area or hardening the surface if possible.

An estimated 16–20 (53% to 67%) of the park's historic properties eligible for the National Register of Historic Places would be actively preserved.

Items representative of the park's natural, cultural and administrative history would be collected, recorded and safely housed.

Visitor Safety

Brochures and other outreach programs to educate visitors on boating etiquette would be created to minimize conflicts between motorized and nonmotorized uses.

Open fires would be allowed only in metal fire rings beginning in the summer of 2005. Staffing would be added to expand visitor contact, resource protection and emergency response capabilities. Safety enforcement activities would be increased.

Trail segments on the Mukooda Lake and Moose Bay portages would be re-routed and consolidated to provide safer snowmobile access.

Impairment

The NPS manages land under its care according to provisions of the 1916 Organic Act (and amendments, including the NPS General Authorities Act of 1970). The key provision of the Organic Act is considered to be the statement that the NPS will manage its lands to ''conform to the fundamental purpose'' of them. That purpose is defined as ''to conserve the scenery and the natural and historic objects and the wild life therein and to provide for the enjoyment of the same in such manner and by such means as will leave them unimpaired for the enjoyment of future generations.'' (16 USC 1) It is considered fundamental to management of the park then, that resources and values be conserved, and that they remain unimpaired throughout time for future generations to enjoy.

A resource or value may experience an impact without being impaired, as impairing a resource means its integrity would be harmed. Although there may be limited exceptions, generally an impairment would only occur in cases where a resource or value is expected to also experience a significant adverse impact.

The NPS Management Policies (2001, section 1.4.5) provide guidance on which resources and values are more likely to be considered impaired by actions with adverse impacts. These include those resources or values whose conservation is necessary to fulfill specific purposes identified in the establishing legislation of the park or key to the natural or cultural integrity of the park or to opportunities for enjoying the park.

The act establishing Voyageurs National Park indicates the ''outstanding scenery, geological conditions and waterway system which constituted a part of the historic route of the Voyageurs who contributed significantly to the opening of the Northwestern United States, are to be preserved for all generations to enjoy. The actions included in the selected alternative, or ''plan,'' would not compromise the integrity of the scenery, geological conditions or the route of the Voyageurs, and so would not result in an impairment of these resources.

The additional resources and values considered by the team in deciding whether the potential for impairment exists are defined in the NPS management policies (1.4.6) and include natural and cultural resources, as well as elements of the visitor experience such as solitude, peace and quiet and visual quality.

Many other resources evaluated as part of the GMP/EIS planning process, such as park operations, socioeconomics and aspects of the visitor experience not mentioned above are not included in the impairment finding (see NPS 2001, section 1.4.6 for more information). Only those actions taken by the NPS or under its control are included in findings of impairment.

After careful consideration of all major impacts to these resources that might result from actions taken by the park in implementing the selected alternative, the team found that no impairment of park resources or values would occur. Very few resources would be expected to experience major or significant environmental effects (see Table 7 and chapter 4 of volume 1 of the final GMP/EIS for more information) from implementing the selected alternative (named ''modified proposed action'' in the GMP/EIS). Where major impacts are expected, they are nearly always either localized or the result of cumulative actions outside the park's authority to control. The ''integrity'' of the resource or value is therefore not at stake.

Examples of localized impacts include impacts to aquatic vegetation at the Daley Bay crossing to build the Kabetogama-Ash River trail, or to soils or terrestrial vegetation at some undeveloped sites. Examples of major impacts resulting from actions partially or completely outside NPS control include artificial regulation of water levels in the park's four large lakes and its impacts on park hydrology, aquatic vegetation and fisheries; cumulative degradation of air quality in the region of the park and in particular visibility; changes in park area vegetation and wildlife as a result of pre-park actions (such as logging and fire suppression); and possibly the management of fisheries populations, which is jointly conducted by the park, the MDNR. To date, no major impacts to the park's sport fishery have been observed, and it is expected that through the return of more natural lake levels and the use of closures, slot limits and creation of spawning habitat to manage fisheries, no impairment of this resource is expected. The change in policies regarding lake level management will also benefit park hydrology, aquatic vegetation and wildlife. The selected alternative also includes measures aimed at reestablishing fire as a natural ecosystem process to the extent possible given visitor experience and safety constraints.

Cumulative impacts to water quality from motorized use of some of the park's lakes may have moderate to major parkwide impacts from polycyclic aromatic hydrocarbons (PAH) (ecological toxins or human carcinogens at low concentrations) released as a result of internal combustion in two stroke engines.

Although testing for the presence and/or impacts of PAHs on water quality and aquatic wildlife is needed to determine precise impacts, neither the park's water quality nor its fisheries resources appear to be in danger of impairment at this time. As noted in the final EIS (see Chapter 4, Impacts of Alternative 1—Fisheries, Conclusion): ''The combination of these factors (PAH concentrations and other toxins, fishing pressure, global climate change and lake level changes) could have major adverse effects on the sport fishery. However, creel surveys indicate sport harvest remain relatively high, perhaps indicating the cumulative impact is not a major one, or that impacts are

mitigated somewhat through closures, slot limits, creation of spawning habitat, and changes in water levels.''

In addition, the final EIS (see chapter 4, Impacts of Alternative 1—Water Quality) indicates while no data on PAH levels in the park's lakes is available, studies of other lakes have indicated concentrations are directly correlated with the level of motorboat activities. Motorboat use comparable to that in the park has produced concentrations above EPA criteria for the protection of human health for some PAHs. Despite the possibility of larger-scale impacts from the toxic effects of PAHs, water quality generally remains high in the park, and is identified by the state of Minnesota as class A—that is, an outstanding resource exhibiting exceptional recreational and ecological values. The integrity of the water quality resource in the park is therefore intact and no impairment has occurred or is expected to occur in the future at the ½% per year increase predicted to occur over the life of the plan. In addition, improvements in engine technology are likely to reduce PAH concentrations over this same time period.

Public Involvement

More information on the public involvement process is available by reading chapter 5 of volume 1 of the final GMP/EIS (consultation and coordination), and in response to issue 1 of the topic titled ''Planning Process'' in volume 2 of the final GMP/EIS.

In summary, the NPS initially invited the public to help scope the GMP/EIS in August 1998 through an announcement in the **Federal Register** and through a newsletter distributed by mail and in park visitor centers. Scoping input sessions were also held during August in Minneapolis/St. Paul, Duluth, Orr and International Falls. Comments made during the input sessions and written comments were summarized through a press release in December 1998.

The suggestions made by the public were used with information gathered by the NPS to develop three management approaches. These alternatives were sent out for public comment in May 1999 and public open houses held in June. The comments on these alternatives were used by the planning team to develop a fourth alternative, the draft proposed action.

The impacts of each of the four alternatives were analyzed by specialists and packaged as the draft GMP/EIS. The draft EIS was released in June 2000 and mailed to all that had returned a postcard indicating they wished to receive the document. The team conducted public open houses in International Falls, Orr, Duluth, and Minneapolis/St. Paul in July, 2000. Although the comment period was scheduled to close in August, it was extended twice and closed October 23, 2000.

The team responded to all comments that questioned facts or information that were substantive. Those that expressed an opinion for or against an alternative or action in an alternative were noted. Duplicate comments were combined. Similar comments were also combined for readability into ''issues'' under particular topics. The first 130 pages of volume 2 of the final GMP/EIS are two indexes to the team's responses to substantive comments. One is organized by topic and the other by author. These substantive letters are also reprinted in volume 2.

Notification of the availability of the final GMP/EIS was published on October 12, 2001, in the **Federal Register**.

Dated: February 14, 2002.

William W. Schenk,

Regional Director, Midwest Region.

[FR Doc. 02–8633 Filed 4–9–02; 8:45 am]

BILLING CODE 4310–70–P

DEPARTMENT OF THE INTERIOR

National Park Service

Road Modifications for Burr Trail, Environmental Impact Statement, Capitol Reef National Park, UT

AGENCY: National Park Service, Department of the Interior.

ACTION: Notice of intent to prepare an environmental impact statement for the Burr Trail, Capitol Reef National Park.

SUMMARY: Garfield County, Utah, has proposed road modifications to the Burr Trail (Boulder-to-Bullfrog Road) within Capitol Reef National Park. Under the provisions of the National Environmental Policy Act of 1969, the National Park Service is preparing an environmental impact statement (EIS) to evaluate the effects of that proposal. Completion of the EIS process would fulfill a May 31, 2001 Memorandum of Agreement, which established a mutually agreeable procedure between the National Park Service, the State of Utah, and Garfield County, Utah, to conduct compliance on this section of the Burr Trail. The State of Utah and Garfield County, Utah, will be cooperating agencies in the preparation of this EIS.

This effort will identify and evaluate alternatives for proposed road modifications, that may include realignment, resurfacing, and stabilization or drainage modifications along a 1-mile segment of the road. Two additional separate drainage modifications outside this 1-mile segment of Burr Trail will be included in this process. Installation of a National Park Service proposed cattle guard at the park boundary would also be considered. During the evaluation process, alternatives will be developed and evaluated to address resource protection, potential resource impacts, user capacities, and various mitigation practices necessary or desirable to minimize loss of resources. The environmental impact statement process will be conducted in consultation with the U.S. Fish and Wildlife Service, as well as the State Historic Preservation Officer, natural resource management agencies and Tribal representatives, and other interested parties. Attention will also be given to resources outside and adjacent to the boundaries that affect the integrity of Capitol Reef National Park. Alternatives to be considered include no-action, the roadway proposal made by Garfield County, and a minimum of one alternative to the proposed road modifications.

Potential project issues that have been identified to date include alterations of geologic features, landforms, and terrain; biological soil crusts; vegetation; wildlife; threatened and endangered species; surface water; historical, archeological, and ethnographic resources; visitor use, safety, and experience; wilderness values; air quality; natural soundscapes; park operations; and soils.

The public scoping process will involve distribution of a scoping brochure for public response and comment. The scoping brochure will describe the proposed project and the issues identified to date. Copies of that information may be obtained from Sharon Gurr, Capitol Reef National Park, HC 70, Box 15, Torrey, Utah 84775; (435) 425–3791.

DATES: The scoping period will be 30 days from the date this notice is published in the **Federal Register**.

ADDRESSES: Information will be available for public review and comment in the Office of the Superintendent, Capitol Reef National Park, HC 70, Box 15, Torrey, Utah 84775; (435) 425–3791.

FOR FURTHER INFORMATION CONTACT: Al Hendricks, Superintendent, Capitol Reef National Park (435) 425–3791.

SUPPLEMENTARY INFORMATION: If you wish to comment on the scoping brochure or on any other issues associated with the plan, you may

submit your comments by any one of several methods. You may mail comments to Capitol Reef National Park HC 70, Box 15, Torrey, Utah 84775. You may also comment via electronic mail (e-mail) to *care_planning@nps.gov.* Please submit e-mail comments as a text file avoiding the use of special characters and any form of encryption. Please also include your name, e-mail address, and return mailing address in your e-mail message. If you do not receive a confirmation from the system that we have received your e-mail message, contact Ms. Sharon Gurr, (435) 425–3791. Finally, you may hand-deliver comments to Capitol Reef National Park. Our practice is to make comments, including names and home addresses of respondents, available for public review during regular business hours. Individual respondents may request that we withhold their home address from the record, which we will honor to the extent allowable by law. There also may be circumstances in which we would withhold from the record a respondent's identity, as allowable by law. If you wish us to withhold your name and/or address, you must state this prominently at the beginning of your comment. We will make all submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, available for public inspection in their entirety.

Dated: March 8, 2002.

R. Euerhart,

Acting Director, Intermountain Region, National Park Service.

[FR Doc. 02–8635 Filed 4–9–02; 8:45 am]

BILLING CODE 4310–70–P

DEPARTMENT OF THE INTERIOR

National Park Service

General Management Plan, Environmental Impact Statement for Lake Meredith National Recreation Area and Alibates Flint Quarries National Monument, Texas

AGENCY: National Park Service, Department of the Interior.

ACTION: Notice of intent to prepare an environmental impact statement (EIS) for the general management plan for Lake Meredith National Recreation Area (NRA) and Alibates Flint Quarries National Monument (NM), Texas.

SUMMARY: Under the provisions of the National Environmental Policy Act of 1969, the National Park Service is preparing an environmental impact statement for the general management plan (GMP) for both the Lake Meredith NRA and the Alibates Flint Quarries NM. The Director, Intermountain Region will approve this statement. Alibates Flint Quarries NM is located immediately adjacent to Lake Meredith NRA. The national recreation area staff administers the national monument. The planning effort will result in a comprehensive general management plan for both sites that encompasses preservation of natural and cultural resources, visitor use and interpretation, and roads, and facilities. In cooperation with local interests, attention will also be given to resources outside the boundaries that affect the integrity of either site. Alternatives to be considered include no action, the preferred alternative and other alternatives addressing the following major issues:

- How can the important natural and cultural resources of Lake Meredith NRA and Alibates Flint Quarries NM be best protected and preserved, while providing for visitor use for present and future generations?
- What level and type of use is appropriate to be consistent with the purpose, and significance of both sites?
- What facilities are needed to meet the mission goals of both sites regarding natural and cultural resource management, visitor use and interpretation, partnerships, and operations?

The National Park Service held joint public scoping meetings regarding the GMP during the week of May 7, 2001. The purpose of these meetings was to explain the planning process and to obtain comments concerning appropriate resource management, desired visitor use, interpretation, facilities; and other issues that need to be resolved. The public was invited to attend any or all of these meetings. The National Park Service is providing the public with an additional 30 days to provide their ideas, concerns and comments on appropriate resource management, desired visitor use, interpretation, facilities and other issues that need to be resolved.

Comments: If you wish to submit issues or provide input to the initial phase of developing the GMP, you may do so mailing your comments to Superintendent, National Park Service, Lake Meredith National Recreation Area, P.O. Box 1460, 419 E. Broadway, Fritch, TX 79036. You may also comment via the Internet to *LAMR_Superintendent@nps.gov.* Please submit Internet comments as an ASCII file avoiding the use of special characters and any form of encryption. Please also include ''Attn: GMP Team'' and your name and return address in your Internet message. If you do not receive a confirmation from the system that we have received your Internet message, contact Superintendent Karren Brown directly at telephone (806) 857–3151. Finally you may hand-deliver your comments to park headquarters, 419 E. Broadway, Fritch, TX 79036. Public scoping comments should be received no later than 30 days from the publication of this Notice of Intent. Our practice is to make comments, including names and home addresses of respondents, available for public review during regular business hours. Individual respondents may request that we withhold their home addresses from the record, which we will honor to the extent allowable by law. If you wish us to withhold your name and/or address, you must state this prominently at the beginning of your comment.

FOR FURTHER INFORMATION CONTACT: Contact Superintendent, National Park Service, Lake Meredith National Recreation Area, Telephone: 806–857–3151, Fax: 806–857–2319.

Dated: February 8, 2002.

R. Everhart,

Director, Intermountain Region, National Park Service.

[FR Doc. 02–8630 Filed 4–9–02; 8:45 am]

BILLING CODE 4310–70–P

DEPARTMENT OF THE INTERIOR

National Park Service

Notice of Intent for Low Gullah Culture Special Resource Study

AGENCY: National Park Service, Interior.

ACTION: Notice of intent to prepare a Draft Environmental Impact Statement on the Low Country Gullah Culture Special Resource Study.

SUMMARY: The National Park Service (NPS) will prepare a Draft Environmental Impact Statement (DEIS) on the Low Country Gullah Culture Special Resource Study (SRS). The NPS will conduct public scoping meetings within the resource study area to receive input on issues, concerns and proposals believed to be relevant to the management of Gullah/Geechee culture. The meetings may also address the inclusion of potential sites associated with Gullah/Geechee culture as units of the National Park System. Of particular interest to the NPS are suggestions and ideas for managing cultural and natural resources associated with Gullah/Geechee culture and developing both new and existing interpretive programs to provide the public with greater

opportunities to understand and experience Gullah/Geechee culture. The DEIS process will formulate and evaluate environmental impacts associated with various types and levels of visitor use and resource management.

DATES: The dates and times of the public scoping meetings will be published in local newspapers and posted on the Charles Pinckney National Historic Site (South Carolina) web site at *www.nps.gov/chpi.* These dates and times may also be obtained by contacting the NPS Southeast Regional Office, Division of Planning and Compliance. Scoping suggesting will be accepted throughout the planning process; however, the NPS prefers that suggestions be submitted prior to May 15, 2002. The NPS anticipates that the DEIS will be available for public review by July 30, 2002.

ADDRESSES: The specific locations of the public scoping meetings will be published in local newspapers and on the Charles Pinckney National Historic Site web site at *www.nps.gov/chpi.* At a minimum, meeting locations will include Charleston, South Carolina and Savannah, Georgia. Should the need arise for additional meetings, those meetings will be noticed in the same fashion. These locations may also be obtained by contacting the NPS Southeast Regional Office, Division of Planning and Compliance. Written scoping suggestions should be submitted to the following address: Planning Team Leader, Low Country Gullah Culture Special Resource Study, NPS Southeast Regional Office, Division of Planning and Compliance, 100 Alabama Street, SW, 6th Floor, 1924 Building, Atlanta, Georgia 30303.

FOR FURTHER INFORMATION CONTACT: John Barrett Planning Team Leader, Low Country Gullah Culture Special Resource Study, 404–562–3124, extension 637.

SUPPLEMENTARY INFORMATION: The NPS has announced that an EIS on SRSs will be prepared for all proposed park units; consistent with this policy this EIS is being prepared. Issues currently being considered for EIS include a determination of Gullah/Geechee culture's national significance and an assessment of the suitability and feasibility of various Gullah/Geechee-associated sites as potential additions to the National Park System. The EIS will identify cultural and natural resources of the Gullah/Geechee culture and evaluate a range of potential management options that might adequately protect these resources.

Our practice is to make comments, including names and addresses of respondents, available for public review during regular business hours. If you wish for us to withhold your name and/or address, you must state this prominently at the beginning of your comment. We will make all submission from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or business, available for public inspection in their entirety.

The responsible official for this environmental impact statement is Jerry Belson, Regional Director, National Park Service, Southeast Region, 100 Alabama Street SW., Atlanta, Georgia 30303.

Dated: February 11, 2002.

W. Thomas Brown,

Acting Regional Director, Southeast Region.

[FR Doc. 02–8625 Filed 4–9–02; 8:45 am]

BILLING CODE 4310–70–M

DEPARTMENT OF THE INTERIOR

National Park Service

Delaware Water Gap National Recreation Area Citizen Advisory Commission Meeting

AGENCY: National Park Service, Interior.

ACTION: Notice of meeting.

SUMMARY: This notice announces public meetings of the Delaware Water Gap National Recreation Area Citizen Advisory Commission. Notice of these meetings is required under the Federal Advisory Committee Act (Public Law 92–463).

Meeting Date and Time: Saturday, April 13, 2002 at 9 a.m.

Address: Bushkill Visitor Center, Bushkill PA 18324.

The agenda will include reports from Citizen Advisory Commission members, specifically approval of minutes from the June 9 and October 11, 2001, and January 26, 2002 meetings. Superintendent William Laitner will give a report on various park issues. The meeting will be open to the public and there will be an opportunity for public comment on these issues.

Meeting Date and Time: Saturday, April 13, 2002 at 9 a.m.

Address: Bushkill Visitor Center, Bushkill PA 18324.

This meeting will immediately follow the previous meeting, same day. The agenda consists of the election of Commission officers for the 2002–2003 term.

Future public meetings dates have been scheduled for Saturday, June 1, 2002, at 8:00 a.m. at Grey Towers, Pinchot Institute in Milford, Pennsylvania, and Saturday, October 5, 2002 at 9:00 a.m. at the Walpack Environmental Education Center in Walpack, New Jersey.

SUPPLEMENTARY INFORMATION: The Delaware Water Gap National Recreation Area Citizen Advisory Commission was established by Public Law 100–573 to advise the Secretary of the Interior and the United States Congress on matters pertaining to the management and operation of the Delaware Water Gap National Recreation Area, as well as on other matters affecting the recreation area and its surrounding communities.

Congressional Listing for Delaware Water Gap NRA

Honorable Jon Corzine
United States Senate
Washington, DC 20510
Honorable Robert G. Torricelli
U.S. Senate
Washington, DC 20510–3001
Honorable Richard Santorum
U.S. Senate
SR 120 Senate Russell Office Bldg.
Washington, DC 20510
Honorable Arlen Specter
U.S. Senate
SH–530 Hart Senate Office Bldg.
Washington, DC 20510–3802
Honorable Pat Toomey
U.S. House of Representatives
Cannon House Office Bldg.
Washington DC 20515
Honorable Don Sherwood
U.S. House of Representatives
2370 Rayburn House Office Bldg.
Washington, DC 20515–3810
Honorable Margaret Roukema
U.S. House of Representatives
2244 Rayburn House Office Bldg.
Washington, DC 20515–3005
Honorable Mark Schweiker
State Capitol
Harrisburg, PA 17120
Governor of New Jersey
State House
Trenton, NJ 08625

FOR FURTHER INFORMATION CONTACT: Superintendent, Delaware Water Gap National Recreation Area, Bushkill, PA 18324, 570–588–2418.

Dated: February 4, 2002.

William G. Laitner,

Superintendent.

[FR Doc. 02–8631 Filed 4–9–02; 8:45 am]

BILLING CODE 4310–70–P

DEPARTMENT OF THE INTERIOR

National Park Service

Native American Graves Protection and Repatriation Review Committee: Meeting

AGENCY: National Park Service, Interior.

ACTION: Notice.

Notice is hereby given in accordance with the Federal Advisory Committee Act, 5 U.S.C. Appendix (1988), of a meeting of the Native American Graves Protection and Repatriation Review Committee.

General Information: The Native American Graves Protection and Repatriation Review Committee was established by Public Law 101-601 to monitor, review, and assist in implementation of the inventory and identification process and repatriation activities required under the Native American Graves Protection and Repatriation Act (NAGPRA).

Persons wishing further information concerning review committee meetings may contact Dr. Robert Stearns, Manager, National NAGPRA Program, 1849 C Street NW-350 NC, Washington, DC 20240, telephone (202) 343-5266, facsimile (202) 343-5260, e-mail robert_stearns@nps.gov. Transcripts of review committee meetings are available for public inspection approximately eight weeks after each meeting at the office of the Manager, National NAGPRA Program, Native American Graves Protection and Repatriation Review Committee, 800 North Capitol Street NW, Suite 350, Washington, DC 20001.

The protocol for review committee meetings is posted on the National NAGPRA Website (www.cr.nps.gov/nagpra; click ''Review Committee,'' then click ''Procedures'').

Indian tribes, Alaska Native villages and corporations, and Native Hawaiian organizations that are considering visits to museums or Federal agencies in review committee meeting locations for the purpose of transfers of repatriated human remains and cultural items may wish to schedule transfers to coincide with review committee meetings. Note that repatriation transfers may be supported by ''repatriation awards'' administered under the NAGPRA grants program. Information about NAGPRA grants is posted on the National NAGPRA Website (www.cr.nps.gov/nagpra; click ''NAGPRA Grants'').

Tulsa, OK, meeting, May 31, June 1-2, 2002: At the invitation of the University of Tulsa, the review committee will meet on May 31, June 1, and June 2, 2002, at the University of Tulsa, in the Great Hall of the Allen Chapman Activity Center, 600 South College, Tulsa, OK. A University of Tulsa campus map is available online (http://www.utulsa.edu; click ''About TU/Visitor Information,'' then click ''Campus Map'').

The agenda for the meeting will include discussion of regulations on the disposition of culturally unidentifiable human remains; discussion of the NAGPRA grants program; discussion of Federal agency compliance; implementation of the statute in Oklahoma; and consideration of a dispute between the Western Apache NAGPRA Working Group, on behalf of the five federally recognized Apache Tribes in Arizona, and the Denver Art Museum. This dispute was proposed by the Western Apache NAGPRA Working Group.

Meeting sessions will begin at 8:30 a.m. and will end no later than 5:00 p.m. each day. The meeting is open to the public. Meeting space is limited and persons will be accommodated on a first-come, first-served basis. Persons wishing to make a presentation to the review committee should submit a request to do so by April 30, 2002, including a written abstract of your presentation and your contact information. Persons may also submit written statements for consideration by the review committee by April 30, 2002. Requests and statements should be addressed to the review committee in care of the Manager, National NAGPRA Program, and should be sent (1) by mail to the Manager, National NAGPRA Program, National Park Service, 1849 C Street NW-350NC, Washington, DC 20240; or (2) by commercial delivery address to the Manager, National NAGPRA Program, National Park Service, 800 North Capitol Street NW, Suite 350, Washington, DC 20001.

Increased security in the Washington, DC, area may cause delays in the delivery of U.S. Mail to Government offices. In addition to mail or commercial delivery, a copy of the mailed request may also be faxed to the review committee in care of the Manager, National NAGPRA Program, at (202) 343-5260.

No special lodging arrangements have been made for this meeting; accommodations are available in the Tulsa community.

Seattle, WA, meeting, fall 2002: The review committee will meet in the fall of 2002 in Seattle, WA. A notice including final meeting dates, the meeting agenda, and other meeting details will be published in the Federal Register at least 90 days prior to the Seattle, WA, meeting.

Dated: March 11, 2002.

Paula Molloy,

Acting Manager, National NAGPRA Program.

[FR Doc. 02–8574 Filed 4–9–02; 8:45 am]

BILLING CODE 4310–70–S

DEPARTMENT OF THE INTERIOR

National Park Service

National Register of Historic Places; Notification of Pending Nominations

Nominations for the following properties being considered for listing in the National Register were received by the National Park Service before March 30, 2002. Pursuant to section 60.13 of 36 CFR part 60 written comments concerning the significance of these properties under the National Register criteria for evaluation may be forwarded by United States Postal Service, to the National Register of Historic Places, National Park Service, 1849 C St., NW., NC400, Washington, DC 20240; by all other carriers, National Register of Historic Places, National Park Service, 800 N. Capitol St., NW., Suite 400, Washington DC 20002; or by fax, 202–343–1836 . Written or faxed comments should be submitted by April 25, 2002.

Patrick Andrus,

Acting Keeper of the National Register of Historic Places.

GEORGIA

Cobb County

Bethel AME Church, 4683 Bell St., Acworth, 02000453

Early County

Blakely Court Square Historic District, Bounded by Powell St., Smith Ave., and Church and Bay Sts., Blakely, 02000452

Worth County

Sylvester Commercial Historic District (Boundary Increase), Approx. the jct. of Main St., and Liberty St., Sylvester, 02000454

ILLINOIS

Douglas County

Arcola Carnegie Public Library, (Illinois Carnegie Libraries MPS) 407 E. Main St., Arcola, 02000459

Edgar County

Paris Carnegie Public Library, (Illinois Carnegie Libraries MPS) 207 S. Main St., Paris, 02000464

Ford County

Paxton Carnegie Public Library, (Illinois Carnegie Libraries MPS) 254 S. Market St., Paxton, 02000463

Franklin County

West Frankfort City Hall, 108 N. Emma St., West Frankfort, 02000460

Jackson County

Illinois Central Railroad Passenger Depot, 111 S. Illinois Ave, Carbondale, 02000457

Macon County

Roosevelt Junior High School, 701 W. Grand Ave., Decatur, 02000462

Sangamon County

Route 66 by Carpenter Park, (Route 66 through Illinois MPS) Old Route 66 bet. Cabin Smoke Trail and N bank of the Sangamon R., Springfield, 02000461

Vermilion County

Hoopeston Carnegie Public Library, (Illinois Carnegie Libraries MPS) 110 N. Fourth St., Hoopeston, 02000458

IOWA

Linn County

Perkins, Charles W. and Nellie, House, 1228 3rd Ave., SE, Cedar Rapids, 02000456

Pottawattamie County

100 Block of West Broadway Historic District, W. Broadway, First St., and Fourth St., Council Bluffs, 02000455

LOUISIANA

Orleans Parish

South Lakeview Historic District, Bounded roughly by Navarre St., Gen. Diaz, Weiblen and Hawthorne Pl., New Orleans, 02000465

MISSOURI

Gentry County

Opera Hall Block, 101–03 W. Vermont/101–03 S. Connecticut, King City, 02000472

Jackson County

Faultless Starch Company Building, (Railroad Related Historic Commercial and Industrial Resources in Kansas City, Missouri MPS) 1025 W. 8th St., Kansas City, 02000470

Sewall Paint and Glass Company Building, (Railroad Related Historic Commercial and Industrial Resources in Kansas City, Missouri MPS) 1009–1013 W. 8th St., Kansas City, 02000469

St. Louis Independent city Eastman Kodak Building, 1009 Olive St., St. Louis (Independent City), 02000468

Kulage, Otto, House, 1904 E. College Ave., St. Louis (Independent City), 02000467

Miltenberger, Eugene and Mary A., House, 3218 Osceola St., St. Louis (Independent City), 02000471

West Pine—Laclede Historic District, Roughly bounded by Euclid, Lindell, Sarah and Forest Park Parkway, St. Louis (Independent City), 02000466

NEW YORK

Nassau County

Jericho Friends Meeting House Complex, 6 Old Jericho Turnpike, Jericho, 02000473

NORTH DAKOTA

Stutsman County

Franklin School, 308 Second St., SW., Jamestown, 02000474

PENNSYLVANIA

Bucks County

Willow Mill Complex, 570, 559, and 569 Bustleton Pike, Richboro, 02000476

Lancaster County

Evans, Ann Cunningham, House, 6132 Twenty-eighth Division Hwy., Caernarvon, 02000475

SOUTH CAROLINA

Richland County

Elmwood Park Historic District (Boundary Increase), 2113 Park St., Columbia, 02000477

A request for a MOVE has been made for the following resource:

COLORADO

Grand County

Timber Creek Road Camp Barn (Rocky Mountain National Park MRA), Timber Creek Rd., Estes Park vicinity, 87001134

A request for REMOVAL has been made for the following resources:

IOWA

Black Hawk County

Central Hall, University of Northern Iowa campus, Cedar Falls, 84001204

Davis County

Clay Avenue Bridge (Highway Bridges of Iowa MPS), Clay Ave., and 118th St., over intermittent stream, Drakesville vicinity, 98000795

Winneshiek County

Clarksville Diner, 504 Heivly St., Decorah, 93001356

[FR Doc. 02–8634 Filed 4–9–02; 8:45 am]

BILLING CODE 4310–70–P

DEPARTMENT OF THE INTERIOR

National Park Service

National Register of Historic Places; Notification of Pending Nominations

Nominations for the following properties being considered for listing in the National Register were received by the National Park Service before March 23, 2002. Pursuant to section 60.13 of 36 CFR part 60 written comments concerning the significance of these properties under the National Register criteria for evaluation may be forwarded by United States Postal Service, to the National Register of Historic Places, National Park Service, 1849 C St. NW., NC400, Washington, DC 20240; by all other carriers, National Register of Historic Places, National Park Service, 800 N. Capitol St. NW., Suite 400, Washington DC 20002; or by fax, 202–343–1836. Written or faxed comments should be submitted by April 25, 2002.

Carol D. Shull,

Keeper of the National Register of Historic Places.

Arizona

Maricopa County

Palmer, E. Payne, House, 6012 N. Central Ave., Phoenix, 02000420.

Navajo County

Wigwam Village #6 (Historic US Route 66 in Arizona MPS), 811 W. Hopi Dr., Holbrook, 02000419

CONNECTICUT

Fairfield County

Camps Nos. 10 and 41 of Rochambeau's Army (Rochambeau's Army in Connecticut, 1780–1782 MPS), Address Restricted, Newtown, 02000424

Hartford County

Center Burying Yard, Old, 30 N. Main St., West Hartford, 02000421

New London County

Redwood (Rochambeau's Army in Connecticut, 1780–1782 MPS), 589 Exeter Rd., Lebanon, 02000423

Tolland County

March Route Rochambeau's Army—Hutchinson Road (Rochambeau's Army in Connecticut, 1780–1782 MPS), Hutchinson Road, from jct. with Hendee Rd. southward to end, Andover, 02000425

Oliver White Tavern (Rochambeau's Army in Connecticut, 1780–1782 MPS), 2 Brandy St., Bolton, 02000422

IOWA

Cerro Gordo County

Mason City YMCA, 15 N. Pennsylvania, Mason City, 02000426

KANSAS

Ellis County

Merchants Bank of Ellis, 822 Washington St., Ellis, 02000428

Hodgeman County:

Hodgeman County Courthouse, (County Courthouses of Kansas MPS), 500 Main St., Jetmore, 02000429

McPherson County:

Wright, John R., House, 322 W. Marlin St., McPherson, 02000427

MASSACHUSETTS

Middlesex County

Forge Village Historic District, Roughly bounded by Forge Pond, W. Prescott St., Story St., Orchard St., Abbott St., and Pleasant St., Westford, 02000430

Hosmer, Jonathan and Simon, House,300 Main St., Acton, 02000432

Worcester County

Whitcomb Inn and Farm, 43 Old Sugar Rd., Bolton, 02000431

NEW JERSEY

Mercer County

Sacred Heart Church, 343 Broad St., Trenton, 02000434

NEW YORK

Clinton County

Reaville Historic District, Old York, Amwell, Barley Sheaf, Kuhl, Manners Rds., East Amwell, 02000433

Suffolk County

First Congregational Church of Bay Shore, 1860 Union Blvd., Bay Shore, 02000448

Westchester County

All Saints Episcopal Church, 96 and 201 Scarborough Rd., Braircliff Manor, 02000449

Union Church of Pocantico Hills, 555–559 Bedford Rd., Pocantico Hills, 02000447

NORTH CAROLINA

Burke County

Dalmas, Jean-Pierre Auguste, House, 4950 Villar Lane, NE, Valdese, 02000444

Davidson County

Grimes Brothers Mill, 2 North State St., Lexington, 02000443

Duplin County

Dallas Graded and High School, 300 W. Church St., Dallas, 02000441

Forsyth County

Holly Avenue Historic District, Roughly bounded by Broad and Marshall Sts., Holly Ave. and Business I–40, Winston-Salem, 02000442

Lee County

Seaboard Milling Company, 202 Hickory Ave., Sanford, 02000440

Mecklenburg County

Jones III, Hamilton C., House, 201 Cherokee Rd., Charlotte, 02000439

Moore County

Kelly, Alexander, House, NC 1640, 0.3 mi. SE of jct. with NC 1666, Carthage, 02000438

Orange County

Holden-Roberts Farm, NC 1002, 1 mi. E of NC 1538, Hillsborough, 02000436

Occoneechee Speedway, Elizabeth Brady, 0.3 N of US 70 Business, Hillsborough, 02000435

Surry County

Hugh Chatham Memorial Hospital, (former), 230 Hawthorne Rd., Elkin, 02000437

VIRGINIA

Botetourt County

Kinzie, Thomas D., House, 65 Kinzie Rd., Troutville, 02000445

Fairfax County

Spring Hill Farm, 1121 Spring Hill Rd., McLean, 02000446

Russell County

Mason-Dorton Schook, VA 71, jct. with VA 606, Castlewood, 02000450

[FR Doc. 02–8696 Filed 4–9–02; 8:45 am]

BILLING CODE 4310–70–P

DEPARTMENT OF THE INTERIOR

National Park Service

Official National Underground Railroad Network to Freedom Symbol

SUMMARY: This notice establishes the official National Park Service symbol with the incorporating words ''National Underground Railroad Network to Freedom'' carrying out the provisions of the National Underground Railroad Network to Freedom Act.

DATES: This action is effective upon publication of this notice in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: Diane Miller, National Coordinator, National Underground Railroad Network to Freedom Program, 1709 Jackson Street, Omaha, Nebraska 68102, telephone 402–221–3749.

SUPPLEMENTARY INFORMATION: The National Park Service has designated an official National Park Service symbol with the words ''National Underground Railroad Network to Freedom'' fulfilling the mandate of the National Underground Railroad Network to Freedom Act. You may obtain a copy of the image incorporating the words ''National Underground Railroad Network to Freedom'' from the National Coordinator at the address listed above. Notice is given that whoever manufactures, sells, or possesses this symbol embossed image, or any colorable imitation thereof, or photographs, prints or in any other manner makes or executes any engraving photograph or print, or impression in the likeness of this symbol, or any colorable imitation thereof, without authorization from the United States Department of the Interior is subject to the penalty provisions of section 701, title 18 of the United States Code.

Dated: February 15, 2002.

William W. Schenk,

Regional Director, Midwest Region.

[FR Doc. 02–8632 Filed 4–9–02; 8:45 am]

BILLING CODE 4310–70–P

DEPARTMENT OF THE INTERIOR

National Park Service

Notice of Inventory Completion for Native American Human Remains and Associated Funerary Objects in the Possession of the American Museum of Natural History, New York, NY

AGENCY: National Park Service, Interior.

ACTION: Notice.

Notice is hereby given in accordance with provisions of the Native American Graves Protection and Repatriation Act (NAGPRA), 43 CFR 10.9, of the completion of an inventory of human remains and associated funerary objects in the possession of the American Museum of Natural History, New York, NY.

This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA, 43 CFR 10.2 (c). The determinations within this notice are the sole responsibility of the museum, institution, or Federal agency that has control of these Native American human remains and associated funerary objects. The National Park Service is not responsible for the determinations within this notice.

A detailed assessment of the human remains was made by American Museum of Natural History professional staff in consultation with representatives of the Assiniboine and Sioux Tribes of the Fort Peck Indian Reservation, Montana; Cheyenne River Sioux Tribe of the Cheyenne River Reservation, South Dakota; Crow Creek Sioux Tribe of the Crow Creek Reservation, South Dakota; Flandreau Santee Sioux Tribe of South Dakota; Lower Brule Sioux Tribe of the Lower Brule Reservation, South Dakota; Lower Sioux Indian Community of Minnesota Mdewakanton Sioux Indians of the Lower Sioux Reservation in Minnesota; Oglala Sioux Tribe of the Pine Ridge Reservation, South Dakota; Prairie Island Indian Community of Minnesota Mdewakanton Sioux Indians of the Prairie Island Reservation, Minnesota; Rosebud Sioux Tribe of the Rosebud Indian Reservation, South Dakota; Santee Sioux Tribe of the Santee Reservation of Nebraska; Shakopee

Mdewakanton Sioux Community of Minnesota (Prior Lake); Sisseton-Wahpeton Sioux Tribe of the Lake Traverse Reservation, South Dakota; Spirit Lake Tribe, North Dakota; Standing Rock Sioux Tribe of North & South Dakota; Upper Sioux Indian Community of the Upper Sioux Reservation, Minnesota; and Yankton Sioux Tribe of South Dakota.

At an unknown date, human remains representing a minimum of one individual were collected by Herman Haupt, Jr. from an unknown locale. Benjamin Hawkins, who inherited the human remains from Mr. Haupt, sold them to the American Museum of Natural History in 1955. No known individual was identified. No associated funerary objects are present.

This individual has been identified as Native American based on documentation at the American Museum of Natural History, which refers to these human remains as ''Dakota Sioux.''

At an unknown date, human remains representing a minimum of one individual were collected by the American Museum of Natural History Department of Vertebrate Paleontology from the vicinity of Harrison, Sioux County, NE. These human remains were transferred to the American Museum of Natural History Department of Anthropology in 1928. No known individual was identified. The 16 associated funerary objects are three metal bracelets, six shell dress ornaments, four metal dress ornaments, a hide dress ornament, and two fiber dress ornaments.

This individual has been identified as Native American based on documentation at the American Museum of Natural History, which describes these human remains as ''Sioux.'' The locale indicates that these human remains were obtained from the postcontact territory of the Sioux Indians.

Based on the above-mentioned information, officials of the American Museum of Natural History have determined that, pursuant to 43 CFR 10.2 (d)(1), the human remains listed above represent the physical remains of a minimum of two individuals of Native American ancestry. Officials of the American Museum of Natural History also have determined that, pursuant to 43 CFR 10.2 (d)(2), the 16 objects listed above are reasonably believed to have been placed with or near individual human remains at the time of death or later as part of the death rite or ceremony. Lastly, officials of the American Museum of Natural History have determined that, pursuant to 43 CFR 10.2 (e), there is a relationship of shared group identity that can be reasonably traced between these Native American human remains and associated funerary objects and the Assiniboine and Sioux Tribes of the Fort Peck Indian Reservation, Montana; Cheyenne River Sioux Tribe of the Cheyenne River Reservation, South Dakota; Crow Creek Sioux Tribe of the Crow Creek Reservation, South Dakota; Flandreau Santee Sioux Tribe of South Dakota; Lower Brule Sioux Tribe of the Lower Brule Reservation, South Dakota; Lower Sioux Indian Community of Minnesota Mdewakanton Sioux Indians of the Lower Sioux Reservation in Minnesota; Oglala Sioux Tribe of the Pine Ridge Reservation, South Dakota; Prairie Island Indian Community of Minnesota Mdewakanton Sioux Indians of the Prairie Island Reservation, Minnesota; Rosebud Sioux Tribe of the Rosebud Indian Reservation, South Dakota; Santee Sioux Tribe of the Santee Reservation of Nebraska; Shakopee Mdewakanton Sioux Community of Minnesota (Prior Lake); Sisseton-Wahpeton Sioux Tribe of the Lake Traverse Reservation, South Dakota; Spirit Lake Tribe, North Dakota; Standing Rock Sioux Tribe of North & South Dakota; Upper Sioux Indian Community of the Upper Sioux Reservation, Minnesota; and Yankton Sioux Tribe of South Dakota.

This notice has been sent to officials of the Assiniboine and Sioux Tribes of the Fort Peck Indian Reservation, Montana; Cheyenne River Sioux Tribe of the Cheyenne River Reservation, South Dakota; Crow Creek Sioux Tribe of the Crow Creek Reservation, South Dakota; Flandreau Santee Sioux Tribe of South Dakota; Lower Brule Sioux Tribe of the Lower Brule Reservation, South Dakota; Lower Sioux Indian Community of Minnesota Mdewakanton Sioux Indians of the Lower Sioux Reservation in Minnesota; Oglala Sioux Tribe of the Pine Ridge Reservation, South Dakota; Prairie Island Indian Community of Minnesota Mdewakanton Sioux Indians of the Prairie Island Reservation, Minnesota; Rosebud Sioux Tribe of the Rosebud Indian Reservation, South Dakota; Santee Sioux Tribe of the Santee Reservation of Nebraska; Shakopee Mdewakanton Sioux Community of Minnesota (Prior Lake); Sisseton-Wahpeton Sioux Tribe of the Lake Traverse Reservation, South Dakota; Spirit Lake Tribe, North Dakota; Standing Rock Sioux Tribe of North & South Dakota; Upper Sioux Indian Community of the Upper Sioux Reservation, Minnesota; and Yankton Sioux Tribe of South Dakota.

Representatives of any other Indian tribe that believes itself to be culturally affiliated with these human remains and associated funerary objects should contact Elaine Guthrie, Acting Director of Cultural Resources, American Museum of Natural History, Central Park West at 79th Street, New York, NY 10024-5192, telephone (212) 769-5835, before May 10, 2002. Repatriation of the human remains and associated funerary objects to the Assiniboine and Sioux Tribes of the Fort Peck Indian Reservation, Montana; Cheyenne River Sioux Tribe of the Cheyenne River Reservation, South Dakota; Crow Creek Sioux Tribe of the Crow Creek Reservation, South Dakota; Flandreau Santee Sioux Tribe of South Dakota; Lower Brule Sioux Tribe of the Lower Brule Reservation, South Dakota; Lower Sioux Indian Community of Minnesota Mdewakanton Sioux Indians of the Lower Sioux Reservation in Minnesota; Oglala Sioux Tribe of the Pine Ridge Reservation, South Dakota; Prairie Island Indian Community of Minnesota Mdewakanton Sioux Indians of the Prairie Island Reservation, Minnesota; Rosebud Sioux Tribe of the Rosebud Indian Reservation, South Dakota; Santee Sioux Tribe of the Santee Reservation of Nebraska; Shakopee Mdewakanton Sioux Community of Minnesota (Prior Lake); Sisseton-Wahpeton Sioux Tribe of the Lake Traverse Reservation, South Dakota; Spirit Lake Tribe, North Dakota; Standing Rock Sioux Tribe of North & South Dakota; Upper Sioux Indian Community of the Upper Sioux Reservation, Minnesota; and Yankton Sioux Tribe of South Dakota may begin after that date if no additional claimants come forward.

Dated: February 8, 2002.

Robert Stearns,

Manager, National NAGPRA Program.

[FR Doc. 02–8576 Filed 4–9–02; 8:45 am]

BILLING CODE 4310–70–S

DEPARTMENT OF THE INTERIOR

National Park Service

Notice of Intent to Repatriate Cultural Items in the Control of the U.S. Department of Agriculture, Forest Service, Chugach National Forest, Anchorage, AK, and in the Possession of the Chugach National Forest and the Anchorage Museum of History and Art, Anchorage, AK

AGENCY: National Park Service, Interior.

ACTION: Notice.

Notice is hereby given under the Native American Graves Protection and Repatriation Act, 43 CFR 10.10 (a) (3), of the intent to repatriate cultural items in the control of the U.S. Department of Agriculture, Forest Service, Chugach National Forest, Anchorage, AK, and in the possession of the Chugach National Forest and the Anchorage Museum of History and Art, Anchorage, AK, which meet the definition of ''unassociated funerary objects'' under Section 2 of the Act.

This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA, 43, CFR 10.2 (c). The determinations within this notice are the sole responsibility of the museum, institution, or Federal agency that has control of the cultural items. The National Park Service is not responsible for the determinations within this notice.

The 1,672 objects are 1,651 glass trade beads, 19 dentalia shell beads, and 2 ivory hand-shaped pendants.

In 1988, these cultural items were recovered with a burial at the Uqciuvit site at the western end of Esther Passage, AK, during a legally authorized excavation project contracted by Chugach National Forest. Uqciuvit is a prehistoric/early historic period Chugach Eskimo settlement in Prince William Sound. Based on archeological evidence, these cultural items from the Uqciuvit site have been dated to the early historic period, and specifically to the late 18th century. The human remains recovered from the burial were reinterred near their original burial location in 1988. Chugach National Forest is not in possession of the human remains from this burial site.

Based on the above-mentioned information, officials of Chugach National Forest have determined that, pursuant to 43 CFR 10.2 (d)(2)(ii), these 1,672 cultural items listed above are reasonably believed to have been placed with or near individual human remains at the time of death or later as part of the death rite or ceremony and are believed, by a preponderance of the evidence, to have been removed from a specific burial site of a Native American individual. Officials of Chugach National Forest also have determined that, pursuant to 43 CFR 10.2 (e), there is a relationship of shared group identity that can be reasonably traced between these unassociated funerary objects and the members of the Native Village of Chenega and the Native Village of Tatitlek, which are represented by Chugach Alaska Corporation.

This notice has been sent to officials of the Chugach Alaska Corporation, Chenega Corporation, Native Village of Chenega, Tatitlek Corporation, Native Village of Tatitlek, English Bay Corporation, Native Village of Nanwalek, Port Graham Corporation, Native Village of Port Graham, Eyak Corporation, and Native Village of Eyak. Representatives of any other Indian tribe that believes itself to be culturally affiliated with these unassociated funerary objects should contact Linda Finn Yarborough, Forest Archeologist, Chugach National Forest, 3301 C Street, Suite 300, Anchorage, AK 99503, telephone (907) 743-9511, facsimile (907) 743-9477, before May 10, 2002. Repatriation of these unassociated funerary objects to the Chugach Alaska Corporation may begin after that date if no additional claimants come forward.

Dated: February 13, 2002.

Robert Stearns,

Manager, National NAGPRA Program.

[FR Doc. 02–8626 Filed 4–9–02; 8:45 am]

BILLING CODE 4310–70–S

DEPARTMENT OF THE INTERIOR

National Park Service

Notice of Intent to Repatriate Cultural Items in the Possession of the U.S. Department of Agriculture, Forest Service, Chugach National Forest, Anchorage, AK

AGENCY: National Park Service, Interior.

ACTION: Notice.

Notice is hereby given in accordance with provisions of the Native American Graves Protection and Repatriation Act, 43 CFR 10.10 (a)(3), of the intent to repatriate cultural items in the possession of the U.S. Department of Agriculture, Forest Service, Chugach National Forest, Anchorage, AK, that meet the definition of ''unassociated funerary objects'' under Section 2 of the Act.

This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA, 43 CFR 10.2 (c). The determinations within this notice are the sole responsibility of the museum, institution, or Federal agency that has control of the cultural items. The National Park Service is not responsible for the determinations within this notice.

The 33 cultural items are a dehydrated duck head, 2 pieces of damask fabric, 6 pieces of mammal leather, 3 sea mammal bones, and 21 hand-hewn wooden planks.

In 1980, U.S. Department of the Interior, Bureau of Indian Affairs, and U.S. Department of the Interior, National Park Service, Cooperative Park Studies Unit archeologists conducted a survey of the Palutat Cave site, Prince William Sound, AK. The human remains that were removed from burials during the survey were reinterred near the original burial location in 1990 through a cooperative effort of the Forest Service, Bureau of Indian Affairs, and Chugach Alaska Corporation. Cultural items that were collected during the survey in 1980 and are associated with these burials, but were not reinterred in 1990, are a dehydrated duck head, 2 pieces of damask fabric, 6 pieces of mammal leather, 3 sea mammal bones, and 21 hand-hewn wooden planks.

Knowledge of Palutat Cave derives from the work of Edmond Meany, who visited the site in 1902, and especially the work of Frederica de Laguna, whose investigations in 1933 are the primary source of archeological information about the site. Based on archeological evidence and on the large number of human remains found there, Palutat Cave is identified as a significant prehistoric Chugach/Sugpiaq site. Chugach National Forest is not in possession or control of human remains from this burial site.

Based on the above-mentioned information, officials of Chugach National Forest have determined that, pursuant to 43 CFR 10.2 (d)(2)(ii), these 33 cultural items are reasonably believed to have been placed with or near individual human remains at the time of death or later as part of the death rite or ceremony and are believed, by a preponderance of the evidence, to have been removed from specific burial sites of Native American individuals. Officials of Chugach National Forest also have determined that, pursuant to 43 CFR 10.2 (e), there is a relationship of shared group identity that can reasonably be traced between these unassociated funerary objects and the Native Village of Chenega and Native Village of Tatitlek, which are represented by Chugach Alaska Corporation.

This notice has been sent to officials of the Chugach Alaska Corporation, Chenega Corporation, Native Village of Chenega, Tatitlek Corporation, Native Village of Tatitlek, English Bay Corporation, Native Village of Nanwalek, Port Graham Corporation, Native Village of Port Graham, Eyak Corporation, and Native Village of Eyak. Representatives of any other Indian tribe that believes itself to be culturally affiliated with these unassociated funerary objects should contact Linda Finn Yarborough, Forest Archeologist, Chugach National Forest, 3301 C Street,

Suite 300, Anchorage, AK 99503, telephone (907) 743-9511, facsimile (907) 743-9477, before May 10, 2002. Repatriation of these unassociated funerary objects to the Chugach Alaska Corporation may begin after that date if no additional claimants come forward.

Dated: February 21, 2002.

Robert Stearns,

Manager, National NAGPRA Program.

[FR Doc. 02–8627 Filed 4–9–02; 8:45 am]

BILLING CODE 4310–70–S

DEPARTMENT OF THE INTERIOR

National Park Service

Native American Graves Protection and Repatriation Review Committee Findings and Recommendations Regarding Human Remains and Associated Funerary Objects from Spirit Cave in Nevada

AGENCY: National Park Service, Interior.

ACTION: Native American Graves Protection and Repatriation Review Committee: Findings and Recommendations.

After full and careful consideration of the information and statements submitted by the Fallon Paiute-Shoshone Tribe and the U.S. Department of the Interior, Bureau of Land Management, Nevada State Office, and evidence presented by representatives of the Fallon Paiute-Shoshone Tribe at the November 17-19, 2001, meeting of the Native American Graves Protection and Repatriation Review Committee (review committee), six out of the seven review committee members find that the preponderance of the evidence indicates a relationship of shared group identity which can be reasonably traced between the present day Fallon Paiute-Shoshone Tribe and the human remains and associated funerary objects from Spirit Cave in Nevada.

This set of human remains, currently under the control of the Nevada State Office, consists of a mummified skeleton and associated funerary objects identified as ''Burial Number 2,'' excavated by S.M. Wheeler and Georgia N. Wheeler in 1940 from Spirit Cave, Nevada.

During its November 17-19, 2001, meeting, the review committee considered a dispute brought by the Fallon Paiute-Shoshone Tribe against the Nevada State Office. The issues leading to the dispute were as follows:

1. On June 26, 2000, the Nevada State Office determined that human remains from Spirit Cave in Nevada (Spirit Cave remains), were not culturally affiliated with any modern individual, Indian tribe, or other group; and

2. The Fallon Paiute-Shoshone Tribe disputed the Nevada State Office's determination, and asked the review committee to review and make findings related to:

a. The cultural affiliation of certain Native American human remains and associated funerary objects removed from Spirit Cave in Nevada (specifically that, despite some gaps in the record, there is compelling evidence to support the Fallon Paiute-Shoshone Tribe's claim of cultural affiliation with the early Holocene occupants of the western Great Basin, including the Spirit Cave remains); and

b. The return of such human remains and objects to the Fallon Paiute-Shoshone Tribe.

The review committee reviewed documents provided by the Fallon Paiute-Shoshone Tribe and the Nevada State Office, and heard oral presentations by individuals on behalf of the Fallon Paiute-Shoshone Tribe regarding the cultural affiliation of Native American human remains from Spirit Cave in Nevada.

After full and careful consideration of the provided information by all review committee members, six out of the seven review committee members find that:

1. The review committee does not believe that the Nevada State Office has given fair and objective consideration and assessment of all the available information and evidence in this case; and

2. The review committee finds that the preponderance of the evidence indicates a relationship of shared group identity which can be reasonably traced between the present-day Fallon Paiute-Shoshone Tribe and the human remains and associated funerary objects from Spirit Cave in Nevada.

Based on these findings, the review committee, by a six to one vote, recommends that the Nevada State Office repatriate the Spirit Cave human remains and associated funerary objects to the Fallon Paiute-Shoshone Tribe.

The review committee directed the Designated Federal Official to communicate its findings on this dispute to the representatives of the two affected parties, the Fallon Paiute-Shoshone Tribe and the Nevada State Office, as well as other appropriate officials within the Department of the Interior.

The Native American Graves Protection and Repatriation Act directs the Secretary of the Interior to establish and maintain an advisory committee composed of seven private citizens nominated by Indian tribes, Native Hawaiian organizations, and national museum organizations and scientific organizations (25 U.S.C. 3006). The responsibilities of the review committee include reviewing and making findings related to the identity or cultural affiliation of Native American human remains or other cultural items, or to the return of human remains or other cultural items; and facilitating the resolution of disputes among Indian tribes, Native Hawaiian organizations, or lineal descendants and Federal agencies or museums relating to the return of human remains and other cultural items.

This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA, 25 U.S.C. 3006 (g). These findings and recommendations do not necessarily represent the views of the National Park Service or Secretary of the Interior. The National Park Service and the Secretary of the Interior have not taken a position on these matters.

Dated: March 13, 2002.

Armand Minthorn,

Chair, Native American Graves Protection and Repatriation Review Committee.

[FR Doc. 02-8577 Filed 4–9–02; 8:45 am]

BILLING CODE 4310–70–S

DEPARTMENT OF THE INTERIOR

National Park Service

Notice of Intent to Repatriate Cultural Items in the Possession of the Springfield Science Museum, Springfield, MA

AGENCY: National Park Service, Interior.

ACTION: Notice.

Notice is hereby given in accordance with provisions of the Native American Graves Protection and Repatriation Act, 43 CFR 10.10 (a)(3), of the intent to repatriate cultural items in the possession of the Springfield Science Museum, Springfield, MA, that meet the definition of ''unassociated funerary objects'' under Section 2 of the Act.

This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA, 43 CFR 10.2 (c). The determinations within this notice are the sole responsibility of the museum, institution, or Federal agency that has control of these cultural items. The National Park Service is not responsible for the determinations within this notice.

The 151 cultural items are glass beads, shell beads, chert projectile points, and rolled lead sheets.

In 1925, these items were donated to the Springfield Science Museum by J.T. Bowne. According to museum records, the objects came from ''Indian graves on the east bank of Cayuga Lake, Union Springs, New York.'' The area from which the remains were collected is in Cayuga County, NY, and, based on historical sources and treaties, lies within the area in which the Cayuga had villages. Cultural material recovered from this site, including chert projectile points and glass beads, supports a Late Woodland and postcontact date (circa A.D. 1000-1700). The Springfield Science Museum does not have possession of the human remains from this site.

Based on the above-mentioned information, officials of the Springfield Science Museum have determined that, pursuant to 43 CFR 10.2 (d)(2)(ii), these cultural items are reasonably believed to have been placed with or near individual human remains at the time of death or later as part of the death rite or ceremony and are believed, by a preponderance of the evidence, to have been removed from a specific burial site of a Native American individual. Officials also have determined that, pursuant to 43 CFR 10.2 (e), there is a relationship of shared group identity that can be reasonably traced between these cultural items and the Cayuga Nation of New York.

This notice has been sent to officials of the Cayuga Nation of New York, Seneca Nation of New York, and the Seneca-Cayuga Tribe of Oklahoma. Representatives of any other Indian tribe that believes itself to be culturally affiliated with these unassociated funerary objects should contact John Pretola, Curator of Anthropology, Springfield Science Museum, 236 State Street, Springfield, MA 01103, telephone (413) 263-6800, extension 320, before May 10, 2002. Repatriation of these unassociated funerary objects to the Cayuga Nation of New York may begin after that date if no additional claimants come forward.

Dated: February 14, 2002.

Robert Stearns,

Manager, National NAGPRA Program.

[FR Doc. 02–8628 Filed 4–9–02; 8:45 am]

BILLING CODE 4310–70–S

DEPARTMENT OF JUSTICE

[AAG/A Order No. 263–2002]

Privacy Act; System of Records

Pursuant to the Privacy Act of 1974 (5 U.S.C. 552a), notice is given that the United States National Central Bureau of INTERPOL (USNCB) proposes to modify a system of records, specifically, the INTERPOL-United States National Central Bureau (USNCB) Records System, Justice/INTERPOL–001'' (last published July 27, 2001, at 66 FR 39201).

This system, which will become effective 30 days from the date of publication, has been revised to include an expanded group of individuals covered by the system, add new categories of records and update and regroup its routine uses to be consistent with those in effect at other law enforcement agencies. In addition, routine uses common to other law enforcement agencies have been added to facilitate the USNCB's law enforcement functions. For clarity, the entire system is reproduced in this publication.

In accordance with 5 U.S.C. 552a(e)(4) and (11), the public is given a 30-day period in which to comment. The Office of Management and Budget (OMB), which has oversight responsibilities under the Privacy Act, requires that it be given a 40-day period in which to review the system. Therefore, please submit any comments by May 10, 2002. The public, OMB, and the Congress are invited to send written comments to Mary Cahill, Management and Planning Staff, Justice Management Division, Department of Justice, 1400 National Place Building, Washington, DC 20530.

A description of the modified system of records is provided below. In addition, in accordance with 5 U.S.C. 552a(r), the Department has provided a report to OMB and the Congress on the proposed modification.

Dated: April 1, 2002.

Robert F. Diegelman,

Acting Assistant Attorney General for Administration.

JUSTICE/INTERPOL–001

SYSTEM NAME:

The INTERPOL-United States National Central Bureau (USNCB) Records System, JUSTICE/INTERPOL–001.

SYSTEM LOCATION:

INTERPOL-U.S. National Central Bureau, Department of Justice, Washington, DC 20530.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Fugitives; wanted persons; criminal and non-criminal individuals who have been charged or convicted or are subjects of a criminal investigation with international aspects; individuals who may be associated with stolen weapons, motor vehicles, artifacts, or similar items involved in a crime; victims related to humanitarian or criminal investigations; witnesses or confidential sources in a criminal investigation with international aspects; missing and/or abducted persons (including alleged abductors or other individuals associated with a missing or abducted person), and persons who are unable or unwilling to identify themselves; INTERPOL–USNCB, government and non-government contractor, judicial or law enforcement personnel engaged in the performance of official duties; applicants for a license, grant, contract or benefit; and applicants for positions with entities performing law enforcement and non-law enforcement functions.

CATEGORIES OF RECORDS IN THE SYSTEM:

The program records of the INTERPOL–USNCB consist of criminal and non-criminal case files which support the law enforcement and humanitarian functions performed by INTERPOL–USNCB. The files contain electronic data and hard copy records of facsimiles, fingerprints, photographs, criminal investigative reports, applicant checks related to law enforcement and non-law enforcement employment, security, and regulatory matters, licenses, grants, contracts, or benefits, and related data, radio messages (international), log sheets, notices, bulletins or posters, lookouts (temporary and permanent notices including identification information on an individual or item of interest to law enforcement authorities), investigative notes, computer printouts, letters, memoranda, witness statements and records related to deceased persons. Information about individuals includes names, aliases, places and dates of birth, addresses, physical descriptions, various identification numbers, reason for the records or lookouts, and details and circumstances surrounding the actual or suspected violations, humanitarian requests or administrative/operational matters.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

22 U.S.C. 263a, and 28 C.F.R. 0.34

PURPOSE(S):

The system manages data on foreign and domestic criminal and non-

criminal, humanitarian, and related law enforcement matters. These records are maintained to assist and support international law enforcement cooperation. The data includes fingerprints, photographs, criminal investigative reports, applicant checks, licenses, facsimiles, letters, memoranda, bulletins, posters, log sheets, notices, investigative notes, computer printouts, and similar data. The data is used to facilitate the sharing of information between federal, state, local, and tribal law enforcement-related authorities in the United States, and foreign authorities engaged in law enforcement functions including: the investigation of crimes and criminal activities, obtaining evidence, the sharing of law enforcement techniques, prevention of crime, assistance in humanitarian matters, the location and arrest of fugitives and wanted persons, the location of missing persons, border and immigration control, assistance in litigation, the sharing of criminal history and background information used for investigative purposes, determinations regarding the suitability of applicants for law enforcement and non law enforcement-related employment, and the issuance of a license, grant, contract, or benefit.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Information may be disclosed as follows:

(1) In the event a record in this system of records, either alone or in conjunction with other information, indicates a violation or potential violation of law, whether civil, criminal or regulatory in nature, the relevant record may be referred, to the appropriate law enforcement and criminal justice agencies whether foreign, federal, state, local or tribal, charged with the responsibility of investigating or prosecuting such violation or charged with enforcing or implementing such law.

(2) To any person or entity, and to the public generally, to the extent necessary to obtain information or cooperation in efforts to locate, identify, or arrest, if appropriate, fugitives, wanted persons, missing persons, abducted persons, and persons who are unable or unwilling to identify themselves.

(3) To any entity maintaining civil, criminal or other information when necessary to obtain information relevant to a decision by a foreign, federal, state, local, or tribal agency concerning the hiring, appointment, or retention of an employee; the issuance or retention of a security clearance; the execution of a security or suitability investigation; the classification of a job; or the issuance of a contract, grant, license, or benefit.

(4) To officials and employees of a federal agency or entity, including the White House, which has a need for information relevant to a decision concerning the hiring, appointment, or retention of an employee; the issuance or retention of a security clearance; the execution of a security or suitability investigation; the classification of a job; or the issuance of a contract, grant, or benefit.

(5) In an appropriate proceeding before a court or administrative or regulatory body when records are determined by the Department of Justice to be arguably relevant to the proceeding.

(6) To such recipients under such circumstances and procedures as are mandated by federal statute or executive agreement, or where disclosure is pursuant to an international treaty or convention entered into and ratified by the United States.

(7) To the International Criminal Police Organization (INTERPOL) General Secretariat and National Central Bureaus in member countries; and to the INTERPOL Supervisory Board, an international board comprised of three judges having oversight responsibilities regarding the purpose and scope of personal information maintained in the international archives of INTERPOL.

(8) To contractors, grantees, experts, consultants, students, and others performing or working on a contract, service, grant, cooperative agreement, or other assignment for the Federal Government, when necessary to accomplish an agency function related to this system of records.

(9) To the news media and the public pursuant to 28 CFR 50.2 unless it is determined that the release of the specific information in the context of a particular case would constitute an unwarranted invasion of personal privacy.

(10) To a Member of Congress or the Member's staff acting upon the Member's behalf when the Member or staff requests the information on behalf of and at the request of the individual who is the subject of the record.

(11) To the National Archives and Records Administration and General Services Administration in records management inspections conducted under the authority of 44 U.S.C. 2904 and 2906.

(12) To foreign, federal, state, local and tribal licensing agencies or associations which require information concerning the suitability or eligibility of an individual for a license or permit.

(13) To an actual or potential party to litigation or the party's authorized representative for the purpose of negotiation or discussion on such matters as settlement, plea bargaining, or in informal discovery proceedings.

(14) To a former employee of the Department for purposes of: responding to an official inquiry by a federal, state, or local government entity or professional licensing authority, in accordance with applicable Department regulations; or facilitating communications with a former employee that may be necessary for personnel-related or other official purposes where the Department requires information and/or consultation assistance from the former employee regarding a matter within that person's former area of responsibility.

(15) A record relating to a case or matter that has been referred by an agency, or that involves a case or matter within the jurisdiction of an agency, or where the agency or its officials may be affected by a case or matter, may be disseminated to such agency to notify the agency of the status of the case or matter or of any decision or determination that has been made, or to make such other inquiries and reports as are necessary during the processing of the case or matter.

(16) To a foreign country, through the United States Department of State or directly to the representative of such country, to the extent necessary to assist such country in apprehending and/or returning a fugitive to a jurisdiction which seeks his return, or to assist such country in civil or criminal proceedings in which the United States or one of its officers or agencies has an interest.

(17) A record relating to a person held in custody pending or during arraignment, trial, sentence, or extradition proceedings, or after conviction or after extradition proceedings, may be disseminated to a federal, state, local, or foreign prison, probation, parole, or pardon authority, or to any other agency or individual concerned with the maintenance, transportation, or release of such a person.

(18) To a federal, state, local, foreign, or international law enforcement agency to assist in the general crime prevention and detection efforts of the recipient agency or to provide investigative leads to such agency.

(19) To any entity or person where there is reason to believe that the recipient is or could become the target of a particular criminal activity or conspiracy, to the extent the information is relevant to the protection of life or property.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Information is stored in file folders and in electronic word files at the INTERPOL–USNCB and at the Washington Federal Records Center. Certain limited data, e.g., that which concerns fugitives and wanted, missing or abducted persons is stored in the Treasury Enforcement Communications System (TECS) TREASURY/CS 00.244, a system published by the U.S. Department of Treasury, and in the National Criminal Information Center (NCIC) [*JUSTICE/FBI 001*], for a limited time period, or until apprehended or located.

RETRIEVABILITY:

Information is retrieved primarily by name, system identification number, personal identification number, and by weapon serial number or motor vehicle identification number.

SAFEGUARDS:

Information is safeguarded and protected in accordance with Department rules and procedures governing the handling of computerized information. Only those individuals specifically authorized have access to the INTERPOL–USNCB records. Access to INTERPOL–USNCB records is given only to those individuals who require access to perform official duties. In addition, USNCB information resides in the secured INTERPOL–USNCB offices which are staffed twenty-four hours a day, seven days a week. Automated data is password secured.

RETENTION AND DISPOSAL:

Case files closed as of April 5, 1982 and thereafter are disposed of as follows: The hard copy (paper record) will be retained on site at the INTERPOL–USNCB for two years after closing. At the end of the two years post closing, the hard copy will be transferred to the Washington National Records Center for storage. The hard copy (paper record) of the case file may be destroyed five years after transfer to the Washington National Records Center, for a total of seven years post closing, if there has been no case activity. Information contained in electronic case files will be stored on a compact disc two years after closing the case and sent to the Washington National Records Center for destruction in five years, or seven years after case closure, if there has been no case activity. Automated information will be flagged as an archived case and maintained on the LAN server for an indefinite period of time.

SYSTEM MANAGER(S) AND ADDRESS:

Chief, INTERPOL-United States National Central Bureau, Department of Justice, Washington, DC 20530.

Records Management Officer, INTERPOL-United States National Central Bureau, Department of Justice, Washington, DC 20530.

Information Resources Manager, INTERPOL-United States National Central Bureau, Department of Justice, Washington, DC 20530.

NOTIFICATION PROCEDURE:

Inquiries regarding whether the system contains a record pertaining to an individual may be addressed to the Chief, INTERPOL-United States National Central Bureau, Department of Justice, Washington, DC 20530, or to the Freedom of Information Act (FOIA) Specialist at the same location. To enable INTERPOL–USNCB personnel to determine whether the system contains a record relating to him or her, the requester must submit a written request identifying the record system, identifying the category and type of records sought, and providing the individual's full name and at least two items of secondary information (date of birth, social security number, employee identification number, or similar identifying information).

RECORD ACCESS PROCEDURES:

The Attorney General has exempted the INTERPOL–USNCB system from the access, contest, and amendment provisions of the Privacy Act. Some records may be available under the Freedom of Information Act. Inquiries should be addressed to the FOIA/PA Officer, INTERPOL-United States National Central Bureau, Department of Justice, Washington, DC 20530. The letter should be clearly marked ''Freedom of Information Request'' and a return address provided for transmitting any information to the requester.

CONTESTING RECORD PROCEDURES:

See ''Access procedures'' above.

RECORD SOURCE CATEGORIES:

Sources of information contained in this system include investigating reports, notes, correspondence, messages, photographs, fingerprints, and other identification materials from federal, state, local, tribal and foreign law enforcement and non-law enforcement agencies (including investigating reports from a system of records published by Department of Treasury Enforcement Communications System (TECS) TREASURY/CS 00.244 or the National Crime Information Center (NCIC); other non-Department of Justice investigative agencies; client agencies of the Department of Justice); statements of witnesses and parties; and the work product of the staff of the INTERPOL–USNCB working on particular cases. Although the organization uses the name INTERPOL–USNCB for purposes of public recognition, the INTERPOL–USNCB is not synonymous with the International Criminal Police Organization (ICPO–INTERPOL), which is a private, intergovernmental organization headquartered in Lyon, France. The Department of Justice USNCB serves as the United States liaison with the INTERPOL General Secretariat and works in cooperation with the National Central Bureaus of other member countries, but is not an agent, legal representative, nor organization subunit of the International Criminal Police Organization. The records maintained by the INTERPOL–USNCB are separate and distinct from records maintained by INTERPOL and INTERPOL–USNCB does not have custody of, access to, nor control over the records of the International Criminal Police Organization.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

The Attorney General has exempted this system from subsections (c)(3) and (4), (d), (e), (1), (2), and (3), (e)(4)(G) and (H), (e)(5) and (8), (f), and (g) of the Privacy Act pursuant to 5 U.S.C. 552a (j)(2), and (k)(2) and (k)(5). Rules have been promulgated in accordance with the requirements of 5 U.S.C. 553(b), (c) and (e) and have been published in the **Federal Register**. See 28 CFR 16.103.

[FR Doc. 02–8427 Filed 4–9–02; 8:45 am]

BILLING CODE 4410–BC–P

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Manufacturer of Controlled Substances; Notice of Registration

By Notice dated August 27, 2001, and published in the **Federal Register** on September 7, 2001, (66 FR 46817), Applied Science Labs, Division of Alltech Associates, Inc., 2701 Carolean Industrial Drive, PO Box 440, State College, Pennsylvania 16801, 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
Methcathinone (1237)	I
N-Ethylamhetamine (1475)	I
N,N-Dimethylamphetamine (1480).	I
4-Methylaminorex (cis isomer) (1590).	I
Lysergic acid diethylamide (7315).	I
Mescaline (7381)	I
4-Bromo-2,5-dimethoxyphenethylamine (7392).	I
3,4-Methylenedioxyamphetamine (7400).	I
N-Hydroxy-3,4-methylenedioxyamphetamine (7402).	I
3,4-Methylenedioxy-N-ethylamphetamine (7404).	I
3,4-Methylenedioxymethamphetamine (7405).	I
N-Ethyl-1-phenylcyclohexylamine (7455).	I
1-(1-Phenylcyclohexyl) pyrrolidine (7458).	I
1-[1-(2-Thienyl) cyclohexyl] piperidine (7470).	I
Dihydromorphine (9145)	I
Normorphine (9313)	I
1-Phenylcyclohexylamine (7460)	II
Phencyclidine (7471)	II
Phenylacetone (8501)	II
1-Piperidinocyclohexanecarbonitrile (8603).	II
Cacaine (9041)	II
Codeine (9050)	II
Dihydrocodeine (9120)	II
Benzoylecgonine (9180)	II
Morphine (9300)	II
Noroxymorphone (9668)	II

The firm plans to manufacture small quantities of the listed controlled substances for reference standards.

No comments or objections were received. DEA has considered the factors in title 21, United States Code, Section 823(a) and determined that the registration of Applied Science Labs to manufacture the listed controlled substances is consistent with the public interest at this time. DEA has investigated Applied Science Labs on a regular basis to ensure that the company's 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: March 27, 2002.

Laura M. Nagel,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 02–8657 Filed 4–4–02; 8:45 am]

BILLING CODE 4410–04–M

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Manufacturer of Controlled Substances; Notice of Application

Pursuant to § 1301.33(a) of Title 21 of the Code of Federal Regulations (CFR), this is notice that on April 23, 2001, B.I. Chemical, Inc., which has changed its name to Boehringer Ingelheim Chemicals, Inc., 2820 N. Normandy Drive, Petersburg, Virginia 23805, made application by letter to the Drug Enforcement Administration (DEA) for registration as a bulk manufacturer of fentanyl (9801), a basic class of controlled substance listed Schedule II.

The firm plans to bulk manufacture the listed controlled substance for sale to their customers.

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 June 10, 2002.

Dated: March 27, 2002.

Laura M. Nagel,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 02–8668 Filed 4–9–02; 8:45 am]

BILLING CODE 4410–09–M

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Manufacturer of Controlled Substances; Notice of Registration

By Notice dated October 5, 2001, and published in the **Federal Register** on October 17, 2001, (66 FR 52781), Celgene Corporation, 7 Powder Horn Drive, Warren, New Jersey 07059, made application by renewal to the Drug Enforcement Administration (DEA) to be registered as a bulk manufacturer of methylphenidate (1724), a basic class of controlled substance listed in Schedule II.

The firm plans to manufacture methylphenidate for product research and development.

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 Celgene Corporation to manufacture methylphenidate is consistent with the public interest at this time. DEA has investigated the Celgene Corporation on a regular basis to ensure that the company's 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 class of controlled substance listed above is granted.

Dated: March 27, 2002.

Laura M. Nagel,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 02–8658 Filed 4–9–02; 8:45 am]

BILLING CODE 4410–09–M

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Manufacturer of Controlled Substances; Notice of Registration

By Notice dated December 18, 2001, and published in the **Federal Register** on December 27, 2001, (66 FR 66939), Chattem Chemicals, Inc., 3801 St. Elmo Avenue, Building 18, Chatanooga, Tennessee 37409, made application by letter to the Drug Enforcement Administration (DEA) to be registered as a bulk manufacturer of dextropropoxyphene (9273), a basic class of controlled substance listed Schedule II.

The firm plans to bulk manufacture dextropropoxyphene to produce products for distribution to its customers.

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 Chattem Chemicals, Inc. to manufacture dextropropoxyphene is consistent with the public interest at this time. DEA has investigated the firm on a regular basis to ensure that the company's continued 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: March 27, 2002.

Laura M. Nagel,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 02–8659 Filed 4–9–02; 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 November 13, 2001, Cody Laboratories Inc., 331 33rd Street, Cody, Wyoming 82414, made application by letter to the Drug Enforcement Administration (DEA) for registration as a bulk manufacturer of the basic classes of controlled substances listed below:

Drug	Schedule
Hydromorphone (9150)	II
Fentanyl (9801)	II

The firm plans to manufacture the listed controlled substances in bulk for distribution to its customers.

Any other such applicant and any person who is presently registered with DEA to manufacture such substances may file comments or objections to the issuance of the proposed registration.

Any such comments or objections may be addressed, in quintuplicate, to the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration, United States Department of Justice, Washington, DC 20537, Attention: DEA Federal Register Representative (CCR), and must be filed no later than June 10, 2002.

Dated: March 27, 2002.

Laura M. Nagel,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 02–8665 Filed 4–9–02; 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 September 12, 2001, Guilford Pharmaceuticals, Inc., 6611 Tributary Street, Baltimore, Maryland 21224, made application by renewal to the Drug Enforcement Administration (DEA) for registration as a bulk manufacturer of cocaine (9041) a basic class of controlled substance listed in Schedule II.

The firm plans to manufacture methyl-3-beta-(4-trimethylstannylphenyl)-tropane-2-carboxylate as a final intermediate for the production of dopascan injection.

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 June 10, 2002.

Dated: March 27, 2002.

Laura M. Nagel,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 02–8667 Filed 4–4–02; 8:45 am]

BILLING CODE 4410–09–M

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Manufacturer of Controlled Substances; Notice of Registration

By Notice dated July 13, 2001, and published in the **Federal Register** on July 23, 2001, (66 FR 38322), Johnson Matthey, Inc., Custom Pharmaceuticals Department, 2003 Nolte Drive, West Deptford, New Jersey 08066, 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
Tetrahydrocannabinols (7370)	I
Difenoxin (9168)	I
Propiram (9649)	I
Amphetamine (1100)	II
Methylphenidate (1724)	II
Anileridine (9020)	II
Codeine (9050)	II
Oxycodone (9143)	II
Hydromorphone (9150)	II
Hydrocodone (9193)	II
Meperidine (9230)	II
Morphine (9300)	II
Thebaine (9333)	II
Alfentanil (9737)	II
Sufentanil (9740)	II
Fentanyl (9801)	II

The firm plans to manufacture the listed controlled substances in bulk to supply final dosage form manufacturers.

DEA has considered the factors in Title 21, United States Code, section 823(a) and determined that the registration of Johnson Matthey, Inc. to manufacture the listed controlled substances is consistent with the public interest at this time. DEA has investigated Johnson Matthey, Inc. on a regular basis to ensure that the company's 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: March 27, 2002.

Laura M. Nagel,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 02–8661 Filed 4–9–02; 8:45 am]

BILLING CODE 4410–09–M

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Manufacturer of Controlled Substances; Notice of Registration

By Notice dated July 13, 2001, and published in the **Federal Register** on July 23, 2001, (66 FR 38323), Lonza Riverside, 900 River Road, Conshohocken, Pennsylvania 19428, 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
Gamma hydroxybutyric acid (2010).	I
Amphetamine (1100)	II
Phenylacetone (8501)	II

The firm plans to manufacture phenylacetone to produce amphetamine. They plan to manufacture amphetamine and gamma hydroxybutyric acid in bulk for distribution to its customers.

No comments or objections were received. DEA has considered the factors in Title 21, United States code, section 823(a) and determined that the registration of Lonza Riverside to manufacture the listed controlled substances is consistent with the public interest at this time. DEA has investigated Lonza Riverside on a regular basis to ensure that the company's 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: March 27, 2002.

Laura M. Nagel,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 02–8673 Filed 4–9–02; 8:45 am]

BILLING CODE 4410–09–M

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Importer of Controlled Substances; Notice of Registration

By Notice dated May 14, 2001, and published in the **Federal Register** on May 30, 2001, (66 FR 29344), Mallinckrodt, Inc., Mallinckrodt & Second Streets, St. Louis, Missouri 63147, made application by renewal to the Drug Enforcement Administration (DEA) to be registered as an importer of the basic classes of controlled substances listed below:

Drug	Schedule
Phenylacetone (8501)	II
Coca Leaves (9040)	II
Opium, raw (9600)	II
Opium poppy (9650)	II
Poppy Straw Concentrate (9670).	II

The firm plans to import the listed controlled substances to bulk manufacture controlled substances.

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 Mallinckrodt, Inc., is consistent with the public interest and with United States obligations under international treaties, conventions, or protocols in effect on May 1, 1971, at this time. DEA has investigated Mallinckrodt, Inc., on a regular basis to ensure that the company's 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 section 1008(a) of the Controlled Substances Import and Export Act and in accordance with Title 21, Code of Federal Regulations, § 1301.34, the above firm is granted registration as an importer of the basic classes of controlled substances listed above.

Dated: March 27, 2002.

Laura M. Nagel,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 02–8663 Filed 4–9–02; 8:45 am]

BILLING CODE 4410–09–M

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Manufacturer of Controlled Substances; Notice of Registration

By Notice dated October 2, 2001, and published in the **Federal Register** on October 11, 2001, (66 FR 51970), Norac Company, Inc., 405 S. Motor Avenue, Azusa, California 91702, made application by renewal 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 plans to manufacture tetrahydrocannabinols (THC) for use in treatment of AIDS wasting syndrome and as an antiemetic.

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 Norac Company, Inc. to manufacture tetrahydrocannabinols is consistent with the public interest at this time. DEA has investigated Norac Company, Inc. on a regular basis to ensure that the company's 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 class of controlled substance listed above is granted.

Dated: March 27, 2002.

Laura M. Nagel,

deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 02–8662 Filed 4–9–02; 8:45 am]

BILLING CODE 4410–04–M

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Importer of Controlled Substances; Notice of Registration

By Notice dated October 12, 2001, and published in the **Federal Register** on October 25, 2001, (66 FR 54033), Noramco Inc., 1440 Olympic Drive, Athens, Georgia 30601, made application by renewal to the Drug Enforcement Administration (DEA) to be registered as an importer of phenylacetone (8501), basic class of controlled substance listed in Schedule II.

The firm plans to import phenylacetone for the production of amphetamine.

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 Noramco Inc., is consistent with the public interest and with United States obligations under international treaties, conventions, or protocols in effect on May 1, 1971, at this time. DEA has investigated Noramco Inc., to ensure that the company's registration is consistent with the public interest. The investigation included inspection and testing of the company's physical security system, verification of the company's compliance with state and local laws, and a review of the company's background and history. Therefore, pursuant to section 1008(a) of the Controlled Substances Import and Export Act and in accordance with Title 21, Code of Federal Regulations, § 1301.34, the above firm is granted registration as an importer of the basic class of controlled substance listed above.

Dated: March 27, 2002.

Laura M. Nagel,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 02–8664 Filed 4–9–02; 8:45 am]

BILLING CODE 4410–09–M

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Manufacturer of Controlled Substances; Notice of Application

Pursuant to section 1301.33(a) of Title 21 of the Code of Federal Regulations (CFR), this is notice that on September 6, 2001, Organix, Inc., 240 Salem Street, Woburn, Massachusetts 01801, made application by renewal to the Drug Enforcement Administration (DEA) of registration as a bulk manufacturer of cocaine (9041), a basic class of controlled substance listed in Schedule II.

The firm plans to manufacture a derivative of cocaine in gram quantities for validation of synthetic procedures.

Any other such applicant and any person who is presently registered with DEA to manufacturer such substances may file comments or objections to the issuance of the proposed registration.

Any such comments or objections may be addressed, in quintuplicate, to the Deputy 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 June 10, 2002.

Dated: March 27, 2002.

Laura M. Nagel,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 02–8666 Filed 4–9–02; 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 9, 2001, and published in the **Federal Register** on August 10, 2001, (66 FR 42239), Pressure Chemical Company, 3419 Smallman Street, Pittsburgh, Pennsylvania 15201, made application by renewal to the Drug Enforcement Administration (DEA) to be registered as a bulk manufacturer of 2,5-dimethoxyamphetamine (7396), a basic class of controlled substance listed in Schedule I.

The firm plans to bulk manufacture 2,5-dimethoxyamphetamine for distribution to its customers.

No comment 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 Pressure Chemical Company to manufacture 2,5-dimethoxyamphetamine is consistent with the public interest at this time. DEA has investigated Pressure Chemical Company to ensure that the company's continued registration is consistent with the public interest. These investigations 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: March 27, 2002.

Laura M. Nagel,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 02–8672 Filed 4–9–02; 8:45 am]

BILLING CODE 4410–09–M

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Manufacturer of Controlled Substances; Notice of Registration

By Notice dated October 5, 2001, and published in the **Federal Register** on October 17, 2001, (66 FR 52782), Wildlife Laboratories, Inc., 1401 Duff Drive, Suite 600, Fort Collins, Colorado 80524, made application by renewal to the Drug Enforcement Administration (DEA) to be registered as a bulk manufacturer of carfentanil (9743), a basic class of controlled substance listed in Schedule II.

The firm plans to manufacture the listed controlled substance for distribution to its customers.

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 Wildlife Laboratories to manufacture carfentanil is consistent with the public interest at this time. DEA has investigated Wildlife Laboratories to ensure that the company's registration is consistent with the public interest. This investigation 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: March 27, 2002.

Laura M. Nagel,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 02–8660 Filed 4–9–02; 8:45 am]

BILLING CODE 4410–09–M

DEPARTMENT OF JUSTICE

Federal Bureau of Investigation

Meeting of the Compact Council for the National Crime Prevention and Privacy Compact

AGENCY: Federal Bureau of Investigation, Justice.

ACTION: Meeting notice.

SUMMARY: The purpose of this notice is to announce a meeting of the Compact Council created by the National Crime Prevention and Privacy Compact Act of 1998 (Compact). Thus far, the federal government and fourteen states are parties to the Compact which governs the exchange of criminal history records for licensing, employment, and similar purposes. The Compact also provides a legal framework for the establishment of a cooperative Federal-State system to exchange such records.

Matters for discussion are expected to include: (1) Dispute Adjudication Procedures, (2) Memorandum of Understanding with Nonparty States, (3) Expansion of the National Fingerprint File Participants, (4) Privatization of Noncriminal Justice Functions, and (5) Improvements to Background Checks and the use of Flat Fingerprints.

The meeting will be open to the public on a first-come, first-seated basis. Any member of the public wishing to file a written statement with the Compact Council or wishing to address this session of the Compact Council should notify Ms. Cathy L. Morrison at (304) 625–2736, at least 24 hours prior to the start of the session. The notification should contain the requestor's name and corporate designation, consumer affiliation, or government designation, along with a short statement describing the topic to be addressed, and the time needed for the presentation. Requestors will ordinarily be allowed up to 15 minutes to present a topic.

DATES AND TIMES: The Compact Council will meet in open session from 9 a.m. until 5 p.m. on May 8–9, 2002.

ADDRESSES: The meeting will take place at the Renaissance Scottsdale Resort, 6160 North Scottsdale Road, Scottsdale, Arizona, telephone (480) 991–1414.

FOR FURTHER INFORMATION CONTACT: Inquiries may be addressed to Ms. Cathy L. Morrison, Interim Compact Officer, Compact Council Office, Module C3, 1000 Custer Hollow Road, Clarksburg, West Virginia 26306–0147, telephone (304) 625–2736, facsimile (304) 625–5388.

Dated: March 21, 2002.

Thomas E. Bush, III,

Section Chief, Programs Development Section, Federal Bureau of Investigation.

[FR Doc. 02–8682 Filed 4–9–02; 8:45 am]

BILLING CODE 4410–02–M

NUCLEAR REGULATORY COMMISSION

Agency Information Collection Activities; Proposed Collection; Comment Request

AGENCY: U.S. Nuclear Regulatory Commission (NRC).

ACTION: Notice of the OMB review of information collection and solicitation of public comment.

SUMMARY: The NRC is preparing a submittal to OMB for review of continued approval of information collections under the provisions of Paperwork Reduction Act of 1995 (44 U.S.C. chapter 35).

Information pertaining to the requirement to be submitted:

1. *The title of the information collection:* 10 CFR Part 32—Specific Domestic Licenses to Manufacture or Transfer Certain Items Containing Byproduct Material.

2. *Current OMB approval number:* 3150–0001.

3. *How often the collection is required:* There is a one-time submittal of information to receive a license. Renewal applications are submitted every 10 years. In addition, recordkeeping must be performed on an on-going basis, and reports of transfer of byproduct material must be reported every 10 years.

4. *Who is required or asked to report:* All specific licensees who manufacture or initially transfer items containing byproduct material for sale or distribution to general licensees or persons exempt from licensing.

5. *The number of annual respondents:* 194 NRC licensees and 491 Agreement State licensees.

6. *The number of hours needed annually to complete the requirement or request:* 151,644 (53,012 hours for NRC licensees [4,507 reporting + 48,505 hours recordkeeping]) or an average of 273 hours per licensee and (98,632 hours for Agreement State licensees [3,210 hours reporting + 95,422 hours recordkeeping]) or 201 hours per Agreement State licensee.

7. *Abstract:* 10 CFR part 32 establishes requirements for specific licenses for the introduction of byproduct material into products or materials and transfer of the products or materials to general licensees or persons exempt from licensing. It also prescribes requirements governing holders of the specific licenses. Some of the requirements are for information which must be submitted in an application for a specific license, records which must be kept, reports which must be submitted, and information which must be forwarded to general licensees and persons exempt from licensing. In addition, 10 CFR part 32 prescribes requirements for the issuance of certificates of registration (concerning radiation safety information about a product) to manufacturers or initial transferors of sealed sources and devices. Submission or retention of the information is mandatory for persons subject to the 10 CFR part 32 requirements. The information is used by NRC to make licensing and other regulatory determinations concerning the use of radioactive byproduct material in products and devices.

Submit, by June 10, 2002, comments that address the following questions:

1. Is the proposed collection of information necessary for the NRC to properly perform its functions? Does the information have practical utility?

2. Is the burden estimate accurate?

3. Is there a way to enhance the quality, utility, and clarity of the information to be collected?

4. How can the burden of the information collection be minimized, including the use of automated collection techniques or other forms of information technology?

A copy of the draft supporting statement may be viewed free of charge at the NRC Public Document Room located at One White Flint North, 11555 Rockville Pike, Rockville, MD. OMB clearance requests are available at the NRC worldwide web site (http://www.nrc.gov/public-involve/doc-comment/omb/index.html). The document will be available on the NRC home page site for 60 days after the signature date of this notice.

Comments and questions about the information collection requirements may be directed to the NRC Clearance Officer, Brenda Jo. Shelton, U.S. Nuclear Regulatory Commission, T–6 E 6, Washington, DC 20555–0001, by telephone at (301) 415–7233, or by Internet electronic mail at *INFOCOLLECTS@NRC.GOV.*

Dated at Rockville, Maryland, this 4th day of April, 2002.

For the Nuclear Regulatory Commission.

Brenda Jo. Shelton,

NRC Clearance Officer, Office of the Chief Information Officer.

[FR Doc. 02–8609 Filed 4–9–02; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 030–03754]

Consideration of Amendment Request for Decommissioning the ABB Prospects, Inc. CE Windsor Site, Building Complexes 2, 5 and 17, in Windsor, CT, and Opportunity for a Hearing

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of consideration of amendment request for decommissioning the ABB Prospects, Inc. CE Windsor Site, Building Complexes 2, 5 and 17 in Windsor, Connecticut and opportunity for a hearing.

The U.S. Nuclear Regulatory Commission is considering issuance of a license amendment to By-Product Materials License No. 06–00217–06 (License No. 06–00217–06), issued to ABB Prospects, Incorporated, to authorize decommissioning of Building Complexes 2, 5 and 17 at the CE Windsor Site in Windsor, Connecticut.

The licensee has been performing limited decommissioning of Building Complexes 2, 5 and 17 at the CE Windsor site in accordance with the conditions described in License No. 06–00217–06. On January 7, 2002, the licensee submitted a Decommissioning Plan for Building Complexes 2, 5 and 17 at the CE Windsor Site to the NRC for review that summarized the decommissioning activities that will be undertaken to de-construct the buildings and remediate the remaining building slabs, basements, sub-surface utilities, and soil at the CE Windsor Site. Radioactive contamination at the licensee's CE Windsor Site consists of soils and building surfaces contaminated with uranium and byproduct material resulting from licensed operations that occurred from the late 1950s until 2001.

The NRC will require the licensee to remediate Building Complexes 2, 5 and 17 and the surrounding areas to meet the NRC's decommissioning criteria, and during decommissioning activities, to maintain effluents and doses within NRC requirements and as low as reasonably achievable.

Prior to approving the decommissioning plan, the NRC will have made findings required by the Atomic Energy Act of 1954, as amended, and NRC's regulations. Approval of the Decommissioning Plan for Building Complexes 2, 5 and 17 at the CE Windsor Site will be documented in an amendment to License No. 06–00217–06.

The NRC hereby provides notice that this is a proceeding on an application for amendment of a license falling within the scope of Subpart L ''Informal Hearing Procedures for Adjudication in Materials Licensing Proceedings,'' of NRC's rules and practice for domestic licensing proceedings in 10 CFR part 2. Pursuant to 10 CFR 2.1205(a), any person whose interest may be affected by this proceeding may file a request for a hearing in accordance with 10 CFR 2.1205(c). A request for hearing must be filed within thirty (30) days of the date of publication of the **Federal Register** Notice.

The request for the hearing must be filed with the Office of the Secretary either:

1. By delivery to the Document Control Desk or may be delivered to the Commission's Public Document Room, 11555 Rockville Pike, Rockville, MD 20852–2738; or

2. By mail or telegram addressed to the Secretary, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Attention: Rulemakings & Adjudications Staff.

In addition to meeting other applicable requirements of 10 CFR part 2 of the NRC's regulations, a request for a hearing filed by a person other than an applicant must describe in detail:

1. The interest of the requester in the proceeding;

2. How that interest may be affected by the results of the proceeding, including the reasons why the requester should be permitted a hearing, with particular reference to the factors set out in 10 CFR 2.1205(g);

3. The requesters areas of concern about the licensing activity that is the subject matter of the proceeding; and

4. The circumstances establishing that the request for a hearing is timely in accordance with 10 CFR 2.1205(c).

In accordance with 10 CFR 2.1205(e), each request for a hearing must also be served, by delivering it personally or by mail, to:

1. The applicant, ABB Prospects, Inc., CEP 880–1403, 2000 Day Hill Road, Windsor, CT 06095–0500, Attention: John Conant; and

2. The NRC staff, by delivery to the Executive Director for Operations, One White Flint North, 11555 Rockville Pike, Rockville, MD 20852, or by mail, addressed to the Executive Director for Operations, U.S. Nuclear Regulatory Commission, Washington, DC 20555.

For further details with respect to this action, the decommissioning plan is available for inspection at the NRC's Public Document Room, 11555 Rockville Pike, Rm 0–1, F23, Rockville, MD 20852.

Dated at King of Prussia, Pennsylvania, this 3rd day of April, 2002.

For the Nuclear Regulatory Commission.

Francis M. Costello,

Deputy Director, Division of Nuclear Materials Safety, RI.

[FR Doc. 02–8610 Filed 4–9–02; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 70–36]

Environmental Assessment and Finding of No Significant Impact of License Amendment for Westinghouse Electric Company LLC

AGENCY: Nuclear Regulatory Commission.

ACTION: Amendment of Westinghouse Electric Company LLC, Materials License SNM–33 to exempt the licensee from the fissile material package standards for shipment of certain bulk materials (e.g. soils) containing low concentrations of uranium-235 contamination and to impose limits on these shipments.

The U.S. Nuclear Regulatory Commission is considering the amendment of Special Nuclear Material License SNM–42 to exempt the licensee from the fissile material package standards for shipment of certain bulk materials (e.g. soils) containing low concentrations of uranium-235 contamination at the Westinghouse Electric Company LLC facility located in Hematite, MO, and to impose limits on these shipments, and has prepared an Environmental Assessment in support of this action.

Environmental Assessment

1.0 Introduction

1.1 Background

The Nuclear Regulatory Commission (NRC) staff has evaluated the environmental impacts of the exemption of Westinghouse Electric Company from the fissile material package standards

for shipment of certain bulk materials (e.g. soils) containing low concentrations of uranium-235 contamination, with limits placed on the shipments to ensure adequate controls for nuclear criticality safety. This Environmental Assessment (EA) has been prepared pursuant to the Council on Environmental Quality (CEQ) regulations (40 CFR parts 1500–1508) and NRC regulations (10 CFR part 51) which implement the requirements of the National Environmental Policy Act (NEPA) of 1969. The purpose of this document is to assess the environmental consequences of the proposed license amendment.

The Westinghouse facility in Hematite, MO, was authorized under NRC Materials License SNM–33 to manufacture nuclear reactor fuel utilizing Special Nuclear Material (SNM), specifically low-enriched uranium, and to receive, possess, use, store and transfer source material. On June 29, 2001, all activities under NRC Materials License SNM–33 related to the possession and use of low-enriched uranium for fabrication of power reactor fuel ceased in their entirety. Activities at the Hematite site are now solely limited to those necessary to remove the facility and site safely from service and to reduce the residual radioactivity to a level that permits the eventual release of the site.

1.2 Review Scope

In accordance with 10 CFR part 51, this EA serves to (1) present information and analysis for determining whether to issue a Finding of No Significant Impact (FONSI) or to prepare an Environmental Impact Statement (EIS); (2) fulfill the NRC's compliance with the National Environmental Policy Act (NEPA) when no EIS is necessary; and (3) facilitate preparation of an EIS if one is necessary. Should the NRC issue a FONSI, no EIS would be prepared and the license amendment would be granted.

1.3 Proposed Action

The proposed action is to amend NRC Materials License SNM–33 to exempt the licensee from the fissile material package standards for shipment of certain bulk materials containing low concentrations of uranium-235 contamination and to impose limiting conditions to ensure adequate controls for nuclear criticality safety. These materials would be exempt from fissile material classification and the fissile material package standards of 10 CFR 71.55 and 71.59, but subject to other requirements of 10 CFR part 71 and the further limiting conditions. A Safety Evaluation Report (SER) has been prepared by the NRC staff and contains a discussion of the safety considerations for approval of the amendment. The SER will be included in the license amendment when it is issued.

1.4 Need for Proposed Action

Westinghouse is currently decommissioning the Hematite site and one of the near term goals is to reduce the site inventory of SNM by removing materials currently on-site to other appropriate licensed facilities.

On February 10, 1997, the NRC issued an emergency direct final rule (62 FR 5913) changing the fissile material exemption specifications of 10 CFR part 71. The revised rule limits the fissile-material mass in a consignment and restricts the presence of select moderators with very low neutron-absorption properties (i.e., special moderators). Under this rule, specifically 10 CFR 71.53(a), Westinghouse would be limited to 400 grams of U-235 per consignment. The imposition of this 400-gram U-235 limit per consignment will increase the number of shipments required to decommission the Westinghouse facility. Therefore, Westinghouse submitted this license amendment request for a specific exemption from the requirements of 10 CFR 71.55 and 71.59 for specified SNM shipments with greater than 400 grams U-235 per consignment.

1.5 Alternatives

The alternatives available to the NRC are:

1. Approve the license amendment request as submitted; or

2. Deny the amendment request.

2.0 Affected Environment

The affected environment for Alternative 1 would be the immediate vicinity of the vehicle used to transport the material to a licensed disposal facility.

The affected environment for Alternative 2 is the Westinghouse site. A full description of the site and its characteristics is given in the 1994 Environmental Assessment for the Renewal of the NRC license for Westinghouse. The Westinghouse facility is located on a site of about 228 acres in Jefferson County, Missouri, approximately 3/4 mile northeast of the unincorporated town of Hematite, Missouri and 35 miles south of St. Louis, Missouri.

3.0 Environmental Impacts of Proposed Action and Alternatives

3.1 Occupational and Public Health

Alternative 1

The risk to human health from the transportation of all radioactive material in the U.S. was evaluated in the Final Environmental Impact Statement on the Transportation of Radioactive Material by Air and Other Modes (NRC, 1977). The principal radiological environmental impact during normal transportation is direct radiation exposure to nearby persons from radioactive material in the package. The average annual individual dose from all radioactive material transportation in the U.S. was calculated to be approximately 0.5 mrem, well below the 10 CFR part 20 requirement of 100 mrem for a member of the public.

Occupational health was also considered in the Final Environmental Impact Statement on the Transportation of Radioactive Material by Air and Other Modes (NRC, 1977). The average annual occupational dose to the driver(s) is estimated to be 8.7 mSv (870 mrem), which is below the 10 CFR Part 20 requirement of 50 mSv (5000 mrem). The Department of Transportation (DOT) regulations in 49 CFR 177.842(g) require that the radiation dose may not exceed 0.02 mSv (2 mrem) per hour in any position normally occupied in a motor vehicle.

The NRC staff evaluated the possibility of a criticality accident due to transportation of this material. Based on the statements and representations in the application, the staff concluded that limiting the contents as described in the application will provide adequate assurance that an inadvertent criticality cannot occur if the materials are exempt from the fissile material classification and fissile material package standards of 10 CFR 71.55 and 71.59. A detailed discussion of this analysis can be found in the Safety Evaluation Report for this amendment.

Under Alternative 1, the doses to the public and to the workers are not increased beyond those considered in the Final Environmental Impact Statement on the Transportation of Radioactive Material by Air and Other Modes (NRC, 1977). Therefore, shipment of these materials would not affect the assessment of environmental impacts or the conclusions in the Final Environmental Impact Statement on the Transportation of Radioactive Material by Air and Other Modes (NRC, 1977).

Alternative 2

The risk to the public health from radiological materials is not expected to

increase as a result of denying this amendment request. If this amendment request was denied, the licensee would be required to ship the contaminated soils in smaller containers. Increasing the number of shipments would not affect the assessment of environmental impacts or the conclusions in the Final Environmental Impact Statement on the Transportation of Radioactive Material by Air and Other Modes (NRC, 1977).

Denial of this amendment will result in a larger number of shipments, therefore, a slight increase in nonradiological truck emissions from transportation would be expected.

The occupational health impacts would not change significantly as a result of denial of this amendment request. The workers at the facility will have the same dose regardless of how the material is transported. Occupational doses at the facility may change slightly as a result of the increase in the number of packages that workers must prepare and handle; however, the facility will continue to implement NRC-approved radiation safety procedures for handling radioactive materials.

3.2 Effluent Releases, Environmental Monitoring, Water Resources, Geology, Soils, Air Quality, Demography, Biota, Cultural and Historic Resources

Alternative 1

The NRC staff has determined that the approval of the proposed amendment will not impact effluent releases, environmental monitoring, water resources, geology, soils, air quality, demography, biota, or cultural or historic resources under normal transport conditions.

Alternative 2

The NRC staff has determined that denial of the proposed amendment will not impact effluent releases, environmental monitoring, water resources, geology, soils, air quality, demography, biota, or cultural or historic resources at or near the Westinghouse site.

3.3 Conclusions

Based on its review, the NRC staff has concluded that the environmental impacts associated with the proposed action are not significant and, therefore, do not warrant denial of the license amendment request. The staff has determined that Alternative 1, approval of the license amendment request as submitted, is the appropriate alternative for selection. Based on an evaluation of the environmental impacts of the amendment request, the NRC has determined that the proper action is to issue a FONSI in the **Federal Register**.

4.0 Agencies and Persons Contacted

The NRC provided the draft Environmental Assessment and FONSI to staff from the Missouri Department of Natural Resources (DNR) on November 21, 2001. NRC staff provided the licensee's exemption request and NRC's Safety Evaluation Report supporting the exemption. NRC staff also participated in a conference call with the DNR staff on February 15, 2002. No comments were received from DNR on the Environmental Assessment and FONSI.

Because the proposed action is entirely within existing facilities or existing roadways, the NRC has concluded that there is no potential to affect endangered species or historic resources, and therefore consultation with the State Historic Preservation Society and the U.S. Fish and Wildlife Service was not necessary.

5.0 References

U.S. Nuclear Regulatory Commission (NRC), December 1977, ''Final Environmental Impact Statement on the Transportation of Radioactive Material by Air and Other Modes.''

U.S. Nuclear Regulatory Commission (NRC), March 1994, ''Environmental Assessment for Renewal of Special Nuclear Material License SNM–33.''

Finding of No Significant Impact

The Commission has prepared the above Environmental Assessment related to the amendment of Special Nuclear Material License SNM–33. On the basis of the assessment, the Commission has concluded that environmental impacts associated with the proposed action would not be significant and do not warrant the preparation of an Environmental Impact Statement. Accordingly, it has been determined that a Finding of No Significant Impact is appropriate.

In accordance with 10 CFR 2.790 of the NRC's ''Rules of Practice,'' the Environmental Assessment and the documents related to this proposed action will be available electronically for public inspection from the Publicly Available Records (PARS) component of NRC's document system (ADAMS). ADAMS is accessible from the NRC Web site at *http://www.nrc.gov/NRC/ADAMS/ index.html* (the Public Electronic Reading Room).

The NRC contact for this licensing action is Mary Adams, who may be contacted at (301) 415–7249 or by e-mail at *mta@nrc.gov* for more information about the licensing action.

Dated at Rockville, Maryland, this 29th day of March, 2002.

For the Nuclear Regulatory Commission.

Michael F. Weber,

Director, Division of Fuel Cycle Safety and Safeguards, Office of Nuclear Material Safety and Safeguards.

[FR Doc. 02–8608 Filed 4–9–02; 8:45 am]

BILLING CODE 7590–01–P

SECURITIES AND EXCHANGE COMMISSION

Issuer Delisting; Notice of Application To Withdraw From Listing and Registration on the Chicago Stock Exchange, Inc. (Aon Corporation, Common Stock, $1.00 Par Value); File No. 1–7933

April 4, 2002.

Aon Corporation, a Delaware corporation (''Issuer''), has filed an application with the Securities and Exchange Commission (''Commission''), pursuant to Section 12(d) of the Securities Exchange Act of 1934 (''Act'') [1] and Rule 12d2–2(d) thereunder, [2] to withdraw its Common Stock, $1.00 par value (''Security''), from listing and registration on the Chicago Stock Exchange, Inc. (''CHX'' or ''Exchange'').

The Issuer stated in its application that it has met the requirements of CHX Article XXVII, Rule 4 by complying with all applicable laws in effect in the state of Delaware, in which it is incorporated, and with the CHX's rules governing an issuer's voluntary withdrawal of a security from listing and registration. The Issuer will continue to list the Security on the New York Stock Exchange (''NYSE''). The Issuer's application relates solely to the Security's withdrawal from listing on the CHX and shall not affect its listing on the NYSE or its registration under Section 12(b) of the Act. [3]

On February 12, 2002, the Board of Directors (''Board'') of the Issuer approved a resolution to withdraw the Issuer's Security from listing on the CHX. The Board made the decision to withdraw the Security from the CHX due to low trading volume.

Any interested person may, on or before April 26, 2002, submit by letter to the Secretary of the Securities and Exchange Commission, 450 Fifth Street, NW, Washington, DC 20549–0609, facts bearing upon whether the application has been made in accordance with the rules of the CHX and what terms, if any,

[1] 15 U.S.C. 78*l*(d).

[2] 17 CFR 240.12d2–2(d).

[3] 15 U.S.C. 78*L*(b).

should be imposed by the Commission for the protection of investors. The Commission, based on the information submitted to it, will issue an order granting the application after the date mentioned above, unless the Commission determines to order a hearing on the matter.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[4]

Jonathan G. Katz,

Secretary.

[FR Doc. 02–8642 Filed 4–9–02; 8:45 am]

BILLING CODE 8010–01–P

[4] 17 CFR 200.30–3(a)(1).

SECURITIES AND EXCHANGE COMMISSION

Issuer Delisting; Notice of Application To Withdraw From Listing and Registration on the Pacific Exchange, Inc. (Progress Energy, Inc., Common Stock, No Par Value) File No. 1–15929

April 4, 2002.

Progress Energy, Inc., a North Carolina corporation (''Issuer''), has filed an application with the Securities and Exchange Commission (''Commission''), pursuant to Section 12(d) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 12d2–2(d) thereunder,[2] to withdraw its Common Stock, no par value (''Security''), from listing and registration on the Pacific Exchange, Inc. (''PCX'' or ''Exchange'').

The Issuer stated in its application that it has complied with PCX Rule 5.4(b) that governs the removal of securities from listing and registration on the Exchange. In making the decision to withdraw the Security from listing and registration on the PCX, the Issuer considered the direct and indirect costs associated with maintaining dual listings. The Issuer stated in its application that it will maintain its listing on the New York Stock Exchange (''NYSE''). The Issuer's application relates solely to the Security's withdrawal from listing on the PCX and shall not affect its listing on the NYSE or registration under Section 12(b) of the Act.[3]

Any interested person may, on or before April 26, 2002, submit by letter to the Secretary of the Securities and Exchange Commission, 450 Fifth Street, NW, Washington, DC 20549–0609, facts bearing upon whether the application has been made in accordance with the rules of the PCX and what terms, if any, should be imposed by the Commission for the protection of investors. The Commission, based on the information submitted to it, will issue an order granting the application after the date mentioned above, unless the Commission determines to order a hearing on the matter.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[4]

Jonathan G. Katz,

Secretary.

[FR Doc. 02–8643 Filed 4–9–02; 8:45 am]

BILLING CODE 8010–01–P

[1] 15 U.S.C. 78*l*(d).

[2] 17 CFR 240.12d2–2(d).

[3] 15 U.S.C. 78*l*(b).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–45692; File No. SR–Amex–2002–15]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the American Stock Exchange LLC To Amend Commentary .02(c) of Rule 901C To Include Volume Weighted Average Pricing as a Permissible Index Option Settlement Value Calculation Methodology

April 4, 2002.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on March 5, 2002, the American Stock Exchange LLC (''Amex'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II and III below, which Items have been prepared by the Exchange. The 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 Amex proposes to amend Commentary .02(c) of Amex Rule 901C to add volume weighted average pricing (''VWAP'') as a permissible index option settlement value calculation methodology. The text of the proposed rule change is below. Proposed new language is in italics.

* * * * *

Designation of Stock Index Options

Rule 901C

(a)–(c) No change.

Commentary

.01 No change.

.02 The Exchange has received approval, pursuant to the Securities Exchange Act of 1934 (''Act''), to list options on stock industry index groups pursuant to Rule 19b–4(e) of the Act provided each of the following criteria are satisfied:

(a) No change.

(b) No change.

(c) Expiration and Settlement—Options on an index established pursuant to this Commentary will be cash settled and the index value for purposes of settling a specific index option will be calculated based upon *either* the primary exchange regular way opening sale prices for the component stocks *or the primary exchange regular way opening sale prices for components listed on a national securities exchange and volume weighted average prices for component stocks listed on NASDAQ/NMS.*

(d) No change.

* * * * *

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to amend Commentary .02(c) to Amex Rule 901C to add VWAP as a permissible index option settlement value calculation methodology. Currently, Commentary .02(c) of Amex Rule 901C provides that index settlement values are determined by using the regular way opening sale price for each of an index's component stocks in its primary market on the last trading day prior to expiration.[3] Unlike exchange-listed securities where there is a market opening price at which all

[4] 17 CFR 200.30–3(a)(1).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See, e.g.,* Securities Exchange Act Release No. 36283 (September 26, 1995), 60 FR 51825 (October 3, 1995) (SR–Amex–95–26) (order approving the listing and trading of options on the Morgan Stanley High Technology 35 Index).

investors entering a market-on-open order can participate, investors in National Association of Securities Dealers Automated Quotation System (''NASDAQ'') National Market System (''NMS'') securities cannot be sure of transactions at a price equal to the first reported print. In some instances, this price may be significantly different than the first price at which most investors can conduct transactions. As a result, investors, market-makers and the specialist cannot be sure that any hedges into which they may have entered will converge to the settlement value for the index; and, in some cases, the value of the hedge may differ significantly from the index settlement value. This uncertainty adds to the cost of trading the options and makes them less desirable to trade. While it may still be difficult to get complete convergence, using the VWAP provides more opportunity for investors to transact at a price near the settlement price, making it much less likely that there will be any significant difference between the hedge and the settlement value. For this reason, the Exchange is proposing to permit, in addition to ''regular way'' opening price settlement, the VWAP settlement calculation methodology for NASDAQ/NMS listed components.

To obtain the component price to be used in the settlement calculation of an index subject to VWAP, the Exchange would revise the settlement calculation methodology by using VWAP for all NASDAQ/NMS component securities of such index option during the first five minutes of trading immediately following the first reported trade for the component. Once the first trade in a component occurs, that component's VWAP is determined by multiplying the number of shares traded (volume) by the price at which those shares traded (execution price) for each trade, adding up all of these products and dividing this sum by the total number of shares traded (total volume) during the five minute period immediately following the initial trade.[4] For all other components (*i.e.,* those with the Amex or the New York Stock Exchange as their primary market), an index's settlement value would continue to reflect the regular way opening sale prices for each of an index's component stocks in their primary market on the last trading day prior to expiration.

The settlement calculation methodology currently used for NASDAQ/NMS components of existing Amex index options will continue to be used for settlement of the Exchange's index options unless the Exchange specifically determines to use the proposed VWAP settlement calculation methodology. A change to a VWAP settlement methodology for NASDAQ/NMS components of index options will require that the existing opening price regular way methodology be used for the settlement of outstanding index options series as of the time of the introduction of the VWAP methodology. Upon a determination to change to a VWAP methodology, the Exchange will inform its members of such change in the settlement methodology through dissemination of an information circular. The circular will detail the method by which contracts settling under the current opening price regular way settlement will be phased out and those settling based on the VWAP methodology will be introduced.[5]

Thereafter, any newly introduced index option series would settle based on the VWAP methodology. Index option contracts would be aggregated regardless of the settlement methodology for purposes of determining compliance with positions and exercise limits. Long Term Equity Anticipation Securities (''LEAPS'') outstanding as of the date of the introduction of option contracts using the VWAP methodology would continue to settle based on opening price regular way methodology. Any newly introduced LEAPS would be subject to VWAP methodology.

The Exchange believes that permitting the VWAP settlement calculation methodology for NASDAQ/NMS component securities of an index option is appropriate and should result in a settlement value more reflective of the markets in NASDAQ/NMS securities.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act[6] in general, and furthers the objectives of Section 6(b)(5) of the Act[7] in particular, because it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of change, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, and to remove impediments to and perfect the mechanism of a free and open market and a national market system.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any inappropriate burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

No written comments were either solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the Exchange 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.

The Amex has requested accelerated approval of the proposed rule change. While the Commission will not grant accelerated approval at this time, the Commission will consider granting accelerated approval of the proposal at the close of an abbreviated comment period of 15 days from the date of publication of the proposal in the **Federal Register**.

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

[4] The VWAP for all NASDAQ/NMS stocks included in the index will be calculated by the NASDAQ index calculation group and forwarded electronically to the Amex's index calculation group to permit Amex's index calculation group to include the values in its determination of the final settlement value.

[5] The Exchange states that the Options Clearing Corporation has been informed of this rule filing and has no objections to the proposed rule change. Telephone message from Jeffrey P. Burns, Assistant General Counsel, Amex, to Cyndi Nguyen, Attorney, Division of Market Regulation, Commission, on March 18, 2002.

[6] 15 U.S.C. 78f(b).

[7] 15 U.S.C. 78f(b)(5).

proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the Exchange. All submissions should refer to file number SR–Amex–2002–15 and should be submitted by April 25, 2002.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[8]

J. Lynn Taylor,

Assistant Secretary.

[FR Doc. 02–8644 Filed 4–9–02; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–45688; File No. SR–CBOE–2002–14]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the Chicago Board Options Exchange Relating to Refunds of Unspent Marketing Fee Account Balances

April 3, 2002.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on March 22, 2002, the Chicago Board Options Exchange, Inc. (''CBOE'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II, and III below, which the CBOE has prepared. 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 CBOE proposes to change its fee schedule to permit Designated Primary Market Makers (''DPMs'') who have collected marketing fees pursuant to the CBOE's fee schedule to refund the unspent balance of the fees back to the market makers who paid them. The text of the proposed rule change is available at the CBOE and at the Commission.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the CBOE included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it had received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The CBOE has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In July 2000 the CBOE imposed a $0.40 per contract marketing fee to collect funds to be used by the appropriate DPM to attract order flow to the CBOE.[3] In July 2001, the CBOE suspended the assessment of the marketing fee but reserved the right to reinstate the assessment of the fee by filing a proposed rule change with the Commission at a future date.[4]

Since July 2001, the DPMs have not spent all of the funds that have been collected. Some DPMs have asked the CBOE for permission to refund the unspent funds to the market makers who paid the fees. The CBOE proposes to give DPMs the right—though not the obligation—to refund the unspent funds, on a *pro rata* basis, to the market makers who contributed the funds. The CBOE and its clearing members would facilitate the refunds by issuing appropriate debits and credits to the applicable accounts of DPMs and market makers.

The CBOE believes that the proposed rule change is consistent with Section 6(b) of the Act[5] and furthers the objectives of Section 6(b)(4) of the Act[6] in that it is designed to provide for the equitable allocation of reasonable dues, fees, and other charges among CBOE members.

B. Self-Regulatory Organization's Statement on Burden on Competition

The CBOE does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The CBOE neither solicited nor received any written comments with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the proposed rule change establishes or changes a due, fee, or other charge that the CBOE has imposed, it has become effective upon filing pursuant to Section 19(b)(3)(A) of the Act[7] and Rule 19b–4(f)(2) thereunder.[8] At any time within 60 days after the filing of the proposed rule change, the Commission may summarily abrogate the rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of the filing will also be available for inspection and copying at the principal office of the CBOE. All submissions should refer to SR–CBOE–2002–14 and should be submitted by May 1, 2002.

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[8] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Exchange Act Release No. 43112 (Aug. 3, 2000), 65 FR 49040 (Aug. 10, 2000) (SR–CBOE–00–28).

[4] *See* Exchange Act Release No. 44717 (Aug. 16, 2001), 66 FR 44655 (Aug. 24, 2001) (SR–CBOE–2001–43).

[5] 15 U.S.C. 78f(b).

[6] 15 U.S.C. 78f(b)(4).

[7] 15 U.S.C. 78s(b)(3)(A).

[8] 17 CFR 240.19b–4(f)(2).

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[9]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 02–8604 Filed 4–9–02; 8:45 am]

BILLING CODE 8010–01–P

SMALL BUSINESS ADMINISTRATION

[Declaration of Disaster #3403]

Commonwealth of Virginia

As a result of the President's major disaster declaration on April 2, 2002, I find that Dickenson, Lee, Russell, Scott, Smyth, Tazewell, Washington and Wise Counties and the Independent City of Norton in the Commonwealth of Virginia constitute a disaster area due to damages caused by severe storms and flooding occurring on March 17 through March 20, 2002. Applications for loans for physical damage as a result of this disaster may be filed until the close of business on June 1, 2002 and for economic injury until the close of business on January 2, 2003 at the address listed below or other locally announced locations:

U.S. Small Business Administration, Disaster Area 1 Office, 360 Rainbow Blvd., South 3rd Fl., Niagara Falls, NY 14303–1192.

In addition, applications for economic injury loans from small businesses located in the following contiguous counties may be filed until the specified date at the above location: Bland, Buchanan, Grayson and Wythe counties in the Commonwealth of Virginia; Bell, Harlan, Letcher and Pike counties in the State of Kentucky; Claiborne, Hancock, Hawkins, Johnson and Sullivan counties in the State of Tennessee; McDowell and Mercer counties in the State of West Virginia.

The interest rates are:

	Percent
For Physical Damage:	
Homeowners with credit available elsewhere	6.625
Homeowners without credit available elsewhere	3.312
Businesses with credit available elsewhere	7.000
Businesses and Non-Profit Organizations without credit available elsewhere	3.500
Others (Including Non-Profit Organizations) with credit available elsewhere	6.375
For Economic Injury:	
Businesses and Small Agricultural Cooperatives without credit available elsewhere	3.500

The number assigned to this disaster for physical damage is 340311. For economic injury the number is 9P1400 for Virginia; 9P1500 for Kentucky; 9P1600 for Tennessee; and 9P1700 for West Virginia.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008).

Dated: April 3, 2002.

S. George Camp,

Acting Associate Administrator for Disaster Assistance.

[FR Doc. 02–8585 Filed 4–9–02; 8:45 am]

BILLING CODE 8025–01–P

DEPARTMENT OF STATE

[Public Notice 3972]

Culturally Significant Objects Imported for Exhibition Determinations: ''Frida Kahlo, Diego Rivera, and Twentieth-Century Mexican Art: The Jacques and Natasha Gelman Collection''

AGENCY: Department of State.

ACTION: Notice.

SUMMARY: Notice is hereby given of the following determinations: Pursuant to the authority vested in me by the Act of October 19, 1965 [79 Stat. 985; 22 U.S.C. 2459], Executive Order 12047 of March 27, 1978, the Foreign Affairs Reform and Restructuring Act of 1998 [112 Stat. 2681, *et seq.*; 22 U.S.C. 6501 note, *et seq.*], Delegation of Authority No. 234 of October 1, 1999 [64 FR 56014], and Delegation of Authority No. 236 of October 19, 1999 [64 FR 57920], as amended, I hereby determine that the objects to be included in the exhibition, ''Frida Kahlo, Diego Rivera, and Twentieth-Century Mexican Art: The Jacques and Natasha Gelman Collection,'' imported from abroad for temporary exhibition within the United States, are of cultural significance. These objects are imported pursuant to a loan agreement with a foreign lender. I also determine that the exhibition or display of the exhibit objects at the El Museo del Barrio, New York, New York, from on or about April 28, 2002, to on or about September 8, 2002, the Seattle Art Museum, Seattle, Washington, from on or about October 17, 2002, to on or about January 5, 2003, and at possible additional venues yet to be determined, is in the national interest. Public Notice of these determinations is ordered to be published in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: For further information, including a list of exhibit objects, contact Paul W. Manning, Attorney-Adviser, Office of the Legal Adviser, 202/619–5997, and the address is United States Department of State, SA–44, Room 700, 301 4th Street, SW., Washington, DC 20547–0001.

Dated: April 2, 2002.

Patricia S. Harrison,

Assistant Secretary for Educational and Cultural Affairs, Department of State.

[FR Doc. 02–8716 Filed 4–9–02; 8:45 am]

BILLING CODE 4710–08–P

DEPARTMENT OF STATE

[Public Notice 3956]

Renewal of Defense Trade Advisory Group Charter

The Charter of the Defense Trade Advisory Group (DTAG) is being renewed for a two-year period. The membership of this advisory committee consists of private sector defense trade specialists appointed by the Assistant Secretary of State for Political-Military Affairs who advise the Department on policies, regulations, and technical issues affecting defense trade.

FOR FURTHER INFORMATION CONTACT: Mike Slack, DTAG Secretariat, U.S. Department of State, Office of Regional Security and Arms Transfer Policy (PM/RSAT), Room 5827 Main State, Washington, DC 20520–2422. Phone: (202) 647–2882. Fax: (202) 647–9779.

Dated: April 1, 2002.

Timothy J. Dunn,

Executive Secretary, Defense Trade Advisory Group, Department of State.

[FR Doc. 02–8715 Filed 4–9–02; 8:45 am]

BILLING CODE 4710–25–P

DEPARTMENT OF TRANSPORTATION

Maritime Administration

[Docket No. MARAD–2002–12060]

Information Collection Available for Public Comments and Recommendations

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, this notice announces the Maritime Administration's (MARAD's) intentions to request extension of approval for three years of a currently approved information collection.

[9] 17 CFR 200.30–3(a)(12).

DATES: Comments should be submitted on or before June 10, 2002.

COMMENTS: Comments should refer to the docket number that appears at the top of this document. Written comments may be submitted to the Docket Clerk, U.S. DOT Dockets, Room PL–401, 400 Seventh Street, SW., Washington, DC 20590. Comments may also be submitted by electronic means via the Internet at *http://dmses.dot.gov/submit.* Specifically address whether this information collection is necessary for proper performance of the functions of the agency and will have practical utility, accuracy of the burden estimates, ways to minimize this burden, and ways to enhance the quality, utility, and clarity of the information to be collected. All comments received will be available for examination at the above address between 10 a.m. and 5 p.m. ET, Monday through Friday, except Federal Holidays. An electronic version of this document is available on the World Wide Web at *http://dms.dot.gov.*

FOR FURTHER INFORMATION CONTACT: Kenneth Kline, Maritime Administration, MAR–770, 400 7th Street, S.W., Washington, DC., TELEPHONE: 202–366–5744; FAX: 202–366–7901; or E-MAIL: *kenneth.kline@marad.dot.gov.*

Copies of this collection can also be obtained from that office.

SUPPLEMENTARY INFORMATION:

Title of Collection: Application for Construction Reserve Fund and Annual Statements.

Type of Request: Extension of currently approved information collection.

OMB Control Number: 2133–0032.

Form Numbers: None.

Expiration Date of Approval: November 30, 2002.

Summary of Collection of Information: The collection consists of an application required for all citizens who own or operate vessels in the U.S. foreign or domestic commerce and desire tax benefits under the Construction Reserve Fund (CRF) program. The annual statement sets forth a detailed analysis of the status of the CRF when each income tax return is filed.

Need and Use of the Information: This information is required in order for MARAD to determine whether the applicant is qualified for the benefits of the CRF program.

Description of Respondents: Owners or operators of vessels in the domestic or foreign commerce.

Annual Responses: 21

Annual Burden: 189 hours

By Order of the Maritime Administrator.

Dated: April 4, 2002.

Joel C. Richard,

Secretary, Maritime Administration.

[FR Doc. 02–8605 Filed 4–9–02; 8:45 am]

BILLING CODE 4910–81–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[Docket No. NHTSA–2001–9630; Notice 2]

Decision That Nonconforming 2001 Ferrari 550 Passenger Cars Are Eligible for Importation

AGENCY: National Highway Traffic Safety Administration (NHTSA), DOT.

ACTION: Notice of decision by NHTSA that nonconforming 2001 Ferrari 550 passenger cars are eligible for importation.

SUMMARY: This notice announces the decision by NHTSA that 2001 Ferrari 550 passenger cars not originally manufactured to comply with all applicable Federal motor vehicle safety standards are eligible for importation into the United States because they are substantially similar to vehicles originally manufactured for importation into and sale in the United States and certified by their manufacturer as complying with the safety standards (the U.S. certified version of the 2001 Ferrari 550), and they are capable of being readily altered to conform to the standards.

DATE: This decision is effective as of the date of its publication in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: George Entwistle, Office of Vehicle Safety Compliance, NHTSA (202–366–5306).

SUPPLEMENTARY INFORMATION:

Background

Under 49 U.S.C. 30141(a)(1)(A), a motor vehicle that was not originally manufactured to conform to all applicable Federal motor vehicle safety standards shall be refused admission into the United States unless NHTSA has decided that the motor vehicle is substantially similar to a motor vehicle originally manufactured for importation into and sale in the United States, certified under 49 U.S.C. 30115, and of the same model year as the model of the motor vehicle to be compared, and is capable of being readily altered to conform to all applicable Federal motor vehicle safety standards.

Petitions for eligibility decisions may be submitted by either manufacturers or importers who have registered with NHTSA pursuant to 49 CFR part 592. As specified in 49 CFR 593.7, NHTSA publishes notice in the **Federal Register** of each petition that it receives, and affords interested persons an opportunity to comment on the petition. At the close of the comment period, NHTSA decides, on the basis of the petition and any comments that it has received, whether the vehicle is eligible for importation. The agency then publishes this decision in the **Federal Register**.

J.K. Technologies of Baltimore, Maryland (''J.K.'') (Registered Importer 90–006) petitioned NHTSA to decide whether 2001 Ferrari 550 Passenger cars are eligible for importation into the United States. NHTSA published notice of the petition on May 21, 2001 (66 FR 28025) to afford an opportunity for public comment. The reader is referred to that notice for a description of the petition. The notice stated that the closing date for comments was June 20, 2001. The agency published on July 26, 2001 (66 FR 39081) notice that it was extending the comment period until August 10, 2001, based on requests that it had received from Fiat Auto R&D U.S.A., a division of Alfa Romeo, Inc., and Ferrari North America Inc.

Twenty-one comments were submitted in response to the notice of petition. Nineteen of these supported the granting of the petition. One comment, from an individual identifying himself as ''James A. Linder'' and stating that he represented the ''Original Automobile Manufacturer's Association'' of Concord, New Hampshire, which the agency has learned is a fictitious entity, raised general objections concerning the registered importer program and its impact on fabricating manufacturers, but did not directly address the subject of the petition— whether non-U.S. certified 2001 Ferrari 550 passenger cars are eligible for importation. As a consequence, the agency is not responding to this comment in this notice.

The remaining comment was from Ferrari North America, Inc. (''Ferrari''), the United States representative of Ferrari SpA, the manufacturer of the 2001 Ferrari 550. In its comment, Ferrari addressed the conformity status of the non-U.S. certified 2001 Ferrari 550 with, or its capability to be conformed to, the following standards: Federal Motor Vehicle Safety Standard (''FMVSS'') Nos. 108, *Lamps, Reflective Devices, and Associated Equipment;* 118, *Power-Operated Window Systems;* 208,

Occupant Crash Protection; 214, *Side Impact Protection;* 216, *Roof Crush Resistance;* 225, *Child Restraint Anchorage Systems;* 301, *Fuel System Integrity;* and the Bumper Standard found in 49 CFR part 581. After receiving this comment, NHTSA accorded J.K. an opportunity to comment upon the issues that Ferrari had raised. Ferrari's comments with respect to each of the standards at issue are set forth below, together with J.K.'s response to those comments and NHTSA's analysis of the matters in contention between the two. The agency's analysis is based on the contents of the petition, and on the comments submitted by J.K. and Ferrari. In addition, to assist the agency's analysis, NHTSA representatives examined a U.S.-certified version of the 2001 Ferrari 550 at a Ferrari dealership in Sterling, Virginia, and a non-U.S. certified version of the vehicle at J.K.'s facility in Baltimore, Maryland. Ferrari's comments, J.K.'s response, and NHTSA's analysis are separately stated below for each of the standards at issue.

1. FMVSS No. 108, Lamps, Reflective Devices, and Associated Equipment

Ferrari stated that turn signal lamps are required by the standard to be located as far apart as practicable. Ferrari further stated that it has been informed by one of its dealerships that J.K. has not met this requirement in the past because the turn signal lamps on vehicles that it has altered are not placed at the outermost portion of the rear tail lamp assemblies.

J.K. claimed that the tail lamps on the non-U.S. certified 2001 Ferrari 550 meet the requirements of the standard. According to J.K., the signal lamps are located in the center of the rear stop lamp assembly that is mounted at the edge of the vehicle, and the turn signal lamp is 1.25 inches from the edge of the vehicle. J.K. believes that the phrase ''as far apart as practicable'' in the standard refers to the assembly and not to the lamp. J.K. also stated that the tail lamp assemblies on both the U.S. certified and the non-U.S. certified versions of the vehicle are the same and that the non-U.S. certified vehicles would be rewired to operate in the same manner as their U.S.-certified counterparts.

Analysis: The requirement in the standard for the mounting of lamps and reflectors as far apart as practicable applies to all of the lamps and reflectors that are mounted on the vehicle. The agency recognizes that it would be impractical to mount all of these components on a vertical line at the outer edge of the vehicle. Moreover, it was not the intent of the standard to be that design restrictive.

Addressing the comments, the agency notes that Ferrari did not state that the rear stop lamp assemblies on non-U.S. certified 2001 Ferrari 550 vehicles do not meet the requirements of FMVSS No. 108, but only made an observation regarding the conformity status of other vehicles that J.K. has modified. That observation is not germane to the matter at issue—whether the non-U.S. certified 2001 Ferrari 550 is capable of being readily modified to conform to the standard. The agency notes that J.K. has stated that it would modify the tail lamp assembly wiring on the non-U.S. certified 2001 Ferrari 550 so that the tail lamps will operate in the same manner as those on the U.S.-certified version of the vehicle and Ferrari has not taken issue with this assertion. The agency has therefore concluded that the non-U.S. certified 2001 Ferrari 550 is capable of being readily modified to comply with FMVSS No. 108.

2. FMVSS No. 118, Power-Operated Window Systems

Ferrari acknowledged that J.K. recognizes that the power window system must be modified so that it will not operate when the ignition is in the ''off'' position. Ferrari again stated that it had been informed by one of its dealers that other vehicles modified by J.K. were not in compliance with this requirement.

J.K. stated that it would add a relay to the power window system so that the power windows will not operate when the ignition switch is in the ''off'' position.

Analysis: Ferrari in essence concedes that non-U.S. certified 2001 Ferrari 550 vehicles can be modified to meet the standard. Ferrari's expressed concerned that J.K. may not actually perform this modification on a given vehicle is not germane to the issue of whether the non-U.S. certified 2001 Ferrari 550 is capable of being readily modified to meet this standard. Since no information has been provided to the contrary, NHTSA has concluded that the vehicle is capable of being so modified.

3. FMVSS No. 208, Occupant Crash Protection

Ferrari stated that both the air bags and the electronic control unit must be replaced on the non-U.S. certified 2001 Ferrari 550 to bring these vehicles into compliance with the standard. Ferrari also stated that U.S. certified and non-U.S. certified versions of the vehicle have different bumper systems and different curb weights. Ferrari indicated that these factors might affect the non-U.S. certified vehicle's compliance with FMVSS No. 208.

J.K. stated that it would inspect all vehicles and replace all parts of the automatic and manual occupant restraint systems that do not bear U.S. part numbers, including the steering wheel, seat belts, air bags, air bag sensors, wiring, and knee bolsters. In addition, J.K. stated that it would replace all of the non-U.S. bumper parts on the non-U.S. certified 2001 Ferrari 550 with U.S. model components to make the bumper system identical to that on the U.S. certified version of the vehicle.

Analysis: J.K. stated that it would examine all restraint and bumper system components on the non-U.S. certified 2001 Ferrari 550 and replace those that are not identical to U.S.-model parts. J.K.'s list of restraint system components that it would examine is larger than the list of components that Ferrari stated would be necessary to replace. Following the modifications outlined by J.K., the non-U.S. certified 2001 Ferrari 550 will be essentially the same as the U.S. certified version of the vehicle with respect to the manual and automatic restraint systems and the bumper system.

With regard to Ferrari's concern that the non-U.S. certified 2001 Ferrari 550 is lighter than its U.S. certified counterpart, the agency has taken note of the type of testing conducted by Ferrari SpA to certify these vehicles to FMVSS No. 208. Ferrari informed the agency that the U.S. certified 2001 Ferrari 550 was certified to FMVSS No. 208 using the sled test option (paragraph S13) of the standard. With respect to that test, the primary components that affect compliance are the air bags, the components that support the air bags such as the steering column and the dash, and the seats. Since this is not a crash test and since the test protocol calls for the laboratory to fire the bags at a particular point in time, the vehicle structure, the test weight, the bumpers, and even the electronic control module do not affect the test results or this part of the certification.

In addition to the unbelted sled test, the vehicle is also required to pass a 30 m.p.h. rigid barrier impact test with belted dummies. In this test environment, a lighter vehicle will create less impact energy than a heavier vehicle. It is difficult to believe that a differential of less than 4 percent in vehicle weight will have a significant effect on the response of the vehicle structure and/or the vehicle restraint systems.

Based on these considerations, the agency has concluded that if all non-U.S. model restraint and bumper system components on the non-U.S. certified 2001 Ferrari 550 are replaced with U.S.-model components, as J.K. stated it plans to do, those vehicles will comply with FMVSS No. 208. On this basis, the agency has concluded that the non-U.S. certified 2001 Ferrari 550 is capable of being readily modified to conform to the standard.

4. FMVSS No. 214, Side Impact Protection.

Ferrari stated that non-U.S. certified 2001 Ferrari 550 vehicles ''do not contain side intrusion bars, and have not been certified to meet FMVSS 214.'' During their visit to the Ferrari dealership in Sterling, Virginia, the NHTSA representatives were shown the door beam in a U.S. certified 2001 Ferrari 550 Maranello coupe. The beam cross-section was a rectangular shape with the top and bottom of the beam shaped as a semi-circle. Towards the front of the vehicle, the beam was welded along its upper and lower edges to the door structure that faced the outer door skin. Ferrari pointed out that this would be a difficult weld to perform without removing the outer door skin.

J.K. claimed that all non-U.S. certified 2001 Ferrari 550 vehicles that it has inspected have door beams that were installed during the manufacturing process. J.K. further indicated that all non-U.S. certified 2001 Ferrari 550 vehicles would be inspected for compliance with Standard No. 214, and that any doors lacking door beams would be replaced with U.S.-model components.

Analysis: During their visit to J.K.'s facility, the NHTSA representatives were shown a Ferrari 550 Barchetta 5SP that was represented by J.K., in writing, to have been certified for the German market. The first 11 characters of the vehicle's VIN were ZFFZR52B000. The interior door trim had been removed from the driver's door, revealing a reinforcement bar that had been welded in place. This bar and the weld pattern that attached the bar to the door frame appeared to be the same as the bar and weld pattern the NHTSA representatives had observed on the U.S. certified 2001 Ferrari 550 they were shown at the Ferrari dealership in Sterling, Virginia. More specifically, the bars in the two vehicles had the same cross-section shape, and were the same width. Ferrari had stated that the only way the bars could be welded onto the door frame at the front of the door is with the door outer skin sheet metal removed. The welds along the bar in this region appeared to be the same on both versions of the vehicle. Based on these circumstances, the bar in the non-U.S. certified vehicle was apparently placed in the door during construction of the door.

From NHTSA's inspection of a non-U.S. certified 2001 Ferrari 550 at J.K.'s facilities, it is clear that at least some non-U.S. versions of the vehicle were manufactured with door beams. J.K. has further stated that if it receives a vehicle with a door that lacks a door beam, it would replace the door with a U.S.-model door. Based on these considerations, the agency has concluded that non-U.S. certified 2001 Ferrari 550 vehicles are capable of being readily modified to comply with FMVSS No. 214.

5. FMVSS No. 216, Roof Crush Resistance.

Ferrari stated that the U.S. certified 2001 Ferrari 550 has a different roof frame than the non-U.S. certified version of the vehicle. According to the company, the U.S. certified version is reinforced around the windshield opening to assure compliance with FMVSS No. 216. Ferrari asserted that in order to install a U.S.-model roof frame, ''the importer would have to remove the existing roof and pillars back to the C Pillar and replace them with U.S. spec'd parts.''

During their visit to the Ferrari dealership in Sterling, Virginia, the NHTSA representatives were shown a frame member that the Ferrari representatives claimed is not present in non-U.S. certified versions of the 2001 Ferrari 550. The component consisted of a single cross-member that crosses the roof directly behind the initial header cross-member.

J.K. showed the agency representatives, during their visit to its facility, a part that it manufactured to attach to the roof structure of the non-U.S. certified 2001 Ferrari 550. A J.K. representative demonstrated how this part will slide into place between the roof and the existing header cross-member and attach to the existing roof structure. J.K. further described in one of its submissions to the agency the process it would use to install the additional roof structural member.

Analysis: Both Ferrari and J.K. are in agreement that the U.S. certified 2001 Ferrari 550 is manufactured with an additional roof structural member. Therefore, the agency's analysis must address two questions. The first is whether J.K.'s proposed modification will assure compliance with the requirements of the standard. The second is whether that proposed modification is capable of being readily performed.

Under the FMVSS No. 216 test procedure, the loading plate places a load on a vehicle at the intersection of the A pillar, the windshield header, and the roof rail. The resultant forces from the load plate compress the windshield (which, because it consists of glass, is very resistant to compression) and the A pillar. The rest of the load is directed into the roof rail and across the windshield header cross-member. The agency is not certain what function is served by the additional cross-member in the roof of the U.S. certified 2001 Ferrari 550. One function it may serve is to reduce the twist of the header/roof rail rectangle. Nevertheless, since the additional cross-member that J.K. is planning to install will be the same shape as, and be somewhat stronger than, the U.S.-model part, the agency concludes it will accomplish the same task as that component. The agency has therefore concluded that if the U.S. certified 2001 Ferrari 550 is in compliance with FMVSS No. 216, a vehicle modified as proposed by J.K. will also be in compliance with the standard.

With respect to the difficulty of installing this additional cross-member, J.K. demonstrated that there is a space between the roof skin and the back end of the cross-member that is presently installed in non-U.S. certified vehicles. J.K. plans to slide its additional cross member into this space and weld it in place. Because this appears to be a straightforward operation, the agency has concluded that the non-U.S. certified 2001 Ferrari 550 is capable of being readily modified to comply with FMVSS No. 216.

6. FMVSS No. 225, Child Restraint Anchorage Systems

In its comments, Ferrari noted that the openings for the mounting of components on the rear frames of the U.S.-certified and non-U.S. certified versions of the 2001 Ferrari 550 are identical. The company stated, however, that only U.S. and Canadian certified vehicles are fitted with top tether anchorages for child restraints. During the agency's visit to the Ferrari dealership, the Ferrari representatives asserted that in order to install the anchorages behind the passenger seat, reinforcements to the chassis must be added. They pointed to an aluminum beam that ran behind the seats that they stated must be welded into the vehicle.

J.K. stated that both the U.S.-certified and the non-U.S. certified versions of the vehicle have the same rear frame, including the beam in question, and that

it intends to install the U.S.-model anchorage part on the rear frame of the non-U.S. certified vehicles. At J.K.'s facility, the agency's representatives were shown a U.S.-model tether anchorage. The anchorage attached to the rear beam by two bolts.

Analysis: In view of Ferrari's concession that there are openings for mounting the tether anchorage on the rear frame of the non-U.S. certified 2001 Ferrari 550, the agency has concluded that these vehicles can be readily modified to comply with FMVSS No. 225.

7. FMVSS No. 301, Fuel System Integrity.

Ferrari pointed out a number of differences between the fuel systems of the U.S. certified and the non-U.S. certified 2001 Ferrari 550 vehicles during the NHTSA representatives' visit to the Ferrari dealership in Sterling, Virginia. Those differences were:

1. The charcoal canister in the U.S. certified vehicle is larger than the one installed in the non-U.S. certified vehicle and is located in the rear of the vehicle near the fuel tank rather than under the hood.
2. The vehicle trunk area in the U.S. certified vehicle was modified to allow for the charcoal canister and a different volume fuel tank.
3. The fuel filler neck and pipes in the two versions of the vehicle are different.
4. The rollover valves are also different.
5. Two bars were added to the rear structure in the U.S. certified version to assure the positioning of the fuel tank and to protect the tank during side impacts. Ferrari expressed the opinion that a U.S.-model tank could not be installed in a non-U.S. certified vehicle because the frame supports are different.
6. A temperature sensor and heat exchanger were inserted into the fuel tank fuel line in the U.S. certified vehicle. A port for the temperature sensor is not supplied on the non-U.S.-model tank.
7. A spill back valve was placed in the fuel filler pipes in the U.S. certified vehicle.
8. All wiring in the U.S. certified vehicle is different from that in the non-U.S. certified vehicle to accommodate the additional sensors.

J.K. stated that the non-U.S. certified 2001 Ferrari 550, as delivered from Europe, will meet the requirements of FMVSS No. 301, but will not meet current Environmental Protection Agency (EPA) regulations. To bring these vehicles into compliance with the EPA regulations, J.K. stated that the vehicles ''must have the stock US gas tank, fuel lines, fuel coolers, the filler neck, rollover valve, fuel/vapor (disaerator) separator including the vapor lines and evaporative canister installed to make them identical to the US model.'' J.K. further asserted that ''[t]hese parts [will be] installed in the stock locations using the stock mounts that are already in the frame.''

Analysis: J.K. states that it would replace all non-U.S. model fuel system parts that are different from U.S.-model parts to satisfy the EPA performance regulations, using attachment holes that are provided on the vehicle frame. Ferrari acknowledges that the frames and mounting holes are the same for both the U.S. certified and the non-U.S. certified versions of the vehicle, with the exception of two brackets that are used to attach the U.S.-model fuel tank to the vehicle frame. After being apprised of this statement, J.K. furnished the agency with photographs of a non-U.S. certified vehicle that has these brackets attached.

Based on the following considerations, the agency has concluded that the non-U.S. certified 2001 Ferrari 550 is capable of being readily modified to comply with FMVSS No. 301:

1. The rear frames on U.S. certified and the non-U.S. certified versions of the vehicle are the same.
2. These frames have mounting brackets and holes to accommodate both U.S. and non-U.S.-model fuel system components.
3. Specific fuel lines are specified for U.S. model vehicles, and therefore fuel lines cannot be randomly attached to the frame.
4. In order to meet the EPA regulations, the fuel system in the non-U.S. certified vehicle must be modified to be essentially the same as the system on the U.S. certified vehicle.

7. 49 CFR Part 581, Bumper Standard

Ferrari asserted that the bumpers are very different on the U.S. certified and the non-U.S. certified versions of the 2001 Ferrari 550. The company stated that the front bumper on the U.S. certified vehicle weighs 3.6 kg (7.9 lb) more than that on the non-U.S. certified vehicle, and that the rear bumper weighs 9.25 kg (20.4 lb) more. Ferrari also maintains that simple changes in the brackets that attach the bumpers to the vehicle frame are not sufficient to bring the vehicle into compliance with the Bumper Standard.

J.K. stated that it would modify the front and rear bumper systems on the non-U.S. certified 2001 Ferrari 550 to make them identical to the bumper systems on the U.S. certified version of the vehicle.

Analysis: Since J.K. claimed that it would replace all non-U.S.-model bumper parts with U.S.-model parts, the agency has concluded that the non-U.S. certified 2001 Ferrari 550 is capable of being readily modified to conform to the requirements of Part 581.

Conclusion

As detailed in the preceding discussion, J.K. has stated that, with the exception of a roof cross-member, it would replace, with U.S.-model parts, all non-U.S. model parts that are necessary to bring non-U.S. certified 2001 Ferrari 550 vehicles into compliance with the applicable Federal Motor Vehicle Safety Standards and with the Bumper Standard in Part 581. The agency notes that replacing the majority of these parts is a matter of removing the non-U.S. model part and bolting on the U.S. model part. J.K. has demonstrated to the agency that the roof cross-member can be installed in a non-U.S. certified 2001 Ferrari 550 without undue complexity.

Vehicle Eligibility Number for Subject Vehicles

The importer of a vehicle admissible under any final decision must indicate on the form HS–7 accompanying entry the appropriate vehicle eligibility number indicating that the vehicle is eligible for entry. VSP–377 is the vehicle eligibility number assigned to vehicles admissible under this notice of final decision.

Final Decision

Accordingly, on the basis of the foregoing, NHTSA hereby decides that 2001 Ferrari 550 passenger cars that were not originally manufactured to comply with all applicable Federal motor vehicle safety standards are substantially similar to 2001 Ferrari 550 passenger cars originally manufactured for importation into, and sale in, the United States and certified under 49 U.S.C. 30115, and are capable of being readily altered to conform to all applicable Federal motor vehicle safety standards.

Authority: 49 U.S.C. 30141(a)(1)(A) and (b)(1); 49 CFR 593.8; delegations of authority at 49 CFR 1.50 and 501.8.

Marilynne Jacobs,

Director, Office of Vehicle Safety Compliance.

[FR Doc. 02–8621 Filed 4–9–02; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[Docket No. NHTSA–2001–9628; Notice 2]

Decision That Nonconforming 2001 Ferrari 360 Passenger Cars are Eligible for Importation

AGENCY: National Highway Traffic Safety Administration (NHTSA), DOT.

ACTION: Notice of decision by NHTSA that nonconforming 2001 Ferrari 360 passenger cars are eligible for importation.

SUMMARY: This notice announces the decision by NHTSA that 2001 Ferrari 360 passenger cars not originally manufactured to comply with all applicable Federal motor vehicle safety standards are eligible for importation into the United States because they are substantially similar to vehicles originally manufactured for importation into and sale in the United States and certified by their manufacturer as complying with the safety standards (the U.S. certified version of the 2001 Ferrari 360), and they are capable of being readily altered to conform to the standards.

DATES: This decision is effective as of the date of its publication in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: George Entwistle, Office of Vehicle Safety Compliance, NHTSA (202–366–5306).

SUPPLEMENTARY INFORMATION:

Background

Under 49 U.S.C. 30141(a)(1)(A), a motor vehicle that was not originally manufactured to conform to all applicable Federal motor vehicle safety standards shall be refused admission into the United States unless NHTSA has decided that the motor vehicle is substantially similar to a motor vehicle originally manufactured for importation into and sale in the United States, certified under 49 U.S.C. 30115, and of the same model year as the model of the motor vehicle to be compared, and is capable of being readily altered to conform to all applicable Federal motor vehicle safety standards.

Petitions for eligibility decisions may be submitted by either manufacturers or importers who have registered with NHTSA pursuant to 49 CFR part 592. As specified in 49 CFR 593.7, NHTSA publishes notice in the **Federal Register** of each petition that it receives, and affords interested persons an opportunity to comment on the petition. At the close of the comment period, NHTSA decides, on the basis of the petition and any comments that it has received, whether the vehicle is eligible for importation. The agency then publishes this decision in the **Federal Register**.

J.K. Technologies of Baltimore, Maryland (''J.K.'') (Registered Importer 90–006) petitioned NHTSA to decide whether 2001 Ferrari 360 Passenger cars are eligible for importation into the United States. NHTSA published notice of the petition on May 21, 2001 (66 FR 28020) to afford an opportunity for public comment. The reader is referred to that notice for a description of the petition. The notice stated that the closing date for comments was June 20, 2001. The agency published on July 26, 2001 (66 FR 39081) notice that it was extending the comment period until August 10, 2001, based on requests that it had received from Fiat Auto R&D U.S.A., a division of Alfa Romeo, Inc., and Ferrari North America Inc.

Twenty-one comments were submitted in response to the notice of petition. Nineteen of these supported the granting of the petition. One comment, from an individual identifying himself as ''James A. Linder'' and stating that he represented the ''Original Automobile Manufacturer's Association'' of Concord, New Hampshire, which the agency has learned is a fictitious entity, raised general objections concerning the registered importer program and its impact on fabricating manufacturers, but did not directly address the subject of the petition—whether non-U.S. certified 2001 Ferrari 360 passenger cars are eligible for importation. As a consequence, the agency is not responding to this comment in this notice.

The remaining comment was from Ferrari North America, Inc. (''Ferrari''), the United States representative of Ferrari SpA, the manufacturer of the 2001 Ferrari 360. In its comment, Ferrari addressed the conformity status of the non-U.S. certified 2001 Ferrari 360 with, or its capability to be conformed to, the following standards: Federal Motor Vehicle Safety Standard (''FMVSS'') Nos. 108, *Lamps, Reflective Devices, and Associated Equipment;* 118, *Power-Operated Window Systems;* 201, *Occupant Protection in Interior Impacts;* 208, *Occupant Crash Protection;* 225, *Child Restraint Anchorage Systems;* 301, *Fuel System Integrity;* and the Bumper Standard found in 49 CFR part 581. After receiving this comment, NHTSA accorded J.K. an opportunity to comment upon the issues that Ferrari had raised. Ferrari's comments with respect to each of the standards at issue are set forth below, together with J.K.'s response to those comments and NHTSA's analysis of the matters in contention between the two. The agency's analysis is based on the contents of the petition, and on the comments submitted by J.K. and Ferrari. In addition, to assist the agency's analysis, NHTSA representatives examined a U.S.-certified version of the 2001 Ferrari 360 at a Ferrari dealership in Sterling, Virginia, and a non-U.S. certified version of the vehicle at J.K.'s facility in Baltimore, Maryland. Ferrari's comments, J.K.'s response, and NHTSA's analysis are separately stated below for each of the standards at issue.

1. FMVSS No. 108, Lamps, Reflective Devices, and Associated Equipment

Ferrari stated that turn signal lamps are required by the standard to be located as far apart as practicable. Ferrari further stated that it has been informed by one of its dealerships that J.K. has not met this requirement in the past because the turn signal lamps on vehicles that it has altered are not placed at the outermost portion of the rear tail lamp assemblies.

J.K. claimed that the tail lamps on the non-U.S. certified 2001 Ferrari 360 meet the requirements of the standard. According to J.K., the signal lamps are located in the center of the rear stop lamp assembly that is mounted at the edge of the vehicle, and the turn signal lamp is 1.25 inches from the edge of the vehicle. J.K. believes that the phrase ''as far apart as practicable'' in the standard refers to the assembly and not to the lamp. J.K. also stated that the tail lamp assemblies on both the U.S. certified and the non-U.S. certified versions of the vehicle are the same and that the non-U.S. certified vehicles would be rewired to operate in the same manner as their U.S.-certified counterparts.

Analysis: The requirement in the standard for the mounting of lamps and reflectors as far apart as practicable applies to all of the lamps and reflectors that are mounted on the vehicle.

The agency recognizes that it would be impractical to mount all of these components on a vertical line at the outer edge of the vehicle. Moreover, it was not the intent of the standard to be that design restrictive.

Addressing the comments, the agency notes that Ferrari did not state that the rear stop lamp assemblies on non-U.S. certified 2001 Ferrari 360 vehicles do not meet the requirements of FMVSS No. 108, but only made an observation regarding the conformity status of other vehicles that J.K. has modified. That observation is not germane to the matter

at issue—whether the non-U.S. certified 2001 Ferrari 360 is capable of being readily modified to conform to the standard. The agency notes that J.K. has stated that it would modify the tail lamp assembly wiring on the non-U.S. certified 2001 Ferrari 360 so that the tail lamps will operate in the same manner as those on the U.S.-certified version of the vehicle and Ferrari has not taken issue with this assertion. The agency has therefore concluded that the non-U.S. certified 2001 Ferrari 360 is capable of being readily modified to comply with FMVSS No. 108.

2. FMVSS No. 118, Power-Operated Window Systems

Ferrari acknowledged that J.K. recognizes that the power window system must be modified so that it will not operate when the ignition is in the ''off'' position. Ferrari again stated that it had been informed by one of its dealers that other vehicles modified by J.K. were not in compliance with this requirement.

J.K. stated that it would add a relay to the power window system so that the power windows will not operate when the ignition switch is in the ''off'' position.

Analysis: Ferrari in essence concedes that non-U.S. certified 2001 Ferrari 360 vehicles can be modified to meet the standard. Ferrari's expressed concern that J.K. may not actually perform this modification on a given vehicle is not germane to the issue of whether the non-U.S. certified 2001 Ferrari 360 is capable of being readily modified to meet this standard. Since no information has been provided to the contrary, NHTSA has concluded that the vehicle is capable of being so modified.

3. FMVSS No. 201, Occupant Protection in Interior Impacts

Ferrari stated that the non-U.S. certified 2001 Ferrari 360 vehicle has not been certified to the upper interior component requirements of the standard. It claimed that 16 interior trim components would have to be replaced to bring the non-U.S. certified version into compliance.

J.K. responded that it would inspect the interiors of all incoming vehicles and, if necessary, change upper interior parts to U.S.-model components. J.K. submitted a parts list for the occupant compartment interior that identifies parts that are ''valid'' for U.S. vehicles.

Analysis: While examining the U.S. certified 2001 Ferrari 360 at the Ferrari dealership in Sterling, Virginia, the agency's representatives were told that only the interior occupant compartment padding components were different between the U.S. certified and the non-U.S. certified versions of the vehicle. The company's representatives also stated that the metal under the trim in the occupant compartment is the same for both versions. Therefore, changing the trim components of the occupant compartment would bring the non-U.S. certified version of the vehicle into compliance. J.K. appears to have identified these trim components. On the basis of these factors, the agency has concluded that non-U.S. certified 2001 Ferrari 360 vehicles can be readily modified to comply with the standard.

4. FMVSS 208, Occupant Crash Protection

Ferrari stated that the seat belt retractors in the non-U.S. certified version of the vehicle are not designed to accommodate child safety seats. Ferrari also pointed out that the bumpers on the non-U.S. certified version are different from those on the U.S. certified version. In addition, Ferrari noted that the U.S. certified vehicle is heavier than the non-U.S. certified vehicle. Ferrari stated that these two factors might affect compliance with the 30 m.p.h. rigid barrier belted dummy test requirement of the standard.

J.K. stated that it would examine the seat belts on all vehicles and change those that do not have the same part numbers and labels as found on U.S. certified vehicles. J.K. also conducted tests and furnished the agency with test data that, it asserted, demonstrated that a vehicle equipped with its modified bumpers will meet the requirements of the Bumper Standard, as found in 49 CFR part 581. This is discussed further below.

Analysis: Based on the data associated with vehicle weight submitted by Ferrari, the difference in curb weight between a U.S. and a non-U.S. certified version of the vehicle will be less than four percent. After the non-U.S. certified vehicle is modified, the difference in weight will be even smaller. J.K. has submitted test data that indicates that it is capable of bringing the non-U.S. certified vehicle's bumpers into compliance with part 581. This indicates that once the bumpers on the non-U.S. certified version of the vehicle are modified, they will provide a similar amount of crush resistance to that provided by the bumpers on the vehicle's U.S.-certified counterpart. The agency believes that the small difference between the bumper designs and the vehicle curb weights will not have a significant affect on the belted test dummies during 30 m.p.h. rigid barrier impact tests. Based on these factors, and J.K.'s statement that it would replace the seat belts on non-U.S. certified versions of the 2001 Ferrari 360 with U.S.-model belts, the agency has concluded that these vehicles can be readily modified to comply with FMVSS No. 208.

5. FMVSS No. 225, Child Restraint Anchorage Systems

In its comments, Ferrari noted that the openings for the mounting of components on the rear frames of the U.S.-certified and non-U.S. certified versions of the 2001 Ferrari 360 are identical. The company stated, however, that only U.S. and Canadian certified vehicles are fitted with top tether anchorages for child restraints. During the agency's visit to the Ferrari dealership, the Ferrari representatives explained that in order to install the anchorages behind the passenger seat, reinforcements to the chassis must be added. They pointed to an aluminum beam that ran behind the seats that they stated must be welded into the vehicle.

J.K. stated that both the U.S.-certified and the non-U.S. certified versions of the vehicle have the same rear frame, including the beam in question, and that it intends to install the U.S.-model anchorage part on the rear frame of the non-U.S. certified vehicles. At J.K.'s facility, the agency's representatives were shown a U.S.-model tether anchorage. The anchorage attached to the rear beam by two bolts.

Analysis: In view of Ferrari's concession that there are openings for mounting the tether anchorage on the rear frame of the non-U.S. certified 2001 Ferrari 360, the agency has concluded that these vehicles can be readily modified to comply with FMVSS No. 225.

6. FMVSS No. 301, Fuel System Integrity

Ferrari pointed out a number of differences between the fuel systems of the U.S. certified and the non-U.S. certified 2001 Ferrari 360 vehicles during the NHTSA representatives' visit to the Ferrari dealership in Sterling, Virginia. Those differences were:

1. The charcoal canister in the U.S. certified vehicle is larger than the charcoal canister in non-U.S. certified vehicle and is located on the left side of the vehicle rather than the right side. The canister is placed very near the rear bumper.

2. An air pump was added to the U.S. certified vehicle and placed adjacent to the large charcoal canister.

3. The left and right fuel tanks in the U.S. certified vehicle are different from those in the non-U.S. certified vehicle.

Each U.S.-model tank is 1½ to 2 liters smaller than the non-U.S. model.

4. The fuel filler necks are of a different design and material composition in the two vehicles.

5. The rollover valves in the U.S. certified and non-U.S. certified vehicles are different and are mounted in different places on the vehicles.

6. There are 105 parts related to the fuel system that are different in the U.S. certified and the non-U.S. certified vehicles. Ferrari asserted that these parts must be replaced to bring the non-U.S. certified vehicle into compliance with FMVSS No. 301.

7. The electrical wiring in the U.S. certified and non-U.S. certified vehicles is different in that more sensors are installed on the U.S. certified model.

8. The aluminum frame is the same on both versions of the vehicle, but an additional frame or frame members were added to the U.S. certified version.

9. The exhaust pipes and catalytic converters are different on the U.S. certified and non-U.S. certified vehicles.

After the agency brought these issues to J.K.'s attention, the company responded that it would change the fuel/vapor separator, rollover valve, filler neck, vapor lines, evaporative (charcoal) canister, air pump, and associated hardware on non-U.S. certified versions of the vehicle to make them identical to those in the U.S. certified version. J.K. further asserted that the U.S.-model fuel tanks are the same as the non-U.S. model tanks with the exception of the connection to the fuel filler neck. J.K. plans to modify the U.S.-model filler neck so that it can be attached to the non-U.S. model tank. J.K. also pointed out that the non-U.S. model fuel system was certified to FMVSS No. 301 as the U.S. model system before current emissions requirements were implemented by the Environmental Protection Agency (EPA). Lastly, J.K. contested Ferrari's contention that the fuel pressure sensor is in different locations on the U.S. model and the non-U.S. model tank.

During their visit to J.K.'s facilities, the NHTSA representatives were shown changes that Ferrari had made to the rear frame of the non-U.S. certified 2001 Ferrari 360, which amounted to reinforcement of the vehicle's box structure. When asked about the differences cited by Ferrari in the exhaust pipes and catalytic converter on the U.S. certified and the non-U.S. certified versions of the vehicle, a J.K. staff member responded that the exterior dimensions of those equipment items remained the same, and that only their interior components were changed to meet the current EPA emissions requirements.

Analysis: In its response, J.K. recognized that it must replace and move the charcoal canister (item 1 above), the air pump (item 2), the fuel filler neck (item 4), and the rollover valve (item 5). During the NHTSA representatives' visit to J.K.'s facilities, a J.K. staff member pointed out that the rear frame of the non-U.S. certified vehicle had predrilled mounting holes for both the U.S.-model and non-U.S. model fuel system components. As a consequence, the staff member contended that removing non-U.S. model parts and replacing them with U.S.-model parts would not be difficult.

The information that NHTSA has received indicates that the U.S.-model and the non-U.S. model fuel tanks are different (item 3). The major difference between the tanks is in the diameter of the connection to the fuel filler neck. The tank in the non-U.S. certified 2001 Ferrari 360 was the same as that used on U.S. models of the vehicle in the 1998 or 1999 model years, before current emissions requirements were implemented. As such, this tank would have been certified to FMVSS No. 301 by Ferrari SpA. Assuming that J.K. provides a sufficient connection between the fuel tank and the fuel filler neck, there is no reason to believe that these tanks and the associated fuel lines will not meet the crash test requirements of FMVSS No. 301. As to the remaining issues, the agency notes that J.K. has stated that it intends to modify the fuel system of the non-U.S. certified vehicle so that it is essentially the same as that of the U.S. certified vehicle version in order to satisfy EPA requirements, and that it would replace non-U.S. model components with U.S. model components. Based on these considerations, the agency has concluded that the non-U.S. certified 2001 Ferrari 360 is capable of being readily modified to meet the requirements of FMVSS No. 301.

7. 49 CFR Part 581 Bumper Standard

Ferrari asserted that the bumpers are very different on the U.S. certified and the non-U.S. certified versions of the 2001 Ferrari 360. The company stated that the front bumper on the U.S. certified vehicle weighs 2.25 kg (5 lb) more than that on the non-U.S. certified vehicle, and that the rear bumper weighs 3.85 kg (8.5 lb) more. Ferrari also maintains that simple changes in the brackets that attach the bumpers to the vehicle frame are not sufficient to bring the vehicle into compliance with the Bumper Standard.

J.K. submitted a report from MGA Research of Burlington, Wisconsin, dated March 7, 2002, which indicates that it tested a Ferrari 360 Spider to the requirements of part 581 and that there was no damage to the vehicle during this testing. J.K. has represented this vehicle to be a non-U.S. certified 2001 Ferrari 360 that it modified to conform to the requirements of part 581.

Analysis: Although it recognizes that this is a conformity issue, based on the test report that J.K. submitted, the agency has concluded that the non-U.S. certified 2001 Ferrari 360 is capable of being readily modified to conform to the requirements of part 581.

Conclusion

As detailed in the preceding discussion, J.K. has stated that with the exception of the bumper components and the fuel tanks, it would replace, with U.S.-model parts, all non-U.S. model parts that are necessary to bring non-U.S. certified 2001 Ferrari 360 vehicles into compliance with the applicable Federal Motor Vehicle Safety Standards and with the Bumper Standard in part 581. The agency notes that replacing the majority of these parts is a matter of removing the non-U.S. model part and bolting on the U.S. model part. J.K. has provided the agency with a test report from a reputable test laboratory that indicates that its modifications of the bumper system would achieve compliance with part 581. As detailed above, the agency has concluded that the fuel tanks in non-U.S. certified 2001 Ferrari 360 vehicles do not have to be replaced with U.S. model fuel tanks for those vehicles to comply with FMVSS No. 301.

Vehicle Eligibility Number for Subject Vehicles

The importer of a vehicle admissible under any final decision must indicate on the form HS–7 accompanying entry the appropriate vehicle eligibility number indicating that the vehicle is eligible for entry. VSP–376 is the vehicle eligibility number assigned to vehicles admissible under this notice of final decision.

Final Decision

Accordingly, on the basis of the foregoing, NHTSA hereby decides that 2001 Ferrari 360 passenger cars that were not originally manufactured to comply with all applicable Federal motor vehicle safety standards are substantially similar to 2001 Ferrari 360 passenger cars originally manufactured for importation into, and sale in, the United States and certified under 49 U.S.C. 30115, and are capable of being

readily altered to conform to all applicable Federal motor vehicle safety standards.

Authority: 49 U.S.C. 30141(a)(1)(A) and (b)(1); 49 CFR 593.8; delegations of authority at 49 CFR 1.50 and 501.8.

Issued on: April 5, 2002.

Marilynne Jacobs,

Director, Office of Vehicle Safety Compliance.

[FR Doc. 02–8622 Filed 4–9–02; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Finance Docket No. 34186]

David W. Wulfson, Gary E. Wulfson, Lisa W. Cota, Richard C. Szuch, and Peter A. Szuch—Control Exemption—The New York and Ogdensburg Railway Company, Inc.

David W. Wulfson, Gary E. Wulfson, Lisa W. Cota, Richard C. Szuch, and Peter A. Szuch, noncarrier individuals (applicants), have filed a verified notice of exemption to acquire control through stock ownership of The New York and Ogdensburg Railway Company, Inc. (NYOG), a noncontiguous Class III railroad.[1]

The transaction was scheduled to be consummated on or after March 22, 2002, the effective date of the exemption.

Applicants control four other Class III rail carriers: Vermont Railway, Inc., and Clarendon & Pittsford Railroad Company, both operating in the States of Vermont and New York; Green Mountain Railroad Corporation, operating in the States of Vermont and New Hampshire; and Washington County Railroad Company, operating in the State of Vermont. Applicants are proposing to acquire 175 shares (a majority) of common stock in NYOG. Of the 175 shares, David W. Wulfson, Lisa W. Cota, and Gary E. Wulfson agreed to purchase 43.75 shares each and Richard C. Szuch and Peter A. Szuch agreed to purchase 21.875 each.

Applicants states: (i) The properties of subsidiaries and affiliates will not connect with each other; (ii) the acquisition and continuance in control are not part of a series of anticipated transactions that would connect the rail lines of subsidiaries and affiliates with each other; and (iii) the transaction does not involve a Class I carrier. Therefore, the transaction is exempt from the prior approval requirements of 49 U.S.C. 11323. *See* 49 CFR 1180.2(d)(2).

Under 49 U.S.C. 10502(g), the Board may not use its exemption authority to relieve a rail carrier of its statutory obligation to protect the interests of its employees. Section 11326(c), however, does not provide for labor protection for transactions under sections 11324 and 11325 that involve only Class III rail carriers. Because this transaction involves Class III rail carriers only, the Board, under the statute, may not impose labor protective conditions for this transaction.

If the verified notice contains false or misleading information, the exemption is void *ab intito*. 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. 34186, must be filed with the Surface Transportation Board, Office of Secretary, Case Control Unit, 1925 K Street, NW., Washington, DC 20423–0001. In addition, a copy of each pleading must be served on Andrew P. Goldstein, McCarthy, Sweeney & Harkaway, P.C., Suite 600, 2175 K Street, NW., Washington, DC 20037.

Board decisions and notices are available on our website at *''WWW.STB.DOT.GOV.''*

Decided: April 2, 2002.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. 02–8418 Filed 4–9–02; 8:45 am]

BILLING CODE 4915–00–P

[1] *See The New York & Ogdensburg Railway Company, Inc.—Lease and Operation Exemption-Ogdensburg Bridge & Port Authority,* STB Finance Docket No. 33658 (STB served Oct. 1, 1998).

DEPARTMENT OF THE TREASURY

Submission for OMB Review; Comment Request

April 1, 2002.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 2110, 1425 New York Avenue, NW., Washington, DC 20220.

DATES: Written comments should be received on or before May 10, 2002 to be assured of consideration.

Departmental Offices/Office of DC Pensions

OMB Number: New.

Form Number: None.

Type of Review: New collection.

Title: The DC Pensions Plans Satisfaction Survey.

Description: Under the National Capital Revitalization and Self Government Act of 1997, Treasury's Office of DC Pensions assumed responsibility for paying the benefits under the Police Officers and Fire Fighters Retirement Plan and Teachers Retirement Plan (earned through June 1997) and for the Judges Retirement Plan. The Office of DC Pensions seeks to collect information from pension benefit recipients in order to establish a customer service baseline and for use in developing a customer service plan. The survey also will be used to gauge improvements in customer service.

Respondents: Individuals or households.

Estimated Number of Respondents: 2,157.

Estimated Burden Hours Per Respondent: 15 minutes.

Frequency of Response: On occasion.

Estimated Total Reporting Burden: 539 hours.

Clearance Officer: Lois K. Holland, (202) 622–1563, Departmental Offices, Room 2110, 1425 New York Avenue, NW, Washington, DC 20220.

OMB Reviewer: Alexander T. Hunt, (202) 395–7860, Office of Management and Budget, Room 10202, New Executive Office Building, Washington, DC 20503.

Lois K. Holland,

Departmental Reports, Management Officer.

[FR Doc. 02–8598 Filed 4–9–02; 8:45 am]

BILLING CODE 4811–16–P

DEPARTMENT OF THE TREASURY

Submission for OMB Review; Comment Request

April 1, 2002.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department

Clearance Officer, Department of the Treasury, Room 2110, 1425 New York Avenue, NW., Washington, DC 20220.

DATES: Written comments should be received on or before May 10, 2002 to be assured of consideration.

Internal Revenue Service (IRS)

OMB Number: 1545–1644.

Regulation Project Number: REG–105312–98 NPRM.

Type of Review: Extension.

Title: Reporting of Gross Proceeds Payment to Attorneys.

Description: Information is required to implement section 1021 of the Taxpayer Relief Act of 1997. This information will be used by the IRS to verify compliance with section 6045 and to determine that the taxable amount of these payments has been computed correctly.

Respondents: Business or other for-profit, Not-for-profit institutions, Federal Government, State, Local or Tribal Government.

Estimated Number of Respondents: 1.

Estimated Burden Hours Per Respondent: 1 hour.

Frequency of Response: On occasion.

Estimated Total Reporting Burden: 1 hour.

Clearance Officer: Glenn Kirkland, Internal Revenue Service, Room 6411, 1111 Constitution Avenue, NW, Washington, DC 20224.

OMB Reviewer: Alexander T. Hunt, (202) 395–7860, Office of Management and Budget, Room 10202, New Executive Office Building, Washington, DC 20503.

Lois K. Holland,

Departmental Reports, Management Officer.

[FR Doc. 02–8599 Filed 4–9–02; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Submission for OMB Review; Comment Request

April 2, 2002.

The Department of the Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 2110, 1425 New York Avenue, NW., Washington, DC 20220.

DATES: Written comments should be received on or before May 10, 2002 to be assured of consideration.

Customs Service (CUS)

OMB Number: 1515–0068.

Form Number: Customs Form 28.

Type of Review: Extension.

Title: Request for Information.

Description: Customs Form 28 is used by Customs personnel to request additional information from importers when the invoice or other documentation provide insufficient information for Customs to carry out its responsibilities to protect revenues.

Respondents: Business or other for-profit, Individuals or households, Not-for-profit institutions.

Estimated Number of Respondents: 60,000.

Estimated Burden Hours Per Respondent: 30 minutes.

Frequency of Response: On occasion.

Estimated Total Reporting Burden: 60,000 hours.

OMB Number: 1515–0100.

Form Number: None.

Type of Review: Extension.

Title: Customs Regulations Pertaining to Customhouse Brokers.

Description: This information contained in Part III of the Customs Regulations (19 CFR 111) governs the licensing and conduct of Customs brokers in performance of Customs business of others.

Respondents: Business or other for-profit, Individuals or households, Not-for-profit institutions.

Estimated Number of Respondents: 3,800.

Estimated Burden Hours Per Respondent: 3 hours.

Frequency of Response: On occasion.

Estimated Total Reporting Burden: 5,450 hours.

OMB Number: 1515–0106.

Form Number: None.

Type of Review: Extension.

Title: Entry of Articles for Exhibition.

Description: This information is used by Customs to substantiate that the goods imported for exhibit have been approved for entry by Department of Commerce.

Respondents: Business or other for-profit, Individuals or households, Not-for-profit institutions.

Estimated Number of Respondents: 40.

Estimated Burden Hours Per Respondent: 20 minutes.

Frequency of Response: On occasion.

Estimated Total Reporting Burden: 530 hours.

OMB Number: 1515–0209.

Form Number: None.

Type of Review: Extension.

Title: Certificate of Compliance for Turbine Fuel Withdrawals.

Description: This information is collected to ensure regulatory compliance for Turbine Fuel Withdrawals to protect revenue collections.

Respondents: Business or other for-profit, Not-for-profit institutions.

Estimated Number of Respondents: 30.

Estimated Burden Hours Per Respondent: 12 hours.

Frequency of Response: On occasion.

Estimated Total Reporting Burden: 360 hours.

Clearance Officer: Tracey Denning, (202) 927–1429, U.S. Customs Service, Information Services Branch, Ronald Reagan Building, 1300 Pennsylvania Avenue, NW., Room 3.2.C, Washington, DC 20229.

OMB Reviewer: Alexander T. Hunt, (202) 395–7860, Office of Management and Budget, Room 10202, New Executive Office Building, Washington, DC 20503.

Mary A. Able,

Departmental Reports Management Officer.

[FR Doc. 02–8601 Filed 4–9–02; 8:45 am]

BILLING CODE 4820–02–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

[REG–209793–95]

Proposed Collection; Comment Request for Regulation Project

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning an existing final regulation, REG–209793–95 (TD 8697), Simplification of Entity Classification Rules (sec. 301.7701–3).

DATES: Written comments should be received on or before June 10, 2002 to be assured of consideration.

ADDRESSES: Direct all written comments to Glenn Kirkland, Internal Revenue Service, room 6411, 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of this regulation should be directed to Allan Hopkins, (202) 622–6665, or through the Internet *(Allan.M.Hopkins@irs.gov)*, Internal Revenue Service, room 6407, 1111 Constitution Avenue NW., Washington, DC 20224.

SUPPLEMENTARY INFORMATION:

Title: Simplification of Entity Classification Rules.

OMB Number: 1545–1486.

Regulation Project Number: REG–209793–95.

Abstract: This regulation provides rules to allow certain unincorporated business organizations to elect to be treated as corporations or partnerships for federal tax purposes. The election is made by filing Form 8832, Entity Classification Election. The information collected on the election will be used to verify the classification of electing organizations.

Current Actions: There is no change to this existing regulation.

Type of Review: Extension of a currently approved collection.

Affected Public: Businesses or other for-profit organizations, and state, local or tribal governments.

The burden for the collection of information in this regulation is reflected in the burden estimates of Form 8832.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: April 2, 2002.

George Freeland,

IRS Reports Clearance Officer.

[FR Doc. 02–8669 Filed 4–9–02; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

[REG–121946–98]

Proposed Collection; Comment Request for Regulation Project

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning an existing final regulation, REG–121946–98 (TD 8861), Private Foundation Disclosure Rules (§§ 301.6104(d)–1, 301.6104(d)–2, and 301.6104(d)–3).

DATES: Written comments should be received on or before June 10, 2002 to be assured of consideration.

ADDRESSES: Direct all written comments to Glenn P. Kirkland, Internal Revenue Service, room 6411, 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of regulations should be directed to Carol Savage, (202) 622–3945, or through the internet *(CAROL.A.SAVAGE@irs.gov.),* Internal Revenue Service, room 6407, 1111 Constitution Avenue NW., Washington, DC 20224.

SUPPLEMENTARY INFORMATION:

Title: Private Foundation Disclosure Rules.

OMB Number: 1545–1655.

Regulation Project Number: REG–121946–98.

Abstract: The regulations relate to the public disclosure requirements described in section 6104(d) of the Internal Revenue Code. These final regulations implement changes made by the Tax and Trade Relief Extension Act of 1998, which extended to private foundations the same rules regarding public disclosure of annual information returns that apply to other tax-exempt organizations. These final regulations provide guidance for private foundations required to make copies of applications for recognition of exemption and annual information return available for public inspection and to comply with requests for copies of those documents.

Current Actions: There is no change to this existing regulation.

Type of Review: Extension of a currently approved collection.

Affected Public: Not-for-profit institutions.

Estimated Number of Respondents: 65,065.

Estimated Time Per Respondent: 30 minutes.

Estimated Total Annual Burden Hours: 32,596.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: April 3, 2002.

George Freeland,

IRS Reports Clearance Officer.

[FR Doc. 02–8670 Filed 4–9–02; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Form 940–EZ

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Form 940–EZ, Employer's Annual Federal Unemployment (FUTA) Tax Return.

DATES: Written comments should be received on or before June 10, 2002 to be assured of consideration.

ADDRESSES: Direct all written comments to Glenn P. Kirkland, Internal Revenue Service, room 6411, 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form and instructions should be directed to Carol Savage, (202) 622–3945, or through the internet *CAROL.A.SAVAGE@irs.gov.),* Internal Revenue Service, room 6407, 1111 Constitution Avenue NW., Washington, DC 20224.

SUPPLEMENTARY INFORMATION:

Title: Employer's Annual Federal Unemployment (FUTA) Tax Return.

OMB Number: 1545–1110.

Form Number: Form 940–EZ.

Abstract: Form 940–EZ is a simplified version of Form 940 that most employers with uncomplicated tax situations (e.g., only paying unemployment contributions to one state and paying them on time) can use to pay their FUTA tax. Most small businesses and household employers use the form.

Current Actions: There are no changes being made to the form at this time.

Type of Review: Extension of a currently approved collection.

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

Estimated Number of Respondents: 4,089,000.

Estimated Time Per Respondent: 8 hours, 50 minutes.

Estimated Total Annual Burden Hours: 36,162,483.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: April 3, 2002.

George Freeland,

IRS Reports Clearance Officer.

[FR Doc. 02–8671 Filed 4–9–02; 8:45 am]

BILLING CODE 4830–01–P

Corrections

Federal Register
Vol. 67, No. 69
Wednesday, April 10, 2002

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

NUCLEAR REGULATORY COMMISSION

10 CFR Parts 170 and 171

RIN 3150–AG95

Revision of the Fee Schedules; Fee Recovery for FY 2002

Correction

In proposed rule document 02–7114 beginning on page 14818 in the issue of Wednesday, March 27, 2002 make the following corrections:

1. On page 14820, Table II. is corrected to read as set forth below.

TABLE II.—FY 2002 BUDGET AUTHORITY TO BE INCLUDED IN HOURLY RATES

[Dollars in millions]

	Reactor programs	Materials program
Direct Program Salaries & Benefits	$117.0M	$32.2M
Overhead Salaries & Benefits, Program Travel and Other Support	59.2M	15.6M
Allocated Agency Management and Support	106.9M	29.0M
Subtotal	$283.1M	$76.8M
Less offsetting receipts	−0.1M	−0.00M
Total Budget Included in Hourly Rate	$283.0M	$76.8M
Program Direct FTEs	1024.0	285.1
Rate per Direct FTE	$276,345	$269,451
Professional Hourly Rate (Rate per direct FTE divided by 1,776 hours)	$156	$152

2. On page 14822, in Table IV., under the heading ‘‘ Proposed FY 2002 annual fee’’, in the seventh line, ‘‘7,700’’ should read ‘‘77,700’’.

3. On page 14823, in Table V., under the heading ‘‘Category of costs ’’, in the first line, ‘‘(NWF and General Fund amounts)’’ should read ‘‘(minus NWF and General Fund amounts)’’.

[FR Doc. C2–7114 Filed 4–9–02; 8:45 am]

BILLING CODE 1505–01–D

Federal Register

Wednesday,
April 10, 2002

Part II

Environmental Protection Agency

40 CFR Part 63

National Emission Standards for Hazardous Air Pollutants for Pesticide Active Ingredient Production; Proposed Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 63

[FRL–7163–9]

RIN 2060–AJ34

National Emission Standards for Hazardous Air Pollutants for Pesticide Active Ingredient Production

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule; amendments.

SUMMARY: On June 23, 1999, EPA promulgated national emission standards for hazardous air pollutants (NESHAP) for Pesticide Active Ingredient Production (40 CFR part 63, subpart MMM). On August 19, 20, and 23, 1999, petitions for judicial review of the June 1999 rule were filed in the U.S. Court of Appeals for the District of Columbia Circuit. This action is in response to issues raised by two of those petitioners—the American Crop Protection Association (ACPA) and the American Cyanamid Company (now BASF Corporation). In this action, EPA proposes amendments to the rule to address issues raised by petitioners and to correct inconsistencies that have been discovered since the rule was originally promulgated.

DATES: Comments. The EPA will accept comments regarding this proposal on or before May 10, 2002.

ADDRESSES: Comments. By U.S. Postal Service, send comments (in duplicate if possible) to: Air and Radiation Docket and Information Center (6102), Attention Docket Number A–95–20, U.S. EPA, 1200 Pennsylvania Avenue, NW., Washington, DC 20460. In person or by courier, deliver comments (in duplicate, if possible) to: Air and Radiation Docket and Information Center (6102), Attention Docket Number A–95–20, U.S. EPA, 401 M Street, SW., Washington, DC 20460. The EPA requests that a separate copy of each public comment be sent to the contact person listed below (see **FOR FURTHER INFORMATION CONTACT**). Comments may also be submitted electronically by following the instructions provided in **SUPPLEMENTARY INFORMATION.**

Docket. Docket No. A–95–20 contains supporting information used in developing the NESHAP. The docket is located at the U.S. EPA, 401 M Street, SW., Washington, DC 20460 in Room M–1500, Waterside Mall (ground floor) and may be inspected from 8 a.m. to 5:30 p.m., Monday through Friday (except for Federal holidays).

FOR FURTHER INFORMATION CONTACT: Mr. Randy McDonald, Organic Chemicals Group, Emission Standards Division (Mail Code C504–04), U.S. EPA, Research Triangle Park, North Carolina 27711, telephone number (919) 541–5402, electronic mail address mcdonald.randy@epa.gov.

SUPPLEMENTARY INFORMATION:

Comments. Comments and data may be submitted by electronic mail (e-mail) to: a-and-r-docket@epa.gov. Electronic comments must be submitted either as an ASCII file to avoid the use of special characters and encryption problems or on disks in WordPerfect file format. All comments and data submitted in electronic form must note the docket number A–95–20. No confidential business information (CBI) should be submitted by e-mail. Electronic comments may be filed online at many Federal Depository Libraries.

Commenters wishing to submit proprietary information for consideration must clearly distinguish such information from other comments and clearly label it as CBI. Send submissions containing such proprietary information directly to the following address, and not to the public docket, to ensure that proprietary information is not inadvertently placed in the docket: Attention: Mr. Randy McDonald, c/o OAQPS Document Control Officer (C404–02), U.S. EPA, Research Triangle Park, NC 27709. The EPA will disclose information identified as CBI only to the extent allowed by the procedures set forth in 40 CFR part 2. If no claim of confidentiality accompanies a submission when it is received by EPA, the information may be made available to the public without further notice to the commenter.

Docket. The docket is an organized and complete file of the information considered by the EPA in the development of this rulemaking. The docket is a dynamic file because material is added throughout the rulemaking process. The docketing system is intended to allow members of the public and industries involved to readily identify and locate documents so that they can effectively participate in the rulemaking process. Along with the proposed and promulgated standards and their preambles, the contents of the docket, excluding interagency review materials, will serve as the record in the case of judicial review. (See section 307(d)(7)(A) of the Clean Air Act (CAA).) The regulatory text and other materials related to this rulemaking are available for review in the docket or copies may be mailed on request from the Air Docket by calling (202) 260–7548. A reasonable fee may be charged for copying docket materials.

Worldwide Web (WWW). In addition to being available in the docket, an electronic copy of this action will also be available on the WWW through the Technology Transfer Network (TTN). Following signature, a copy of this action will be posted on the EPA's TTN policy and guidance page for newly proposed or promulgated rules *http://www.epa.gov/ttn/oarpg.* The TTN at EPA's web site provides information and technology exchange in various areas of air pollution control. If more information regarding the TTN is needed, call the TTN HELP line at (919) 541–5384.

Regulated Entities. The regulated category and entities affected by this action include:

Category	NAICS codes	SIC codes	Examples of regulated entities
Industry	Typically, 325199 and 325320.	Typically, 2869 and 2879	• Producers of pesticide active ingredients that contain organic compounds that are used in herbicides, insecticides, or fungicides. • Producers of any integral intermediate used in on-site production of an active ingredient used in an herbicide, insecticide, or fungicide.

This table is not intended to be exhaustive, but rather provides a guide for readers likely to be interested in the revisions to the rule affected by this action. To determine whether your facility, company, business, organization, etc., is regulated by this action, you should carefully examine all of the applicability criteria in § 63.1360 of the rule, as well as in today's proposed amendments to the applicability sections. If you have questions regarding the applicability of these amendments to a particular entity, consult the person listed in the

preceding **FOR FURTHER INFORMATION CONTACT** section.

Outline. The information presented in this preamble is organized as follows:

I. Why are we proposing amendments to the rule?
II. What amendments are we proposing?
A. Requirements for which the Petitioners Requested Clarification
B. Proposed Amendments Related to Petitioner's Issues
C. Other Amendments to Correct the Rule
III. What are the administrative requirements for the proposed amendments?
A. Executive Order 12866, Regulatory Planning and Review
B. Executive Order 13132, Federalism
C. Executive Order 13175, Consultation and Coordination with Indian Tribal Governments
D. Executive Order 13045, Protection of Children for Environmental Health Risks and Safety Risks
E. Unfunded Mandates Reform Act of 1995
F. Regulatory Flexibility Act (RFA), as Amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA), 5 U.S.C. 601 *et seq.*
G. Paperwork Reduction Act
H. National Technology Transfer and Advancement Act
I. Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use

I. Why Are We Proposing Amendments to the Rule?

On June 23, 1999, we promulgated NESHAP for Pesticide Active Ingredient Production as subpart MMM in 40 CFR part 63 (64 FR 33550). On August 19 and 20, 1999, the American Crop Protection Association and American Cyanamid Company (now BASF Corporation) filed petitions for judicial review of the promulgated Pesticide Active Ingredient (PAI) Production NESHAP in the U.S. Court of Appeals for the District of Columbia Circuit, *ACPA* v. *EPA,* No. 99–1332, and American Cyanamid Company v. EPA, No. 99–1334 (Consolidated with *ACPA* v. *EPA,* No. 99–1332) (D.C. Cir.). The petitioners raised issues regarding the applicability of the rule, the alternative standard, alternatives to the standard for storage vessels, outlet concentration standards, procedures for calculating emissions averaging credits, initial compliance requirements for condensers, and performance testing over an entire batch cycle.

On January 18, 2002, ACPA and EPA signed a settlement agreement, which provides that EPA will propose amendments to the PAI NESHAP and include preamble discussion to clarify various issues raised by petitioners. Notice of this agreement was published in the **Federal Register** on February 4, 2002 pursuant to the requirements of CAA section 113(g). (67 FR 5116).

Today's proposed amendments address the issues raised by ACPA and BASF Corporation, and include additional corrections and clarifications to ensure that the rule is implemented as intended. Some of the proposed amendments provide new compliance options and other new provisions that would reduce the burden associated with demonstrating compliance. For example, vapor balancing is proposed as a compliance option for storage tanks in § 63.1362(c). We are proposing to eliminate the requirement to calculate uncontrolled emissions under certain circumstances if performance testing is conducted over the entire batch cycle. We are also proposing to allow compliance demonstrations based on either total organic compound (TOC) or total organic hazardous air pollutants.

II. What Amendments Are We Proposing?

This section of the preamble describes the changes that we are proposing to make to subpart MMM. The following discussion is organized into three sections. The first section focuses on provisions for which the petitioners requested clarification. For some of these provisions we are proposing amendments; others do not require changes to the rule. The second section describes proposed amendments to address other issues raised by the petitioners. The third section consists of proposed technical corrections that we believe are necessary to ensure that the rule is implemented as intended, correct errors, and maintain consistency with other rules. We are soliciting comment on the specific revisions to the PAI Production rule that are described below and proposed today. We are not seeking comment on portions of the rule that we are not currently proposing to change.

A. Requirements for Which the Petitioners Requested Clarification

The petitioners requested clarification of six provisions: New source applicability; the concept of process unit groups; differences between the alternative standard and the outlet concentration standard; pollution prevention; initial compliance when using a condenser to control emissions; and the startup, shutdown, and malfunction requirements.

1. New Source Applicability

Subpart MMM as promulgated on June 23, 1999, specified that new source standards apply to two types of entities: An affected source for which construction or reconstruction commenced after November 10, 1997; and any single PAI process unit that is not part of a PAI process unit group, for which construction commenced after November 10, 1997, and that has the potential to emit 10 tons per year (tpy) or more of any single HAP or 25 tpy or more of combined HAP. Petitioners requested clarification that modifications of existing process units to create a new or different PAI process unit do not trigger new source requirements.

New source requirements apply to PAI process units only if the equipment meets the definition of either ''construction'' or ''reconstruction,'' and the construction or reconstruction commences after November 10, 1997. A PAI process unit is the processing equipment that is used to produce a PAI or integral intermediate, as well as associated storage tanks, piping to connect the processing equipment, and components such as valves, connectors, and pumps. Our intent is that ''construction'' applies only to PAI process units added at a site previously without an affected source, or the addition of a dedicated PAI process unit with potential to emit greater than 10 tpy of one HAP or 25 tpy of combined HAP at an affected source. To clarify our intent, we are proposing several changes to the rule, most of which involve definitions. We are proposing to revise the definitions of the terms ''construction'' and ''reconstruction'' and to add definitions for ''reconfiguration,'' ''dedicated PAI process unit,'' and ''non-dedicated PAI process unit.'' We are also clarifying the new source applicability language in § 63.1360(b).

The original definition of the term ''construction'' indicated that it applied to an affected source or a PAI process unit. The definition also specified that addition of new equipment to an existing PAI process unit does not constitute construction. To clarify this term, we are proposing to provide additional statements specifying actions that do not constitute construction. These actions include the creation of non-dedicated PAI process units by reconfiguration of equipment or changes in the raw materials processed (at affected sources), and addition of new equipment to an affected source (provided the new equipment is not a dedicated PAI process unit with the potential to emit greater than the 10 or 25 tpy thresholds). We are also proposing to delete the exception in the original definition because it is redundant with the more comprehensive revised statements.

The definition of ''reconstruction'' in the June 23, 1999 NESHAP references the definition in § 63.2 of the General Provisions. We are proposing to revise this definition to be consistent with changes made for other rules, such as 40 CFR part 63, subpart GGG, by replacing the phrase ''affected or previously unaffected stationary source'' with the phrase ''affected source or PAI process unit.'' This change makes it clear that the replacement of equipment meeting the capital cost criteria in the General Provisions applies to individual PAI process units with a potential to emit of 10 or 25 tpy as well as to the entire affected source.

A ''dedicated PAI process unit'' is defined as a process unit constructed from equipment that is fixed in place and designed and operated to produce only a single product or co-products. The equipment is not designed to be reconfigured or operated with different raw materials. ''Non-dedicated PAI process units'' are any PAI process units that are not dedicated PAI process units. ''Reconfiguration'' refers to changes in the arrangement or operation of non-dedicated equipment to create a different process unit (either PAI or non-PAI).

The final changes to clarify this issue involve the language in § 63.1360(b)(2). The intent has always been that the new source requirements apply to what we are now calling a ''dedicated PAI process unit.'' Therefore, we are proposing to use this term in paragraph (b)(2) instead of the phrase ''any single PAI process unit.'' We are also proposing to delete the current paragraph (b)(2)(i), which states that new source requirements apply only to PAI process units that are ''not part of a process unit group.'' The provision in paragraph (b)(2)(i) could be misinterpreted to mean that you must develop process unit groups. This interpretation is incorrect because developing process unit groups is optional; you could elect to develop process unit groups if subpart MMM and other maximum achievable control technology (MACT) rules apply to the same processing equipment and you want to minimize the number of different requirements for the equipment with which you must comply. The purpose of the statement in paragraph (b)(2)(i) was to ensure that new source requirements are not applied to individual process units that we are now defining as ''non-dedicated PAI process units.'' The proposed change to paragraph (b)(2), to specify that new source requirements apply to dedicated PAI process units, as described above, serves the same purpose.

To illustrate how the new source requirements would be triggered, we have developed the following scenarios.

Scenario: I have an affected source on the effective date. Am I subject to new source requirements for a non-dedicated PAI process unit that I create after November 10, 1997, using equipment that was installed and operating before November 10, 1997?

Response: No, any non-dedicated PAI process unit you create solely from existing equipment is subject to existing source standards. It does not matter what type of product(s) you have produced in the past or whether you have ever produced the PAI before. To create a non-dedicated PAI process unit from existing equipment, you would either reconfigure the equipment or change the raw materials. The proposed change to the definition of ''construction'' clarifies that neither of these changes constitutes construction. In addition, because these changes do not include replacement of equipment, they also do not meet the definition of ''reconstruction'' in the General Provisions. Therefore, these changes do not satisfy the criteria in § 63.1360(b)(1). If you already have a PAI affected source as specified in § 63.1360(a), the newly created non-dedicated PAI process unit expands that affected source.

Scenario: If I have an affected source, am I subject to new source requirements for a non-dedicated PAI process unit that I create after November 10, 1997, using a mixture of new equipment and equipment installed and operating before November 10, 1997?

Response: No, if the amount of new equipment added does not constitute reconstruction. The revised definition of ''construction'' specifies that addition of equipment to an affected source does not constitute construction unless it is to construct a dedicated PAI process unit with the potential to emit greater than either the 10 or 25 tpy threshold. Therefore, the newly created non-dedicated PAI process unit becomes part of and expands the affected source, which is subject to existing source standards. Any non-dedicated PAI process units created in the future by reconfiguring this equipment are also subject to existing source standards for the reasons given in the discussion above.

Scenario: My facility was built and operating before November 10, 1997 with no PAI affected source. After November 10, 1997, I add non-dedicated equipment. Am I subject to new source standards for any PAI process unit that I create from this equipment?

Response: Yes. The first PAI process unit (that uses, processes, or produces HAP) constitutes construction of an affected source. Because the construction commenced after November 10, 1997, the affected source is a new affected source in accordance with § 63.1360(b)(1). All PAI process units created in the future by reconfiguring the equipment, adding to the equipment, or by changing raw materials would also be subject to new source standards because they are process changes or additions to the applicable affected source, which in this case is a new affected source.

Scenario: My facility is a major source consisting of non-dedicated equipment that was built after April 10, 2002. Are all of my PAI process units subject to new source standards?

Response: Yes, for the same reasons discussed in the preceding example.

2. Process Unit Groups

Many different MACT rules may apply to the same multi-purpose equipment because many different process units may be created from this equipment, depending on how it is configured or the raw materials used. To minimize the compliance burden, the June 23, 1999, promulgated rule included an option based on ''process unit groups'' (PUG). A ''process unit group'' is a collection of processing equipment from which you create both non-dedicated PAI process units and non-dedicated process units for other types of products. The purpose and potential advantage of the PUG option is that, under certain conditions, it allows you to comply with a MACT rule that applies to a non-PAI process unit in the PUG, both when the equipment is configured as the non-PAI process unit and when it is configured as a PAI process unit. Typically, the applicable MACT rule is selected based on the primary product of the PUG. These provisions are specified in § 63.1360(h), and the term ''process unit group'' is defined in § 63.1361. Developing PUG is entirely optional.

Petitioners noted that the definition of ''process unit group'' in § 63.1361 differs from the description in the preamble to the promulgated rule, and they recommended that the rule be changed to match the preamble. They also requested that we clarify compliance procedures because the requirements in the promulgated rule are confusing, particularly with respect to different primary products, and in situations where future MACT rules may apply to the same equipment. In

this preamble we clarify our intent regarding how to comply under the PUG option, and we describe proposed changes to the definition of the term ''process unit group'' to make it consistent with previous descriptions. We are also proposing changes to § 63.1360(h) to clarify and simplify compliance with the PUG option.

The PUG option allows you to develop groups to accommodate your site-specific situation subject to the following constraints: (1) For equipment used to create a PAI process unit to be part of the group, some of the equipment must overlap with equipment in at least one other PAI process unit in the group, (2) for equipment used to create a non-PAI process unit to be part of the group, some of the equipment must overlap with at least one PAI process unit in the group, and (3) a PAI process unit may not be part of more than one process unit group. Thus, it is possible that all of the non-dedicated equipment at a facility could be part of just one process unit group. On the other hand, if there are distinct processing areas within the plant, and there is no overlap in the PAI products produced in those areas, and no equipment is shared between the areas, then there would have to be more than one PUG.

To clarify the rule, we are proposing to specifically include the above constraints in § 63.1360(h)(1). In addition, we are proposing that you initially create the group by starting with one non-dedicated PAI process unit that is operating on December 23, 2003 (or later) and then include any other non-dedicated PAI process units and non-dedicated non-PAI process units that you expect to be operated in the subsequent 5 years, subject to the constraints listed above. In the future, you can include new process units in a PUG if any of the equipment in the new process unit overlaps equipment in any of the process units already in the PUG. A record of process units added to a PUG must be maintained and included in Periodic reports.

Also, § 63.1360(h)(2) and (3) specify two possible compliance options for the PAI process units in a PUG. The first option is that you may comply with the NESHAP for Pharmaceuticals Production (40 CFR part 63, subpart GGG) for each PAI process unit in the PUG if there is at least one pharmaceutical manufacturing process unit in the group. Note, however, that § 63.1360(h)(2)(i) through (iii) specify three provisions in subpart GGG that do not apply.

The second option involves first determining the primary product of the process unit group. We are proposing that the primary product be the category of products (e.g., PAI, pharmaceutical product, thermoplastic resin, etc.) that is expected to be produced for the greatest operating time (or have the greatest production on a mass basis) in the 5 years after the group is created, based on the process units initially in the group. You must redetermine the primary product if you do not intend to produce any of the product in the future, or you have not produced any of it for 5 years and include results of the redetermination in the next Periodic report.

If the primary product is a material that was subject to another MACT standard on June 23, 1999, or it is (or was) subject to another MACT standard upon startup of the first process unit(s) in the PUG, whichever is later, then you may comply with the subpart for that material for each PAI process unit in the PUG. Although other subparts have more stringent process vent emission limits than subpart MMM, the applicability cutoffs are often higher than the cutoffs specified in the definition of ''Group 1 process vents'' in § 63.1361 of subpart MMM. Therefore, we are proposing to add a provision in § 63.1360(h)(3) specifying that you must comply with the control requirements of the subpart that applies to the primary product of the PUG for all PAI process units in the PUG that have Group 1 process vents, regardless of the applicability cutoffs in the other subpart.

If the primary product is a material that is not yet subject to a MACT standard, then you must comply with the PAI rule for all PAI process units in the PUG. If in the future, a rule is developed that applies to the primary product (e.g., the Miscellaneous Organic national emission standards for hazardous air pollutants (HON)), that rule will have to specify any alternative to this provision. Note that the primary product is the type of product that is subject to a MACT standard (e.g., PAI, pharmaceutical, MON chemicals, etc.), not an individual compound or material. For example, if you make five PAI and one specialty chemical, you sum the operating hours (or mass produced, if the operating hours for different types of products are equal) for all five PAI to determine if PAI are the primary product.

Another proposed change clarifies what constitutes reconstruction for PAI process units in a process unit group and the applicable requirements. A new paragraph (h)(4) to § 63.1360, specifies that the requirements for new and reconstructed sources under the alternative subpart apply to all of the PAI process units in the process unit group if, and only if, the affected source under the alternative subpart meets the requirements for reconstruction.

Finally, we are also proposing to revise the definition of ''process unit group'' to be consistent with the above discussion. The current definition limits equipment in a group to equipment that has been or could be part of a PAI process unit. This restriction could limit a PUG to only PAI process units, which effectively negates the potential benefits of creating a PUG. A PUG has to include complete process units (not just some of the equipment) for the production of products other than PAI for it to minimize the impact of overlapping MACT standards. Therefore, we are proposing to replace the second sentence in the definition of ''process unit group'' with a statement that a PUG ''consists of all equipment used in one or more PAI process units, and it may include all of the equipment used in other process units that have equipment that overlaps with the PAI process unit(s).''

3. Comparison of Alternative Standard and Outlet Concentration Standard

For storage tanks and process vents, the rule provides two compliance options that are based on an outlet concentration. One option (specified in § 63.1362(b)(2)(iv)(A), (b)(3)(ii), (b)(4)(ii)(A), (b)(5)(ii), (b)(5)(iii) for process vents, and § 63.1362(c)(2)(iv)(B) for storage tanks) is simply referred to as the outlet concentration option. The other option is the alternative standard (specified in § 63.1362(b)(6) and (c)(4)). The differences between these options include the initial compliance procedures, monitoring techniques, and the way violations are assessed.

Initial and ongoing compliance procedures under the outlet concentration option are similar to those for the percent reduction option. For example, you demonstrate initial compliance by conducting a performance test (the design evaluation option is not allowed for demonstrating compliance with the outlet concentration), you establish monitoring levels for control device operating parameters during the initial test, and you demonstrate ongoing compliance by not exceeding these levels. Because the test must be conducted under the most challenging conditions that the control device will experience while being used to control PAI emissions, you also need to develop an emission profile to identify the most challenging conditions. This requires calculating the uncontrolled emissions for all emission

episodes that are routed to the control device.

Compliance procedures are much simpler for the alternative standard. This option requires the use of continuous emission monitoring systems (CEMS) to demonstrate ongoing compliance at all times beginning on the compliance date. The only initial requirement is to conduct a performance evaluation in accordance with the General Provisions. There is no need to calculate uncontrolled emissions or to develop an emissions profile. An ongoing requirement is to conduct a quality control program in accordance with § 63.8(d) of the General Provisions, which is likely to be more involved than the annual calibration requirements for parameter monitoring instruments.

Exceedances under the outlet concentration option are considered exceedances of the operating limit, whereas exceedances under the alternative standard are considered exceedances of the emission limit. In addition, compliance under the outlet concentration option is determined for each emission point or process, whereas compliance under the alternative standard is determined at the control device.

4. Pollution Prevention

As specified in § 63.1362(g), the pollution prevention alternative requires either an 85 percent or 50 percent reduction in the ''HAP factor'' (i.e., the HAP consumption per unit of production). In addition, if the HAP are also volatile organic compounds (VOC), an equivalent reduction (on a mass basis) is required in the VOC factor. This requirement to reduce the VOC factor differs from the proposed rule (62 FR 60566, November 10, 1997), which would have required only that the VOC factor not increase. The petitioners want us to reinstate the proposed language.

In the preamble to the promulgated rule (64 FR 33576, June 23, 1999), we provided two reasons for changing the VOC factor requirements. One reason is that our intent with the pollution prevention alternative is to recognize those processes that reduce solvent usage. The proposed rule would have allowed VOC substitution for the HAP, without any reduction in total solvent usage. Merely substituting one pollutant for another is inconsistent with the concept of pollution prevention. A second reason for making the change is that the proposed language gives an unfair advantage to affected sources using HAP solvents that are also VOC as opposed to using HAP solvents that are not VOC. As proposed, an affected source using HAP solvents that are also VOC could switch to a low-VOC solvent and possibly comply with the pollution prevention alternative, but an affected source using HAP solvents that are not VOC would be unable to comply with the pollution prevention alternative after making such a switch. We continue to believe in the validity of the rationale for requiring a reduction in the VOC factor if the HAP are also VOC. Therefore, we are not proposing changes in the pollution prevention alternative.

5. Initial Compliance for Condensers

Based on a review of the project database and the public comments on the proposed rule, it appears that this issue is focused on compliance for storage tanks. We are not aware of any ambient process vent emission streams that are (or likely would be) controlled with a condenser, but several storage tanks are controlled with condensers. We have also assumed the petitioner is asking for clarification of compliance for the percent reduction option because we expect that using a condenser to reduce emissions to less than 50 parts per million by volume (ppmv) is unlikely for a stored material with a maximum true vapor pressure greater than 3.45 kilo Pascals (kPa) (i.e., the Group 1 storage tank cutoff).

Section 63.1365(d)(1) specifies how to demonstrate initial compliance with the percent reduction emission limitation for storage tanks. You may conduct either a performance test or a design evaluation to demonstrate that the condenser achieves at least a 95 percent reduction when the tank is filled at the reasonably expected maximum filling rate. For the performance test option, you use an applicable test method to measure the inlet and outlet mass of HAP and use the results to calculate the percent reduction. As specified in § 63.1366(b)(1)(iii) and (b)(3), you must measure the outlet gas temperature during the test to establish the maximum level for use in demonstrating ongoing compliance. Alternatively, you are not required to conduct a performance test while filling the tank if you conducted a performance test for the same condenser to demonstrate compliance with process vent emission limits, and the demonstrated reduction was at least 95 percent.

For the design evaluation option, you must prepare documentation to demonstrate that the required reduction is achieved. The documentation requirements are specified in § 63.1365(a)(1)(iii). However, we are proposing some changes to that paragraph to clarify the requirements. The current language requires you to establish the ''design outlet organic HAP compound concentration level,'' the ''design average temperature of the condenser exhaust,'' and the ''design average temperatures of the coolant fluid at the condenser inlet and outlet.'' Our proposed changes would require you to establish the temperature of the condenser exhaust vent stream and the corresponding organic HAP compound concentration level for which the required reduction is achieved. Knowledge of the coolant temperatures may help you confirm that the outlet vent stream temperature is achievable, but it is not needed to establish that required temperature; therefore, we are proposing to delete that requirement. We are also proposing to delete the requirement to measure the outlet gas stream temperature for use in establishing the outlet concentration. Measurement of the temperature is an essential part of demonstrating continuous compliance with the temperature limit established in the design evaluation, but it serves no purpose in establishing the required temperature limit.

The rule does not specify the ambient temperature at which the performance test or design evaluation must be conducted. This is consistent with other rules that specify compliance procedures for condensers used to control storage tank emissions. In a design evaluation, standard procedure is to use some representative or median summer temperature. Thus, the design evaluation will show that the required reduction is achieved for the maximum uncontrolled emission rate. Similarly, conducting a performance test on a warm summer day will demonstrate that the required reduction is achieved for the maximum uncontrolled emission rate. If you elect to conduct a test on a cool day, your monitoring temperature limit will be set based on those conditions, which also ensures that compliance will be met or exceeded on the warmest days with higher uncontrolled emissions.

6. Startup, Shutdown, and Malfunction Requirements

During discussions, petitioners expressed reservations regarding the flexibility of the startup, shutdown, and malfunction provisions, and they requested clarification of these provisions.

Startup, shutdown, and malfunction provisions were developed to accommodate the fact that the emissions characteristics of an affected unit can be substantially different during periods of startup, shutdown, or malfunction than during normal operations. As specified in § 63.1360(e), affected sources are not

required to meet the specified MACT emission limitations during periods of startup, shutdown, or malfunction. Instead, affected sources must develop (and operate in accordance with) a startup, shutdown, and malfunction plan, which would require sources to operate ''in a manner consistent with good air pollution control practices for minimizing emissions.'' For instance, this general duty clause does not require an affected source to install a duplicate control system to meet the emissions limitations during periods of malfunction of the primary control system or during periods of process upset when operation could damage the control system (i.e., the only times when a control system may be shutdown, as specified in § 63.1360(e)(3)). It may be feasible in some of these cases, however, that a source could reroute emissions to another control device already in existence at the facility, which would also constitute good engineering practices.

B. Proposed Amendments Related to Petitioners Issues

After reviewing issues raised by the petitioners, we are proposing amendments to clarify applicability requirements; add and modify compliance options, initial compliance requirements, and monitoring requirements; and clarify definitions. We are also correcting several referencing errors.

1. Storage Vessel Applicability

Section 63.1360(f)(3) of the rule as promulgated on June 23, 1999, specified that a storage tank in a tank farm is part of an affected source only if the greatest input to or output from the tank is associated with PAI processes and there is no intervening storage tank between the tank farm and the process. We are proposing changes to this section that would allow owners and operators the option to include storage vessels in the affected source even if there is an intervening tank. We are not, however, changing the requirement that the primary input or output must be associated with PAI processes.

Without this amendment, the excluded tanks in the tank farm would be subject to the Organic Liquids (non-gasoline) Distribution MACT rule, currently under development. We anticipate that the proposed requirements for that rule will be similar to the requirements in the hazardous organic NESHAP (HON) (§ 63.119(a) of subpart G), which has less stringent capacity and maximum true vapor pressure cutoffs than § 63.1362(c) of subpart MMM. Notwithstanding the stringency of these standards, sources may choose this option in order to reduce the burden associated with complying with multiple standards.

2. Process Unit Groups

We are proposing to redesignate § 63.1360(h)(1)(i) and (ii) as § 63.1360(h)(2)(i) and (ii) and then make four technical corrections to the language. These paragraphs would specify exceptions to the provisions in the Pharmaceuticals NESHAP, subpart GGG. Because the Pharmaceuticals NESHAP was amended on August 29, 2000 (65 FR 52588), the changes described below are necessary to ensure the PAI NESHAP are consistent with the amended subpart GGG.

The first proposed change is to § 63.1360(h)(2)(i). Because the requirements in § 63.1254 were rearranged when subpart GGG was amended, we are proposing to replace the now incorrect reference to § 63.1254(a)(1) in § 63.1360(h)(2)(i) with the correct reference to § 63.1254(a)(2).

The other three proposed technical corrections are in § 63.1360(h)(2)(ii). In the rule as promulgated on June 23, 1999, this paragraph specifies that, for the purposes of subpart MMM, the date June 23, 1999 shall apply instead of the date April 2, 1997 in § 63.1254(a)(iii) of subpart GGG. Our first proposed change is to replace the incorrect reference to § 63.1254(a)(iii) with the correct reference to § 63.1254(a)(3)(ii). Because the grandfathering provisions in § 63.1254(a)(3)(ii) apply to control devices installed before the original proposal date of subpart GGG (i.e., April 2, 1997), our second proposed change is to replace ''June 23, 1999'' with ''November 10, 1997'' to be consistent with the intent in subpart GGG (i.e., this change replaces the promulgation date of subpart MMM with the proposal date). Section 63.1254(a)(3)(ii) also contains provisions for replacing or upgrading control devices before April 2, 2007 (i.e., 10 years after the proposal date). Therefore, our third proposed change is to specify that when this date applies in § 63.1254(a)(3)(ii), the date of November 10, 2007 shall apply for the purposes of subpart MMM.

3. Vapor Balancing for Storage Vessels

We are proposing to allow vapor balancing in conjunction with the use of a pressure setting to comply with the storage vessel requirements. The vapor balancing option would also require that displaced vapors from the tank trucks and railcars be controlled at the reloading or cleaning facility to at least 95 percent or be vapor balanced.

In general, a pressure setting of at least 2.5 pounds per square inch gage (psig) was determined to eliminate breathing losses from storage vessels that are typically found in this industry. As a means of demonstrating continuous compliance with the pressure setting requirement, the proposed provisions would require the owner or operator to monitor the pressure relief valve on a quarterly basis to ensure no breathing losses.

To demonstrate compliance with the offsite provisions, the owner or operator must obtain a certification from the cleaning and reloading facility indicating that the control requirements will be met. In addition, tank trucks and railcars would be required to have current certification in accordance with U.S. Department of Transportation pressure test requirements, and the owner or operator would be required to keep a record of the certifications. All of the vapor balancing provisions are consistent with subpart GGG.

4. Planned Routine Maintenance of Control Devices for Storage Vessels

Currently, the rule specifies that an owner or operator is exempt from the standards for storage tanks during periods of planned routine maintenance of a control device for up to 240 hours per year (hr/yr). We are proposing to allow an owner or operator to submit an application to the Administrator requesting an extension of the time limit to a total of 360 hr/yr. The application would have to explain why the extension is needed, indicate that no material will be added to the storage vessel between the time the 240 hour limit is exceeded and the control device is again operational, and be submitted at least 60 days before the 240 hour limit will be exceeded. In the event that planned routine maintenance for a particular control device cannot be completed in less than 240 hr/yr, this option would reduce the burden on an owner or operator who would otherwise be required to take the storage vessel out of service. Allowing the time extension may also result in less emissions than emptying and degassing the storage vessel.

5. The Alternative Standard

We are proposing to raise the concentration limit for HAP emissions at the outlet of a non-combustion device from 20 ppmv to 50 ppmv. The proposed change is a result of reconsideration of the process vent stream data used in the MACT floor analysis and consideration of the limitations and advantages of non-combustion control technologies. The

definition of process vent stream from an organic chemical manufacturing process was developed in the HON where the minimum HAP concentration is 50 ppmv. The same definition of vent stream is used in subpart MMM. In the MACT floor analysis, we included only process vents with HAP concentrations of 50 ppmv or greater, and where data were available to calculate HAP concentrations in process vent emission streams, we excluded those vents with HAP concentrations less than 50 ppmv from the MACT floor analysis.

We selected 20 ppmv for the alternative standard because ample data suggest this is an achievable level for properly operated combustion devices. However, we do not have data to demonstrate that 20 ppmv is also achievable for non-combustion devices. Raising the concentration limit for non-combustion devices to 50 ppmv would make the alternative standard consistent with the data used in establishing the MACT floor and allow the possible use of such control technology as carbon adsorption, oil scrubbers, and biofiltration. These control technologies have much less impact on the environment than thermal oxidation and have potential for recovery and reuse of HAP. In most cases, it is likely to achieve much greater control because the HAP concentration in process vent emissions at the surveyed facilities is rarely less than 500 ppmv. Finally, we want to encourage facilities to comply with the MACT standard by implementing the alternative standard because we believe CEMS are the best way to demonstrate ongoing compliance.

6. Outlet Concentration Emission Limits

We are proposing changes to make the outlet concentration emission limit option more flexible for process vents, storage vessels, and wastewater. Currently, the rule specifies (in § 63.1362(b) and (c)) that organic HAP emissions be reduced to concentrations less than or equal to 20 ppmv as TOC. Similarly, control devices used to reduce emissions from waste management units must achieve an outlet TOC concentration of 20 ppmv because § 63.1362(d)(12) specifies that the total organic HAP limit in § 63.139 of the HON does not apply. To provide greater flexibility, we are proposing to change this option so that an affected source may reduce outlet concentrations to 20 ppmv or less of either TOC or total organic HAP.

For all of the emission points, the MACT floors (and regulatory alternatives above the floor) are based on the percent reduction of organic HAP. The outlet concentration format is also provided because we realize that there is a practical limit of control for emission streams with relatively low HAP concentrations. The 20 ppmv as TOC option was specified in the June 23, 1999 promulgated rule because it is the limit of control for most control devices, and it is the most stringent concentration limit. For most streams, however, control to an outlet concentration of 20 ppmv as HAP would also be equivalent to a reduction far greater than the required 90 or 95 percent reductions, depending on the emission point. Based on data from surveyed facilities, very few process vents have HAP concentrations between 50 ppmv and 200 ppmv (i.e., between the proposed cutoff in the definition of a process vent and the minimum inlet concentration needed to achieve a 90 percent reduction if the outlet is 20 ppmv as HAP). Plus, for Group 1 storage vessels, the maximum true vapor pressure cutoffs of 16.5 kPa for existing sources and 3.45 kPa for new sources (compared to standard atmospheric pressure of 101.3 kPa) means the minimum uncontrolled HAP concentrations that must be controlled are well above the levels needed to achieve at least 95 percent control when the outlet is 20 ppmv as HAP. Therefore, we believe that control will continue to be at least equivalent to the MACT floor after implementing the proposed change.

We are also proposing a related change in § 63.1365(a)(2). This paragraph specifies procedures for calculating emissions concentrations as part of an initial compliance determination. The third sentence in this paragraph currently states that ''if compliance with the percent reduction format of the standard is being determined based on total organic HAP, the owner or operator shall compute total organic HAP * * *'' We are proposing to delete the reference to the ''percent reduction format of the standard'' in this sentence to be consistent with the proposed change described above that would also allow compliance with the outlet concentration standard to be demonstrated based on total organic HAP.

7. Wastewater Standards

We are proposing several technical corrections to the wastewater standards. According to the rule promulgated on June 23, 1999, the referenced provisions of the HON specify that only Method 18 of 40 CFR part 60 may be used to demonstrate compliance with the standards for control devices used to control emissions vented from waste management units. For other emission streams, however, the promulgated rule allows compliance to be demonstrated using Method 25 or Method 25A of 40 CFR part 60, under applicable conditions for the method. To correct this unintended disparity, we are proposing to specify in § 63.1362(d)(12) that an owner or operator may elect to use Method 25 or Method 25A as an alternative to Method 18 when Method 18 is specified in §§ 63.139(c)(1)(ii) and 63.145(i)(2). We are also proposing to add a similar statement in § 63.1365(e), which specifies the elements of § 63.145 of the HON which are to be used to demonstrate initial compliance with the wastewater standards.

Section 63.139(c)(1)(ii) of the cross-referenced HON wastewater provisions specifies that outlet concentrations from combustion devices are to be corrected to 3 percent oxygen at all times. Section 63.1362(d)(13) of subpart MMM as promulgated on June 23, 1999 specifies that the correction is required only if supplemental gases are combined with affected streams. This statement was included in the rule to ensure that the cross-referenced requirements for wastewater emissions do not conflict with the requirements specified in § 63.1365(a)(7). However, to further clarify this point, we are proposing to add a statement to § 63.1362(d)(13) specifying that the procedures to determine the percent oxygen correction in § 63.1365(a)(7) apply instead of the procedures in § 63.145(i)(6).

In the rule as promulgated on June 23, 1999, § 63.1362(d)(14) required covered waste management units or a determination that less than 5 percent of the HAP are emitted from the units for all wastewater sent offsite for biological treatment. We are proposing to specify that these restrictions apply only to Group 1 wastewater to be consistent with the applicability requirements in § 63.132(g) of the HON.

The requirements for wastewater tanks in § 63.1362(d), which cross-reference the requirements in § 63.133 of the HON, differ depending on the maximum true vapor pressure of the HAP in the stored wastewater. The vapor pressure cutoffs are specified in Table 10 to subpart G of part 63. Since all of the other wastewater provisions apply only to the HAP listed in Table 9 to subpart G of part 63, we are proposing to specify in § 63.1362(d)(15) that the vapor pressure cutoffs in Table 10 to subpart G of part 63 also apply only to the HAP in Table 9 of subpart G of part 63 for the purposes of subpart MMM.

Section 63.1365(b)(8) requires wastewater analyses to be conducted in accordance with the test methods and procedures specified in § 63.144 of the HON. We are proposing to add a statement to this paragraph specifying that an owner or operator may also use Method 1666 or Method 1671 of 40 CFR part 136, appendix A, without performing the validation procedures specified in § 63.144(b)(5)(iii). The two new methods can be used to measure certain analytes (e.g., methanol, acetonitrile, and n-hexane) that cannot be measured using the other methods in 40 CFR part 136. They also have the same quality assurance/quality control requirements as the earlier methods; in particular, sampling must be conducted so as to minimize loss of volatile compounds. These two methods were added to 40 CFR part 136 when the revisions to the pharmaceutical effluent limitation guidelines and standards were promulgated in September 1998. They were also added to the list of acceptable methods for wastewater analyses in the amended subpart GGG of 40 CFR part 63 (66 FR 40134, August 2, 2001).

8. Emissions Averaging

We are proposing changes to § 63.1362(h)(2) to clarify the procedures for calculating emissions averaging credits and make them more consistent with the HON. Section 63.150(d)(2) of the HON specifies that Group 1 emission points that are controlled with a ''reference control technology'' may not be used to calculate emissions averaging credits unless the reference control technology has been approved for use in a different manner, and a higher nominal efficiency has been assigned according to the procedures in § 63.150(i). Our intent was to specify equivalent requirements in § 63.1362(h)(2) of subpart MMM. We did not simply reference all of § 63.150 because we did not define ''reference control technologies'' for the PAI standards.

Section 63.1362(h)(2) currently specifies that certain emission streams may not be used for calculating emissions averaging credits unless a nominal efficiency has been assigned that exceeds the applicable percent reduction; this section also lists the relevant sections of the rule that specify the required percent reductions for process vents, storage tanks, and wastewater treatment units. In addition, § 63.1362(h)(2)(i) through (iii) specifies the types of controls subject to this provision; all of them are equipment or operational requirements that are alternatives to a percent reduction requirement (i.e., storage tanks controlled with a floating roof; emission streams vented to a flare; waste management units that are controlled using devices and techniques such as covers, plugs, water seals, floating roofs, and submerged fill; and wastewater treated using a design steam stripper).

After reexamining the emissions averaging provisions, we determined that several changes are needed to maintain equivalence with the HON. Two of our proposed changes are to the introductory text in § 63.1362(h)(2). In the first sentence, we are proposing a change to clarify that all of the restrictions on the calculation of credits in this paragraph apply only to Group 1 emission points. We are also proposing to add a requirement that the nominal efficiency for control devices used to control emissions vented from waste management units must exceed the 95 percent reduction requirement in § 63.139(c).

We are also proposing two changes to § 63.1362(h)(2)(iii). This paragraph specifies that wastewater may not be used to calculate emissions averaging credits if it is controlled either as specified in §§ 63.133 through 63.137 or with a design steam stripper, unless a higher nominal efficiency is assigned. This language inadvertently bars an owner or operator from calculating emissions averaging credits for all wastewater streams because the equations and procedures specified in § 63.150(h)(5) for calculating credits require the use of emission suppression controls in §§ 63.133 through 63.137 (i.e, § 63.1365(h)(2)(iii) prohibits a wastewater stream from being used to calculate emissions averaging credits if it is managed according to §§ 63.133 through 63.137, but § 63.150 requires management according to §§ 63.133 through 63.137 in order to calculate credits). To make the limitation on calculating credits consistent with the HON, we are proposing to change § 63.1365(h)(2)(iii) so that only wastewater streams that are both managed according to §§ 63.133 through 63.137 and treated using a design steam stripper may not be used to calculate emissions averaging credits. This way both conditions must be met (rather than either one), which is consistent with the reference control technology concept in the HON.

After making the changes described above for the settlement agreement, we realized that § 63.1365(h)(2) still differs from the HON in two ways. First, § 63.1365(h)(2) does not mention the requirement that the control technology must be approved for use in a manner that differs from the reference control technology. Therefore, we are considering adding language to § 63.1365(h)(2) to require that the control technology must be approved for use in a manner different from that otherwise required by the rule. Second, the proposed change to § 63.1365(h)(2)(iii) as described above addresses two components from the HON's definition of reference control technology for wastewater, but it does not address the requirement that emissions from waste management units, including the design steam stripper, be controlled by 95 percent. Without this component in § 63.1365(h)(2)(iii), no wastewater stream treated in a design steam stripper could be used to calculate credits. Therefore, we are considering adding a requirement that emissions from the waste management units, including the design steam stripper, must be controlled in a device that meets the requirements specified in § 63.139(c). We are requesting comment on the need for these two additional changes and suggestions for the best way to incorporate them.

We are proposing changes to make § 63.1365(h)(3) consistent with other proposed changes. As promulgated, § 63.1365(h)(3) specifies that process vent and storage vessel emissions controlled to 20 ppmv may not be used in any emissions averaging group. Since we are proposing to change the concentration limit to 50 ppmv for non-combustion devices used to comply with the alternative standard (see section II.B.5 of this preamble), we are also proposing to exclude process vent and storage vessel emission streams controlled to 50 ppmv from use in emissions averaging. To enhance understanding of the provision, we are also adding references to the applicable sections of the rule that specify the various concentration standards.

Finally, we are proposing to revise § 63.1362(h)(4) to clarify the requirements for Group 2 wastewater streams. As noted above, the procedures and equations in § 63.150 of the HON allow credits to be calculated for Group 2 wastewater streams only if they are managed in accordance with §§ 63.133 through 63.137. We are proposing to explicitly state this requirement in § 63.1362(h)(4) so that a reader does not need to examine all of the details in § 63.150 to reach the same conclusion.

9. Initial Compliance for Condensers

While reviewing the rule, we also determined that additional changes would clarify the initial compliance requirements for condensers. Section 63.1362(b)(12) specifies that the testing

requirements for condensers include calculating the necessary outlet gas temperature to meet the required percent reduction. We are proposing to delete this paragraph because calculating the temperature is not a testing requirement. The calculation is required as part of the design evaluation requirements specified in § 63.1365(a)(1)(iii) and the procedures for calculating controlled emissions from process vents in § 63.1365(c)(3)(iii).

Section 63.1365(c)(3)(iii) specifies initial compliance procedures for determining controlled emissions from condensers used to control process vents. We are proposing to edit this paragraph for clarity by specifying that the measured exhaust gas temperature must be compared to, and shown to be less than, the temperature used in the equation to calculate the emission rate. Although the proposed language is consistent with the settlement agreement, we are also considering deleting the requirement to measure the temperature as part of the initial compliance demonstration. This change would make this provision consistent with the proposed changes to the design evaluation requirement discussed in section II.A.5 of this preamble. Specifically, the owner or operator would be required to establish an appropriate temperature and calculate the controlled emissions using this temperature as part of the initial compliance determination; temperature measurement is required as part of the monitoring requirements to demonstrate ongoing compliance. We are requesting comment on whether initial compliance can be adequately demonstrated without actually measuring the exhaust gas temperature.

10. Initial Compliance if the Performance Test Is Conducted Over the Entire Batch Cycle

The June 23, 1999 rule specifies that performance tests to demonstrate initial compliance with a percent reduction or outlet concentration standard batch process vents are to be conducted under absolute or hypothetical peak-case conditions. In order to determine when those conditions occur, the rule also specifies that the owner or operator must develop an emissions profile. For absolute peak-case, the emissions profile consists of an evaluation of all emission episodes that could vent through a particular stack (controlled or uncontrolled) and the timing of those episodes. Petitioners have requested that we exempt an owner or operator from the requirement to develop an emissions profile if the performance test is conducted over the entire batch cycle.

We reviewed the initial compliance requirements and identified two situations where we believe that an emissions profile is not necessary if the emissions test is conducted over the entire batch cycle. In both cases, the control device must be dedicated to a single process at a given time; otherwise, without knowing how vents from multiple processes could be combined, testing over only one of the batch cycles would not clearly capture the absolute peak-case conditions for the control device. One case where an emissions profile would not be necessary is if all of the vents in a process are controlled to at least 98 percent because a test over the entire batch cycle would be certain to include the period of absolute peak-case conditions.

At first glance, it might appear that the absolute peak-case conditions would also be covered for any process where the sum of all process vents is controlled to greater than 90 percent. However, for such processes the owner or operator must first determine if any individual vents are required to be controlled to 98 percent. To do this, the owner or operator must calculate the uncontrolled emissions for all of the vents in the process. For a process with a dedicated control device, the list of uncontrolled emissions is also essentially equivalent to what would be required in an emissions profile (assuming there is no overlap of emissions from different vents within the process). Therefore, it would be misleading to specify that no emissions profile is required in such a situation.

The second situation where an emissions profile would be unnecessary is for a dedicated control device that is used to comply with the outlet concentration limit. As for the first case described above, the emission profile is not needed because, by definition, testing over the entire batch cycle includes the period of absolute peak-case conditions.

Therefore, we are proposing to exempt owners and operators from the requirement to conduct an emissions profile under the following two circumstances: (1) If all process vents for a process are controlled using a control device or series of control devices that reduce HAP emissions by 98 percent or more, no other emission streams are vented to the control device when it is used to control emissions from the subject process, and the performance test is conducted over the entire batch cycle; and (2) if a control device is used to comply with the outlet concentration limit for process vent emission streams from a single process, no other emission streams are vented to the control device while it is used to control emissions from the process, and the performance test is conducted over the entire batch cycle. If either of these conditions is met, the owner or operator would not be required to calculate and maintain records of the emissions from the process. Instead, they would be required to maintain a record showing how they determined that one of the conditions is met (see § 63.1367(b)(6)(ix)) and include this determination in the Notification of Compliance Status report in accordance with § 63.1368(f)(2).

We are also considering changes to § 63.1365(b)(11)(iv), which specifies test duration requirements for batch operations. This paragraph specifies that each run must occur ''over the same absolute or hypothetical peak-case conditions, as specified in paragraph (b)(11)(i) or (ii) of this section.'' This paragraph could be interpreted as limiting the test duration to the time period associated with the peak-case conditions (i.e., typically 1 hour, or up to a maximum of 8 hours). To demonstrate compliance with the percent reduction standard, we do not believe that the duration of test runs needs to be limited, as long as the test run does not exceed the duration of the averaging period used in demonstrating ongoing compliance. To align the test run duration with the averaging period, we are considering limiting the duration of test runs to 24 hours or the duration of the longest batch controlled by the control device, whichever is shorter. A consequence of this limitation is that an owner or operator would not be able to take advantage of the proposed exemption from the requirement to develop an emission profile, as described above, for batch cycles that exceed 24 hours. On the other hand, for tests to demonstrate compliance with the outlet concentration limit, we are considering limiting the duration of test runs to the applicable peak-case conditions, as in the original interpretation, because of the potential that a large number of low concentrations could be averaged in with high concentrations for a short period, thereby rendering meaningless the concept of demonstrating compliance over peak-case conditions. Therefore, we are requesting comment on how to limit the duration of test runs, especially for tests used to demonstrate compliance with the outlet concentration limit.

11. Testing To Determine Controlled Emissions for Large Control Devices

Section § 63.1365(c)(3)(ii)(A) specifies some of the performance test requirements related to determining controlled emissions for large control devices. We are proposing to delete references in this paragraph to testing at the outlet of control devices that are used to comply with an outlet concentration limit. The purpose of this paragraph is to specify procedures for performance tests conducted to demonstrate compliance with the percent reduction standards. Procedures for demonstrating compliance with the outlet concentration limits are specified in § 63.1365(a)(6) and (c)(1)(v).

Although the proposed language is consistent with the settlement agreement, we believe additional editing to condense it would make it easier to read and understand. We believe the following sentence could replace the first three sentences in § 63.1365(c)(3)(ii)(A) with no change in meaning: ''Performance test measurements shall be conducted at both the inlet and outlet of the control device for TOC, total organic HAP, and total HCl and chlorine, as applicable, using the test methods and procedures described in paragraph (b) of this section.'' We are requesting comment on any differences in meaning between this statement and the proposed language in § 63.1365(c)(3)(ii)(A).

12. Monitoring Requirements for Alternative Standard

To demonstrate continuous compliance with the alternative standard in the June 23, 1999 rule, an owner or operator must correct the outlet concentrations from combustion devices to 3 percent oxygen if supplemental gases are used. This type of concentration correction accounts for dilution, and it has been included in numerous rules beginning with the new source performance standard (NSPS) for synthetic organic chemical manufacturing industry (SOCMI) unit operations (for a summary, see 65 FR 19160, April 10, 2000). For the oxygen-deficient emission streams, in many industries the potential for dilution is from excessive combustion air; if the proper amount of supplemental combustion air is added, the outlet stream would contain approximately 3 percent oxygen. Many batch PAI processes, however, have high oxygen contents, either naturally or because supplemental gases are added in the manifold prior to the control device for design or safety purposes, not to promote good combustion. The oxygen correction requirement has the effect of lowering the 20 ppmv compliance level for such streams, perhaps significantly.

As discussed above in this preamble and in the preamble to the PAI promulgated rule (64 FR 33575, June 23, 1999), the alternative standard offers a way to streamline compliance procedures for both affected sources and implementing agencies without sacrificing emissions control. Therefore, we want to encourage rather than restrict its use. To ensure that the alternative standard remains viable, we are proposing to add a monitoring option that was introduced in the NESHAP for the pharmaceuticals industry, another industry that has batch processes and emission streams with high oxygen levels, perhaps even more than the PAI industry. The option would allow the owner or operator to monitor combustion devices for good operating practices. A properly operated combustion device that is meeting the alternative standard's 20 ppmv concentration limit also has an adequate residence time and combustion chamber temperature. We believe that, like correcting to 3 percent oxygen, a requirement to maintain these parameters above specified levels in conjunction with meeting the 20 ppmv limit would provide an economic incentive to minimize the amount of supplemental gas added prior to the combustion device. Furthermore, for most streams, it would also result in control at least equivalent to the otherwise applicable percent reduction requirements.

Therefore, we are proposing two sets of parameter levels as alternatives to correcting for dilution when supplemental gases are used in combustion devices. If the owner or operator complies with the alternative standard instead of a percent reduction requirement of 95 percent or less (e.g., for storage tanks and some process vents), the owner or operator would be required to monitor for a minimum residence time of 0.5 second and a minimum combustion chamber temperature of 760°C. These values are consistent with the parameters specified in § 63.139(c) of the HON for controlling emissions vented from waste management units. If the owner or operator complies with the alternative standard instead of a percent reduction requirement of 98 percent or less, the owner or operator would be required to monitor for a minimum residence time of 0.75 second and a minimum combustion chamber temperature of 816°C. Based on a considerable amount of data, we have concluded that properly designed and operated incinerators reduce emissions by 98 percent if they maintain these residence times and temperatures.

After completing the settlement agreement, we realized that the agreed upon language contains an internal conflict. Specifically, the phrase ''98 percent or less'' overlaps with the phrase ''95 percent or less.'' Since there are no requirements to control in the range greater than 95 percent to less than 98 percent, we believe the best way to resolve the conflict is to change ''98 percent or less'' to ''98 percent.'' If we receive no negative comments on this approach, we will make the change in the final amendments.

In addition to the above change in monitoring for combustion devices, we are also proposing to clarify the monitoring requirements for non-combustion devices that are used to comply with the alternative standard. According to § 63.1366(b)(5), if supplemental gases are introduced before the control device, the owner or operator must correct the outlet concentration as specified in § 63.1365(a)(7). For non-combustion devices, this means evaluating the supplemental and total gas flow rates and calculating a correction factor as specified in equation 8 of subpart MMM, but the rule does not clearly specify when this evaluation is to occur as part of the monitoring effort. To correct this oversight, we are proposing to add a requirement, in § 63.1366(b)(5)(ii)(B), to reevaluate the flow rates and the correction factor each time a different operating scenario is implemented that vents to the subject control device. In addition, we are proposing that the initial procedure used to evaluate the flow rates and the resulting correction factor be included in the Notification of Compliance Status report, and that subsequent reevaluations and revised correction factors be included in the Periodic report that is submitted after the change in the operating scenarios.

13. Definitions

We are proposing technical corrections to the definitions of ''process vent,'' ''Group 1 wastewater stream,'' ''recovery device,'' ''wastewater,'' and ''supplemental gas.''

The promulgated rule, defines a ''process vent'' as an undiluted and uncontrolled emission stream that contains at least 20 ppmv HAP. We are proposing to change this concentration cutoff to 50 ppmv to be consistent with the MACT floor analysis and the proposed change in the control level for the alternative standard (see section II.B.4 of this preamble).

In the promulgated rule, a maintenance wastewater stream that contains 5.3 megagrams (Mg) of HAP per discharge event is considered to be a ''Group 1 wastewater stream.'' We did not intend to require an evaluation of all HAP in the determination of group status for maintenance wastewater streams; we meant the same HAP that are used to determine the group status for process wastewater streams. Therefore, we are proposing to change the definition to specify that a maintenance wastewater stream is a Group 1 wastewater stream if it contains 5.3 Mg of compounds in Table 9 of subpart G of part 63 per discharge event. We are proposing an identical change to correct the definition of ''wastewater.''

The definition of the term ''recovery device'' in the promulgated rule specifies that a decanter and other equipment, based on the operating principle of gravity separation, may be a recovery device only if they receive two-phase liquid streams. To address the possibility that some process streams contain more than two liquid phases, we are proposing to replace the term ''two-phase'' with the term ''multi-phase.''

Finally, to be consistent with the proposed change in the concentration cutoff in the definition of ''process vent,'' as described above, we are also proposing to revise the concentration cutoff in the definition of ''supplemental gas.''

14. References

In § 63.1362(c)(2)(iv), we are proposing to replace the incorrect reference to paragraph (k) with the correct reference to paragraph (j). In § 63.1365(a)(2) we are proposing to replace the incorrect reference to § 63.1363(d) with the correct reference to § 63.1362(d).

C. Other Amendments To Correct the Rule

In addition to the proposed changes to address issues raised by petitioners, we are proposing other changes to clarify requirements, correct errors, and ensure that the rule is implemented as intended.

1. Coal Tar Distillation

We are proposing to exempt coal tar distillation from the requirements of subpart MMM. Based on recent discussions with the industry, we understand that one or more of the distillate fractions from coal tar distillation is often used to produce creosote, which is a PAI. The proposed changes described below to the definition of ''intermediate'' clarify that the distillate fraction would be an intermediate. When more than 50 percent of the distillate fraction is used in the production of creosote, the distillate is also an integral intermediate. Thus, in the absence of any other changes to the rule, coal tar distillation would be a PAI process unit subject to the rule. Typically, this is our intended result for integral intermediate processes that are not already subject to another MACT rule, but coal tar distillation is different.

The Background Information Document for the HON (40 CFR part 63, subpart G) illustrates a hierarchy of chemical production processes (EPA–453/D–92–016a, November 1992). This hierarchy is based on a listing of chemicals first developed in an October 1983 EPA report titled ''Industrial Organic Chemical Use Trees.'' The top level of the hierarchy consists of petroleum refineries, natural gas plants, and coal tar distillation plants which supply the basic chemicals used as raw materials in the synthetic organic chemical manufacturing industry. Below this level are high volume intermediates and lower volume finished chemicals. Production of many of the high volume intermediates (and some finished products) is subject to the HON. Other MACT rules cover production primarily of lower level chemicals in the hierarchy. The soon to be proposed MON, however, is specifically intended to apply to chemical manufacturing processes at all levels in the hierarchy that are not subject to any other MACT rule. Therefore, since coal tar distillation is at the top of the hierarchy, we believe that it should be excluded from the requirements of the PAI rule and be subject to the MON.

2. Intermediates

The promulgated rule defines an intermediate as ''an organic compound that is produced by chemical reaction and that is further processed or modified in one or more additional chemical reaction steps to produce another intermediate or a PAI.'' This definition limits intermediates to only those compounds that are produced by chemical synthesis. At the time this definition was written, we were considering a series of extractions to be a single process. We now realize that individual extractions in the series may more properly be considered individual processes, particularly if the material that does not ultimately get processed into a PAI is also a useful intended product (or is processed into one). Therefore, we are proposing to revise the definition to read as follows: ''an intermediate means an organic material that is further processed or modified to ultimately produce a PAI.''

3. Offsite Discharge of Wastewater

We are making several technical corrections to the requirements specified in § 63.1362(d)(14) because the current language does not convey our intent. As promulgated, this paragraph specifies requirements for all wastewater streams that are sent offsite for biological treatment. Our intent, however, was to mirror an option in § 63.1256(a)(5)(ii)(D) of the Pharmaceuticals NESHAP that provides compliance alternatives to suppression requirements.

To achieve our intent, we are proposing five changes to § 63.1363(d)(14). First, we are proposing to clarify that it is an option to the otherwise applicable requirements. Second, we are proposing to specify that the option applies only to Group 1 wastewater streams (and residuals removed from Group 1 wastewater streams), except that it also applies to Group 2 wastewater streams if the offsite treatment facility complies with the 95 percent mass reduction option. This change is needed to be consistent with the onsite requirements (i.e., Group 2 wastewater streams are not subject to management and treatment requirements onsite, except when complying with the 95 percent required mass reduction option). Third, the current language limits the option to wastewater discharged only to offsite treatment. We are proposing to specify that the option also applies to wastewater discharged to onsite treatment not owned or operated by the source. This change would make the option consistent with other rules (e.g., § 63.132(g) of the HON and § 63.1256(a)(5)(ii)(D) of the Pharmaceuticals NESHAP). Fourth, the current language specifies that the 5 percent emission limitation applies to HAP on list 1 in Table 36 to subpart G of the HON. We are proposing to revise the provision to require the 5 percent demonstration for soluble HAP listed in Table 3 to subpart GGG because these are the HAP for which the option was developed. Finally, the current language mistakenly applies regardless of the HAP in the wastewater stream, whereas the option in subpart GGG is limited to wastewater streams (and residuals) that contain less than 50 ppmw of partially soluble HAP. This limitation is critical because the option is expected to achieve control equivalent to that achieved by complying with § 63.132(g) only for soluble HAP. To correct this oversight, we are proposing to specify that the option applies only to Group 1

wastewater (or residuals from Group 1 streams) that contain less than 50 ppmw of partially soluble HAP (i.e., the HAP compounds listed in Table 2 of subpart GGG).

4. Requirements for Scrubber Effluent

Under the HON, control devices are considered to be part of the chemical manufacturing process unit. Therefore, effluent from a scrubber is considered wastewater if it is discarded and meets the flow rate and HAP concentration cutoffs in the definition of wastewater. If the effluent also meets the definition of a Group 1 wastewater stream, it is subject to the wastewater standards. This approach in the HON ensures that pollutants removed from an emission stream are destroyed rather than simply transferred between media.

In subpart MMM, our intent was to have scrubber effluent be subject to the same requirements as in the HON. However, because we did not include control devices in the definition of a PAI process unit, the rule is silent on how to handle scrubber effluent. To correct this oversight, we are proposing to revise the definition of wastewater to include effluent from a scrubber used to control emissions from a PAI process. We decided not to change the definition of ''PAI process unit'' to include control devices because we do not want control devices to be included in reconstruction analyses. If a PAI process unit includes control devices, the control devices become part of the affected source and would be included in reconstruction analyses.

5. Engineering Assessments

To comply with most formats of the process vent standards, § 63.1365(c)(1) requires an owner or operator to determine uncontrolled emissions in accordance with § 63.1365(c)(2). This paragraph requires the owner or operator to estimate emissions from certain batch emission episodes by using specified equations in the rule. For other types of emission episodes, including those from continuous operations, the owner or operator must estimate emissions by conducting an engineering assessment. A variety of techniques may be used in an engineering assessment, including emissions tests. Typically, all data and procedures used in an engineering assessment must be included in the Precompliance plan. The only specified exception to this reporting requirement is when more than a 20 percent difference exists between test data and emissions calculated using the equations; such a difference suggests that the equations are not applicable for the specific application.

We believe the language used in the engineering assessment provisions has two shortcomings. First, the requirement to submit test results as part of the Precompliance plan was intended to apply only to previously conducted tests. The results from a new test also may be used to determine uncontrolled emissions as part of an engineering assessment, but there is no need to submit the results in the Precompliance plan because a notification of the test and a test plan must be submitted 60 days prior to the test in accordance with § 63.1368(m). Second, because emissions from continuous operations are constant over time, we do not need to review the results from a previous test of continuous operations prior to the compliance date. Provided the test was conducted in accordance with the test methods and procedures specified in § 63.1365(b), the results would be acceptable for demonstrating uncontrolled emission levels. Thus, the results could be submitted in the Notification of Compliance Status report rather than the Precompliance plan.

To clarify these points, we are proposing to revise § 63.1365(c)(2)(ii)(A). The revised paragraph specifies that, for vents with variable emission stream characteristics, engineering assessments that are based on previous tests must be included in the Precompliance plan, except as currently specified in the rule for situations where tests for batch emission episodes differ from the estimated emissions by more than 20 percent. Engineering assessments based on new tests, and engineering assessments for vents without variable emission stream characteristics (i.e., continuous operations) based on previous tests, may be submitted in the Notification of Compliance Status report.

6. Leak Inspections for Closed-Vent Systems

The rule requires leak inspections for closed-vent systems that are used to convey vent streams from waste management units and equipment leaks. For waste management units, the applicable requirements are specified in § 63.148 of the HON because the provisions in that section are referenced from §§ 63.133 through 63.137, and these sections are referenced from § 63.1362(d). For equipment leaks, the applicable requirements are specified in § 63.172 of the HON, which is referenced from § 63.1363(b)(3). Closed-vent systems used to convey emissions from process vents and storage vessels are subject only to the requirements to prevent flow through bypass lines that are specified in § 63.1362(j).

We are proposing to require identical leak inspections for all closed-vent systems that convey emissions from process vents, storage vessels, or waste managements units. The proposed requirements are consistent with the requirements in § 63.148 (i.e., annual sensory or instrument inspections, depending on the type of closed-vent system construction). These requirements are needed for all closed-vent systems to ensure that the required emission reductions are being achieved. Adding these requirements will also make subpart MMM consistent with other MACT rules, which may reduce the chance of inadvertent compliance errors at facilities subject to multiple MACT rules. However, rather than reference § 63.148 from subpart MMM and specify all of the exceptions to subsequent references, we have decided to incorporate the provisions from § 63.148 in the applicable sections of subpart MMM. Inspection requirements would be added in § 63.1366(h), recordkeeping requirements in § 63.1367(f), and reporting requirements in § 63.1368(g)(2)(iii) and (xi). In addition, we are proposing to add a statement in § 63.1362(d)(16) specifying the applicable provisions in subpart MMM that take the place of references to § 63.148 from §§ 63.133 through 63.137.

7. Wastewater Test Methods

To be consistent with other recent rules, we are proposing to add a provision to § 63.1365(b)(8) that would allow an owner or operator to analyze wastewater using Method 8260 or Method 8270 in ''Test Methods for Evaluating Solid Waste, Physical/Chemical Methods'' (EPA Publication No. SW–846, Third Edition, September 1986, as amended by Update I, November 15, 1992).

8. Notification of Process Changes

Section 63.1368(h)(1) specifies that a quarterly report is required whenever a process change is made. Our intent, both in this rule and in the Pharmaceutical Production NESHAP (subpart GGG), is that a process change means the startup of a new operating scenario. Both rules require the owner or operator to prepare operating scenarios that describe the equipment, emissions, controls, and monitoring for each process. A new operating scenario must be prepared each time the owner or operator makes a change to produce a new product. A new operating scenario must also be prepared for any

change to an existing process that is not within the scope of a current operating scenario. Therefore, to clarify the meaning of the term ''process change,'' we are proposing to add a statement in § 63.1368(h) specifying that, for reporting purposes, a process change means the startup of a new process. We are also proposing to require this notification in the next Periodic report (i.e., the Periodic report filed following the change) rather than in quarterly reports because we believe that separate and more frequent reporting of this information is an unnecessary burden.

9. Technical Corrections

We are proposing numerous technical corrections throughout the rule to improve consistency, correct terminology and references, and clarify our intent.

a. *Definitions.* We are proposing to revise the definition of ''consumption'' to clarify requirements for the pollution prevention alternative. Currently, the rule specifies that compliance with pollution prevention is not allowed for HAP generated in the process if the HAP are not part of the production-indexed consumption factor. However, the rule does not explain how generated HAP are to be included in the consumption factor. In the preamble to the promulgated rule (64 FR 33576), we indicated our intent to revise the definition of ''consumption'' to consider quantities of HAP that are generated by the process as well as those that are brought into the process, provided the HAP generated in the process are the same as the HAP added to the process. Due to an oversight, this change was not made in the promulgated rule. Therefore, we are proposing to make the change now.

The definition of ''PAI process unit'' states that formulation of pesticide products is not considered part of a PAI process unit. To clarify the rule, we are proposing to define formulation of pesticide products as the mixing, blending, or dilution of a PAI with one or more other PAI or inert ingredients. These are operations that occur after a PAI has been produced and purified. The formulation may be performed by the PAI producer or by others. Implicit in the proposed definition is our assumption that no PAI is manufactured by blending another PAI with other materials. If this assumption is false, we would reconsider the proposed definition. Therefore, we are requesting information about any PAI production process that consists of blending one PAI with other materials to produce another PAI, and we are requesting any suggestions for clarifying the definition of formulation.

We are proposing minor corrections to several additional terms. In the definition of ''Group 1 storage vessel,'' we are proposing editing changes to clarify the two sets of cutoffs for storage vessels at new affected sources. In the definition of ''process vent,'' we are proposing to replace the incorrect reference to Method 1818 with the correct reference to Method 18. In the definition of ''PAI process unit,'' we are proposing to replace the incorrect reference to § 63.1362(l) with the correct reference to § 63.1362(k).

b. *Equipment Leak Requirements.* We are proposing numerous changes to clarify and correct the equipment leak provisions in § 63.1363. Most of the changes are discussed in table 1 below. Changes to the procedures for designating equipment as unsafe-to-monitor, difficult-to-monitor, and inaccessible in § 63.1363(f) are discussed in the following paragraphs because they are too extensive to include in the table. The proposed changes are intended to clarify the requirements and make them consistent with the HON and other rules.

One change is intended to address a difference in terminology between § 63.1363(f) and the referenced requirements in § 63.172 of the HON for closed-vent systems. According to § 63.1363(f)(2)(i), an owner or operator may designate a closed-vent system as unsafe-to-monitor if monitoring personnel would be exposed to an immediate danger as a consequence of complying with the monitoring requirements in § 63.1363(f)(1)(iii) and, by extension, § 63.172. This provision may cause confusion because, strictly speaking, § 63.172 contains inspection requirements, not monitoring requirements. To eliminate this potential confusion, we are proposing to revise § 63.1363(f)(2)(i) so that it refers to both inspection requirements for closed-vent systems and monitoring requirements for other types of equipment. We are also proposing to make a similar change in § 63.1363(f)(3)(i) for difficult-to-monitor equipment.

Although equipment subject to § 63.1363(f) is exempt from the standard monitoring requirements, monitoring is still required, typically on a less frequent schedule. The rule requires the owner or operator to prepare a written plan that specifies the schedule to be followed. The rule also specifies that unsafe-to-monitor equipment must be monitored no more frequently than the periodic monitoring schedule otherwise applicable, and difficult-to-monitor equipment must be monitored at least once per year. We are proposing to clarify that the applicable schedule for unsafe-to-monitor equipment is the one that applies to the group of processes in which the equipment is located. The standard monitoring schedule for valves might be less frequent than once per year. Therefore, we are also proposing to allow monitoring of difficult-to-monitor equipment on the periodic monitoring schedule otherwise applicable to the group of processes in which the equipment is located. To determine these schedules, the equipment must be assigned to a group of processes; therefore, we are proposing to add a statement requiring all equipment to be assigned to a group of processes (but the equipment need not all be assigned to the same group of processes). A final proposed change to the monitoring schedule provisions is to specify that monitoring of parts of closed-vent systems that are designated as unsafe-to-monitor be no more frequent than annually, and parts of closed-vent systems that are difficult-to-monitor must be inspected at least once every 5 years.

Several proposed changes address the types of equipment and percentage of equipment that may be designated as unsafe-to-monitor, difficult-to-monitor, or inaccessible. Currently, any type of equipment may be designated in any of the three categories. We are proposing to specify the specific types of equipment that can receive each designation. For example, only connectors can be designated as inaccessible, but connectors cannot be designated as difficult-to-monitor. In addition, the rule currently specifies that no more than 3 percent of each type of equipment at new sources may be designated as difficult-to-monitor or inaccessible. We are proposing to specify that the restriction for difficult-to-monitor equipment applies only to valves and that the restriction for inaccessible equipment applies only to connectors. Finally, we are proposing to delete the statements that specify that any equipment at an existing source may be designated as difficult-to-monitor or inaccessible. These statements are unnecessary because one reaches the same conclusion when the rule is silent on this point.

Two proposed changes would add provisions that were inadvertently left out of the rule. One change is to add a criterion for designating a connector as inaccessible. The other change is to add a statement specifying that inaccessible, ceramic, and ceramic-lined connectors are exempt from the recordkeeping and reporting requirements in the rule.

c. *Table 4 to Subpart MMM.* This table specifies control requirements for items of equipment that are part of open systems for certain liquid streams within PAI process units. We are proposing three changes to make the rule internally consistent, clarify our intent, and eliminate overlapping requirements.

The table includes numerous references to § 63.1256(h)(2) of subpart GGG. We are proposing to replace these references with references to § 63.139(c) of the HON to make the control requirements for the items of equipment in open systems consistent with the requirements specified in § 63.1362(d) for equipment used to manage and treat wastewater streams.

For manholes, we are proposing to delete the option to vent emissions to a fuel gas system. This option should not have been included because we did not include requirements specific to fuel gas systems anywhere in the rule. Our intent is that fuel gas systems are a form of control device, and the requirements for control devices apply.

Finally, we are proposing to change the control requirements for tanks used to manage liquid streams in open systems. Table 4 currently requires control consistent with the control required for wastewater tanks (i.e., installation of a fixed roof and, if certain conditions are met, vent emissions to a control device). However, because the liquid streams managed in such tanks are also process streams, the tanks are process tanks. A vent on a process tank with a fixed roof is also subject to the requirements for process vents. To eliminate this overlap, we are proposing to replace the vent stream control requirements in Table 4 with a statement that vents on these tanks are process vents.

d. *Miscellaneous Corrections.* We are proposing several changes throughout subpart MMM to correct referencing and typesetting errors, clarify terminology, improve consistency within subpart MMM and with other rules, clarify intent, and eliminate overlapping requirements. These changes are described in Table 1 in this preamble.

TABLE 1.—TECHNICAL CORRECTIONS TO SUBPART MMM

Subpart MMM	Description of proposed correction
§ 63.1362(b)(5)(ii)	Paragraphs (b)(5)(i) through (iii) specify the required HCl and chlorine emission reductions for a new source. The requirements differ depending on the uncontrolled emissions from the process. Currently, paragraph (ii) applies to processes with emissions ''greater than or equal to 6.8 Mg/yr and less than 191 Mg/yr.'' To eliminate both an overlap between paragraphs (i) and (ii) and a gap between paragraphs (ii) and (iii), we are proposing to change paragraph (ii) so that it applies to processes with uncontrolled emissions ''greater than 6.8 Mg/yr and less than or equal to 191 Mg/yr.''
§ 63.1362(b)(6)	We are proposing to delete the reference to paragraph (b)(3)(iii) because there is no such paragraph.
§ 63.1362(d)	We are proposing to require compliance with §§ 63.132 through 63.147 instead of §§ 63.131 through 63.147 because § 63.131 is now a reserved section.
§ 63.1362(d)(2)	We are proposing to replace the reference to §§ 63.132 through 63.148 with a reference to §§ 63.132 through 63.147 because § 63.148 is not part of the wastewater provisions. This change would make paragraph (d)(2) consistent with paragraph (d) introductory text. We are also proposing to delete the exception specified in subparagraph (d)(2)(v) because the reference is not applicable for wastewater tanks.
§ 63.1362(h)(3)	Because of the proposed change to a concentration limit of 50 ppmv when non-combustion devices are used to comply with the alternative standard (see section II.B.5), we are also proposing to specify that process vents and storage vessels controlled to 50 ppmv may not be used in emissions averaging.
§ 63.1363	Throughout § 63.1363 we have used the terms ''group of process units'' and ''group of processes'' interchangeably. This could be a source of confusion because only the term ''group of processes'' is defined in the rule (in § 63.1363(b)). Therefore, we are proposing to replace every use of the term ''group of process units'' with the term ''group of processes.''
§ 63.1363(a)(1)	We are proposing to edit this paragraph to clarify that the closed-vent systems and control devices that are subject to § 63.1363 are only those closed-vent systems and control devices that are used to control emissions from equipment leaks.
§ 63.1363(a)(10)(ii) and (iii)	The amended HON and § 63.1363(b)(3)(iii) of subpart MMM require monitoring outside of the regularly scheduled periodic monitoring only as an option in § 63.174(c)(1)(i) for connectors that are reconnected after being opened. Therefore, we are proposing to replace the reference to § 63.174(e) with a reference to § 63.174(c)(1)(i).
§ 63.1363(b)(3)(iii)	One change is to simplify the references by specifying in one sentence that all of the paragraphs in § 63.174(b)(3) do not apply and are replaced by paragraphs in § 63.1363(b)(3)(iii); all of the monitoring requirements would be contained within § 63.1363(b)(3)(iii). A second proposed change is to specify that the monitoring frequency must be increased to once every 2 years if at least 0.5 percent but less than 1.0 percent of the connectors monitored in an 8-yr monitoring period are leaking; the proposed change is consistent with the requirements for 4-yr monitoring periods. A third proposed change is to clarify that § 63.174(h), the requirements for inaccessible connectors, does not apply and that the owner or operator shall instead comply with § 63.1363(f).
§ 63.1363(b)(3)(iv)	We are proposing to specify in § 63.1363(b)(3)(iv) that, for pumps, the phrase ''at the frequencies specified in Table 1 of this subpart'' in § 63.178(c)(3)(iii) shall mean ''quarterly'' for the purposes of subpart MMM (i.e., even if a pump is operated less than full-time, it must be monitored at least once in every quarter that it operates).
§ 63.1363(b)(3)(vi)	To clarify the requirements for PAI owners and operators, we are proposing to add a statement in § 63.1363(b)(3)(vi) specifying that when various sections in subpart H reference other sections in subpart H, the references shall be to the sections as modified in § 63.1363.
§ 63.1363(c)(2)(i)	We are proposing to add compliance with § 63.178 to the list of exceptions to clarify that the quarterly monitoring is not required if the owner or operator complies with the pressure testing option of the alternative means of emission limitation in § 63.178.

TABLE 1.—TECHNICAL CORRECTIONS TO SUBPART MMM—Continued

Subpart MMM	Description of proposed correction
§ 63.1363(c)(2)(iii) and (c)(5)(iv)	We are proposing to revise both paragraphs to specify that if there are visual indications of liquids dripping during a weekly visual inspection, then you must either monitor using EPA Method 21 or eliminate the visual indication of liquids dripping. These changes also would make the paragraphs consistent with the Consolidated Federal Air Rule (CAR) (40 CFR 65.107, subpart F).
§ 63.1363(c)(4)(ii)	We are proposing to revise the paragraph to specify that quarterly monitoring may be reinstated after the 1-year rolling average again indicates that leaking pumps constitute less than 10 percent of the pumps in a group of processes (or fewer than 3 pumps in a group of processes with fewer than 30 pumps).
§ 63.1363(c)(3)(i) and (c)(5)(vi)	We are proposing to specify the leak repair requirements only once, in paragraph (c)(3). We are also proposing editorial changes to specify that when a leak is detected, it must be repaired as specified in paragraph (c)(3).
§ 63.1363(c)(6)	This paragraph specifies that pumps and agitators without an externally actuated shaft penetrating the pump or agitator housing are exempt from all of the monitoring and repair provisions except for the visual inspections. We are proposing to delete this exception because such pumps and agitators have no seals to inspect for leaks.
§ 63.1363(e)(7)(iii)	We are proposing to add a statement to clarify that the monitoring required by this paragraph is in addition to the monitoring required to satisfy the definitions of ''repaired'' and ''first attempt at repair.'' In addition, we are proposing to add subparagraphs that specify how to conduct the monitoring, that regularly scheduled periodic monitoring may be used to satisfy this requirement, and procedures to follow to determine if the valve must be counted as leaking for purposes of calculating the percent leakers. This language was inadvertently left out of the rule published on June 23, 1999; including it would make this rule consistent with the HON and the CAR (40 CFR 63.168(f) and 40 CFR 65.106(d), respectively).
§ 63.1363(e)(9)	This paragraph specifies that monthly monitoring is not required if a facility has fewer than 250 valves. Instead, monitoring is required quarterly, or less frequently if the percent leaking valves are below specified limits. However, the only less frequent options that are actually specified are the semiannual and biennial options; we inadvertently neglected to include the annual option. Therefore, we are proposing to correct this oversight.
§ 63.1363(g)(2)(vi)	We are proposing to delete the requirement to maintain a list of equipment that is designated as inaccessible so that this paragraph is consistent with one of the proposed changes to § 63.1363(f); and to delete the requirement to maintain a list of equipment for which the owner or operator invokes the delay of repair provisions when repair personnel would be exposed to an immediate danger if attempting to repair without a process shutdown. This requirement is unnecessary because it is redundant with the requirement in § 63.1363(g)(4)(v) to record the reason for any delay of repair.
§ 63.1365(a)(2)	As a result of the proposed change to the standards, compliance based on total organic HAP would no longer be limited to the percent reduction format. Therefore, we are proposing to delete the reference to the ''percent reduction format'' from the third sentence in this paragraph. Our second proposed change is to replace the incorrect reference to § 63.1363(d) with the correct reference to § 63.1362(d).
§ 63.1365(b)(11)(iii)(A)	We are proposing to replace the incorrect reference to paragraph (b)(1)(i)(B) with the correct reference to paragraph (b)(11)(i)(B).
§ 63.1365(c)(2)(i)(C)	We are proposing to correct the definitions for the terms ''P_j'' and ''m'' that are used in Equation 10 by replacing the phrase ''condensable VOC compounds'' with the phrase ''condensable compounds.''
§ 63.1365(c)(2)(i)(D)(*4*)(*i*)	We are proposing to correct Equation 15 by replacing the terms ''$P_{j,\ 1}$'' and ''$P_{j,\ 2}$'' with the terms ''$P_{i,\ 1}$'' and ''$P_{i,\ 2}$.'' We are also proposing to correct the definition of the term ''m'' by specifying that it counts the number of HAP compounds in the emission stream, not the number of condensable VOC.
§ 63.1365(c)(2)(i)(D)(*4*)(*iii*)	In the list of definitions of terms for Equation 17, we are proposing to correct a typographical error; the term ''$_{HAP,1}$'' should read ''$n_{HAP,1}$.''
§ 63.1365(c)(2)(i)(E)(*3*)	We are proposing to replace the upper case mole fraction terms with lower case terms; to define the mole fraction term as the liquid phase mole fraction, not the mole fraction in the emission stream; and we are proposing to replace the phrase ''condensable VOC'' with the phrase ''condensable compound'' in the definitions of the terms ''P_{j*},'' ''x_j,'' and ''m.''
§ 63.1365(c)(2)(i)(E)(*4*)	We are proposing to move the Equation 23 to its proper location before the definitions list.
§ 63.1365(c)(2)(i)(F)	We are proposing to correct Equation 26 by replacing the term ''MW_s'' with the term ''MW_{HAP}'' to be consistent with the term in the list of definitions of terms. We are also proposing to correct the definitions of 5the terms ''P_j'' and ''m'' by replacing the phrase ''condensable VOC'' with the phrase ''condensable compounds.''
§ 63.1365(d)(3)(ii)	This paragraph specifies that initial compliance for storage vessels equipped with floating roofs is demonstrated by complying with procedures specified in § 63.120, except as specified in § 63.1362(d)(2)(i), (iv), and (v). Because we are proposing to delete one of the referenced paragraphs (see discussion earlier in this table), we are proposing to state the exceptions in subparagraphs to this paragraph.
§ 63.1365(g)	We are proposing to replace several incorrect references to § 63.1362(h) and (i) with the correct reference to § 63.1362(g).
§ 63.1367(a)(3)	We are proposing to replace the incorrect reference to paragraph (b)(3)(i) with the correct reference to paragraph (a)(3)(i).

TABLE 1.—TECHNICAL CORRECTIONS TO SUBPART MMM—Continued

Subpart MMM	Description of proposed correction
§ 63.1367(a)(3)(i)	We are proposing to clarify that the owner or operator must record the occurrence and duration of each malfunction of process operations, consistent with the requirements in § 63.6(e)(3)(iii) of the General Provisions to 40 CFR part 63.
§ 63.1367(b)(4)	We are proposing to specify that the records must be updated daily to be consistent with the monitoring requirements specified in § 63.1366(c).
§ 63.1367(b)(7)	We are proposing to revise this paragraph to require a log or schedule of operating scenarios that is updated daily or, at a minimum, each time a different operating scenario takes effect.
§ 63.1367(b)(10)	Table 1 in the rule specifies that § 63.10(b)(2) does not apply to subpart MMM because we have specified applicable records in § 63.1367. One of the requirements in § 63.10(b)(2) is to record all maintenance performed on the air pollution control equipment. We neglected to include this requirement in § 63.1367, but these are important records that we should have required. Therefore, we are proposing to add this paragraph requiring records of this information.
§ 63.1367(b)(11)	We are proposing to add this paragraph requiring records of the results of each inspection and seal gap measurement in accordance with § 63.123(c) through (e). This change would make the recordkeeping requirements consistent with the HON and numerous other rules.
§ 63.1368(e)(4)	We are proposing to replace the incorrect reference to § 63.1362(i) with the correct reference to § 63.1362(g). We are also proposing to replace the incorrect reference to § 63.1365(g)(3) with the correct reference to § 63.1365(g)(1).
§ 63.1368(g)(1)	We are proposing to clarify that the first report is due no later than 240 days after the Notification of Compliance Status report is due, and that subsequent reports are due no later than 60 days after the end of the applicable reporting period.
§ 63.1368(g)(2)(xii)	We are proposing to add this paragraph that requires reporting consistent with § 63.122(d) through (f) of the HON. The referenced paragraphs require that the results of inspections that detected a failure, or seal gap measurements that exceed required limits, be submitted in Periodic reports.
§ 63.1368(m)	We are proposing to replace the incorrect reference to § 63.1365(b)(10)(ii) with the correct reference to § 63.1365(b)(11)(iii).
Table 1 to subpart MMM	Table 1 to subpart MMM currently specifies that § 63.9(j) does not apply for changes related to compliance for equipment leaks. We are proposing to specify that § 63.9(j) does not apply at all for the purposes of subpart MMM because § 63.1368(h) specifies procedures for notification of changes.

III. What Are the Administrative Requirements for the Proposed Amendments?

A. Executive Order 12866, Regulatory Planning and Review

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

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

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

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

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

It has been determined that these proposed amendments do not constitute a ''significant regulatory action'' under the terms of Executive Order 12866. Consequently, this action was not subject to OMB review.

B. Executive Order 13132, Federalism

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

Today's proposed amendments do not have federalism implications. They will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132, because State and local governments do not own or operate any sources that would be subject to this rule. Thus, Executive Order 13132 does not apply to today's action.

In the spirit of Executive Order 13132, and consistent with EPA policy to promote communications between EPA and State and local governments, EPA specifically solicits comment on these proposed amendments from State and local officials.

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

Executive Order 13175, entitled ''Consultation and Coordination with Indian Tribal Governments'' (65 FR 67249, November 9, 2000), requires EPA to develop an accountable process to ensure ''meaningful and timely input by tribal officials in the development of regulatory policies that have tribal implications.''

The final rule does not have tribal implications, as specified in Executive Order 13175. Thus, Executive Order 13175 does not apply to the proposed rule amendments.

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

Executive Order 13045 (62 FR 19885, April 23, 1997) applies to any rule that: (1) Is determined to be ''economically significant'' as defined under Executive Order 12866, and (2) concerns an environmental health or safety risk that EPA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, EPA must evaluate the environmental health or safety effects of the planned rule on children, and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by EPA.

The EPA interprets Executive Order 13045 as applying only to those regulatory actions that are based on health or safety risks, such that the analysis required under section 5–501 of the Executive Order has the potential to influence the regulation. Today's proposed amendments are not subject to Executive Order 13045 because they are based on technology performance, not health or safety risks. Furthermore, the final rule has been determined not to be ''economically significant'' as defined under Executive Order 12866.

E. Unfunded Mandates Reform Act of 1995

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Public Law 104–4, establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments and the private sector. Under section 202 of the UMRA, EPA generally must prepare a written statement, including a cost-benefit analysis, for proposed and final rules with ''Federal mandates'' that may result in expenditures by State, local, and tribal governments, in the aggregate, or by the private sector, of $100 million or more in any 1 year. Before promulgating an EPA rule for which a written statement is needed, section 205 of the UMRA generally requires EPA to identify and consider a reasonable number of regulatory alternatives and adopt the least-costly, most cost-effective, or least burdensome alternative that achieves the objectives of the rule. The provisions of section 205 do not apply when they are inconsistent with applicable law. Moreover, section 205 allows EPA to adopt an alternative other than the least-costly, most cost effective, or least-burdensome alternative if the Administrator publishes with the final rule an explanation why that alternative was not adopted. Before EPA establishes any regulatory requirements that may significantly or uniquely affect small governments, including tribal governments, it must have developed under section 203 of the UMRA a small government agency plan. The plan must provide for notifying potentially affected small governments to have meaningful and timely input in the development of EPA regulatory proposals with significant Federal intergovernmental mandates, and informing, educating, and advising small governments on compliance with the regulatory requirements.

The EPA has determined that today's proposed amendments do not contain a Federal mandate that may result in expenditures of $100 million or more for State, local, or tribal governments, in the aggregate, or the private sector in any 1 year. For existing sources, the total annual cost of the Pesticide Active Ingredient Production NESHAP has been estimated to be approximately $39.4 million (64 FR 33559, June 23, 1999). Today's proposed amendments do not add new requirements that would increase this cost. Thus, today's proposed amendments are not subject to the requirements of sections 202 and 205 of the UMRA. In addition, EPA has determined that these proposed amendments contain no regulatory requirements that might significantly or uniquely affect small governments because they contain no requirements that apply to such governments or impose obligations upon them. Therefore, today's proposed amendments are not subject to the requirements of section 203 of the UMRA.

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

The RFA generally requires an agency to prepare a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements under the Administrative Procedure Act or any other statute unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small organizations, and small governmental jurisdictions.

For purposes of assessing the impacts of today's proposed amendments on small entities, a small entity is defined as: (1) A small business in the North American Industrial Classification System (NAICS) code 325320 that has up to 500 employees; (2) a small business in NAICS code 325199 that has up to 1,000 employees; (3) a small governmental jurisdiction that is a government of a city, county, town, school district or special district with a population of less than 50,000; and (4) a small organization that is any not-for-profit enterprise which is independently owned and operated and is not dominant in its field.

After considering the economic impacts of today's proposed amendments on small entities, I certify that this action will not have a significant economic impact on a substantial number of small entities. The EPA has determined that none of the small entities will experience a significant impact because the proposed amendments impose no additional regulatory requirements on owners or operators of affected sources.

Although these proposed amendments will not have a significant economic impact, EPA nonetheless has tried to reduce the impact of the proposed amendments on small entities. Many of the proposed amendments define optional means of compliance. For example, vapor balancing was added as an optional means of compliance for storage tanks, compliance may be demonstrated for either TOC or total organic HAP rather than only TOC, monitoring of combustion device operating parameters would be allowed under the alternative standard as an option to correcting to 3 percent oxygen, and we have specified additional EPA test methods that may be used to analyze wastewater without performing the validation procedures specified in Method 301 of Appendix A to 40 CFR part 63. We also are proposing to add a provision that would allow an owner or operator to request an extension to the specified period of planned routine maintenance of control devices for storage vessels during which the owner or operator is exempt from the standards. The proposed amendments also simplify the initial compliance demonstration requirements and recordkeeping requirements for processes that are controlled by a dedicated control device. We continue to be interested in the potential impacts of the proposed amendments on small entities and welcome comments on issues related to such impacts.

G. Paperwork Reduction Act

The OMB has approved the information collection requirements contained in the 1999 NESHAP under the provisions of the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.* and has assigned OMB control number 2060–0370. An Information Collection Request (ICR) document has been prepared by EPA (ICR No. 1807.01), and

a copy may be obtained from Sandy Farmer by mail at U. S. EPA, Office of Environmental Information, Collection Strategies Division (2822), 1200 Pennsylvania Avenue, NW, Washington, DC 20460, by email at *farmer.sandy@epa.gov*, or by calling (202) 260–2740.

Today's proposed amendments to the NESHAP will have no net impact on the information collection burden estimates made previously. An oversight has been corrected by adding recordkeeping and reporting requirements for add-on control devices for storage tanks equipped with floating roofs. The promulgated rule only included recordkeeping and reporting requirements for add-on control devices for storage tanks even though add-on control devices and floating roofs were considered in the cost impacts and burden estimates. Also, the proposed amendments clarify the intent of several provisions in the 1999 NESHAP and correct inadvertent omissions and minor drafting errors in the 1999 NESHAP. Therefore, the ICR has not been revised.

H. National Technology Transfer and Advancement Act of 1995

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

During the rulemaking, EPA searched for voluntary consensus standards that might be applicable. The search identified 22 voluntary consensus standards that appeared to have possible use in lieu of EPA standard reference methods in the rule, but after review, none were considered practical alternatives to the specified EPA methods. An assessment of these voluntary consensus standards is presented in the preamble to the 1999 NESHAP (64 FR 33588, June 23, 1999). Today's proposed amendments specify additional EPA methods that may be used to determine the concentration of HAP in wastewater samples without conducting the validation procedures specified in § 63.144, but no additional voluntary consensus standards have been identified. The EPA welcomes comments on this aspect of these proposed amendments and, specifically, invites the public to identify potentially applicable voluntary consensus standards and to explain why such standards should be used in this rule.

I. Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use

This rule is not subject to Executive Order 13211 (66 FR 28355, May 22, 2001) because it is not a significant regulatory action under Executive Order 12866.

List of Subjects in 40 CFR Part 63

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

Dated: March 20, 2002.

Christine Todd Whitman,

Administrator.

For the reasons set out in the preamble, title 40, chapter I, part 63 of the Code of Federal Regulations is proposed to be amended as follows:

PART 63—NATIONAL EMISSION STANDARDS FOR HAZARDOUS AIR POLLUTANTS FOR SOURCE CATEGORIES

1. The authority citation for part 63 continues to read as follows:

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

Subpart MMM—National Emission Standards for Pesticide Active Ingredient Production

2. Section 63.1360 is amended by:

a. Revising paragraph (b) introductory text;

b. Revising paragraph (b)(2);

c. Revising paragraph (d)(3);

d. Redesignating paragraph (d)(4) as paragraph (d)(5) and adding a new paragraph (d)(4);

e. Revising paragraph (f) introductory text;

f. Revising paragraphs (f)(2) through (4) and adding paragraph (f)(5);

g. Revising paragraph (h); and

h. Revising paragraph (i)(1).

The revisions and additions read as follows:

§ 63.1360 Applicability.

* * * * *

(b) *New source applicability.* A new affected source subject to this subpart and to which the requirements for new sources apply is defined according to the criteria in paragraph (b)(1) or (2) of this section.

* * * * *

(2) Any dedicated PAI process unit that meets the criteria specified in paragraphs (b)(2)(i) and (ii) of this section.

(i) For which construction, as defined in § 63.1361, commenced after November 10, 1997, or reconstruction commenced after [DATE OF PUBLICATION OF THE FINAL RULE IN THE **Federal Register**].

(ii) That has the potential to emit 10 tons/yr of any one HAP or 25 tons/yr of combined HAP.

* * * * *

(d) * * *

(3) Production of ethylene;

(4) Coal tar distillation; and

* * * * *

(f) *Storage vessel applicability determination.* An owner or operator shall follow the procedures specified in paragraphs (f)(1) through (5) of this section to determine whether a storage vessel is part of the affected source to which this subpart applies.

* * * * *

(2) Unless otherwise excluded under paragraph (f)(1) of this section, the storage vessel is part of a PAI process unit if either the input to the vessel from the PAI process unit is greater than or equal to the input from any other PAI or non-PAI process unit, or the output from the vessel to the PAI process unit is greater than or equal to the output to any other PAI or non-PAI process unit. If the greatest input to and/or output from a shared storage vessel is the same for two or more process units, including one or more PAI process units, the owner or operator must assign the storage vessel to any one of the PAI process units that meet this condition.

(3) Unless otherwise excluded under paragraph (f)(1) of this section, where a storage vessel is located in a tank farm (including a marine tank farm), the applicability of this subpart shall be determined according to the provisions in paragraphs (f)(3)(i) through (iii) of this section.

(i) The storage vessel in the tank farm is not subject to the provisions of this subpart if the greatest input to or output from the storage vessel is for a non-PAI process unit. The input and output shall be determined among only those process units that share the storage vessel and that do not have an intervening storage vessel for that product (or raw material, as appropriate).

(ii) Except for storage vessels in a tank farm excluded in accordance with

paragraph (f)(3)(i), applicability of this subpart shall be determined according to the provisions in paragraphs (f)(3)(ii)(A) through (C) of this section.

(A) Except as specified in paragraph (f)(3)(ii)(C) of this section, this subpart does not apply to the storage vessel in a tank farm if each PAI process unit that receives material from or sends material to the storage vessel has an intervening storage vessel for that material.

(B) Except as specified in paragraph (f)(3)(ii)(C) of this section, a storage vessel in a tank farm shall be assigned to the PAI process unit that receives the greatest amount of material from or sends the greatest amount of material to the storage vessel and does not have an intervening storage vessel. If two or more PAI process units have the same input to or output from the storage vessel in the tank farm, then the storage vessel in the tank farm may be assigned to any one of the PAI process units that meet this condition.

(C) As an alternative to the requirements specified in paragraphs (f)(3)(ii)(A) and (B) of this section, even if an intervening storage vessel is present, an owner or operator may elect to assign a storage vessel in a tank farm to the PAI process unit that sends the most material to or receives the most material from the storage vessel. If two or more PAI process units have the same input to or output from the storage vessel in the tank farm, then the storage vessel in the tank farm may be assigned to any one of the PAI process units that meet this condition.

(iii) With respect to a process unit, an intervening storage vessel means a storage vessel connected by hard-piping to the process unit and to the storage vessel in the tank farm so that the product or raw material entering or leaving the process flows into (or from) the intervening storage vessel and does not flow directly into (or from) the storage vessel in the tank farm.

(4) If use varies from year to year, then use for the purposes of this subpart for existing sources shall be based on the utilization that occurred during the year preceding June 23, 1999 or, if the storage vessel was not in operation during that year, the use shall be based on the expected use in the 5 years after startup. This determination shall be reported as part of an operating permit application or as otherwise specified by the permitting authority.

(5) If the storage vessel begins receiving material from (or sending material to) another process unit, or ceasing to receive material from (or send material to) a PAI process unit, or if there is a significant change in the use of the storage vessel, the owner or operator shall reevaluate the ownership determination for the storage vessel.

* * * * *

(h) *Applicability of process units included in a process unit group.* An owner or operator may elect to develop process unit groups in accordance with paragraph (h)(1) of this section. For the PAI process units in these process unit groups, the owner or operator may comply with the provisions in overlapping MACT standards, as specified in paragraphs (h)(2) through (4) of this section, as an alternative means of demonstrating compliance with the provisions of this subpart.

(1) Develop, revise, and document changes in a process unit group in accordance with the procedures specified in paragraphs (h)(1)(i) through (vi) of this section.

(i) Initially, identify a non-dedicated PAI process unit that is operating on December 23, 2003 or a date after December 23, 2003, and identify all processing equipment that is part of this PAI process unit, based on descriptions in operating scenarios.

(ii) Add to the group any other non-dedicated PAI and non-dedicated non-PAI process units expected to be operated in the 5 years after the date specified in paragraph (h)(1)(i) of this section, provided they satisfy the criteria specified in paragraphs (h)(1)(ii)(A) through (C) of this section. Also identify all of the processing equipment used for each process unit based on information from operating scenarios and other applicable documentation.

(A) Each PAI process unit that is added to a group must have some processing equipment that is part of one or more PAI process units that are already in the process unit group.

(B) Each non-PAI process unit that is added to a group must have some processing equipment that is also part of one or more of the PAI process units in the group.

(C) No process unit may be part of more than one process unit group.

(iii) The initial process unit group consists of all of the processing equipment for the process units identified in paragraphs (h)(1)(i) and (ii) of this section.

(iv) If compliance is to be demonstrated in accordance with paragraph (h)(3) of this section, determine the primary product of the process unit group according to the procedures specified in paragraphs (h)(1)(iv)(A) through (C) of this section.

(A) The primary product is the type of product (e.g., PAI, pharmaceutical product, thermoplastic resin, etc.) that is expected to be produced for the greatest operating time in the 5-year period specified in paragraph (h)(1)(i) of this section.

(B) If the process unit group produces multiple products equally based on operating time, then the primary product is the product with the greatest production on a mass basis over the 5-year period specified in paragraph (h)(1)(i) of this section.

(C) The primary product of the group must be redetermined if the owner or operator does not intend to make that product in the future or if it has not been made for 5 years. The results of the redetermination must be recorded as specified in § 63.1367(b) and reported in a Periodic report no later than the report covering the period for the end of the 5th year as specified in § 63.1368(g)(2). If the primary product changes, the owner or operator must either demonstrate compliance with the applicable subpart as specified in paragraph (h)(3) of this section or demonstrate compliance with the provisions of this subpart MMM.

(v) Add process units developed in the future in accordance with the conditions specified in paragraphs (h)(1)(ii)(A) through (C) of this section.

(vi) Maintain records of changes in the process units in each process unit group as specified in § 63.1367(b)(9), and maintain reports as specified in § 63.1368(f)(9) and (g)(2)(ix).

(2) If any of the products produced in the process unit group are subject to 40 CFR part 63, subpart GGG (Pharmaceuticals MACT), the owner or operator may elect to comply with the requirements of subpart GGG for the PAI process unit(s) within the process unit group, except for the following:

(i) The emission limit standard for process vents in § 63.1362(b)(2)(i) shall apply in place of § 63.1254(a)(2);

(ii) When the dates of April 2, 1997 and April 2, 2007 are provided in § 63.1254(a)(3)(ii), the dates of November 10, 1997 and November 10, 2007, respectively, shall apply for purposes of this subpart MMM; and

(iii) Requirements in § 63.1367(a)(5) regarding application for approval of construction or reconstruction shall apply in place of the provisions in § 63.1259(a)(5).

(3) If the primary product of a process unit group is determined to be a type of material that is subject to another subpart of 40 CFR part 63 on June 23, 1999 or startup of the first process unit after formation of the process unit group, whichever is later, the owner or operator may elect to comply with the other subpart for any PAI process unit within the process unit group, subject to

the requirement in this paragraph (h)(3). Emissions from PAI Group 1 process vents, as defined in § 63.1361, must be reduced in accordance with the control requirements for Group 1 vents as specified in the alternative subpart. The criteria in the alternative subpart for determining which process vents must be controlled do not apply for the purposes of paragraph (h)(3) of this section.

(4) The requirements for new and reconstructed sources in the alternative subpart apply to all PAI process units in the process unit group if and only if the affected source under the alternative subpart meets the requirements for construction or reconstruction.

(i) * * *

(1) *Compliance with other MACT standards.* (i) After the compliance dates specified in § 63.1364, an affected source subject to the provisions of this subpart that is also subject to the provisions of any other subpart of 40 CFR part 63 may elect, to the extent the subparts are consistent, under which subpart to maintain records and report to EPA. The affected source shall identify in the Notification of Compliance Status report required by § 63.1368(f) under which authority such records will be maintained.

(ii) After the compliance dates specified in § 63.1364, at an offsite reloading or cleaning facility subject to § 63.1362(b)(6), compliance with the emission standards and associated initial compliance monitoring, recordkeeping, and reporting provisions of any other subpart of 40 CFR part 63 constitutes compliance with the provisions of § 63.1362(b)(6)(vii)(B) or (C). The owner or operator of the affected storage vessel shall identify in the Notification of Compliance Status report required by § 63.1368(f) the subpart of 40 CFR part 63 with which the owner or operator of the offsite reloading or cleaning facility complies.

* * * * *

3. Section 63.1361 is amended by:

a. Revising the definitions for ''Construction,'' ''Consumption,'' ''Group 1 storage vessel,'' ''Group 1 wastewater stream,'' ''Intermediate,'' ''Process,'' ''Process unit group,'' ''Process vent,'' ''Recovery device,'' ''Supplemental gases,'' and ''Wastewater';

b. Revising ''equipment identified in § 63.1362(l)'' to read ''equipment identified in § 63.1362(k)'' in the definition of ''pesticide active ingredient manufacturing process unit (PAI process unit);'' and

c. Adding definitions in alphabetical order for ''Dedicated PAI process unit,'' ''Formulation of pesticide products,'' ''Non-dedicated PAI process unit,'' ''Reconfiguration,'' and ''Reconstruction.''

The revisions and additions read as follows:

§ 63.1361 Definitions.

* * * * *

Construction means the onsite fabrication, erection, or installation of an affected source or dedicated PAI process unit. Addition of new equipment to an affected source does not constitute construction, provided the new equipment is not a dedicated PAI process unit with the potential to emit 10 tons/yr of any one HAP or 25 tons/yr of combined HAP, but it may constitute reconstruction of the affected source or PAI process unit if it satisfies the definition of reconstruction in this section. At an affected source, changing raw materials processed and reconfiguring non-dedicated equipment to create a non-dedicated PAI process unit do not constitute construction.

Consumption means the quantity of all HAP raw materials entering a process in excess of the theoretical amount used as reactant, assuming 100 percent stoichiometric conversion. The raw materials include reactants, solvents, and any other additives. If HAP are generated in the process as well as added as raw material, consumption includes the quantity generated in the process.

* * * * *

Dedicated PAI process unit means a PAI process unit constructed from equipment that is fixed in place and designed and operated to produce only a single product or co-products. The equipment is not designed to be reconfigured to create different process units, and it is not operated with different raw materials so as to produce different products.

* * * * *

Formulation of pesticide products means the mixing, blending, or diluting of a PAI with one or more other PAI's or inert ingredients.

* * * * *

Group 1 storage vessel means a storage vessel at an existing affected source with a capacity equal to or greater than 75 m^3 and storing material with a maximum true vapor pressure greater than or equal to 3.45 kPa, a storage vessel at a new affected source with a capacity equal to or greater than 40 m^3 and storing material with a maximum true vapor pressure greater than or equal to 16.5 kPa, or a storage vessel at a new affected source with a capacity greater than or equal to 75 m^3 and storing material with a maximum true vapor pressure greater than or equal to 3.45 kPa.

* * * * *

Group 1 wastewater stream means process wastewater at an existing or new source that meets the criteria for Group 1 status in § 63.132(c) for compounds in Table 9 of subpart G of this part or a maintenance wastewater stream that contains 5.3 Mg of compounds in Table 9 of subpart G of this part per discharge event.

* * * * *

Intermediate means an organic compound that is manufactured in a process and that is further processed or modified in one or more additional steps to ultimately produce a PAI.

* * * * *

Non-dedicated PAI process unit means a process unit that is not a dedicated PAI process unit.

* * * * *

Process means a logical grouping of processing equipment which collectively function to produce a product. For the purpose of this subpart, a PAI process includes all, or a combination of, reaction, recovery, separation, purification, treatment, cleaning, and other activities or unit operations, which are used to produce a PAI or integral intermediate. Ancillary activities are not considered a PAI process or any part of a PAI process. Ancillary activities include boilers and incinerators (not used to comply with the provisions of § 63.1362), chillers or refrigeration systems, and other equipment and activities that are not directly involved (i.e., they operate within a closed system and materials are not combined with process fluids) in the processing of raw materials or the manufacturing of a PAI. A PAI process and all integral intermediate processes for which 100 percent of the annual production is used in the production of the PAI may be linked together and defined as a single PAI process unit.

* * * * *

Process unit group means a group of process units that manufacture PAI's and products other than PAI's by alternating raw materials or operating conditions, or by reconfiguring process equipment. A process unit group is determined according to the procedures specified in § 63.1360(g).

Process vent means a point of emission from processing equipment to the atmosphere or a control device. The vent may be the release point for an emission stream associated with an individual unit operation, or it may be the release point for emission streams from multiple unit operations that have

been manifolded together into a common header. Examples of process vents include, but are not limited to, vents on condensers used for product recovery, bottom receivers, surge control vessels, reactors, filters, centrifuges, process tanks, and product dryers. A vent is not considered to be a process vent for a given emission episode if the undiluted and uncontrolled emission stream that is released through the vent contains less than 50 ppmv HAP, as determined through process knowledge that no HAP are present in the emission stream; using an engineering assessment as discussed in § 63.1365(b)(2)(ii); from test data collected using Method 18 of 40 CFR part 60, appendix A; or from test data collected using any other test method that has been validated according to the procedures in Method 301 of appendix A of this part. Process vents do not include vents on storage vessels regulated under § 63.1362(c), vents on wastewater emission sources regulated under § 63.1362(d), or pieces of equipment regulated under § 63.1363.

* * * * *

Reconfiguration means disassembly of processing equipment for a particular non-dedicated process unit and reassembly of that processing equipment in a different sequence, or in combination with other equipment, to create a different non-dedicated process unit.

Reconstruction, as used in § 63.1360(b), shall have the meaning given in § 63.2, except that ''affected or previously unaffected stationary source'' shall mean either ''affected facility'' or ''PAI process unit.''

Recovery device, as used in the wastewater provisions, means an individual unit of equipment capable of, and normally used for the purpose of, recovering chemicals for fuel value (i.e., net positive heating value), use, reuse, or for sale for fuel value, use, or reuse. Examples of equipment that may be recovery devices include organic removal devices such as decanters, strippers, or thin-film evaporation units. To be a recovery device, a decanter and any other equipment based on the operating principle of gravity separation must receive only multi-phase liquid streams.

* * * * *

Supplemental gases means any nonaffected gaseous streams (streams that are not from process vents, storage vessels, equipment or waste management units) that contain less than 50 ppmv TOC and less than 50 ppmv total HCl and chlorine, as determined through process knowledge, and are combined with an affected vent stream. Supplemental gases are often used to maintain pressures in manifolds or for fire and explosion protection and prevention. Air required to operate combustion device burner(s) is not considered a supplemental gas.

* * * * *

Wastewater means water that meets either of the conditions described in paragraph (1) or (2) of this definition and is discarded from a PAI process unit that is at an affected source:

(1) Is generated from a PAI process or a scrubber used to control emissions from a PAI process and contains either:

(i) An annual average concentration of compounds in Table 9 of subpart G of this part of at least 5 ppmw and has an average flow rate of 0.02 L/min or greater; or

(ii) An annual average concentration of compounds in Table 9 of subpart G of this part of at least 10,000 ppmw at any flow rate;

(2) Is generated from a PAI process unit as a result of maintenance activities and contains at least 5.3 Mg of compounds listed in Table 9 of subpart G of this part per individual discharge event.

* * * * *

4. Section 63.1362 is amended by:

a. Revising paragraph (b)(2)(iv)(A);

b. Revising paragraph (b)(4)(ii)(A);

c. Revising paragraph (b)(5)(ii);

d. Revising paragraph (b)(6);

e. Revising paragraph (c)(2) introductory text;

f. Revising paragraph (c)(2)(iv) introductory text;

g. Revising paragraph (c)(2)(iv)(B);

h. Revising paragraphs (c)(3) through (6);

i. Adding paragraph (c)(7);

j. Revising paragraph (d) introductory text;

k. Revising paragraph (d)(2) introductory text;

l. Removing paragraph (d)(2)(v);

m. Revising paragraphs (d) (12) through (14);

n. Adding paragraphs (d) (15) and (16);

o. Revising paragraph (h) (2) introductory text;

p. Revising paragraphs (h) (2)(i) and (iii); and

q. Revising paragraphs (h) (3) and (4).

The revisions and additions read as follows:

§ 63.1362 Standards.

* * * * *

(b) * * *

(2) * * *

(iv) * * *

(A) To outlet concentrations less than or equal to 20 ppmv; or

* * * * *

(4) * * *

(ii) * * *

(A) To outlet concentrations less than or equal to 20 ppmv; or

* * * * *

(5) * * *

(ii) If HCl and Cl_2 emissions, including HCl generated from combustion of halogenated process vent emissions, from the sum of all process vents within a process are greater than 6.8 Mg/yr and less than or equal to 191 Mg/yr, these HCl and Cl_2 emissions shall be reduced by 94 percent or to an outlet concentration less than or equal to 20 ppmv.

* * * * *

(6) *Alternative standard.* As an alternative to the provisions in paragraphs (b) (2) through (5) of this section, the owner or operator may route emissions from a process vent to a combustion control device achieving an outlet TOC concentration, as calibrated on methane or the predominant HAP, of 20 ppmv or less, and an outlet concentration of HCl and Cl_2 of 20 ppmv or less. If the owner or operator is routing emissions to a non-combustion control device or series of control devices, the control device(s) must achieve an outlet TOC concentration, as calibrated on methane or the predominant HAP, of 50 ppmv or less, and an outlet concentration of HCl and Cl_2 of 50 ppmv or less. Any process vents within a process that are not routed to such a control device or series of control devices must be controlled in accordance with the provisions of paragraphs (b)(2)(ii), (b)(2)(iii), (b)(2)(iv), (b)(3)(ii), (b)(4)(ii), (b)(5)(ii), or (b)(5)(iii) of this section, as applicable.

(c) * * *

(2) *Standard for existing sources.* Except as specified in paragraphs (c)(4), (5), and (6) of this section, the owner or operator of a Group 1 storage vessel at an existing affected source, as defined in § 63.1361, shall equip the affected storage vessel with one of the following:

* * * * *

(iv) A closed vent system meeting the conditions of paragraph (j) of this section and a control device that meets any of the following conditions:

* * * * *

(B) Reduces organic HAP emissions to outlet concentrations of 20 ppmv or less; or

* * * * *

(3) *Standard for new sources.* Except as specified in paragraphs (c)(4), (5), and (6) of this section, the owner or operator of a Group 1 storage vessel at a new source, as defined in § 63.1361, shall equip the affected storage vessel in

accordance with any one of paragraphs (c)(2)(i) through (iv) of this section.

(4) *Alternative standard.* As an alternative to the provisions in paragraphs (c)(2) and (3) of this section, the owner or operator of an existing or new affected source may route emissions from storage vessels to a combustion control device achieving an outlet TOC concentration, as calibrated on methane or the predominant HAP, of 20 ppmv or less, and an outlet concentration of hydrogen chloride and chlorine of 20 ppmv or less. If the owner or operator is routing emissions to a non-combustion control device or series of control devices, the control device(s) must achieve an outlet TOC concentration, as calibrated on methane or the predominant HAP, of 50 ppmv or less, and an outlet concentration of HCl and Cl_2 of 50 ppmv or less.

(5) *Planned routine maintenance.* The owner or operator is exempt from the specifications in paragraphs (c)(2) through (4) of this section during periods of planned routine maintenance of the control device that do not exceed 240 hr/yr. The owner or operator may submit an application to the Administrator requesting an extension of this time limit to a total of 360 hr/yr. The application must explain why the extension is needed, it must indicate that no material will be added to the storage vessel between the time the 240 hr limit is exceeded and the control device is again operational, and it must be submitted at least 60 days before the 240 hr limit will be exceeded.

(6) *Vapor Balancing Alternative.* As an alternative to the requirements in paragraphs (c)(2) and (3) of this section, the owner or operator of an existing or new affected source may implement vapor balancing in accordance with paragraphs (c)(6)(i) through (vii) of this section.

(i) The vapor balancing system must be designed and operated to route organic HAP vapors displaced from loading of the storage tank to the railcar or tank truck from which the storage tank is filled.

(ii) Tank trucks and railcars must have a current certification in accordance with the U.S. Department of Transportation pressure test requirements of 49 CFR part 180 for tank trucks and 49 CFR 173.31 for railcars.

(iii) Hazardous air pollutants must only be unloaded from tank trucks or railcars when vapor collection systems are connected to the storage tank's vapor collection system.

(iv) No pressure relief device on the storage tank, or on the railcar or tank truck shall open during loading or as a result of diurnal temperature changes (breathing losses).

(v) Pressure relief devices on affected storage tanks must be set to no less than 2.5 psig at all times to prevent breathing losses. The owner or operator shall record the setting as specified in § 63.1367(b)(8) and comply with the following requirements for each pressure relief valve:

(A) The pressure relief valve shall be monitored quarterly using the method described in § 63.180(b).

(B) An instrument reading of 500 ppmv or greater defines a leak.

(C) When a leak is detected, it shall be repaired as soon as practicable, but no later than 5 days after it is detected, and the owner or operator shall comply with the recordkeeping requirements of § 63.1363(g)(4)(i) through (iv).

(vi) Railcars or tank trucks that deliver HAP to an affected storage tank must be reloaded or cleaned at a facility that utilizes one of the following control techniques:

(A) The railcar or tank truck must be connected to a closed vent system with a control device that reduces inlet emissions of HAP by 90 percent by weight or greater; or

(B) A vapor balancing system designed and operated to collect organic HAP vapor displaced from the tank truck or railcar during reloading must be used to route the collected HAP vapor to the storage tank from which the liquid being transferred originated.

(vii) The owner or operator of the facility where the railcar or tank truck is reloaded or cleaned must comply with the following requirements:

(A) Submit to the owner or operator of the affected storage tank and to the Administrator a written certification that the reloading or cleaning facility will meet the requirements of this section. The certifying entity may revoke the written certification by sending a written statement to the owner or operator of the affected storage tank giving at least 90 days notice that the certifying entity is rescinding acceptance of responsibility for compliance with the requirements of this paragraph.

(B) If complying with paragraph (c)(6)(vi)(A) of this section, demonstrate initial compliance in accordance with § 63.1365(d), demonstrate continuous compliance in accordance with § 63.1366, keep records as specified in § 63.1367, and prepare reports as specified in § 63.1368.

(C) If complying with paragraph (c)(6)(vi)(B) of this section, keep records of:

(*1*) The equipment to be used and the procedures to be followed when reloading the railcar or tank truck and displacing vapors to the storage tank from which the liquid originates, and

(*2*) Each time the vapor balancing system is used to comply with paragraph (c)(6)(vi)(B) of this section.

(7) Compliance with the provisions of paragraphs (c)(2) and (3) of this section is demonstrated using the initial compliance procedures in § 63.1365(d) and the monitoring requirements in § 63.1366. Compliance with the outlet concentrations in paragraph (c)(4) of this section shall be determined by the initial compliance provisions in § 63.1365(a)(5) and the continuous emission monitoring requirements of § 63.1366(b)(5).

(d) *Wastewater.* The owner or operator of each affected source shall comply with the requirements of §§ 63.132 through 63.147, with the differences noted in paragraphs (d)(1) through (16) of this section for the purposes of this subpart.

* * * * *

(2) When the storage tank requirements contained in §§ 63.119 through 63.123 are referred to in §§ 63.132 through 63.147, §§ 63.119 through 63.123 are applicable, with the exception of the differences noted in paragraphs (d)(2)(i) through (iv) of this section.

* * * * *

(12) As an alternative to using Method 18 of 40 CFR part 60, as specified in §§ 63.139(c)(1)(ii) and 63.145(i)(2), the owner or operator may elect to use Method 25 or Method 25A of 40 CFR part 60, as specified in § 63.1365(b).

(13) The requirement to correct outlet concentrations from combustion devices to 3 percent oxygen in § 63.139(c)(1)(ii) shall apply only if supplemental gases are combined with affected vent streams, and the procedures in § 63.1365(a)(7)(i) apply instead of the procedures in § 63.145(i)(6) to determine the percent oxygen correction. If emissions are controlled with a vapor recovery system as specified in § 63.139(c)(2), the owner or operator must correct for supplemental gases as specified in § 63.1365(a)(7)(ii).

(14) As an alternative to the management and treatment options specified in § 63.132(g)(2), any Group 1 wastewater stream (or residual removed from a Group 1 wastewater stream) that contains less than 50 ppmw of HAP listed in Table 2 to subpart GGG of this part may be transferred offsite or to an on-site treatment operation not owned or operated by the owner or operator of the source generating the wastewater (or residual) if the transferee manages and treats the wastewater stream or residual

in accordance with paragraphs (d)(14)(i) through (iv) of this section.

(i) Treat the wastewater stream or residual in a biological treatment unit in accordance with §§ 63.138 and 63.145.

(ii) Cover the waste management units up to the activated sludge unit. Alternatively, covers are not required if the owner or operator demonstrates that less than 5 percent of the total HAP listed in Table 3 to subpart GGG of this part is emitted.

(iii) Inspect covers as specified in § 63.1366(h).

(iv) The reference in § 63.132(g)(2) to ''§ 63.102(b) of subpart F'' does not apply for the purposes of this subpart.

(15) When § 63.133 refers to Table 10 to subpart G of this part, the maximum true vapor pressures in the table shall be limited to the HAP listed in Table 9 to subpart G of this part.

(16) When the inspection, recordkeeping, and reporting requirements contained in § 63.148 are referred to in §§ 63.132 through 63.147, the inspection requirements in § 63.1366(h), the recordkeeping requirements in § 63.1367(f), and the reporting requirements in § 63.1368(g)(2)(iii) and (xi) shall apply for the purposes of this subpart.

* * * * *

(h) * * *

(2) Group 1 emission points that are controlled as specified in paragraphs (h)(2)(i) through (iii) of this section may not be used to calculate emissions averaging credits, unless a nominal efficiency has been assigned according to the procedures in § 63.150(i). The nominal efficiency must exceed the percent reduction required by paragraphs (b) and (c) of this section for process vents and storage vessels, respectively, exceed the percent reduction required in § 63.139(c) for control devices used to control emissions vented from waste management units, and exceed the percent reduction required in § 63.138(e) or (f) for wastewater treatment processes.

(i) Storage vessels controlled with an internal floating roof meeting the specifications of § 63.119(b), an external floating roof meeting the specifications of § 63.119(c), or an external floating roof converted to an internal floating meeting the specifications of § 63.119(d).

* * * * *

(iii) Wastewater streams that are both managed in waste management units that are controlled as specified in §§ 63.133 through 63.137 and treated using a steam stripper meeting the specifications of § 63.138(d).

(3) Process vents and storage vessels controlled with a control device to an outlet concentration of 20 ppmv or 50 ppmv, as specified in paragraph (b)(2)(iv)(A), (b)(3)(ii), (b)(6), (c)(2)(iv)(B), or (c)(4) of this section, and wastewater streams controlled in a treatment unit to an outlet concentration of 50 ppmw, may not be used in any averaging group.

(4) Maintenance wastewater streams, wastewater streams treated in biological treatment units, and Group 2 wastewater streams that are not managed as specified in §§ 63.133 through 63.137 may not be included in any averaging group.

* * * * *

5. Section 63.1363 is amended by:

a. Revising paragraph (a)(1);

b. Revising paragraphs (a)(10)(ii) and (iii);

c.–d. Revising paragraphs (b)(3)(iii)(A) through (F), adding paragraph (b)(3)(iii)(G), and revising paragraph (b)(3)(w);

e. Revising paragraphs (c)(2)(i) and (iii);

f. Revising paragraph (c)(3)(i);

g. Revising paragraph (c)(4)(ii);

h. Revising paragraph (c)(5) introductory text;

i. Revising paragraph (c)(5)(iv);

j. Removing paragraphs (c)(5)(vi)(C) and (D);

k. Adding paragraph (c)(5)(vii);

l. Revising paragraph (c)(6);

m. Revising paragraph (c)(9);

n. Revising paragraph (e)(7)(iii);

o. Revising paragraph (e)(9);

p. Revising paragraph (f); and

q. Revising paragraph (g)(2)(vi).

The revisions and additions read as follows:

§ 63.1363 Standards for equipment leaks.

(a) * * *

(1) The provisions of this section apply to ''equipment'' as defined in § 63.1361. The provisions of this section also apply to any closed-vent systems and control devices required by this section.

* * * * *

(10) * * *

(ii) The identification on a valve in light liquid or gas/vapor service may be removed after it has been monitored as specified in paragraph (e)(7)(iii) of this section, and no leak has been detected during the follow-up monitoring. If an owner or operator elects to comply with § 63.174(c)(1)(i), the identification on a connector may be removed after it has been monitored as specified in § 63.174(c)(1)(i) and no leak is detected during that monitoring.

(iii) The identification on equipment, except as specified in paragraph (a)(10)(ii) of this section, may be removed after it has been repaired.

* * * * *

(b) * * *

(3) * * *

(iii) * * *

(A) Section 63.174(b), (f), (g), and (h) shall not apply. In place of § 63.174(b), the owner or operator shall comply with paragraphs (b)(3)(iii)(C) through (G) of this section. In place of § 63.174(f), (g), and (h), the owner or operator shall comply with paragraph (f) of this section.

(B) Days that the connectors are not in organic HAP service shall not be considered part of the 3-month period in § 63.174(c).

(C) If the percent leaking connectors in a group of processes was greater than or equal to 0.5 percent during the initial monitoring period, monitoring shall be performed once per year until the percent leaking connectors is less than 0.5 percent.

(D) If the percent leaking connectors in the group of processes was less than 0.5 percent, but equal to or greater than 0.25 percent, during the last required monitoring period, monitoring shall be performed once every 4 years. An owner or operator may comply with the requirements of this paragraph by monitoring at least 40 percent of the connectors in the first 2 years and the remainder of the connectors within the next 2 years. The percent leaking connectors will be calculated for the total of all monitoring performed during the 4-year period.

(E) The owner or operator shall increase the monitoring frequency to once every 2 years for the next monitoring period if leaking connectors comprise at least 0.5 percent but less than 1.0 percent of the connectors monitored within either the 4 years specified in paragraph (b)(3)(iii)(D) of this section, the first 4 years specified in paragraph (b)(3)(iii)(G) of this section, or the entire 8 years specified in paragraph (b)(3)(iii)(G) of this section. At the end of that 2-year monitoring period, the owner or operator shall monitor once per year while the percent leaking connectors is greater than or equal to 0.5 percent; if the percent leaking connectors is less than 0.5 percent, the owner or operator may again elect to monitor in accordance with paragraph (b)(3)(iii)(D) or (G) of this section, as applicable.

(F) If an owner or operator complying with the requirements of paragraph (b)(3)(iii)(D) or (G) of this section for a group of processes determines that 1 percent or greater of the connectors are leaking, the owner or operator shall

increase the monitoring frequency to one time per year. The owner or operator may again elect to use the provisions of paragraph (b)(3)(iii)(D) or (G) of this section after a monitoring period in which less than 0.5 percent of the connectors are determined to be leaking.

(G) Monitoring shall be required once every 8 years, if the percent leaking connectors in the group of process units was less than 0.25 percent during the last required monitoring period. An owner or operator shall monitor at least 50 percent of the connectors in the first 4 years and the remainder of the connectors within the next 4 years. If the percent leaking connectors in the first 4 years is equal to or greater than 0.35 percent, the monitoring program shall revert at that time to the appropriate monitoring frequency specified in paragraph (b)(3)(iii)(D), (E), or (F) of this section.

(iv) Section 63.178, shall apply, except as specified in paragraphs (b)(3)(iv)(A) and (B) of this section.

(A) Section 63.178(b), requirements for pressure testing, shall apply to all processes, not just batch processes.

(B) For pumps, the phrase ''at the frequencies specified in Table 1 of this subpart'' in § 63.178(c)(3)(iii) shall mean ''quarterly'' for the purposes of this subpart.

* * * * *

(c) * * *

(2) * * *

(i) *Monitoring.* Each pump and agitator subject to this section shall be monitored quarterly to detect leaks by the method specified in § 63.180(b), except as provided in § 63.177, § 63.178, paragraph (f) of this section, and paragraphs (c)(5) through (9) of this section.

* * * * *

(iii) *Visual inspections.* Each pump and agitator shall be checked by visual inspection each calendar week for indications of liquids dripping from the pump or agitator seal. If there are indications of liquids dripping from the seal at the time of the weekly inspection, the owner or operator shall follow the procedure specified in either paragraph (c)(2)(iii)(A) or (B) of this section prior to the next weekly inspection.

(A) The owner or operator shall monitor the pump or agitator by the method specified in § 63.180(b). If the instrument reading indicates a leak as specified in paragraph (c)(2)(ii) of this section, a leak is detected.

(B) The owner or operator shall eliminate the visual indications of liquids dripping.

(3) * * *

(i) When a leak is detected pursuant to paragraph (c)(2)(i), (c)(2)(iii)(A), (c)(5)(iv)(A), or (c)(5)(vi)(B) of this section, it shall be repaired as soon as practicable, but not later than 15 calendar days after it is detected, except as provided in paragraph (b)(3)(i) of this section.

* * * * *

(4) * * *

(ii) If, calculated on a 1-year rolling average, 10 percent or more of the pumps in a group of processes (or 3 pumps in a group of processes with fewer than 30 pumps) leak, the owner or operator shall monitor each pump once per month, until the calculated 1-year rolling average value drops below 10 percent (or three pumps in a group of processes with fewer than 30 pumps).

* * * * *

(5) *Exemptions.* Each pump or agitator equipped with a dual mechanical seal system that includes a barrier fluid system and meets the requirements specified in paragraphs (c)(5)(i) through (vii) is exempt from the requirements of paragraphs (c)(1) through (c)(4)(iii) of this section, except as specified in paragraphs (c)(5)(iv)(A) and (vii) of this section.

* * * * *

(iv) Each pump/agitator is checked by visual inspection each calendar week for indications of liquids dripping from the pump/agitator seal. If there are indications of liquids dripping from the pump or agitator seal at the time of the weekly inspection, the owner or operator shall follow the procedures specified in either paragraph (c)(5)(iv)(A) or (B) of this section prior to the next required inspection.

(A) The owner or operator shall monitor the pump or agitator using the method specified in § 63.180(b) to determine if there is a leak of organic HAP in the barrier fluid. If the instrument reading indicates a leak, as specified in paragraph (c)(2)(ii) of this section, a leak is detected.

(B) The owner or operator shall eliminate the visual indications of liquids dripping.

* * * * *

(vii) When a leak is detected pursuant to paragraph (c)(5)(iv)(A) or (vi)(B) of this section, the leak must be repaired as specified in paragraph (c)(3) of this section.

(6) Any pump/agitator that is designed with no externally actuated shaft penetrating the pump/agitator housing is exempt from the requirements of paragraphs (c)(1) through (3) of this section.

* * * * *

(9) If more than 90 percent of the pumps in a group of processes meet the criteria in either paragraph (c)(5) or (6) of this section, the group of processes is exempt from the requirements of paragraph (c)(4) of this section.

* * * * *

(e) * * *

(7) * * *

(iii) When a leak is repaired, the valve shall be monitored at least once within the first 3 months after its repair. Days that the valve is not in organic HAP service shall not be considered part of this 3-month period. The monitoring required by this paragraph is in addition to the monitoring required to satisfy the definitions of ''repaired'' and ''first attempt at repair.''

(A) The monitoring shall be conducted as specified in § 63.180(b) and (c) as appropriate, to determine whether the valve has resumed leaking.

(B) Periodic monitoring required by paragraphs (e)(2) through (4) of this section may be used to satisfy the requirements of paragraph (e)(7)(iii) of this section, if the timing of the monitoring period coincides with the time specified in paragraph (e)(7)(iii) of this section. Alternatively, other monitoring may be performed to satisfy the requirements of paragraph (e)(7)(iii) of this section, regardless of whether the timing of the monitoring period for periodic monitoring coincides with the time specified in paragraph (e)(7)(iii) of this section.

(C) If a leak is detected by monitoring that is conducted pursuant to paragraph (e)(7)(iii) of this section, the owner or operator shall follow the provisions of paragraphs (e)(7)(iii)(C)(*1*) and (*2*) of this section to determine whether that valve must be counted as a leaking valve for purposes of paragraph (e)(6) of this section.

(*1* If the owner or operator elects to use periodic monitoring required by paragraphs (e)(2) through (4) of this section to satisfy the requirements of paragraph (e)(7)(iii) of this section, then the valve shall be counted as a leaking valve.

(*2*) If the owner or operator elects to use other monitoring prior to the periodic monitoring required by paragraphs (e)(2) through (4) of this section to satisfy the requirements of paragraph (e)(7)(iii) of this section, then the valve shall be counted as a leaking valve unless it is repaired and shown by periodic monitoring not to be leaking.

* * * * *

(9) Any equipment located at a plant site with fewer than 250 valves in organic HAP service in the affected source is exempt from the requirements

for monthly monitoring specified in paragraph (e)(4)(i) of this section. Instead, the owner or operator shall monitor each valve in organic HAP service for leaks once each quarter, or comply with paragraphs (e)(4)(iii), (iv), or (v) of this section, except as provided in paragraph (f) of this section.

(f) *Unsafe to monitor, difficult-to-monitor, and inaccessible equipment.*

(1) Equipment that is designated as unsafe-to-monitor, difficult-to-monitor, or inaccessible is exempt from the requirements as specified in paragraphs (f)(1)(i) through (iv) of this section provided the owner or operator meets the requirements specified in paragraph (f)(2), (3), or (4) of this section, as applicable. All equipment, except connectors that meet the requirements in paragraph (f)(4) of this section, must be assigned to a group of processes. Ceramic or ceramic-lined connectors are subject to the same requirements as inaccessible connectors.

(i) For pumps and agitators, paragraphs (c)(2), (3), and (4) of this section do not apply.

(ii) For valves, paragraphs (e)(2) through (7) of this section do not apply.

(iii) For connectors, § 63.174(b) through (e) and paragraphs (b)(3)(iii)(C) through (G) of this section do not apply.

(iv) For closed-vent systems, § 63.172(f)(1), (f)(2), and (g) do not apply.

(2) *Equipment that is unsafe-to-monitor.*

(i) Valves, connectors, agitators, and any part of closed-vent systems may be designated as unsafe-to-monitor if the owner or operator determines that monitoring personnel would be exposed to an immediate danger as a consequence of complying with the monitoring requirements identified in paragraphs (f)(1)(i) through (iii) of this section, or the inspection requirements identified in paragraph (f)(1)(iv) of this section.

(ii) The owner or operator of equipment that is designated as unsafe-to-monitor must have a written plan that requires monitoring of the equipment as frequently as practicable during safe-to-monitor times. For valves, connectors, and agitators, monitoring shall not be more frequent than the periodic monitoring schedule otherwise applicable to the group of processes in which the equipment is located. For closed-vent systems, inspections shall not be more frequent than annually.

(3) *Equipment that is difficult-to-monitor.*

(i) A valve, agitator, pump, or any part of a closed-vent system may be designated as difficult-to-monitor if the owner or operator determines that the equipment cannot be monitored or inspected without elevating the monitoring personnel more than 2 meters above a support surface or the equipment is not accessible in a safe manner when it is in organic HAP service;

(ii) At a new affected source, an owner or operator may designate no more than 3 percent of valves as difficult-to-monitor.

(iii) The owner or operator of valves, agitators, or pumps designated as difficult-to-monitor must have a written plan that requires monitoring of the equipment at least once per calendar year or on the periodic monitoring schedule otherwise applicable to the group of processes in which the equipment is located, whichever is less frequent. For any part of a closed-vent system designated as difficult-to-monitor, the owner or operator must have a written plan that requires inspection of the closed-vent system at least once every 5 years.

(4) *Inaccessible, ceramic, or ceramic-lined connectors.*

(i) A connector may be designated as inaccessible if it is:

(A) Buried;

(B) Insulated in a manner that prevents access to the equipment by a monitor probe;

(C) Obstructed by equipment or piping that prevents access to the equipment by a monitor probe;

(D) Unable to be reached from a wheeled scissor-lift or hydraulic-type scaffold which would allow access to equipment up to 7.6 meters above the ground; or

(E) Not able to be accessed at any time in a safe manner to perform monitoring. Unsafe access includes, but is not limited to, the use of a wheeled scissor-lift on unstable or uneven terrain, the use of a motorized man-lift basket in areas where an ignition potential exists, or access would require near proximity to hazards such as electrical lines, or would risk damage to equipment.

(F) Would require elevating the monitoring personnel more than 2 meters above a permanent support surface or would require the erection of scaffold.

(ii) At a new affected source, an owner or operator may designate no more than 3 percent of connectors as inaccessible.

(iii) If any inaccessible, ceramic, or ceramic-lined connector is observed by visual, audible, olfactory, or other means to be leaking, the leak shall be repaired as soon as practicable, but no later than 15 calendar days after the leak is detected, except as provided in paragraph (b)(3)(i) of this section.

(iv) Any connector that is inaccessible or that is ceramic or ceramic-lined is exempt from the recordkeeping and reporting requirements of paragraphs (g) and (h) of this section.

(g) * * *

(2) * * *

(vi) A list of equipment designated as unsafe to monitor or difficult to monitor under paragraph (f) of this section and a copy of the plan for monitoring this equipment.

* * * * *

§ 63.1365 [Amended]

6. Section 63.1365 is amended by:

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

b. Revising paragraph (a)(2);

c. Revising paragraph (a)(5);

d. Revising paragraph (a)(6);

e. Revising paragraph (a)(7)(i) introductory text;

f. Revising paragraphs (a)(7)(i)(A) and (C);

g. Revising paragraph (a)(7)(ii);

h. Revising paragraph (b) introductory text;

i. Revising paragraph (b)(8);

j. Revising paragraph (b)(11) introductory text;

k. Revising paragraph (b)(11)(iii) introductory text;

l. Revising ''paragraph (b)(1)(i)(B) of this section'' to read ''paragraph (b)(11)(i)(B) of this section'' in the last sentence of paragraph (b)(11)(iii)(A);

m. Adding paragraph (b)(11)(iii)(D);

n. Revising paragraph (b)(11)(iv);

o. Removing paragraph (b)(12);

p. Revising paragraph (c)(1)(iii) and (v);

q. Revising paragraph (c)(2)(i)(C);

r. Revising paragraphs (c)(2)(i)(D)(*4*)(*i*) and (*iii*);

s. Revising paragraphs (c)(2)(i)(E)(*3*) and (*4*);

t. Revising paragraph (c)(2)(i)(F);

u. Revising paragraph (c)(2)(ii) introductory text and paragraph (c)(2)(ii)(A);

v. Revising paragraph (c)(3)(ii)(A);

w. Revising paragraph (c)(3)(iii) introductory text;

x. Revising paragraphs (d)(1)(i)(A) and (B);

y. Revising paragraph (d)(3)(ii);

z. Revising paragraph (e);

aa. Revising ''§ 63.1362(h)(2)'' to read ''§ 63.1362(g)(2)'' and revising ''§ 63.1362(h)(3)'' to read ''§ 63.1362(g)(3)'' in paragraph (g) introductory text;

bb. Revising ''§ 63.1362(h)(2)'' to read ''§ 63.1362(g)(2)'' in paragraph (g)(3)(i);

cc. Revising ''§ 63.1362(h)(3)(i)'' to read ''§ 63.1362(g)(3)(i)'' in paragraph (g)(3)(ii);

dd. Revising ''§ 63.1362(h)(3)(ii)'' to read ''§ 63.1362(g)(3)(ii)'' in paragraph (g)(4) introductory text;

ee. Revising ''§ 63.1362(h)(3)(ii)(A)'' to read ''§ 63.1362(g)(3)(ii)(A)'' in paragraph (g)(4)(i); and

ff. Revising ''§ 63.1362(i)(3)(ii)(A)'' to read ''§ 63.1362(g)(3)(iii)(A)'' in paragraph (g)(4)(ii).

The revisions and additions read as follows:

§ 63.1365 Test methods and initial compliance procedures.

(a) * * *

(1) * * *

(iii) For a condenser, the design evaluation must consider the vent stream flow rate, relative humidity, and temperature, and must establish the maximum temperature of the condenser exhaust vent stream and the corresponding outlet organic HAP compound concentration level or emission rate for which the required reduction is achieved.

* * * * *

(2) *Calculation of TOC or total organic HAP concentration.* The TOC concentration or total organic HAP concentration is the sum of the concentrations of the individual components. If compliance is being determined based on TOC, the owner or operator shall compute TOC for each run using Equation 6 of this subpart. If compliance is being determined based on total organic HAP, the owner or operator shall compute total organic HAP using Equation 6 of this subpart, except that only organic HAP compounds shall be summed; when determining compliance with the wastewater provisions of § 63.1362(d), the organic HAP compounds shall consist of the organic HAP compounds in Table 9 of subpart G of this part.

$$CG_T = \frac{1}{m}\sum_{j=1}^{m}\left(\sum_{i=1}^{n} CGS_{i,j}\right) \qquad \text{(Eq. 6)}$$

Where:

CG_T=total concentration of TOC in vented gas stream, average of samples, dry basis, ppmv

$CGS_{i,j}$=concentration of sample components in vented gas stream for sample j, dry basis, ppmv

n=number of compounds in the sample

m=number of samples in the sample run

* * * * *

(5) *Initial compliance with alternative standard.* Initial compliance with the alternative standards in § 63.1362(b)(6) and (c)(4) for combustion devices is demonstrated when the outlet TOC concentration is 20 ppmv or less, and the outlet HCl and chlorine concentration is 20 ppmv or less. Initial compliance with the alternative standards in § 63.1362(b)(6) and (c)(4) for noncombustion devices is demonstrated when the outlet TOC concentration is 50 ppmv or less, and the outlet HCl and chlorine concentration is 50 ppmv or less. To demonstrate initial compliance, the owner or operator shall be in compliance with the monitoring provisions in § 63.1366(b)(5) on the initial compliance date. The owner or operator shall use Method 18 to determine the predominant organic HAP in the emission stream if the TOC monitor is calibrated on the predominant HAP.

(6) *Initial compliance with the 20 ppmv outlet limit.* Initial compliance with the 20 ppmv TOC or total organic HAP concentration is demonstrated when the outlet TOC or total organic HAP concentration is 20 ppmv or less. Initial compliance with the 20 ppmv HCl and chlorine concentration is demonstrated when the outlet HCl and chlorine concentration is 20 ppmv or less. To demonstrate initial compliance, the operator shall use applicable test methods described in paragraphs (b)(1) through (9) of this section, and test under conditions described in paragraphs (b)(10) or (11) of this section, as applicable. The owner or operator shall comply with the monitoring provisions in § 63.1366(b)(1) through (5) on the initial compliance date.

(7) * * *

(i) *Combustion device.* Except as specified in § 63.1366(b)(5)(ii)(A), if the vent stream is controlled with a combustion device, the owner or operator must comply with the provisions in paragraphs (a)(7)(i)(A) through (C) of this section.

(A) To comply with a TOC or total organic HAP outlet concentration standard in § 63.1362(b)(2)(iv)(A), (b)(4)(ii)(A), (b)(6), (c)(2)(iv)(B), (c)(4), (d)(13), or § 63.172, the actual TOC outlet concentration must be corrected to 3 percent oxygen.

* * * * *

(C) The integrated sampling and analysis procedures of Method 3B of 40 CFR part 60, appendix A, shall be used to determine the actual oxygen concentration ($\%O_{2d}$). The samples shall be taken during the same time that the TOC, total organic HAP, and total HCl and chlorine samples are taken. The concentration corrected to 3 percent oxygen (C_d) shall be computed using Equation 7 of this subpart:

$$C_c = C_m\left(\frac{17.9}{20.9 - \%O_{2d}}\right) \qquad \text{(Eq. 7)}$$

Where:

C_c=concentration of TOC, total organic HAP, or total HCl and chlorine corrected to 3 percent oxygen, dry basis, ppmv

C_m=total concentration of TOC, total organic HAP, or total HCl and chlorine in the vented gas stream, average of samples, dry basis, ppmv

$\%O_{2d}$=concentration of oxygen measured in vented gas stream, dry basis, percent by volume

(ii) *Noncombustion devices.* If a control device other than a combustion device, and not in series with a combustion device, is used to comply with a TOC, total organic HAP, or total HCl and chlorine outlet concentration standard, the owner or operator must correct the actual concentration for supplemental gases using Equation 8 of this subpart.

$$C_a = C_m\left(\frac{V_s + V_a}{V_a}\right) \qquad \text{(Eq. 8)}$$

Where:

C_a=corrected outlet TOC, total organic HAP, or total HCl and chlorine concentration, dry basis, ppmv

C_m=actual TOC, total organic HAP, or total HCl and chlorine concentration measured at control device outlet, dry basis, ppmv

V_a=total volumetric flow rate of affected streams vented to the control device

V_s=total volumetric flow rate of supplemental gases

(b) *Test methods and conditions.* When testing is conducted to measure emissions from an affected source, the test methods specified in paragraphs (b)(1) through (9) of this section shall be used. Compliance tests shall be performed under conditions specified in paragraphs (b)(10) and (11) of this section.

* * * * *

(8) Wastewater analysis shall be conducted in accordance with § 63.144(b)(5)(i) through (iii) or as specified in paragraph (b)(8)(i) or (ii) of this section.

(i) As an alternative to the methods specified in § 63.144(b)(5)(i), an owner or operator may conduct wastewater analyses using Method 1666 or 1671 of 40 CFR part 136, appendix A, and comply with the sampling protocol requirements specified in § 63.144(b)(5)(ii). The validation requirements specified in § 63.144(b)(5)(iii) do not apply if an owner or operator uses Method 1666 or 1671 of 40 CFR part 136, appendix A.

(ii) As an alternative to the methods specified in § 63.144(b)(5)(i), an owner or operator may use procedures specified in Method 8260 or 8270 in

''Test Methods for Evaluating Solid Waste, Physical/Chemical Methods,'' EPA Publication No. SW–846, Third Edition, September 1986, as amended by Update I, November 15, 1992. An owner or operator also may use any more recent, updated version of Method 8260 or 8270 approved by EPA. For the purpose of using Method 8260 or 8270 to comply with this subpart, the owner or operator must maintain a formal quality assurance program consistent with either Section 8 of Method 8260 or Method 8270. This program must include the elements related to measuring the concentrations of volatile compounds that are specified in paragraphs (b)(8)(ii)(A) through (C) of this section.

(A) Documentation of site-specific procedures to minimize the loss of compounds due to volatilization, biodegradation, reaction, or sorption during the sample collection, storage, and preparation steps.

(B) Documentation of specific quality assurance procedures followed during sampling, sample preparation, sample introduction, and analysis.

(C) Measurement of the average accuracy and precision of the specific procedures, including field duplicates and field spiking of the material source before or during sampling with compounds having similar chemical characteristics to the target analytes.

* * * * *

(11) *Testing conditions for batch processes.* Testing of emissions on equipment where the flow of gaseous emissions is intermittent (batch operations) shall be conducted at absolute peak-case conditions or hypothetical peak-case conditions, as specified in paragraphs (b)(11)(i) and (ii) of this section, respectively. Gas stream volumetric flow rates shall be measured at 15-minute intervals. Organic HAP, TOC, or HCl and chlorine concentration shall be determined from samples collected in an integrated sample over the duration of the test, or from grab samples collected simultaneously with the flow rate measurements (every 15 minutes). If an integrated sample is collected for laboratory analysis, the sampling rate shall be adjusted proportionally to reflect variations in flow rate. In all cases, a site-specific test plan shall be submitted to the Administrator for approval prior to testing in accordance with § 63.7(c). The test plan shall include the emissions profile described in paragraph (b)(11)(iii) of this section. The term ''HAP mass loading'' as used in paragraphs (b)(11)(i) through (iii) of this section refers to the class of HAP, either organic or HCl and chlorine, that the control device is intended to control.

* * * * *

(iii) *Emissions profile.* The owner or operator may choose to perform tests only during those periods of the peak-case episode(s) that the owner or operator selects to control as part of achieving the required emission reduction. Except as specified in paragraph (b)(11)(iii)(D) of this section, the owner or operator shall develop an emission profile for the vent to the control device that describes the characteristics of the vent stream at the inlet to the control device under either absolute or hypothetical peak-case conditions. The emissions profile shall be developed based on the applicable procedures described in paragraphs (b)(11)(iii)(A) through (C) of this section, as required by paragraphs (b)(11)(i) and (ii) of this section.

* * * * *

(D) *Exemptions.* The owner or operator is not required to develop an emission profile under the circumstances described in paragraphs (b)(11)(iii)(D)(1) or (2) of this section.

(*1*) If all process vents for a process are controlled using a control device or series of control devices that reduce HAP emissions by 98 percent or more, no other emission streams are vented to the control device when it is used to control emissions from the subject process, and the performance test is conducted over the entire batch cycle.

(*2*) If a control device is used to comply with the outlet concentration limit for process vent emission streams from a single process (but not necessarily all of the process vents from that process), no other emission streams are vented to the control device while it is used to control emissions from the subject process, and the performance test is conducted over the entire batch cycle.

(iv) *Test duration.* Three runs, at a minimum of 1 hour each, are required for performance testing. Each test run may be a maximum of either 24 hours or the duration of the longest batch controlled by the control device, whichever is shorter. Each run must include the same absolute or hypothetical peak-case conditions, as defined in paragraph (b)(11)(i) or (ii) of this section.

(c) * * *

(1) * * *

(iii) Initial compliance with the organic HAP percent reduction requirements specified in § 63.1362(b)(2)(ii), (b)(2)(iii), and (b)(4)(ii) is demonstrated by determining controlled HAP emissions using the procedures described in paragraph (c)(3) of this section, determining uncontrolled HAP emissions using the procedures described in paragraph (c)(2) of this section, and calculating the applicable percent reduction. As an alternative, if the conditions specified in paragraph (b)(11)(iii)(D)(*1*) of this section are met, initial compliance may be demonstrated by showing the control device reduces emissions by 98 percent by weight or greater using the procedures specified in paragraph (c)(3) of this section.

* * * * *

(v) Initial compliance with the outlet concentration limits in § 63.1362(b)(2)(iv)(A), (b)(3)(ii), (b)(4)(ii)(A), (b)(5)(ii), and (b)(5)(iii) is demonstrated when the outlet TOC or total organic HAP concentration is 20 ppmv or less and the outlet HCl and chlorine concentration is 20 ppmv or less. The owner or operator shall demonstrate compliance by fulfilling the requirements in paragraph (a)(6) of this section. If an owner or operator elects to develop an emissions profile by process as described in paragraph (b)(11)(iii)(A) of this section, uncontrolled emissions shall be determined using the procedures in paragraph (c)(2) of this section.

* * * * *

(2) * * *

(i) * * *

(C) *Purging.* Emissions from purging shall be calculated using Equation 10 of this subpart, except that for purge flow rates greater than 100 scfm, the mole fraction of HAP will be assumed to be 25 percent of the saturated value.

$$E = \sum_{i=1}^{n} P_i MW_i \times \frac{(V)(t)}{(R)(T)} \times \frac{P_T}{P_T - \sum_{j=1}^{m} \left(P_j\right)} \qquad \text{(Eq. 10)}$$

Where:

E=mass of HAP emitted

V=purge flow rate at the temperature and pressure of the vessel vapor space

R=ideal gas law constant

T=temperature of the vessel vapor space; absolute

P_i=partial pressure of the individual HAP

P_j=partial pressure of individual condensable compounds (including HAP)

P_T=pressure of the vessel vapor space

MW_i=molecular weight of the individual HAP

t=time of purge

n=number of HAP compounds in the emission stream

m=number of condensable compounds (including HAP) in the emission stream

(D) * * *

(*4*) * * *

(*i*) As an alternative to the procedures described in paragraphs (c)(2)(i)(D)(*1*) and (*2*) of this section, emissions caused by heating a vessel to any temperature less than the boiling point may be calculated using Equation 15 of this subpart.

$$E = MW_{HAP} \times \left(N_{avg} \times 1n \left(\frac{P_T - \sum_{i=1}^{m} \left(P_{i,1} \right)}{P_T - \sum_{i=1}^{m} \left(P_{i,2} \right)} \right) - \left(n_{HAP,2} - n_{HAP,1} \right) \right) \qquad \text{(Eq. 15)}$$

Where:

E=mass of HAP vapor displaced from the vessel being heated

N_{avg}=average gas space molar volume during the heating process, as calculated using Equation 16 of this subpart

P_T=total pressure in the vessel

$P_{i,1}$=partial pressure of the individual HAP compounds at T_1

$P_{i,2}$=partial pressure of the individual HAP compounds at T_2

MW_{HAP}=average molecular weight of the HAP compounds, as calculated using Equation 14 of this subpart

$n_{HAP,1}$ = number of moles of total HAP in the vessel headspace at T_1

$n_{HAP,2}$ = number of moles of total HAP in the vessel headspace at T_2

m = number of HAP compounds in the emission stream

* * * * *

(*iii*) The difference in the number of moles of total HAP in the vessel headspace between the initial and final temperatures is calculated using Equation 17 of this subpart.

$$\left(n_{HAP,2} - n_{HAP,1} \right) = \frac{V}{(R)(T_2)} \sum_{i=1}^{n} P_{i,2} - \frac{V}{(R)(T_1)} \sum_{i=1}^{n} P_{i,1} \qquad \text{(Eq. 17)}$$

Where:

$n_{HAP,2}$ = number of moles of total HAP in the vessel headspace at T_2

$n_{HAP,1}$ = number of moles of total HAP in the vessel headspace at T_1

V = volume of free space in vessel

R = ideal gas law constant

T_1 = initial temperature of the vessel contents, absolute

T_2 = final temperature of the vessel contents, absolute

$P_{i,1}$ = partial pressure of the individual HAP compounds at T_1

$P_{i,2}$ = partial pressure of the individual HAP compounds at T_2

n = number of HAP compounds in the emission stream

(E) * * *

(*3*) The initial and final partial pressures of the noncondensable gas in the vessel are determined using Equations 21 and 22 of this subpart.

$$P_{nc1} = P_1 - \sum_{j=1}^{m} \left(P_j^* \right) \left(x_j \right) \qquad \text{(Eq. 21)}$$

$$P_{nc2} = P_2 - \sum_{j=1}^{m} \left(P_j^* \right) \left(x_j \right) \qquad \text{(Eq. 22)}$$

Where:

P_{nc1} = initial partial pressure of the noncondensable gas

P_{nc2} = final partial pressure of the noncondensable gas

P_1 = initial vessel pressure

P_2 = final vessel pressure

P_j^* = vapor pressure of each condensable compound (including HAP) in the emission stream

x_j = mole fraction of each condensable compound (including HAP) in the liquid phase

m = number of condensable compounds (including HAP) in the emission stream

(*4*) The moles of HAP emitted during the depressurization are calculated by taking an approximation of the average ratio of moles of HAP to moles of noncondensable and multiplying by the total moles of noncondensables released during the depressurization, using Equation 23 of this subpart:

$$n_{HAP,e} = \frac{\left(\frac{n_{HAP,1}}{n_1} + \frac{n_{HAP,2}}{n_2} \right)}{2} \left[n_1 - n_2 \right] \qquad \text{(Eq. 23)}$$

Where:

$n_{HAP,e}$ = moles of HAP emitted

$n_{HAP,1}$ = moles of HAP vapor in vessel at the initial pressure, as calculated using Equation 18 of this subpart

$n_{HAP,2}$ = moles of HAP vapor in vessel at the final pressure, as calculated using Equation 18 of this subpart

n_1 = initial number of moles of noncondensable gas in the vessel, as calculated using Equation 19 of this subpart

n_2 = final number of moles of noncondensable gas in the vessel, as calculated using Equation 19 of this subpart

* * * * *

(F) *Vacuum systems.* Calculate emissions from vacuum systems using Equation 26 of this subpart:

$$E = \frac{(MW_{HAP})(La)(t)}{MW_{nc}} \left(\frac{\sum_{i=1}^{n} P_i}{P_T - \sum_{j=1}^{m} P_j} \right) \qquad \text{(Eq. 26)}$$

Where:

E = mass of HAP emitted

P_T = absolute pressure of receiving vessel or ejector outlet conditions, if there is no receiver

P_i = partial pressure of individual HAP at the receiver temperature or the ejector outlet conditions

P_j = partial pressure of individual condensable compounds (including HAP) at the receiver temperature or the ejector outlet conditions

La = total air leak rate in the system, mass/time

MW_{nc} = molecular weight of noncondensable gas

t = time of vacuum operation

MW_{HAP} = average molecular weight of HAP in the emission stream, as calculated using Equation 14 of this subpart, with HAP partial pressures calculated at the temperature of the receiver or ejector outlet, as appropriate

n = number of HAP components in the emission stream

m = number of condensable compounds (including HAP) in the emission stream

* * * * *

(ii) *Engineering assessments.* The owner or operator shall conduct an engineering assessment to determine uncontrolled HAP emissions for each emission episode that is not due to vapor displacement, purging, heating, depressurization, vacuum systems, gas evolution, or air drying. For a given emission episode caused by any of these seven types of activities, the owner or operator also may request approval to determine uncontrolled HAP emissions based on an engineering assessment. Except as specified in paragraph (c)(2)(ii)(A) of this section, all data, assumptions, and procedures used in the engineering assessment shall be documented in the Precompliance plan in accordance with § 63.1367(b). An engineering assessment includes, but is not limited to, the information and procedures described in paragraphs (c)(2)(ii)(A) through (D) of this section.

(A) Test results, provided the tests are representative of current operating practices at the process unit. For process vents without variable emission stream characteristics, an engineering assessment based on the results of a previous test may be submitted in the Notification of Compliance Status report instead of the Precompliance plan. Results from a previous test of process vents with variable emission stream characteristics will be acceptable in place of values estimated using the procedures specified in paragraph (c)(2)(i) of this section if the test data show a greater than 20 percent discrepancy between the test value and the estimated value, and the results of the engineering assessment shall be included in the Notification of Compliance Status report. For other process vents with variable emission stream characteristics, engineering assessments based on the results of a previous test must be submitted in the Precompliance plan. For engineering assessments based on new tests, the owner or operator must comply with the test notification requirements in § 63.1368(m), and the results of the engineering assessment may be submitted in the Notification of Compliance Status report rather than the Precompliance plan.

* * * * *

(3) * * *

(ii) * * *

(A) Initial compliance with a percent reduction requirement for total organic HAP shall be determined by measuring either total organic HAP or TOC at the inlet and outlet of the control. Initial compliance with a percent reduction requirement for total HCl and chlorine shall be determined by measuring the HCl and chlorine at the inlet and outlet of the control device. All measurements shall be conducted using the test methods and procedures described in paragraph (b) of this section. Concentrations shall be calculated from the data obtained through emission testing according to the procedures in paragraph (a)(2) of this section.

* * * * *

(iii) *Condensers.* The owner or operator using a condenser as a control device shall determine controlled emissions for each batch emission episode according to the engineering methodology in paragraphs (c)(3)(iii)(A) through (G) of this section. The owner or operator must measure the exhaust gas temperature and show that it is less than or equal to the temperature used in the applicable equation. Individual HAP partial pressures shall be calculated as specified in paragraph (c)(2)(i) of this section.

* * * * *

(d) * * *

(1) * * *

(i) * * *

(A) At the reasonably expected maximum filling rate, Equations 35 and 36 of this subpart shall be used to calculate the mass rate of total organic HAP or TOC at the inlet and outlet of the control device.

$$E_i = K_2 \left(\sum_{j=1}^{n} C_{ij} M_{ij} \right) Q_i \qquad \text{(Eq. 35)}$$

$$E_o = K_2 \left(\sum_{j=1}^{n} C_{oj} M_{oj} \right) Q_o \qquad \text{(Eq. 36)}$$

Where:

C_{ij}, C_{oj}=concentration of sample component j of the gas stream at the inlet and outlet of the control device, respectively, dry basis, ppmv

E_i, E_o=mass rate of total organic HAP or TOC at the inlet and outlet of the control device, respectively, dry basis, kg/hr

M_{ij}, M_{oj}=molecular weight of sample component j of the gas stream at the inlet and outlet of the control device, respectively, g/gmole

Q_i, Q_o=flow rate of gas stream at the inlet and outlet of the control device, respectively, dscmm

K_2=constant, 2.494 x 10^{-6} (parts per million)$^{-1}$ (gram-mole per standard cubic meter) (kilogram/gram) (minute/hour), where standard temperature is 20°C

(B) The percent reduction in total organic HAP or TOC shall be calculated using Equation 37 of this subpart:

$$R = \frac{E_i - E_o}{E_i}(100) \qquad \text{(Eq. 37)}$$

Where:

R=control efficiency of control device, percent

E_i=mass rate of total organic HAP or TOC at the inlet to the control device as calculated under paragraph (d)(l)(i)(A) of this section, kilograms organic HAP per hour

E_o=mass rate of total organic HAP or TOC at the outlet of the control device, as calculated under paragraph (d)(1)(i)(A) of this section, kilograms organic HAP per hour

* * * * *

(3) * * *

(ii) Comply with the procedures described in § 63.120(a), (b), or (c), as applicable, with the differences specified in paragraphs (d)(3)(ii)(A) through (C) of this section.

(A) When the term ''storage vessel'' is used in § 63.120, the definition of the term ''storage vessel'' in § 63.1361 shall apply for the purposes of this subpart.

(B) When the phrase ''the compliance date specified in § 63.100 of subpart F of this part'' is referred to in § 63.120, the phrase ''the compliance date specified in § 63.1364'' shall apply for the purposes of this subpart.

(C) When the phrase ''the maximum true vapor pressure of the total organic HAP in the stored liquid falls below the values defining Group 1 storage vessels specified in Table 5 or Table 6 of this subpart'' is referred to in § 63.120(b)(1)(iv), the phrase ''the maximum true vapor pressure of the total organic HAP in the stored liquid falls below the values defining Group 1 storage vessels specified in § 63.1361'' shall apply for the purposes of this subpart.

* * * * *

(e) *Initial compliance with wastewater provisions.* The owner or operator shall demonstrate initial compliance with the wastewater requirements by complying with the applicable provisions in § 63.145, except that the owner or operator need not comply with the requirement to determine visible emissions that is specified in § 63.145(j)(1), and references to compounds in Table 8 of subpart G of this part are not applicable for the purposes of this subpart. When § 63.145(i) refers to Method 18 of 40 CFR part 60, the owner or operator may use any method specified in § 63.1362(d)(12) to demonstrate initial compliance with this subpart.

* * * * *

7. Section 63.1366 is amended by:

a. Revising paragraph (b)(5);

b. Revising the first sentence of paragraph (b)(8) introductory text;

c. Revising paragraph (b)(8)(iii); and

d. Adding paragraph (h).

The revisions and additions read as follows:

§ 63.1366 Monitoring and inspection requirements.

* * * * *

(b) * * *

(5) *Monitoring for the alternative standards.*

(i) For control devices that are used to comply with the provisions of § 63.1362(b)(6) and (c)(4), the owner or operator shall monitor and record the outlet TOC concentration and the outlet total HCl and chlorine concentration at least once every 15 minutes during the period in which the device is controlling HAP from emission streams subject to the standards in § 63.1362. A TOC monitor meeting the requirements of Performance Specification 8 or 9 of appendix B of 40 CFR part 60 shall be installed, calibrated, and maintained, according to § 63.8. The owner or operator need not monitor the total HCl and chlorine concentration if the owner or operator determines that the emission stream does not contain HCl or chlorine. The owner or operator need not monitor for TOC concentration if the owner or operator determines that the emission stream does not contain organic compounds.

(ii) If supplemental gases are introduced before the control device, the owner or operator must either correct for supplemental gases as specified in § 63.1365(a)(7) or, if using a combustion control device, comply with the requirements of paragraph (b)(5)(ii)(A) of this section. If the owner or operator corrects for supplemental gases as specified in § 63.1365(a)(7)(ii) for non-combustion control devices, the flow rates must be evaluated as specified in paragraph (b)(5)(ii)(B) of this section.

(A) *Provisions for combustion devices.* As an alternative to correcting for supplemental gases as specified in § 63.1365(a)(7), the owner or operator may monitor residence time and firebox temperature according to the requirements of paragraphs (b)(5)(ii)(A)(*1*) and (*2*) of this section. Monitoring of residence time may be accomplished by monitoring flow rate into the combustion chamber.

(*1*) If complying with the alternative standard instead of achieving a control efficiency of 95 percent or less, the owner or operator must maintain a minimum residence time of 0.5 seconds and a minimum combustion chamber temperature of 760°C.

(*2*) If complying with the alternative standard instead of achieving a control efficiency of 98 percent or less, the owner or operator must maintain a minimum residence time of 0.75 seconds and a minimum combustion chamber temperature of 816°C.

(B) *Flow rate evaluation for non-combustion devices.* To demonstrate continuous compliance with the requirement to correct for supplemental gases as specified in § 63.1365(a)(7)(ii) for non-combustion devices, the owner or operator must evaluate the volumetric flow rate of supplemental gases, V_s, and the volumetric flow rate of all gases, V_a, each time a new operating scenario is implemented based on process knowledge and representative operating data. The procedures used to evaluate the flow rates, and the resulting correction factor used in Equation 8 of this subpart, must be included in the Notification of Compliance Status report and in the next Periodic report submitted after an operating scenario change.

* * * * *

(8) *Violations.* Exceedances of parameters monitored according to the provisions of paragraphs (b)(1)(ii), (iv) through (ix), and (b)(5)(i)(A) of this section, or excursions as defined by paragraphs (b)(7)(i) and (ii) of this section, constitute violations of the operating limit according to paragraphs (b)(8)(i), (ii), and (iv) of this section.

* * *

* * * * *

(iii) Except as provided in paragraph (b)(8)(iv) of this section, exceedances of the 20 or 50 ppmv TOC outlet emission limit, averaged over the operating day, will result in no more than one violation per day per control device. Except as provided in paragraph (b)(8)(iv) of this section, exceedances of the 20 or 50 ppmv HCl and chlorine outlet emission limit, averaged over the operating day, will result in no more than one violation per day per control device.

* * * * *

(h) *Leak inspection provisions for vapor suppression equipment.*

(1) Except as provided in paragraphs (h)(9) and (10) of this section, for each vapor collection system, closed-vent system, fixed roof, cover, or enclosure required to comply with this section, the owner or operator shall comply with the requirements of paragraphs (h)(2) through (8) of this section.

(2) Except as provided in paragraphs (h)(6) and (7) of this section, each vapor collection system and closed-vent system shall be inspected according to the procedures and schedule specified in paragraphs (h)(2)(i) and (ii) of this section and each fixed roof, cover, and enclosure shall be inspected according to the procedures and schedule specified in paragraph (h)(2)(iii) of this section.

(i) If the vapor collection system or closed-vent system is constructed of hard-piping, the owner or operator shall:

(A) Conduct an initial inspection according to the procedures in paragraph (h)(3) of this section, and

(B) Conduct annual visual inspections for visible, audible, or olfactory indications of leaks.

(ii) If the vapor collection system or closed-vent system is constructed of ductwork, the owner or operator shall:

(A) Conduct an initial inspection according to the procedures in paragraph (h)(3) of this section,

(B) Conduct annual inspections according to the procedures in paragraph (h)(3) of this section, and

(C) Conduct annual visual inspections for visible, audible, or olfactory indications of leaks.

(iii) For each fixed roof, cover, and enclosure, the owner or operator shall:

(A) Conduct an initial inspection according to the procedures in paragraph (h)(3) of this section, and

(B) Conduct semiannual visual inspections for visible, audible, or olfactory indications of leaks.

(3) Each vapor collection system, closed-vent system, fixed roof, cover, and enclosure shall be inspected according to the procedures specified in paragraphs (h)(3)(i) through (vi) of this section.

(i) Inspections shall be conducted in accordance with Method 21 of 40 CFR part 60, appendix A.

(ii) *Detection instrument performance criteria.*

(A) Except as provided in paragraph (h)(3)(ii)(B) of this section, the detection instrument shall meet the performance criteria of Method 21 of 40 CFR part 60, appendix A, except the instrument response factor criteria in section 3.1.2(a) of Method 21 shall be for the average composition of the process fluid not each individual VOC in the stream. For process streams that contain nitrogen, air, or other inerts which are not organic HAP or VOC, the average stream response factor shall be calculated on an inert-free basis.

(B) If no instrument is available at the plant site that will meet the performance criteria specified in paragraph (h)(3)(ii)(A) of this section, the instrument readings may be adjusted by multiplying by the average response factor of the process fluid, calculated on an inert-free basis as described in paragraph (h)(3)(ii)(A) of this section.

(iii) The detection instrument shall be calibrated before use on each day of its use by the procedures specified in Method 21 of 40 CFR part 60, appendix A.

(iv) Calibration gases shall be as follows:

(A) Zero air (less than 10 parts per million hydrocarbon in air); and

(B) Mixtures of methane in air at a concentration less than 10,000 parts per million. A calibration gas other than methane in air may be used if the instrument does not respond to methane or if the instrument does not meet the performance criteria specified in paragraph (h)(2)(ii)(A) of this section. In such cases, the calibration gas may be a mixture of one or more of the compounds to be measured in air.

(v) An owner or operator may elect to adjust or not adjust instrument readings for background. If an owner or operator elects to not adjust readings for background, all such instrument readings shall be compared directly to the applicable leak definition to determine whether there is a leak. If an owner or operator elects to adjust instrument readings for background, the owner or operator shall measure background concentration using the procedures in § 63.180(b) and (c). The owner or operator shall subtract background reading from the maximum concentration indicated by the instrument.

(vi) The arithmetic difference between the maximum concentration indicated by the instrument and the background level shall be compared with 500 parts per million for determining compliance.

(4) Leaks, as indicated by an instrument reading greater than 500 parts per million above background or by visual inspections, shall be repaired as soon as practicable, except as provided in paragraph (h)(5) of this section.

(i) A first attempt at repair shall be made no later than 5 calendar days after the leak is detected.

(ii) Repair shall be completed no later than 15 calendar days after the leak is detected.

(5) Delay of repair of a vapor collection system, closed-vent system, fixed roof, cover, or enclosure for which leaks have been detected is allowed if the repair is technically infeasible without a shutdown, as defined in § 63.1361, or if the owner or operator determines that emissions resulting from immediate repair would be greater than the fugitive emissions likely to result from delay of repair. Repair of such equipment shall be complete by the end of the next shutdown.

(6) Any parts of the vapor collection system, closed-vent system, fixed roof, cover, or enclosure that are designated, as described in § 63.1367(f)(1), as unsafe-to-inspect are exempt from the inspection requirements of paragraphs (h)(2)(i), (ii), and (iii) of this section if:

(i) The owner or operator determines that the equipment is unsafe to inspect because inspecting personnel would be exposed to an imminent or potential danger as a consequence of complying with paragraph (h)(2)(i), (ii), or (iii) of this section; and

(ii) The owner or operator has a written plan that requires inspection of the equipment as frequently as practicable during safe-to-inspect times. Inspection is not required more than once annually.

(7) Any parts of the vapor collection system, closed-vent system, fixed roof, cover, or enclosure that are designated, as described in § 63.1367(f)(2), as difficult-to-inspect are exempt from the inspection requirements of paragraphs (h)(2)(i), (ii), and (iii)(A) of this section if:

(i) The owner or operator determines that the equipment cannot be inspected without elevating the inspecting personnel more than 2 meters above a support surface; and

(ii) The owner or operator has a written plan that requires inspection of the equipment at least once every 5 years.

(8) Records shall be maintained as specified in § 63.1367(f).

(9) If a closed-vent system subject to this section is also subject to the equipment leak provisions of § 63.1363, the owner or operator shall comply with the provisions of § 63.1363 and is exempt from the requirements of this section.

(10) For any closed-vent system that is operated and maintained under negative pressure, the owner or operator is not required to comply with the requirements specified in paragraphs (h)(2) through (8) of this section.

8. Section 63.1367 is amended by:

a. Revising ''paragraphs (b)(3)(i) through (iii) of this section'' to read ''paragraphs (a)(3)(i) through (iii) of this section'' in paragraph (a)(3) introductory text;

b. Revising paragraph (a)(3)(i);

c. Revising paragraph (b) introductory text;

d. Revising paragraph (b)(4);

e. Revising paragraph (b)(6)(i);

f. Adding paragraph (b)(6)(ix) and revising paragraph (b)(7);

g. Adding paragraphs (b)(8) through (11); and

h. Revising paragraph (f).

The revisions and additions read as follows:

§ 63.1367 Recordkeeping requirements.

(a) * * *

(3) * * *

(i) The owner or operator shall record the occurrence and duration of each malfunction of the process operations or of air pollution control equipment used to comply with this subpart, as specified in § 63.6(e)(3)(iii).

* * * * *

(b) *Records of equipment operation.* The owner or operator must keep the records specified in paragraphs (b)(1) through (11) of this section up-to-date and readily accessible.

* * * * *

(4) For processes in compliance with the 0.15 Mg/yr emission limit of § 63.1362(b)(2)(i) or (b)(4)(i), daily records of the rolling annual calculations of uncontrolled emissions.

* * * * *

(6) * * *

(i) Except as specified in paragraph (b)(6)(ix) of this section, the initial calculations of uncontrolled and controlled emissions of gaseous organic HAP and HCl per batch for each process.

* * * * *

(ix) As an alternative to the records in paragraph (b)(6)(i) of this section, a record of the determination that the conditions in § 63.1365(b)(11)(iii)(D)(*1*) or (*2*) are met.

(7) Daily schedule or log of each operating scenario updated daily or, at a minimum, each time a different operating scenario is put into operation.

(8) If the owner or operator elects to comply with the vapor balancing alternative in § 63.1362(c)(6), the owner or operator must keep records of the DOT certification required by § 63.1362(c)(6)(ii) and the pressure relief vent setting and leak detection records specified in § 63.1362(c)(6)(v).

(9) If the owner or operator elects to develop process unit groups, the owner or operator must keep records of the PAI and non-PAI process units in the process unit group, including records of the operating time for process units used to establish the process unit group. The owner or operator must also keep records of any redetermination of the primary product for the process unit group.

(10) All maintenance performed on the air pollution control equipment.

(11) If the owner or operator elects to comply with § 63.1362(c) by installing a floating roof, the owner or operator must keep records of each inspection and seal gap measurement in accordance with § 63.123(c) through (e) as applicable.

* * * * *

(f) *Records of inspections.* The owner or operator shall keep records specified in paragraphs (f)(1) through (6) of this section.

(1) Records identifying all parts of the vapor collection system, closed-vent system, fixed roof, cover, or enclosure that are designated as unsafe to inspect in accordance with § 63.1366(h)(6), an explanation of why the equipment is unsafe-to-inspect, and the plan for inspecting the equipment.

(2) Records identifying all parts of the vapor collection system, closed-vent system, fixed roof, cover, or enclosure that are designated as difficult-to-inspect in accordance with § 63.1366(h)(7), an explanation of why the equipment is difficult-to-inspect, and the plan for inspecting the equipment.

(3) For each vapor collection system or closed-vent system that contains bypass lines that could divert a vent stream away from the control device and to the atmosphere, the owner or operator shall keep a record of the information specified in either paragraph (f)(3)(i) or (ii) of this section.

(i) Hourly records of whether the flow indicator specified under § 63.1362(j)(1) was operating and whether a diversion was detected at any time during the hour, as well as records of the times and durations of all periods when the vent stream is diverted from the control device or the flow indicator is not operating.

(ii) Where a seal mechanism is used to comply with § 63.1362(j)(2), hourly records of flow are not required. In such cases, the owner or operator shall record that the monthly visual inspection of the seals or closure mechanisms has been done and shall record the occurrence of all periods when the seal mechanism is broken, the bypass line valve position has changed, or the key for a lock-and-key type lock has been checked out, and records of any car-seal that has broken.

(4) For each inspection conducted in accordance with § 63.1366(h)(2) and (3) during which a leak is detected, a record of the information specified in paragraphs (f)(4)(i) through (ix) of this section.

(i) Identification of the leaking equipment.

(ii) The instrument identification numbers and operator name or initials, if the leak was detected using the procedures described in § 63.1366(h)(3); or a record of that the leak was detected by sensory observations.

(ii) The date the leak was detected and the date of the first attempt to repair the leak.

(iii) Maximum instrument reading measured by the method specified in § 63.1366(h)(4) after the leak is successfully repaired or determined to be nonrepairable.

(iv) ''Repair delayed'' and the reason for the delay if a leak is not repaired within 15 calendar days after discovery of the leak.

(v) The name, initials, or other form of identification of the owner or operator (or designee) whose decision it was that repair could not be effected without a shutdown.

(vi) The expected date of successful repair of the leak if a leak is not repaired within 15 calendar days.

(vii) Dates of shutdowns that occur while the equipment is unrepaired.

(viii) The date of successful repair of the leak.

(5) For each inspection conducted in accordance with § 63.1366(h)(3) during which no leaks are detected, a record that the inspection was performed, the date of the inspection, and a statement that no leaks were detected.

(6) For each visual inspection conducted in accordance with § 63.1366(h)(2)(i)(B) or (h)(2)(iii)(B) of this section during which no leaks are detected, a record that the inspection was performed, the date of the inspection, and a statement that no leaks were detected.

* * * * *

9. Section 63.1368 is amended by:

a. Revising paragraph (e) (4);

b. Revising paragraph (f) (6);

c. Adding paragraph (f) (9);

d. Revising paragraph (g) (1) introductory text;

e. Revising paragraph (g) (2) introductory text;

f. Adding paragraphs (g)(2)(ix) through (xii);

g. Revising paragraph (h)(1) introductory text;

h. Revising ''§ 63.1365(b)(10)(ii)'' to read ''§ 63.1365(b)(11)(iii)'' in paragraph (m).

The revisions and additions read as follows:

§ 63.1368 Reporting requirements.

* * * * *

(e) * * *

(4) For owners and operators complying with the requirements of § 63.1362(g), the pollution prevention demonstration summary required in § 63.1365(g)(1).

* * * * *

(f) * * *

(6) Identification of emission points subject to overlapping requirements described in § 63.1360(i) and the authority under which the owner or operator will comply, and identification of emission sources discharging to devices described by § 63.1362(l).

* * * * *

(9) Records of the initial process units used to create each process unit group, if applicable.

(g) * * *

(1) *Submittal schedule.* Except as provided in paragraphs (g)(1)(i) and (ii) of this section, the owner or operator shall submit Periodic reports semiannually. The first report shall be submitted no later than 240 days after the date the Notification of Compliance Status report is due and shall cover the 6-month period beginning on the date the Notification of Compliance Status report is due. Each subsequent Periodic report shall cover the 6-month period following the preceding period and shall be submitted no later than 60 days after the end of the applicable period.

* * * * *

(2) *Content of periodic report.* The owner or operator shall include the information in paragraphs (g)(2)(i) through (xii) of this section, as applicable.

* * * * *

(ix) Records of process units added to each process unit group, if applicable.

(x) Records of redetermination of the primary product for a process unit group.

(xi) For each inspection conducted in accordance with § 63.1366(h)(2) or (3) during which a leak is detected, the records specify in § 63.1367(h)(4) must be included in the next Periodic report.

(xii) If the owner or operator elects to comply with the provisions of § 63.1362(c) by installing a floating roof, the owner or operator shall submit the information specified in § 63.122(d) through (f) as applicable. References to § 63.152 from § 63.122 shall not apply for the purposes of this subpart.

(h) * * *

(1) Except as specified in paragraph (h)(2) of this section, whenever a process change is made, or any of the information submitted in the Notification of Compliance Status report changes, the owner or operator shall submit the information specified in paragraphs (h)(1)(i) through (iv) of this section with the next Periodic report required under paragraph (g) of this section. For the purposes of this section, a process change means the startup of a new process, as defined in § 63.1361.

* * * * *

10. Table 1 to subpart MMM is amended by:

a. Revising the entry ''63.9(i)–(j);'' and

b. Adding the entry ''63.9(j)''.

The revisions and additions read as follows:

TABLE 1 TO SUBPART MMM OF PART 63.—GENERAL PROVISIONS APPLICABILITY TO SUBPART MMM

Reference to subpart A	Applies to subpart MMM	Explanation
* * *	* * *	*
63.9(i)	Yes	
63.9(j)	No	§ 63.1368(h) specifies procedures for notification of changes.
* * *	* * *	*

11. Table 4 to subpart MMM is revised to read as follows:

TABLE 4 TO SUBPART MMM.—CONTROL REQUIREMENTS FOR ITEMS OF EQUIPMENT THAT MEET THE CRITERIA OF § 63.1362(K)

Item of equipment	Control requirement [a]
Drain or drain hub	(a) Tightly fitting solid cover (TFSC); or (b) TFSC with a vent to either a process, or to a control device meeting the requirements of § 63.139(c); or (c) Water seal with submerged discharge or barrier to protect discharge from wind.
Manhole [b]	(a) TFSC; or (b) TFSC with a vent to either a process or to a control device meeting the requirements of § 63.139(c); or (c) If the item is vented to the atmosphere, use a TFSC with a properly operating water seal at the entrance or exit to the item to restrict ventilation in the collection system. The vent pipe shall be at least 90 cm in length and not exceeding 10.2 cm in nominal inside diameter.
Lift station	(a) TFSC; or (b) TFSC with a vent to either a process, or to a control device meeting the requirements of § 63.139(c); or (c) If the lift station is vented to the atmosphere, use a TFSC with a properly operating water seal at the entrance or exit to the item to restrict ventilation in the collection system. The vent pipe shall be at least 90 cm in length and not exceeding 10.2 cm in nominal inside diameter. The lift station shall be level controlled to minimize changes in the liquid level.
Trench	(a) TFSC; or (b) TFSC with a vent to either a process, or to a control device meeting the requirements of § 63.139(c); or (c) If the item is vented to the atmosphere, use a TFSC with a properly operating water seal at the entrance or exit to the item to restrict ventilation in the collection system. The vent pipe shall be at least 90 cm in length and not exceeding 10.2 cm in nominal inside diameter.
Pipe	Each pipe shall have no visible gaps in joints, seals, or other emission interfaces.
Oil/Water separator	(a) Equip with a fixed roof and route vapors to a process, or equip with a closed-vent system that routes vapors to a control device meeting the requirements of § 63.139(c); or (b) Equip with a floating roof that meets the equipment specifications of § 60.693 (a)(1)(i), (a)(1)(ii), (a)(2), (a)(3), and (a)(4).

TABLE 4 TO SUBPART MMM.—CONTROL REQUIREMENTS FOR ITEMS OF EQUIPMENT THAT MEET THE CRITERIA OF § 63.1362(K)—Continued

Item of equipment	Control requirement [a]
Tank	Maintain a fixed roof and consider vents as process vents.[c]

[a] Where a tightly fitting solid cover is required, it shall be maintained with no visible gaps or openings, except during periods of sampling, inspection, or maintenance.
[b] Manhole includes sumps and other points of access to a conveyance system.
[c] A fixed roof may have openings necessary for proper venting of the tank, such as pressure/vacuum vent, j-pipe vent.

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April 10, 2002

Part III

Commission on Civil Rights

45 CFR Part 701 et al.

Operations, Functions, and Structure of Civil Rights Commission; Proposed Rule

COMMISSION ON CIVIL RIGHTS

45 CFR Parts 701, 702, 703, 704, 705, 706, 707, and 708

Operations, Functions, and Structure of Civil Rights Commission

AGENCY: Commission on Civil Rights.

ACTION: Proposed rule with request for comments.

SUMMARY: The United States Commission on Civil Rights proposes to revise its regulations to provide the organizational structure, procedures, and program processes of the Commission.

DATES: Comments should be submitted on or before June 10, 2002 to be considered in the formulation of final rules.

ADDRESSES: Interested parties should submit written comments to: U.S. Commission on Civil Rights, Office of General Counsel, Attn: Debra A. Carr, Esq., 624 Ninth Street, NW., Washington, DC, 20425. E-mail comments should be addressed to *DCarrUSCCR@netscape.net.* Please cite 45 CFR in all correspondence related to these proposed revisions.

FOR FURTHER INFORMATION CONTACT: Contact Debra A. Carr, Deptuy General Counsel, U.S. Commission on Civil Rights, 624 Ninth Street, NW., Washington, DC 20425, (202) 376–8351.

SUPPLEMENTARY INFORMATION: The General Accounting Office (GAO) recommended the U.S. Commission on Civil Rights develop and document policies and procedures that (1) assign responsibility for management functions to the staff director and other Commission employees and (2) provide mechanisms to hold these personnel accountable for properly managing the Commission's day-to-day operations. These revisions update the agency's regulations consistent with GAO's recommendations and updates the Commission's regulations to reflect the procedures and practices of the agency.

List of Subjects

45 CFR Part 701

Organization and functions (Government agencies).

45 CFR Part 702

Administrative practice and procedure, Sunshine Act.

45 CFR Part 703

Advisory committees, Organization and functions (Government agencies).

45 CFR Part 704

Freedom of information.

45 CFR Part 705

Privacy.

45 CFR Part 706

Conflict of interests.

45 CFR Part 707

Administrative practice and procedure, Civil rights, Equal employment opportunity, Federal buildings and facilities, Individuals with disabilities.

45 CFR Part 708

Claims, Government employees.

For the reasons set forth in the preamble, the Commission on Civil Rights proposes to revise 45 CFR chapter VII to read as follows:

PART 701—ORGANIZATION AND FUNCTIONS OF THE COMMISSION

Subpart A—Organizations and Functions

Sec.
701.1 Establishment.
701.2 Responsibilities.

Subpart B—Organization Statement

701.10 Membership of the Commission.
701.11 Commission meetings—duties of the Chairperson.
701.12 Staff Director.
701.13 Staff organization and functions.

Authority: 42 U.S.C. 1975, 1975a, 1975b.

Subpart A—Organizations and Functions

§ 701.1 Establishment.

The United States Commission on Civil Rights (hereinafter referred to as the ''Commission'') is a bipartisan agency of the executive branch of the Government. The predecessor agency to the present Commission was established by the Civil Rights Act of 1957, 71 Stat. 634. This Act was amended by the Civil Rights Act of 1960, 74 Stat. 86; the Civil Rights Act of 1964, 78 Stat. 241; by 81 Stat. 582 (1967); by 84 Stat. 1356 (1970); by 86 Stat. 813 (1972); and by the Civil Rights Act of 1978, 92 Stat. 1067. The present Commission was established by the United States Commission on Civil Rights Act of 1983, 97 Stat. 1301, as amended by the Civil Rights Commission Amendments Act of 1994, 108 Stat. 4339. The statutes are codified in 42 U.S.C. 1975 through 1975d. (Hereinafter, the 1994 Act will be referred to as ''the Act.'')

§ 701.2 Responsibilities.

(a) The Commission's authority under 42 U.S.C. 1975a(a) may be summarized as follows:

(1) To investigate allegations in writing under oath or affirmation that citizens of the United States are being deprived of their right to vote and have that vote counted by reason of color, race, religion, sex, age, disability, or national origin;

(2) To study and collect information relating to discrimination or a denial of equal protection of the laws under the Constitution because of color, race, religion, sex, age, disability or national origin or in the administration of justice;

(3) To appraise the laws and policies of the Federal Government relating to discrimination or denials of equal protection of the laws under the Constitution because of, color, race, religion, sex, age, disability, or national origin or in the administration of justice;

(4) To serve as a national clearinghouse for information relating to discrimination or denials of equal protection of the laws because of color, race, religion, sex, age, disability, or national origin;

(5) To prepare public service announcements and advertising campaigns to discourage discrimination or denials of equal protection of the laws because of color, race, religion, sex, age, disability, or national origin.

(b) Under 42 U.S.C. 1975a(c), the Commission is required to submit at least one report annually that monitors Federal civil rights enforcement efforts in the United States and other such reports to the President and to the Congress at such times as the Commission, the Congress, or the President shall deem appropriate.

(c) In fulfilling these responsibilities the Commission is authorized by the Act to hold hearings and to issue subpoenas for the attendance of witnesses; to consult with governors, attorneys general; and other representatives of State and local governments, and private organizations; and is required to establish an advisory committee in each State. The Act also provides that all Federal agencies shall cooperate fully with the Commission so that it may effectively carry out its functions and duties.

Subpart B—Organization Statement

§ 701.10 Membership of the Commission.

(a) The Commission is composed of eight members (or ''Commissioners''), not more than four of whom may be of the same political party. The President shall appoint four members, the President pro tempore of the Senate shall appoint two, and the Speaker of the House of Representatives shall appoint two.

(b) The Chairperson and Vice Chairperson of the Commission are designated by the President with the concurrence of a majority of the

Commissioners. The Vice Chairperson acts as Chairperson in the absence or disability of the Chairperson or in the event of a vacancy in that office.

(c) No vacancy in the Commission affects its powers and any vacancy is filled in the same manner and is subject to the same limitations with respect to party affiliations as previous appointments.

(d) Five members of the Commission constitute a quorum.

§ 701.11 Commission meetings—duties of the Chairperson.

(a) At a meeting of the Commission in each calendar year, the Commission shall, by vote of the majority, adopt a schedule of Commission meetings for the following calendar year.

(b) In addition to the regularly scheduled meetings, it is the responsibility of the Chairperson to call the Commission to meet in a special open meeting at such time and place as he or she shall deem appropriate; provided however, that upon the motion of a member, and a favorable vote by a majority of Commission members, a special meeting of the Commission may be held in the absence of a call by the Chairperson.

(c) The Chairperson, after consulting with the Staff Director, shall establish the agenda for each meeting. The agenda at the meeting of the Commission may be modified by the addition or deletion of specific items upon the motion of a Commissioner and a favorable vote by a majority of the members.

(d) In the event that after consulting with the members of the Commission and consideration of the views of the members the Chairperson determines that there are insufficient substantive items on a proposed meeting agenda to warrant holding a scheduled meeting, the Chairperson may cancel such meeting.

§ 701.12 Staff Director.

A Staff Director for the Commission is appointed by the President with the concurrence of a majority of the Commissioners. The Staff Director is the administrative head of the agency.

§ 701.13 Staff organization and functions.

The Commission staff organization and function are as follows:

(a) *Office of the Staff Director.* Under the direction of the Staff Director, this Office defines and disseminates to staff the policies established by the Commissioners; develops program plans for presentation to the Commissioners; evaluates program results; supervises and coordinates the work of other agency offices; manages the administrative affairs of the agency; appoints an Equal Employment Opportunity Officer for the agency's in-house Equal Employment Opportunity Program; and conducts agency liaison with the Executive Office of the President, the Congress, and other Federal agencies.

(b) *Office of the Deputy Staff Director.* Under the direction of the Deputy Staff Director, this Office is responsible for the day-to-day administration of the agency; evaluation of quantity and quality of program efforts; personnel administration; and the supervision of Office Directors who do not report directly to the Staff Director.

(c) *Office of the General Counsel.* Under the direction of the General Counsel, who reports directly to the Staff Director, this office serves as legal counsel to the Commissioners and to the agency; legal aspects of agency-related personnel actions, employment issues, and labor relations issues; plans and conducts hearings and consultations for the Commission; conducts legal studies; prepares reports of legal studies and hearings; drafts or reviews proposals for legislative and executive action; receives and responds to requests for material under the Freedom of Information Act, Federal Advisory Committee Act, Administrative Procedures Act, and the Sunshine Act; serves as the agency's ethics office and responds to requests for advice and guidance on questions of ethical conduct, conflicts of interest, and reporting financial interest; and reviews all agency publications and congressional testimony for legal sufficiency.

(d) *Office of Management.* This Office is responsible for all administrative, management, and facilitative services necessary for the operation of the agency, including financial management, personnel, publications, and the National Clearinghouse Library. This office consists of three divisions reporting directly to the Staff Director.

(1) *Administrative Services and Clearinghouse Division.* Under the direction of the Chief of Administrative Services, this Division is responsible for the identification and acquisition of Commission hearing facilities; oversight of the Rankin Library and the distribution of publications; procurement; information and resources management; security; telecommunications; transportation; space management; repair and maintenance services; supplies; central mailing lists; and assorted other administrative duties and functions;

(2) *Budget and Finance Division.* Under the direction of the Chief of Budget and Finance, this Division is responsible for budget preparation, formulation, justification, and execution; financial management; and accounting, including travel for Commissioners and staff; and

(3) *Human Resources Division.* Under the direction of the Director of Human Resources, this Division is responsible for human resources development, including career staffing, classification, benefits, time and attendance, training, and compensation.

(e) *Office of Federal Civil Rights Evaluation.* Under the direction of an Assistant Staff Director, this Office is responsible for monitoring, evaluating and reporting on the civil rights enforcement effort of the Federal Government; developing concepts for programs, projects, and policies directed toward the achievement of Commission goals; preparing documents that articulate the Commission's views and concerns regarding Federal civil rights to Federal agencies having appropriate jurisdiction; and receiving complaints alleging denial of civil rights because of color, race, religion, sex, age, disability, or national origin and referring these complaints to the appropriate government agency for investigation and resolution.

(f) *Congressional Affairs Unit.* This Unit is responsible for liaison with committees and members of Congress or their staffs, monitoring legislative activities relating to civil rights, and preparing testimony for presentation before committees of Congress when such testimony has been requested by a committee.

(g) *Public Affairs Unit.* Under the direction of the Chief of Public Affairs, this Unit is responsible for planning and managing briefings at which the Commission receives information regarding civil rights issues; developing plans for community outreach activities; managing the Commission's public service announcements; media releases and press conferences; preparing for publication periodic updates of Commission activities and a Commission civil rights magazine; and keeping the Commission and Commission staff apprised of civil rights conferences and activities.

(h) *Regional Programs Coordination Unit.* Under the direction of the Chief of the Regional Programs Coordination Unit, this Unit is responsible for directing and coordinating the programs and work of the regional offices and 51 State Advisory Committees to the Commission and maintaining liaison between the regional offices and the various headquarters' offices of the Commission.

(i) *Regional Offices.* The Commission has six regional offices, each headed by a Director, that coordinate studies and fact-finding activities on a variety of civil rights issues addressed by the State Advisory Committees (SAC) in their regions and approved by the Staff Director; report to the Commission on the results of SAC activities; submit SAC reports to the Commission for action; and assist with follow-up on recommendations included in SAC or Commission reports. The name of the Director, the address, and telephone and facsimile numbers for each regional office are published annually in the ''United States Government Manual''. The regions and the SACs that they serve are:

Region I: Eastern Regional Office, Washington, D.C.

Connecticut, Delaware, District of Columbia, Maine, Maryland, Massachusetts, New Hampshire, New Jersey, New York, Pennsylvania, Rhode Island, and Vermont, Virginia, West Virginia.

Region II: Southern Regional Office, Atlanta, Georgia.

Florida, Georgia, Kentucky, North Carolina, South Carolina, and Tennessee.

Region III: Midwestern Regional Office, Chicago, Illinois

Illinois, Indiana, Michigan, Minnesota, Ohio, and Wisconsin.

Region IV: Central Regional Office, Kansas City, Kansas

Alabama, Arkansas, Iowa, Kansas, Louisiana, Mississippi, Missouri, Nebraska, and Oklahoma.

Region V: Rocky Mountain Regional Office, Denver, Colorado

Colorado, Montana, New Mexico North Dakota, South Dakota, Utah, and Wyoming.

Region VI: Western Regional Office, Los Angeles, California

Alaska, Arizona, California, Hawaii, Idaho, Nevada, Oregon, Texas, and Washington.

PART 702—RULES ON HEARINGS, REPORTS AND MEETINGS OF THE COMMISSION

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Authority: 42 U.S.C. 1975, 1975a, 1975b.

Subpart A—Hearings and Reports

§ 702.1 Definitions.

For purposes of this part, the following definitions shall apply unless otherwise provided:

(a) *The Act* means the United States Commission on Civil Rights Act of 1983, 97 Stat. 1301, as amended by the Civil Rights Commission Amendments Act of 1994, 108 Stat. 4339, codified in 42 U.S.C. 1975 through 1975d.

(b) *The Commission* means the United States Commission on Civil Rights or, as provided in § 702.2, to any authorized subcommittee thereof.

(c) *The Chairperson* means the Chairperson of the Commission or authorized subcommittee thereof or to any acting Chairperson of the Commission or of such subcommittee.

(d) *Proceeding* means collectively to any public session of the Commission and executive session held in connection therewith.

(e) *Hearing* means collectively to a public session of the Commission and any executive session held in connection therewith, including the attendance of witnesses or the production of written or other matters for which subpoenas have been issued.

(f) *Witnesses* are persons subpoenaed to attend and testify or produce written or other matter.

(g) *The rules in this part* means the Rules on Hearings of the Commission.

(h) *Report* means statutory reports or portions thereof issued pursuant to 42 U.S.C. 1975a(c).

(i) *Verified answer* means an answer the truth of which is substantiated by oath or affirmation attested to by a notary public or other person who has legal authority to administer oaths.

§ 702.2 Authorization for hearing.

Under 42 U.S.C. 1975a(e)(1) the Commission or, on the authorization of the Commission, any subcommittee of two or more members, at least one of whom shall be of each major political party, may, for the purpose of carrying out the provisions of the Act, hold such hearings and act at such times and locations as the Commission or such authorized subcommittee may deem advisable. The holding of hearings by the Commission or the appointment of a subcommittee to hold hearings pursuant to this section must be approved by a majority of the Commission or by a majority of the members present at a meeting at which at least a quorum of five members is present.

§ 702.3 Notice of hearing.

At least 30 days prior to the commencement of any hearing, the Commission shall publish in the **Federal Register** notice of the date on which such hearing is to commence, the location at which it is to be held, and the subject of the hearing.

§ 702.4 Subpoenas.

(a) Subpoenas for the attendance and testimony of witnesses or the production of written or other matter may be issued by the Commission over the signature of the Chairperson and may be served by any person designated by the Chairperson.

(b) A witness compelled to appear before the Commission or required to produce written or other matter shall be served with a copy of the rules in this part at the time of service of the subpoena.

(c) The Commission may issue subpoenas for the attendance and testimony of witnesses or for the production of written or other matter. Such a subpoena may not require the presence of a witness more than 100 miles outside the location wherein the witness is found or resides or is domiciled or transacts business or has appointed an agent for receipt of service of process.

(d) The Chairperson shall receive and the Commission shall dispose of requests to subpoena additional witnesses except as otherwise provided in § 702.6(e).

(e) Requests for subpoenas shall be in writing, supported by a showing of the general relevance and materiality of the evidence sought. Witness fees and mileage shall be computed and paid pursuant to § 702.15.

(f) Subpoenas shall be issued at a reasonably sufficient time in advance of their scheduled return, in order to give subpoenaed persons an opportunity to prepare for their appearance and to employ counsel, should they so desire.

(g) No subpoenaed document or information contained therein shall be made public unless it is introduced into

and received as part of the official record of the hearing.

§ 702.5 Conduct of proceedings.

(a) The Chairperson shall announce in an opening statement the subject of the proceedings.

(b) Following the opening statement, the Commission shall first convene in executive session if one is required pursuant to the provisions of § 702.6.

(c) The Chairperson, subject to the approval of the Commission, shall:

(1) Set the order of presentation of evidence and appearance of witnesses;

(2) Rule on objections and motions;

(3) Administer oaths and affirmations;

(4) Make all rulings with respect to the introduction into or exclusion from the record of documentary or other evidence;

(5) Regulate the course and decorum of the proceedings and the conduct of the parties and their counsel to ensure that the proceedings are conducted in a fair and impartial manner.

(d) Proceedings shall be conducted with reasonable dispatch and due regard shall be had for the convenience and necessity of witnesses.

(e) The questioning of witnesses shall be conducted only by Members of the Commission, by authorized Commission staff personnel, or by counsel to the extent provided in § 702.7.

(f) In addition to persons served with a copy of the rules in this part pursuant to §§ 702.4 and 702.6, a copy of the rules in this part will be made available to all witnesses.

(g) The Chairperson may punish breaches of order and decorum by censure and exclusion from the proceedings.

§ 702.6 Executive session.

(a) If the Commission determines that evidence or testimony at any hearing may tend to defame, degrade, or incriminate any person, it shall receive such evidence or testimony or summary of such evidence or testimony in executive session.

(b) The Commission shall afford any persons defamed, degraded, or incriminated by such evidence or testimony an opportunity to appear and be heard in executive session, with a reasonable number of additional witnesses requested by them, before deciding to use such evidence or testimony.

(1) Such person shall be served with notice, in writing, at least 10 days prior to the date, time, and location for the appearance of witnesses at executive session or where service is by mail at least 14 days prior to such date. This notice shall be accompanied by a copy of the rules in this part and by a brief summary of the information that the Commission has determined may tend to defame, degrade, or incriminate such person;

(2) The notice, summary, and rules in this part shall be served by certified mail or by leaving a copy thereof at the last known residence or business address of such person; and

(3) The date of service, for purposes of this section, shall be the day when the material is deposited in the mail or is delivered in person, whichever is applicable. When service is made by mail, the return post office receipt shall be proof of service; in all other cases, the acknowledgment of the party served or the verified return of the one making service shall be proof of the same.

(c) If a person receiving notice under this section notifies the Commission within five days of service of such notice or where service is by mail within eight days of service of such notice that the scheduled appearance constitutes a hardship, the Commission may, in its discretion, set a new date or time for such person's appearance at the executive session.

(d) In the event such persons fail to appear at executive session at the time and location scheduled under paragraph (b) or (c) of this section, they shall not be entitled to another opportunity to appear at executive session, except as provided in § 702.11.

(e) If such persons intend to submit sworn statements of themselves or others, or if they intend that witnesses appear in their behalf at executive session, they shall, no later than 48 hours prior to the time set under paragraph (b) or (c) of this section, submit to the Commission all such statements and a list of all witnesses. The Commission will inform such persons whether the number of witnesses requested is reasonable within the meaning of paragraph (b) of this section. In addition, the Commission will receive and dispose of requests from such persons to subpoena other witnesses. Requests for subpoenas shall be made sufficiently in advance of the scheduled executive session to afford subpoenaed persons reasonable notice of their obligation to appear at that session. Subpoenas returnable at executive session shall be governed by the provisions of § 702.4.

(f) Persons for whom an executive session has been scheduled, and persons compelled to appear at such session, may be represented by counsel at such session to the extent provided by § 702.7.

(g) Attendance at executive session shall be limited to Commissioners; authorized Commission staff personnel; witnesses, and their counsel at the time scheduled for their appearance; and such other persons whose presence is requested or consented to by the Commission.

(h) In the event the Commission determines to release or to use evidence or testimony that it has determined may tend to defame, degrade, or incriminate any persons in such a manner as to reveal publicly their identity, such evidence or testimony, prior to such public release or use, will be presented at a public session, and the Commission will afford them an opportunity to appear as voluntary witnesses or to file a sworn statement in their own behalf and to submit brief and pertinent sworn statements of others.

§ 702.7 Counsel.

(a) Persons compelled to appear in person before the Commission and any witness appearing at a public session of the Commission will be accorded the right to be accompanied and advised by counsel, who will have the right to subject their clients to reasonable examination, make objections on the record, and briefly argue the basis for such objections.

(b) For the purpose of this section, counsel shall mean an attorney at law admitted to practice before the Supreme Court of the United States or the highest court of any State or Territory of the United States.

(c) Failure of any persons to obtain counsel shall not excuse them from attendance in response to a subpoena, nor shall any persons be excused in the event their counsel is excluded from the proceeding pursuant to § 702.6(g). In the latter case, however, such persons shall be afforded a reasonable time to obtain other counsel, said time to be determined by the Commission.

§ 702.8 Evidence at Commission proceedings.

(a) The rules of evidence prevailing in courts of law or equity shall not control proceedings of the Commission.

(b) Where a witness testifying at a public session of a hearing or a session for return of subpoenaed documents offers the sworn statements of other persons, such statements, in the discretion of the Commission, may be included in the record, provided they are received by the Commission 24 hours in advance of the witness' appearance.

(c) The prepared statement of a witness testifying at a public session of a hearing, in the discretion of the Commission, may be placed into the record, provided that such statement is

received by the Commission 24 hours in advance of the witness' appearance.

(d) In the discretion of the Commission, evidence may be included in the record after the close of a public session of a hearing provided the Commission determines that such evidence does not tend to defame, degrade, or incriminate any person.

(e) The Commission will determine the pertinence of testimony and evidence adduced at its proceedings and may refuse to include in the record of a proceeding or may strike from the record any evidence it considers to be cumulative, immaterial, or not pertinent.

§ 702.9 Cross-examination at public session.

If the Commission determines that oral testimony of a witness at a public session tends to defame, degrade, or incriminate any person, such person, or through counsel, shall be permitted to submit questions to the Commission in writing, which, in the discretion of the Commission, may be put to such witness by the Chairperson or by authorized Commission staff personnel.

§ 702.10 Voluntary witnesses at public session of a hearing.

A person who has not been subpoenaed and who has not been afforded an opportunity to appear pursuant to § 702.6 may be permitted, in the discretion of the Commission, to make an oral or written statement at a public session of a hearing. Such person may be questioned to the same extent and in the same manner as other witnesses before the Commission.

§ 702.11 Special executive session.

If, during the course of a public session, evidence is submitted that was not previously presented at executive session and that the Commission determines may defame, degrade, or incriminate any person, the provisions of § 702.6 shall apply and such extensions, recesses or continuances of the public session shall be ordered by the Commission, as it deems necessary. The time and notice requirements of § 702.6 may be modified by the Commission provided reasonable notice of a scheduled executive session is afforded such person; the Commission may, in its discretion, strike such evidence from the record, in which case the provisions of § 702.6 shall not apply.

§ 702.12 Contempt of the Commission.

Proceedings and process of the Commission are governed by 42 U.S.C. 1975a(e)(2), which provides that in case of contumacy or refusal to obey a subpoena, the Attorney General may in a Federal court of appropriate jurisdiction obtain an appropriate order to enforce the subpoena.

§ 702.13 Intimidation of witnesses.

Witnesses at Commission proceedings are protected by the provisions of 18 U.S.C. 1505, which provide that whoever, with intent to avoid, evade, prevent, or obstruct compliance, in whole or in part, with any civil investigative demand duly and properly made under the Antitrust Civil Process Act, willfully withholds, misrepresents, removes from any place, conceals, covers up, destroys, mutilates, alters, or by other means falsifies any documentary material, answers to written interrogatories, or oral testimony, which is the subject of such demand; or attempts to do so or solicits another to do so; or whoever corruptly, or by threats or force, or by any threatening letter or communication influences, obstructs, or impedes or endeavors to influence, obstruct, or impede the due and proper administration of the law under which any pending proceeding is being had before any department or agency of the United States, or the due and proper exercise of the power of inquiry under which any inquiry or investigation is being had by either House, or any committee of either House or any joint committee of the Congress shall be fined under this title or imprisoned not more than five years, or both.

§ 702.14 Transcript of Commission proceedings.

(a) An accurate transcript shall be made of the testimony of all witnesses at all proceedings of the Commission. Transcripts shall be recorded solely by the official reporter or by any other person or means designated by the Commission.

(b) Every person who submits data or evidence shall be entitled to retain or, on payment of lawfully prescribed costs, procure a copy or transcript thereof, except that witnesses in a hearing held in executive session may be limited, for good cause, to inspection of the official transcript of their testimony. Transcript copies of public sessions may be obtained by the public upon the payment of the cost thereof.

(c) Persons who have presented testimony at a proceeding may ask within 60 days after the close of the proceeding to correct errors in the transcript of their testimony. Such requests shall be granted only to make the transcript conform to their testimony as presented at the proceeding.

§ 702.15 Witness fees.

A witness attending any session of the Commission shall be paid the same fees and mileage that are paid witnesses in the courts of the United States. Mileage payments must be tendered at the witness' request upon service of a subpoena issued on behalf of the Commission or any subcommittee thereof.

§ 702.16 Attendance of news media at public sessions.

Reasonable access for coverage of public sessions shall be provided to the various communications media, including newspapers, magazines, radio, newsreels, and television, subject to the physical limitations of the room in which the session is held and consideration of the physical comfort of Commission members, staff, and witnesses. However, no witnesses shall be televised, filmed, or photographed during the session nor shall the testimony of any witness be broadcast or recorded for broadcasting if the witness objects.

§ 702.17 Communications with respect to Commission proceedings.

During any proceeding held outside Washington, DC, communications to the Commission with respect to such proceeding must be made to the Chairperson or authorized Commission staff personnel in attendance. All requests for subpoenas returnable at a hearing, requests for appearance of witnesses at a hearing, and statements or other documents for inclusion in the record of a proceeding, required to be submitted in advance, must be submitted to the Chairperson, or such authorized person as the Chairperson may appoint, at an office located in the community where such hearing or proceeding is scheduled to be held. The location of such office will be set forth in all subpoenas issued under the rules in this part and in all notices prepared pursuant to § 706.2.

§ 702.18 Commission reports.

(a) If a Commission report tends to defame, degrade, or incriminate any person, the report or relevant portions thereof shall be delivered to such person at least 30 days before the report is made public to allow such person to make a timely verified answer to the report. The Commission shall afford such person an opportunity to file with the Commission a verified answer to the report or relevant portions thereof not later than 20 days after service as provided by the regulations in this part.

(1) Such person shall be served with a copy of the report or relevant portions

thereof, with an indication of the section(s) that the Commission has determined tend to defame, degrade, or incriminate such person, a copy of the Act, and a copy of the regulations in this part.

(2) The report or relevant portions thereof, the Act, and regulations in this part shall be served by certified mail, return receipt requested, or by leaving a copy thereof at the last known residence or business address or the agent of such person.

(3) The date of service for the purposes of this section shall be the day the material is delivered either by the post office or otherwise, to such person or the agent of such person or at the last known residence or business address of such person. The acknowledgement of the party served or the verified return of the one making service shall be proof of service except that when service is made by mail, the return post office receipt shall also constitute proof of same.

(b) If a person receiving a Commission report or relevant portions thereof under this part requests an extension of time from the Commission within seven days of service of such report, the Commission may, upon a showing of good cause, grant the person additional time within which to file a verified answer.

(c) A verified answer shall plainly and concisely state the facts and law constituting the person's reply or defense to the charges or allegations contained in the report.

(d) Such verified answer shall be published as an appendix to the report; however, the Commission may except from the answer such matter as it determines to be scandalous, prejudicial, or unnecessary.

Subpart B—Meetings

§ 702.50 Purpose and scope.

This subpart contains the regulations of the United States Commission on Civil Rights implementing sections (a)–(f) of 5 U.S.C. 552b, the ''Government in the Sunshine Act.'' They are adopted to further the principle that the public is entitled to the fullest practicable information regarding the decision-making processes of the Commission. They open meetings of the Commission to public observation except where the rights of individuals are involved or the ability of the Commission to carry out its responsibilities requires confidentiality.

§ 702.51 Definitions.

(a) *Commission* means the United States Commission on Civil Rights and any subcommittee of the Commission authorized under the United States Commission on Civil Rights Act of 1983, 97 Stat. 1301, as amended by the Civil Rights Commission Amendments Act of 1994, 108 Stat. 4339. The statutes are codified in 42 U.S.C. 1975 through 1975d.

(b) *Commissioner* means a member of the U.S. Commission on Civil Rights appointed by the President, the President pro tempore of the Senate, or the Speaker of the House of Representatives, as provided in 42 U.S.C. 1975.

(c) *Meeting* means the deliberations of at least the number of Commissioners required to take action on behalf of the Commission where such deliberations determine or result in the joint conduct or disposition of official Commission business.

(1) The number of Commissioners required to take action on behalf of the Commission is four, except that such number is two when the Commissioners are a subcommittee of the Commission authorized under 42 U.S.C. 1975a(e)(1).

(2) Deliberations among Commissioners regarding the setting of the time, location, or subject matter of a meeting, whether the meeting is open or closed, whether to withhold information discussed at a closed meeting, and any other deliberations required or permitted by 5 U.S.C. 552b (d) and (e) and § 702.54 and § 702.55 of this subpart, are not meetings for the purposes of this subpart.

(3) The consideration by Commissioners of Commission business that is not discussed through conference calls or a series of two party calls by the number of Commissioners required to take action on behalf of the Commission is not a meeting for the purposes of this subpart.

(d) *Public announcement or publicly announce* means the use of reasonable methods, such as the posting on the Commission's website or public notice bulletin boards and the issuing of press releases, to communicate information to the public regarding Commission meetings.

(e) *Staff Director* means the Staff Director of the Commission.

§ 702.52 Open meeting requirements.

(a) Every portion of every Commission meeting shall be open to public observation, except as provided in § 702.53 of this subpart. Commissioners shall not jointly conduct or dispose of agency business other than in accordance with this subpart.

(b) This subpart gives the public the right to attend and observe Commission open meetings; it confers no right to participate in any way in such meetings.

(c) The Staff Director shall be responsible for making physical arrangements for Commission open meetings that provide ample space, sufficient visibility, and adequate acoustics for public observation.

(d) The presiding Commissioner at an open meeting may exclude persons from a meeting and shall take all steps necessary to preserve order and decorum.

§ 702.53 Closed meetings.

(a) The Commission may close a portion or portions of a meeting and withhold information pertaining to such meeting when it determines that the public interest does not require otherwise and when such portion or portions of a meeting or the disclosure of such information is likely to:

(1) Disclose matters that are:

(i) Specifically authorized under criteria established by an Executive Order to be kept secret in the interests of national defense or foreign policy and

(ii) In fact properly classified pursuant to such Executive Order;

(2) Disclose information relating solely to the internal personnel rules and practices of the Commission;

(3) Disclose matters specifically exempted from disclosure by statute (other than 5 U.S.C. 552b), provided that such statute:

(i) Requires that the matters be withheld from the public in such a manner as to leave no discretion on the issue, or

(ii) Establishes particular criteria for withholding or refers to particular types of matters to be withheld;

(4) Disclose trade secrets and commercial or financial information obtained from a person and is privileged or confidential;

(5) Involve accusing any person of a crime or formally censuring any person;

(6) Disclose information of a personal nature where disclosure would constitute a clearly unwarranted invasion of personal privacy;

(7) Disclose investigatory records compiled for law enforcement purposes, or information that if written would be contained in such records, but only to the extent that the production of such records or information would:

(i) Interfere with enforcement proceedings,

(ii) Deprive a person of a right to a fair trial or an impartial adjudication,

(iii) Constitute an unwarranted invasion of personal privacy,

(iv) Disclose the identity of a confidential source and, in the case of a record received by the Commission

from a criminal law enforcement authority in the course of a criminal investigation or by an agency conducting a lawful national security intelligence investigation, confidential information furnished only by the confidential source,

(v) Disclose investigative techniques and procedures, or

(vi) Endanger the life or physical safety of law enforcement personnel;

(8) Disclose information received by the Commission and contained in or related to examination, operating, or condition reports prepared by, on behalf of, or for the use of an agency responsible for the regulation or supervision of financial institutions;

(9) Disclose information the premature disclosure of that would:

(i) In the case of information received by the Commission from an agency that regulates currencies, securities, commodities, or financial institutions, be likely to:

(A) Lead to significant financial speculation in currencies, securities, or commodities, or

(B) Significantly endanger the stability of any financial institution; or

(ii) Be likely to significantly frustrate implementation of a proposed action, except that this paragraph shall not apply in any instance where the Commission has already disclosed to the public the content or nature of its proposed action or where the Commission is required by law to make such disclosure on its own initiative prior to taking final agency action on such proposal; or

(10) Specifically concern the Commission's issuance of a subpoena or the Commission's participation in a civil action or proceeding, an action in a foreign court or international tribunal, or an arbitration.

(b) [Reserved]

§ 702.54 Closed meeting procedures.

(a) A meeting or portion thereof will be closed, and information pertaining to a closed meeting will be withheld, only after four Commissioners when no Commissioner's position is vacant, three Commissioners when there is a vacancy, or two Commissioners on a subcommittee authorized under 42 U.S.C. 1975a(e)(1), vote to take such action.

(b)(1) A separate vote shall be taken with respect to each meeting, a portion or portions of which is proposed to be closed to the public under § 702.53, and with respect to any information to be withheld under § 702.53.

(2) A single vote may be taken with respect to a series of meetings, a portion or portions of which are proposed to be closed to the public, or with respect to any information concerning such series of meetings, so long as:

(i) Each meeting in such series involves the same particular matters, and

(ii) Is scheduled to be held no more than thirty (30) days after the initial meeting in such series.

(c) The Commission will vote on the question of closing a meeting or portion thereof and withholding information under paragraph (b) of this section if one Commissioner calls for such a vote. The vote of each Commissioner participating in a vote to close a meeting shall be recorded and no proxies shall be allowed.

(1) If such vote is against closing a meeting and withholding information, the Staff Director, within one working day of such vote, shall make publicly available by putting in a place easily accessible to the public a written copy of such vote reflecting the vote of each Commissioner.

(2) If such vote is for closing a meeting and withholding information, the Staff Director, within one working day of such vote, shall make publicly available by putting in a place easily accessible to the public a written copy of such vote reflecting the vote of each Commissioner, and:

(i) A full written explanation of the decision to close the meeting or portions thereof (such explanation will be as detailed as possible without revealing the exempt information);

(ii) A list of all persons other than staff members expected to attend the meeting and their affiliation (the identity of persons expected to attend such meeting will be withheld only if revealing their identity would reveal the exempt information that is the subject of the closed meeting).

(d) Prior to any vote to close a meeting or portion thereof under paragraph (c) of this section, the Commissioners shall obtain from the General Counsel an opinion as to whether the closing of a meeting or portions thereof is in accordance with paragraphs (a)(1) through (10) of § 702.53.

(1) For every meeting closed in accordance with paragraphs (a)(1) through (10) of § 702.53, the General Counsel shall publicly certify in writing that, in his or her opinion, the meeting may be closed to the public and shall cite each relevant exemptive provision.

(2) A copy of certification by the General Counsel together with a statement from the presiding officer of the closed meeting setting forth the time and location of the meeting and the persons present, shall be retained by the Commission.

(e) For all meetings closed to the public, the Commission shall maintain a complete verbatim transcript or electronic recording adequate to record fully the proceedings of each meeting or portion of a meeting, which sets forth the time and location of the meeting and the persons present. In the case of a meeting or a portion of a meeting closed to the public pursuant to paragraphs (a)(8), (9)(i)(A), or (10) of § 702.53, the Commission may retain a set of minutes and such minutes shall fully and clearly describe all matters discussed and provide a full and accurate summary of any actions taken, and the reasons therefor, including a description of each of the views expressed on any item and the record of any roll call vote (reflecting the vote of each member on the question). All documents considered in connection with any action shall be identified in such minutes.

(f) Any person whose interests may be directly affected by a portion of a meeting may request that such portion be closed to the public under § 702.53 or that it be open to the public if the Commission has voted to close the meeting pursuant to § 702.53(a)(5), (6) or (7). The Commission will vote on the request if one Commissioner asks that a vote be taken. Such requests shall be made to the Staff Director within a reasonable amount of time after the meeting or vote in question is publicly announced.

§ 702.55 Public announcement of meetings.

(a) *Agenda.* The Staff Director shall set as early as possible but in any event at least eight calendar days before a meeting, the time, location, and subject matter for the meeting. Agenda items will be identified in adequate detail to inform the general public of the specific business to be discussed at the meeting.

(b) *Notice.* The Staff Director, at least eight calendar days before a meeting, shall make public announcement of:

(1) The time of the meeting;

(2) Its location;

(3) Its subject matter;

(4) Whether it is open or closed to the public; and

(5) The name and phone number of a Commission staff member who will respond to requests for information about the meeting.

(c) *Changes.* (1) The time of day or location of a meeting may be changed following the public announcement required by paragraph (b) of this section, if the Staff Director publicly announces such change at the earliest practicable time subsequent to the decision to change the time of day or location of the meeting.

(2) The date of a meeting may be changed following the public announcement required by paragraph (b) of this section, or a meeting may be scheduled less than eight calendar days in advance, if:

(i) Four Commissioners when no Commissioner's position is vacant, three Commissioners when there is such a vacancy, or two Commissioners on a subcommittee authorized under 42 U.S.C. 1975a(d), determine by recorded vote that Commission business requires such a meeting at an earlier date; and

(ii) The Staff Director, at the earliest practicable time following such vote, makes public announcement of the time, location, and subject matter of such meeting and whether it is open or closed to the public.

(3) The subject matter of a meeting or the determination to open or close a meeting or a portion of a meeting to the public may be changed following the public announcement required by paragraph (b) of this section if:

(i) Four Commissioners when no Commissioner's position is vacant, three Commissioners when there is such a vacancy, or two Commissioners on a subcommittee authorized under 42 U.S.C. 1975a(e)(1) determine by recorded vote that Commission business so requires; and

(ii) The Staff Director publicly announces such change and the vote of each Commissioner upon such change at the earliest practicable time subsequent to the decision to make such change.

(d)(1) **Federal Register**. Immediately following all public announcements required by paragraphs (b) and (c) of this section, notice of the time, location, and subject matter of a meeting, whether the meeting is open or closed to the public, any change in one of the preceding, and the name and phone number of the official designated by the Commission to respond to requests for information about meeting, shall be submitted for publication in the **Federal Register**.

(2) Notice of a meeting will be published in the **Federal Register** even after the meeting that is the subject of the notice has occurred in order to provide a public record of all Commission meetings.

§ 702.56 Records.

(a) The Commission shall promptly make available to the public in an easily accessible place at Commission headquarters the following materials:

(1) A copy of the certification by the General Counsel required by § 702.54(e)(1).

(2) A copy of all recorded votes required to be taken by these rules.

(3) A copy of all announcements published in the **Federal Register** pursuant to this subpart.

(4) Transcripts, electronic recordings, and minutes of closed meetings determined not to contain items of discussion or information that may be withheld under § 702.53. Copies of such material will be furnished to any person at the actual cost of transcription or duplication.

(b)(1) Requests to review or obtain copies of records compiled under this Act, other than transcripts, electronic recordings, or minutes of a closed meeting, will be processed under the Freedom of Information Act and, where applicable, the Privacy Act regulations of the Commission (parts 704 and 705, respectively, of this title). Nothing in this subpart expands or limits the present rights of any person under the rules in this part with respect to such requests.

(2) Requests to review or obtain copies of transcripts, electronic recordings, or minutes of a closed meeting maintained under § 702.54(e) and not released under paragraph (a)(4) of this section shall be directed to the Staff Director who shall respond to such requests within ten (10) working days.

(c) The Commission shall maintain a complete verbatim copy of the transcript, a complete copy of minutes, or a complete electronic recording of each meeting, or portion of a meeting, closed to the public, for a period of two years after such meeting or until one year after the conclusion of any agency proceeding with respect to which the meeting or portion was held, whichever occurs later.

§ 702.57 Administrative review.

Any person who believes a Commission action governed by this subpart to be contrary to the provisions of this subpart shall file an objection in writing with the Staff Director specifying the violation and suggesting corrective action. Whenever possible, the Staff Director shall respond within ten (10) working days of the receipt of such objections.

PART 703—OPERATIONS AND FUNCTIONS OF STATE ADVISORY COMMITTEES

Sec.

703.1 Name and establishment.
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§ 703.1 Name and establishment.

Pursuant to 42 U.S.C. 1975a(d), the Commission has chartered and maintains Advisory Committees to the Commission in each State, and the District of Columbia. All relevant provisions of the Federal Advisory Committee Act of 1972 (Public Law 92–463, as amended) are applicable to the management, membership, and operations of such committees and subcommittees thereof.

§ 703.2 Functions.

Under the Commission's charter each Advisory Committee shall:

(a) Advise the Commission in writing of any knowledge or information it has of any alleged deprivation of the right to vote and to have the vote counted by reason of color, race, religion, sex, age, disability, or national origin, or that citizens are being accorded or denied the right to vote in Federal elections as a result of patterns or practices of fraud or discrimination;

(b) Advise the Commission concerning matters related to discrimination or a denial of equal protection of the laws under the Constitution and the effect of the laws and policies of the Federal Government with respect to equal protection of the laws;

(c) Advise the Commission upon matters of mutual concern in the preparation of reports of the Commission to the President and the Congress;

(d) Receive reports, suggestions, and recommendations from individuals, public and private organizations, and public officials upon matters pertinent to inquiries conducted by the Advisory Committee;

(e) Initiate and forward advice and recommendations to the Commission upon matters that the Advisory Committee has studied;

(f) Assist the Commission in the exercise of its clearinghouse function and with respect to other matters that the Advisory Committee has studied;

(g) Attend, as observers, any open hearing or conference that the Commission may hold within the State.

§ 703.3 Scope of subject matter.

The scope of the subject matter to be dealt with by Advisory Committees shall be those subjects of inquiry or study with which the Commission itself is authorized to investigate, pursuant to

42 U.S.C. 1975(a). Each Advisory Committee shall confine its studies to the State covered by its charter. It may, however, subject to the requirements of § 703.4, undertake to study, within the limitations of the Act, subjects other than those chosen by the Commission for study.

§ 703.4 Advisory Committee Management Officer.

(a) The Chief of the Regional Programs Coordination Unit is designated as Advisory Committee Management Officer pursuant to the requirements of the Federal Advisory Committee Act of 1972 (Public Law 92–463, as amended).

(b) Such Officer shall carry out the functions specified in section 8(b) of the Federal Advisory Committee Act.

(c) Such Officer shall, for each Advisory Committee, appoint a Commission employee to provide services to the Committee and to be responsible for supervising the activity of the Committee pursuant to section 8 of the Federal Advisory Committee Act. The employee is subject to the supervision of the Regional Director of the Commission responsible for the State within which said Committee is chartered.

§ 703.5 Membership.

(a) Subject to exceptions made from time to time by the Commission to fit special circumstances, each Advisory Committee shall consist of at least 11 members appointed by the Commission. Members of the Advisory Committees shall serve for a fixed term to be set by the Commission upon the appointment of a member subject to the duration of Advisory Committees as prescribed by the charter, provided that members of the Advisory Committee may, at any time, be removed by the Commission.

(b) Membership on the Advisory Committee shall be reflective of the different ethnic, racial, and religious communities within each State and the membership shall also be representative with respect to sex, political affiliation, age, and disability status.

§ 703.6 Officers.

(a) The officers of each Advisory Committee shall be a Chairperson, Vice Chairperson, and such other officers as may be deemed advisable.

(b) The Chairperson shall be appointed by the Commission.

(c) The Vice Chairperson and other officers shall be elected by the majority vote of the full membership of the Committee.

(d) The Chairperson, or in his or her absence the Vice Chairperson, under the direction of the Commission staff member appointed pursuant to § 703.4(b) shall:

(1) Call meetings of the Committee;

(2) Preside over meetings of the Committee;

(3) Appoint all subcommittees of the Committee;

(4) Certify for accuracy the minutes of Committee meetings prepared by the assigned Commission staff member; and

(5) Perform such other functions as the Committee may authorize or the Commission may request.

§ 703.7 Subcommittees—Special assignments.

Subject to the approval of the designated Commission employee, an Advisory Committee may:

(a) Establish subcommittees, composed of members of the Committee, to study and report upon matters under consideration and authorize such subcommittees to take specific action within the competence of the Committee; and

(b) Designate individual members of the Committee to perform special projects involving research or study on matters under consideration by the Committee.

§ 703.8 Meetings.

(a) Meetings of a Committee shall be convened by the designated Commission employee or subject to his or her approval by the Chairperson or a majority of the Advisory Committee members. The agenda for such Committee or subcommittee meeting shall be approved by the designated Commission employee.

(b) A quorum shall consist of one-half or more of the members of the Committee, or five members, whichever is the lesser, except that with respect to the conduct of fact-finding meetings as authorized in paragraph (e) of this section, a quorum shall consist of three members.

(c) Notice of all meetings of an Advisory Committee shall be given to the public.

(1) Notice shall be published in the **Federal Register** at least 15 days prior to the meetings, provided that in emergencies such requirement may be waived.

(2) Notice of meetings shall be provided to the public by press releases and other appropriate means.

(3) Each notice shall contain a statement of the purpose of the meeting, a summary of the agenda, and the date, time, and location of such meeting.

(d) Except as provided for in paragraph (d)(1) of this section, all meetings of Advisory Committees or subcommittees shall be open to the public.

(1) The Chief of the Regional Programs Coordination Unit may authorize a Committee or subcommittee to hold a meeting closed to the public if he or she determines that the closing of such meeting is in the public interest provided that prior to authorizing the holding of a closed meeting the Chief of the Regional Programs Coordination Unit has requested and received the opinion of the General Counsel with respect to whether the meeting may be closed under one or more of the exemptions provided in the Government in the Sunshine Act, 5 U.S.C. 552b(c).

(2) In the event that any meeting or portion thereof is closed to the public, the Committee shall publish, at least annually, in summary form a report of the activities conducted in meetings not open to the public.

(e) Advisory Committees and subcommittees may hold fact-finding meetings for the purpose of inviting the attendance of and soliciting information and views from government officials and private persons respecting subject matters within the jurisdiction of the Committee or subcommittee.

(f) Any person may submit a written statement at any business or fact-finding meeting of an Advisory Committee or subcommittee.

(g) At the discretion of the designated Commission employee or his or her designee, any person may make an oral presentation at any business or fact-finding meeting, provided that such presentation will not defame, degrade, or incriminate any other person as prohibited by the Act.

§ 703.9 Reimbursement of members.

(a) Advisory Committee members may be reimbursed by the Commission by a per diem subsistence allowance and for travel expenses at rates not to exceed those prescribed by Congress for Government employees, for the following activities only:

(1) Attendance at meetings, as provided for in § 703.8; and

(2) Any activity specifically requested and authorized by the Commission to be reimbursed.

(b) Members will be reimbursed for the expense of travel by private automobile on a mileage basis only to the extent such expense is no more than that of suitable public transportation for the same trip unless special circumstances justify the additional expense of travel by private automobile.

§ 703.10 Public availability of documents and other materials.

Part 704 of this chapter shall be applicable to reports, publications, and other materials prepared by or for Advisory Committees.

PART 704—INFORMATION DISCLOSURE AND COMMUNICATIONS

Sec.
704.1 Material available pursuant to 5 U.S.C. 552.
704.2 Complaints.
704.3 Other requests and communications.
704.4 Restrictions on disclosure of information.

Authority: 5 U.S.C. 552, 552a, 552b.

§ 704.1 Material available pursuant to 5 U.S.C. 552.

(a) *Purpose, scope, and definitions.* (1) This section contains the regulations of the United States Commission on Civil Rights implementing the *Freedom of Information Act,* 5 U.S.C. 552. These regulations inform the public with respect to where and how records and information may be obtained from the Commission. Officers and employees of the Commission shall make Commission records available under 5 U.S.C. 552 only as prescribed in this section. Nothing contained in this section, however, shall be construed to prohibit officers or employees of the Commission from routinely furnishing information or records that are customarily furnished in the regular performance of their duties.

(2) For the purposes of these regulations the following terms are defined as indicated:

Commission means the United States Commission on Civil Rights;

FOIA means Freedom of Information Act, 5 U.S.C. 552;

FOIA Request means a request in writing, for records pursuant to 5 U.S.C. 552, which meets the requirements of paragraph (d) of this section. These regulations do not apply to telephone or other oral communications or requests not complying with paragraph (d)(1)(i) of this section.

Office of the General Counsel means the General Counsel of the Commission or his or her designee;

Staff Director means the Staff Director of the Commission.

(b) *General policy.* In order to foster the maximum participation of an informed public in the affairs of Government, the Commission will make the fullest possible disclosure of its identifiable records and information consistent with such considerations as those provided in the exemptions of 5 U.S.C. 552 that are set forth in paragraph (f) of this section.

(c) *Material maintained on file pursuant to 5 U.S.C. 552(a)(2).* Material maintained on file pursuant to 5 U.S.C. 552(a)(2) shall be available for inspection during regular business hours at the offices of the Commission at 624 9th Street, NW., Washington, DC 20425. Copies of such material shall be available upon written request, specifying the material desired, addressed to the Office of the General Counsel, U.S. Commission on Civil Rights, 624 9th Street, NW., Washington, DC 20425, and upon the payment of fees, if any, determined in accordance with paragraph (e) of this section.

(1) *Current index.* Included in the material available pursuant to 5 U.S.C. 552(a)(2) shall be an index of:

(i) All other material maintained on file pursuant to 5 U.S.C. 552(a)(2); and

(ii) All material published by the Commission in the **Federal Register** and currently in effect.

(2) *Deletion of identifying details.* Wherever deletions from material maintained on file pursuant to 5 U.S.C. 552(a)(2) are required in order to prevent a clearly unwarranted invasion of privacy, justification for the deletions shall be placed as a preamble to documents from which such deletions are made.

(d) *Materials available pursuant to 5 U.S.C. 552(a)(3)*—(1) *Request procedures.* (i) Each request for records pursuant to this section shall be in writing over the signature of the requester, addressed to the Office of the General Counsel, U.S. Commission on Civil Rights, 624 9th Street, NW., Washington, DC 20425 and:

(A) Shall clearly and prominently be identified as a request for information under the Freedom of Information Act (if submitted by mail or otherwise submitted in an envelope or other cover, be clearly and prominently identified as such on the envelope or other cover—e.g., FOIA); and

(B) Shall contain a sufficiently specific description of the record requested with respect to names, dates, and subject matter to permit such record to be identified and located; and

(C) Shall contain a statement that whatever costs involved pursuant to paragraph (e) of this section will be paid, that such costs will be paid up to a specified amount, or that waiver or reduction of fees is requested pursuant to paragraph (e) of this section.

(ii) If the information submitted pursuant to paragraph (d)(1)(i)(B) of this section is insufficient to enable identification and location of the records, the General Counsel shall as soon as possible notify the requester in writing indicating the additional information needed. Every reasonable effort shall be made to assist in the identification and location of the record sought. Time requirements under the regulations in this part are tolled from the date notification under this section is sent to the requester until an answer in writing to such notification is received from requester.

(iii) A request for records that is not in writing or does not comply with paragraph (d)(1)(i) of this section is not a request under the Freedom of Information Act and the 10 day time limit for agency response under the Act will not be deemed applicable.

(iv) Except as otherwise provided in this section, the General Counsel shall immediately notify the requester of noncompliance with paragraphs (d)(1)(i)(C) and (e) of this section.

(2) *Agency determinations.* (i) Responses to all requests pursuant to 5 U.S.C. 552(a)(3) shall be made by the General Counsel in writing to the requester within 10 working days after receipt by the General Counsel of such request except as specifically exempted under paragraphs (d)(1) (ii), (iii) and (iv) of this section, and shall state:

(A) Whether and to what extent the Commission will comply with the request;

(B) The probable availability of the records or that the records may be furnished with deletions or that records will be denied as exempt pursuant to 5 U.S.C. 552(b)(1) through (9);

(C) The estimated costs, determined in accordance with paragraph (e) of this section, including waiver or reduction of fee as appropriate and any deposit or prepayment requirement; and

(D) When records are to be provided, the time and place at which records or copies will be available determined in accordance with the terms of the request and with paragraph (d)(3) of this section. Such response shall be termed a determination notice.

(ii) In the case of denial of requests in whole or part the determination notice shall state:

(A) Specifically what records are being denied;

(B) The reasons for such denials;

(C) The specific statutory exemption(s) upon which such denial is based;

(D) The names and titles or positions of every person responsible for the denial of such request; and

(E) The right of appeal to the Staff Director of the Commission and procedures for such appeal as provided under paragraph (g) of this section.

(iii) Each request received by the Office of the General Counsel for records pursuant to the regulations in this part shall be recorded immediately. The record of each request shall be kept current, stating the date and time the request is received, the name and address of the person making the request, any amendments to such

request, the nature of the records requested, the action taken regarding the request, including waiver of fees, extensions of time pursuant to 5 U.S.C. 552(a)(6)(B), and appeals. The date and subject of any letters pursuant to paragraph (d)(1) of this section or agency determinations pursuant to paragraph (d)(2)(i) of this section, the date(s) any records are subsequently furnished, and the payment requested and received.

(3) *Time limitations.* (i) Time limitations for agency response to a request for records established by the regulations in this part shall begin when the request is recorded pursuant to paragraph (d)(2)(iii) of this section. A written request pursuant to FOIA but sent to an office of the Commission other than the Office of the General Counsel shall be date stamped, initialed, and redirected immediately to the Office of the General Counsel. The required period for agency determination shall begin when it is received by the Office of the General Counsel in accordance with paragraph (d)(2)(iii) of this section.

(ii) In unusual circumstances, pursuant to 5 U.S.C. 552(a)(6)(B), the General Counsel may, in the case of initial determinations under the regulations in this part, extend the 10 working day time limit in which the agency is required to make its determination notification. Such extension shall be communicated in writing to the requesting party setting forth with particularity the reasons for such extension and the date on which a determination is expected to be transmitted. Such extensions may not exceed 10 working days for any request and may only be used to the extent necessary to properly process a particular request. Such extension is permissible only where there is a demonstrated need:

(A) To search for and collect the requested records from field facilities or other establishments that are separate from the Office of the General Counsel;

(B) To search for, collect, and appropriately examine a voluminous amount of separate and distinct records that are demanded in a single request; or

(C) For consultation, which shall be conducted with all practicable speed, with another agency having a substantial interest in the determination of the request or among two or more components of the same agency having substantial subject matter interest therein.

(e) *Fees*— (1) *Definitions.* The following definitions apply to the terms when used in this section:

(i) *Direct costs* means those expenditures that the Commission actually incurs in searching for and duplicating (and in the case of commercial requesters, reviewing) documents to respond to a request made under paragraph (d) of this section. Direct costs include, for example, the salary of the employee(s) performing the work (the basic rate of pay for the employee(s) plus 16 percent of that rate to cover benefits) and the cost of operating duplicating machinery. Not included in direct costs are overhead expenses such as costs of space and heating or lighting the facility in which the records are stored.

(ii) *Search* means all time spent looking for material that is responsive to a request, including page-by-page or line-by-line identification within documents. However, an entire document will be duplicated if this would prove to be a more efficient and less expensive method of complying with a request than a more detailed manner of searching. Search is distinguished from review of material in order to determine whether the material is exempt from disclosure.

(iii) *Duplication* means the process of making a copy of a document necessary to respond to a request for disclosure of records. Such copies can take the form of paper or machine readable documentation (e.g., magnetic tape or disk), among others.

(iv) *Review* means the process of examining documents located in response to an information request to determine whether any portion of any document is permitted to be withheld. It also includes processing any documents for disclosure, e.g., doing all that is necessary to prepare them for release. Review does not include time spent resolving general legal or policy issues regarding the application of exemptions.

(v) *Commercial use request* means a request from or on behalf of one who seeks information for a use or purpose that furthers the commercial, trade, or profit interests of the requester or the person on whose behalf the request is made. In deciding whether a requester properly belongs in this category, the General Counsel will determine the use to which a requester will put the documents requested. When the General Counsel has reasonable cause to doubt such intended use, or where such use is not clear from the request itself, the General Counsel will seek additional clarification before assigning the request to a specific category.

(vi) *Educational institution* means a school, an institution of higher education, an institution of professional education, or an institution of vocational education that operates a program or programs of scholarly research.

(vii) *Noncommercial scientific institution* means an institution that is not operated on a commercial basis 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.

(viii) *Representative of the news media* 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. News media entities include television or radio stations broadcasting to the public at large, and publishers of periodicals (but only in those instances when they can qualify as disseminators of *news*) who make their products available for purchase or subscription by the general public. *Freelance* journalists may be regarded as working for a news organization if they can demonstrate a solid basis for expecting publication through that organization, even though not actually employed by it.

(2) *Costs to be included in fees.* The direct costs included in fees will vary according to the following categories of requests:

(i) *Commercial use requests.* Fees will include the Commission's direct costs for searching for, reviewing, and duplicating the requested records.

(ii) *Educational and noncommercial scientific institution requests.* The Commission will provide documents to requesters in this category for the cost of duplication alone, excluding charges for the first 100 pages. To be eligible for inclusion in this category, requesters must show that the request is being made under the auspices of a qualifying institution and that the records are sought in furtherance of scholarly (if the request is from an educational institution) or scientific (if the request is from a noncommercial scientific institution) research.

(iii) *Requests from representatives of the news media.* The Commission will provide documents to requesters in this category for the cost of duplication alone, excluding charges for the first 100 pages. To be eligible for inclusion in this category a requester must meet the criteria in paragraph (e)(1)(viii) of this section.

(iv) *All other requests.* The Commission will charge requesters who do not fit into any of the categories in paragraphs (e)(2)(i) through (iii) of this

section fees that cover the direct costs of searching for and duplicating records that are responsive to the requests, except for the first two hours of search time and the first 100 pages duplicated. However, requests from persons for records about themselves will continue to be treated under the fee provisions of the Privacy Act of 1974 and § 705.10 of this chapter.

(3) *Fee calculation.* Fees will be calculated as follows:

(i) *Manual search.* At the salary rate (basic pay plus 16 percent) of the employee(s) making the search.

(ii) *Computer search.* At the actual direct cost of providing the search, including computer search time directly attributable to search for records responsive to the request, runs, and operator salary apportionable to the search.

(iii) *Review* (commercial use requests only). At the salary rate (basic pay plus 16 percent) of the employee(s) conducting the review. Only the review necessary at the initial administrative level to determine the applicability of any exemption, and not review at the administrative appeal level, will be included in the fee.

(iv) *Duplication.* At 20 cents per page for paper copy. For copies of records prepared by computer (such as tapes or printouts), the actual cost of production, including operator time, will be charged.

(v) *Additional services; certification.* Express mail and other additional services that may be arranged by the requester will be charged at actual cost. The fee for certification or authentication of copies shall be $3.00 per document.

(vi) *Assessment of interest.* The Commission may begin assessing interest charges on the 31st day following the day the fee bill is sent. Interest will be at the rate prescribed in 31 U.S.C. 3717 and will accrue from the date of billing.

(vii) No fee shall be charged if the total billable cost calculated under paragraphs (e)(2) and (3) of this section is less than $10.00.

(4) *Waiver or reduction of fees.* (i) Documents will be furnished without charge, or at a reduced charge, where disclosure of the information is in the public interest because it is likely to contribute significantly to public understanding of the operations or activities of the government and is not primarily in the commercial interest of the requester.

(ii) Whenever a waiver or reduction of fees is granted, only one copy of the record will be furnished.

(iii) The decision of the General Counsel on any fee waiver or reduction request shall be final and unappealable.

(5) *Payment procedures*—(i) *Fee payment.* Payment of fees shall be made by cash (if delivered in person), check, or money order payable to the United States Commission on Civil Rights.

(ii) *Notification of fees.* No work shall be done that will result in fees in excess of $25.00 without written authorization from the requester. Where it is anticipated that fees will exceed $25.00, and the requester has not indicated in advance a willingness to pay fees as high as are anticipated, the requester will be notified of the amount of the projected fees. The notification shall offer the requester an opportunity to confer with the General Counsel in an attempt to reformulate the request so as to meet the requester's needs at a lower cost. The administrative time limits prescribed in 5 U.S.C. 552(a)(6) will not begin until after the requester agrees in writing to accept the prospective charges.

(6) *Advance payment of fees.* When fees are projected to exceed $250.00, the requester may be required to make an advance payment of all or part of the fee before the request is processed. If a requester has previously failed to pay a fee in a timely fashion (i.e., within 30 days of the billing date), the requester will be required to pay the full amount owed plus any applicable interest, and to make an advance payment of the full amount of the estimated fee before a new or pending request is processed from that requester. The administrative time limits prescribed in 5 U.S.C. 552(a)(6) will not begin until after the requester has complied with this provision.

(7) *Other provisions*—(i) Charges for unsuccessful search. Charges may be assessed for time spent searching for requested records, even if the search fails to locate responsive records or the records are determined, after review, to be exempt from disclosure.

(ii) *Aggregating requests to avoid fees.* Multiple requests shall be aggregated when the General Counsel reasonably determines that a requester or group of requesters is attempting to break down a request into a series of requests to evade fees.

(iii) *Debt Collection Improvement Act of 1996.* The Debt Collection Improvement Act of 1996 (Public Law 104–134), including disclosure to consumer reporting agencies and use of collection agencies, will be used to encourage payment where appropriate.

(f) *Exemptions* (5 U.S.C. 552(b))—(1) *General.* The Commission may exempt from disclosure matters that are:

(i)(A) Specifically authorized under criteria established by an Executive Order to be kept secret in the interest of national defense or foreign policy and

(B) Are in fact properly classified pursuant to such Executive Order.

(ii) Related solely to the internal personnel rules and practices of an agency;

(iii) Specifically exempted from disclosure by statute;

(iv) Trade secrets and commercial or financial information obtained from a person and privileged or confidential;

(v) Interagency or intra-agency memoranda or letters that would not be available by law to a party other than an agency in litigation with the agency;

(vi) Personnel and medical files and similar files the disclosure of which would constitute a clearly unwarranted invasion of personal privacy;

(vii) Records or information compiled for law enforcement purposes, but only to the extent that the production of such law enforcement records or information:

(A) Could reasonably be expected to interfere with enforcement proceedings;

(B) Could deprive a person of a right to a fair trial or an impartial adjudication;

(C) Could reasonably be expected to constitute an unwarranted invasion of personal privacy;

(D) Could reasonably be expected to disclose the identity of a confidential source, including a State, local, or foreign agency or authority or any private institution that furnished information on a confidential basis;

(E) Could disclose techniques and procedures for all enforcement investigations or prosecutions, or could disclose guidelines for law enforcement investigations or prosecutions if such disclosure could reasonably be expected to risk circumvention of the law; or

(F) Could reasonably be expected to endanger the life or physical safety of any individual;

(viii) Contained in or related to examination, operating, or condition reports prepared by, on behalf of, or for the use of an agency responsible for the regulation or supervision of financial institutions; and

(ix) Geological and geophysical information and data, including maps, concerning wells.

(2) Investigatory records or information. (5 U.S.C. 552(b)(7)).

(i) Among the documents exempt from disclosure pursuant to paragraph (f)(1)(vii) of this section shall be records or information reflecting investigations that either are conducted for the purpose of determining whether a violation(s) of legal right has taken place, or have disclosed that a

violation(s) of legal right has taken place, but only to the extent that production of such records or information would fall within the classifications established in paragraphs (f)(1)(vii)(B) through (F) of this section.

(ii) Among the documents exempt from disclosure under paragraphs(f)(1)(vii)(D) and (f)(2)(i) of this section concerning confidential sources shall be documents that disclose the fact or the substance of a communication made to the Commission in confidence relating to an allegation or support of an allegation of wrongdoing by certain persons. It is sufficient under this section to indicate the confidentiality of the source if the substance of the communication or the circumstances of the communication indicate that investigative effectiveness could reasonably be expected to be inhibited by disclosure.

(iii) Whenever a request is made that involves access to records described in paragraph (f)(1)(vii)(A) of this section and the investigation or proceeding involves a possible violation of criminal law and there is reason to believe that the subject of the investigation or proceeding is not aware of its pendency and disclosure of the existence of the records could reasonably be expected to interfere with enforcement proceedings, the Commission may, during only such time as that circumstance continues, treat the records as not subject to the requirements of 5 U.S.C. 552 and this section.

(3) Any reasonably segregable portion of a record shall be provided to any person requesting such record after deletion of the portions that are exempt under this section.

(g) *Administrative appeals.* (1) These procedures apply whenever a requester is denied records under paragraph (d)(2)(i) of this section.

(2) Parties may appeal decisions under paragraph (d)(2)(i) of this section within 90 days of the date of such decision by filing a written request for review addressed to the Staff Director, U.S. Commission on Civil Rights, 624 9th Street, NW., Washington, DC 20425, by certified mail, including a copy of the written denial, and may include a statement of the circumstances, reasons or arguments advanced in support of disclosure. Review will be made by the Staff Director on the basis of the written record.

(3) The decision on review of any appeal filed under this section shall be in writing over the signature of the Staff Director will be promptly communicated to the person requesting review and will constitute the final action of the Commission.

(4) Determinations of appeals filed under this section shall be made within 20 working days after the receipt of such appeal. If, on appeal, denial of records is in whole or part upheld, the Staff Director shall notify the persons making such request of the provisions for judicial review of that determination under 5 U.S.C. 552(a)(6).

(5) An extension of time may be granted under this section pursuant to criteria established in paragraph (d)(3)(ii) (A) through (C) of this section, except that such extension together with any extension, which may have been granted pursuant to paragraph (d)(3)(ii) of this section, may not exceed a total of 10 working days.

§ 704.2 Complaints.

Any person may bring to the attention of the Commission a grievance that he or she believes falls within the jurisdiction of the Commission, as set forth in section 3 of the Act. This shall be done by submitting a complaint in writing to the Office of Civil Rights Evaluation, U.S. Commission on Civil Rights, 9th Street, NW., Washington, DC 20425. Allegations falling under section 3(a)(1) of the Act must be under oath or affirmation. All complaints should set forth the pertinent facts upon which the complaint is based, including but not limited to specification of:

(a) Names and titles of officials or other persons involved in acts forming the basis for the complaint;

(b) Accurate designations of place locations involved;

(c) Dates of events described in the complaint.

§ 704.3 Other requests and communications.

Requests for information should be addressed to the Public Affairs Unit and requests for Commission literature should be directed to National Clearinghouse Library, U.S. Commission on Civil Rights, 624 9th Street, NW., Washington DC 20425. Communications with respect to Commission proceedings should be made pursuant to § 702.17 of this chapter. All other communications should be directed to Office of Staff Director, U.S. Commission on Civil Rights, 624 9th Street, Washington, DC 20425.

§ 704.4 Restrictions on disclosure of information.

(a) By the provisions of the Act, no evidence or testimony or summary of evidence or testimony taken in executive session may be released or used in public sessions without the consent of the Commission, and any person who releases or uses in public without the consent of the Commission such evidence or testimony taken in executive session shall be fined not more than $1,000 or imprisoned for not more than 1 year.

(b) Unless a matter of public record, all information or documents obtained or prepared by any Commissioner, officer, or employee of the Commission, including members of Advisory Committees, in the course of his or official duties, or by virtue of his or her official status, shall not be disclosed or used by such person for any purpose except in the performance of his or her official duties.

(c) Any Commissioner, officer, or employee of the Commission, including members of Advisory Committees, who is served with a subpoena, order, or other demand requiring the disclosure of such information or the production of such documents shall appear in response to such subpoena, order, or other demand and, unless otherwise directed by the Commission, shall respectfully decline to disclose the information or produce the documents called for, basing his or her refusal upon this section. Any such person who is served with such a subpoena, order, or other demand shall promptly advise the Commission of the service of such subpoena, order, or other demand, the nature of the information or documents sought, and any circumstances that may bear upon the desirability of making available such information or documents.

PART 705—MATERIALS AVAILABLE PURSUANT TO 5 U.S.C. 552a

Sec.

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705.10 Fees.
705.11 Penalties.
705.12 Special procedures: Information furnished by other agencies.
705.13 Exemptions.
705.95 Accounting of the disclosures of records.

Authority: 5 U.S.C. 552a.

§ 705.1 Purpose and scope.

(a) The purpose of this part is to set forth rules to inform the public regarding information maintained by the United States Commission on Civil Rights about identifiable individuals and to inform those individuals how they may gain access to and correct or amend information about themselves.

(b) The rules in this part carry out the requirements of the Privacy Act of 1974 (Public Law 93–579) and in particular 5 U.S.C. 552a as added by that Act.

(c) The rules in this part apply only to records disclosed or requested under the Privacy Act of 1974, and not to requests for information made pursuant to the Freedom of Information Act, 5 U.S.C. 552.

§ 705.2 Definitions.

For the purpose of this part:

(a) *Commission* and *agency* mean the U.S. Commission on Civil Rights;

(b) *Individual* means a citizen of the United States or an alien lawfully admitted for permanent residence;

(c) *Maintain* includes maintain, collect, use, or disseminate;

(d) *Record* means any item, collection, or grouping of information about an individual that is maintained by the Commission, 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 the identifying number, symbol, or other identifying particular assigned to the individual;

(e) *System record* means a group of any records under the control of the Commission from which information may be retrieved by the name of the individual or by some identifying number, symbol, or other identifying particular assigned to that individual;

(f) *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 in 13 U.S.C. 8; and

(g) *Routine use* means, with respect to the disclosure of a record, the use of such record for a purpose that is compatible with the purpose for which it was collected.

(h) *Confidential source* means a source who furnished information to the Government under an express promise that the identity of the source would remain confidential, or, prior to September 27, 1975, under an implied promise that the identity of the source would be held in confidence.

(i) *Act* means the Privacy Act of 1974, Public Law 93–579.

§ 705.3 Procedures for requests pertaining to individual records in a system of records.

(a) An individual seeking notification of whether a system of records contains a record pertaining to him or her or an individual seeking access to information or records pertaining to him or her, that are available under the Privacy Act of 1974, shall present his or her request in person or in writing to the General Counsel of the Commission.

(b) In addition to meeting the requirements set forth in § 705.4(c) or (d), any person who requests information under the regulations in this part shall provide a reasonably specific description of the information sought so that it may be located without undue search or inquiry. If possible, that description should include the nature of the records sought, the approximate dates covered by the record, and, if known by the requester, the system in which the record is thought to be included. Requested information that is not identified by a reasonably specific description is not an identifiable record, and the request for that information cannot be treated as a formal request.

(c) If the description is insufficient, the agency will notify the requester and, to the extent possible, indicate the additional information required. Every reasonable effort shall be made to assist a requester in the identification and location of the record or records sought.

§ 705.4 Times, places, and requirements for identification of individuals making requests and identification of records requested.

(a) The General Counsel is the designated Privacy Act Officer for the Commission.

(b) An individual making a request to the General Counsel in person may do so at the Commission's headquarters office, 624 9th Street, N.W., Washington, D.C. 20425, on any business day during business hours. Persons may also appear for purposes of identification only, at any of the regional offices of the Commission on any business day during business hours. Regional offices are located as follows:

Region I: Eastern Regional Office, Washington, DC

Connecticut, Delaware, District of Columbia, Maine, Maryland, Massachusetts, New Hampshire, New Jersey, New York, Pennsylvania, Rhode Island, Vermont, Virginia, and West Virginia.

Region II: Southern Regional Office, Atlanta, Georgia.

Florida, Georgia, Kentucky, North Carolina, South Carolina, and Tennessee.

Region III: Midwestern Regional Office, Chicago, Illinois

Illinois, Indiana, Michigan, Minnesota, Ohio, and Wisconsin.

Region IV: Central Regional Office, Kansas City, Kansas

Alabama, Arkansas, Iowa, Kansas, Louisiana, Mississippi, Missouri, Nebraska, and Oklahoma.

Region V: Rocky Mountain Regional Office, Denver, Colorado Colorado, Montana, New Mexico, North Dakota, South Dakota, Utah, and Wyoming.

Region VI: Western Regional Office, Los Angeles, California

Alaska, Arizona, California, Hawaii, Idaho, Nevada, Oregon, Texas, and Washington.

(c) An individual seeking access to records in person may establish his or her identity by the presentation of one document bearing a photograph (such as a driver's license, passport, or identification card or badge) or by the presentation of two items of identification that do not bear a photograph, but do bear both a name and address (such as a credit card). When identification is made without photographic identification, the Commission will request a signature comparison to the signature appearing on the items offered for identification, whenever possible and practical.

(d) An individual seeking access to records by mail shall establish his or her identity by a signature, address, date of birth, and one other identification, such as a copy of a driver's license, passport, identification card or badge, credit card, or other document. The words *Privacy Act Request* should be placed in capital letters on the face of the envelope in order to facilitate requests by mail.

(e) An individual seeking access in person or by mail who cannot provide the required documentation of identification may provide a notarized statement, swearing or affirming to his or her identity and to the fact that he or she understands that there are criminal penalties for the making of false statements.

(f) The parent or guardian of a minor or a person judicially determined to be incompetent, in addition to establishing the identity of the minor or incompetent person he or she represents as required by paragraphs (a) through (c) of this section, shall establish his or her own parentage or guardianship by furnishing a copy of a birth certificate showing parentage or court order establishing guardianship.

(g) An individual seeking to review information about himself or herself may be accompanied by another person of his or her own choosing. In all such cases, the individual seeking access

shall be required to furnish a written statement authorizing the discussion of his or her record in the presence of the accompanying person.

§ 705.5 Disclosure of requested information to individuals.

The General Counsel, or one or more assistants designated by him or her, upon receiving a request for notification of the existence of a record or for access to a record shall:

(a) Determine whether such record exists;

(b) Determine whether access is available under the Privacy Act;

(c) Notify the requesting person of those determinations within 10 (ten) working days (excluding Saturdays, Sundays, and legal public holidays); and

(d) Provide access to information pertaining to that person that has been determined to be available.

§ 705.6 Request for correction or amendment to record.

(a) Any individual who has reviewed a record pertaining to him or her that was furnished to him or her under this part may request the agency to correct or amend all or part of that record.

(b) Each individual requesting a correction or amendment shall send the request to the General Counsel.

(c) Each request for a correction or amendment of a record shall contain the following information:

(1) The name of the individual requesting the correction or amendment.

(2) The name of the system of records in which the record sought to be amended is maintained.

(3) The location of the record system from which the record was obtained.

(4) A copy of the record sought to be amended or a description of that record.

(5) A statement of the material in the record that should be corrected or amended.

(6) A statement of the specific wording of the correction or amendment sought.

(7) A statement of the basis for the requested correction or amendment, including any material that the individual can furnish to substantiate the reasons for the amendment sought.

§ 705.7 Agency review of request for correction or amendment of the record.

Within ten (10) working days (excluding Saturdays, Sundays and legal public holidays) of the receipt of the request for the correction or amendment of a record, the General Counsel shall acknowledge receipt of the request and inform the individual that his or her request has been received and inform the individual whether further information is required before the correction or amendment can be considered. Further, the General Counsel shall promptly and, under normal circumstances, not later than thirty (30) working days after receipt of the request, make the requested correction or amendment or notify the individual of his or her refusal to do so, including in the notification the reasons for the refusal and the procedures established by the Commission by which the individual may initiate a review of that refusal. In the event of correction or amendment, an individual shall be provided with one copy of each record or portion thereof corrected or amended pursuant to his or her request without charge as evidence of the correction or amendment. The Commission shall also provide to all prior recipients of such a record, the corrected or amended information to the extent that it is relevant to the information previously furnished to a recipient pursuant to the Privacy Act.

§ 705.8 Appeal of an initial adverse agency determination.

(a) Any individual whose request for access or for a correction or amendment that has been denied, in whole or in part, by the General Counsel may appeal that decision to the Staff Director of the Commission, 624 9th Street, NW., Washington, DC 20425, or to a designee of the Staff Director.

(b) The appeal shall be in writing and shall:

(1) Name the individual making the appeal;

(2) Identify the record sought to be amended or corrected;

(3) Name the record system in which that record is contained;

(4) Contain a short statement describing the amendment or correction sought; and

(5) State the name of the person who initially denied the correction or amendment.

(c) Not later than thirty (30) working days (excluding Saturdays, Sundays, and legal public holidays) after the date on which the agency received the appeal, the Staff Director shall complete his or her review of the appeal and make a final decision thereon, unless, for good cause shown, the Staff Director extends the appeal period beyond the initial thirty (30) day appeal period. In the event of such an extension, the Staff Director shall promptly notify the individual making the appeal that the period for a final decision has been extended.

(d) After review of an appeal request, the Staff Director will send a written notice to the requester containing the following information:

(1) The decision; and if the denial is upheld, the reasons for the decision;

(2) The right of the requester to institute a civil action in a Federal District Court for judicial review of the decision if the appeal is denied; and

(3) The right of the requester to file with the Commission a concise statement setting forth the reasons for his or her disagreement with the Commission's decision denying the request. The Commission shall make this statement available to any person to whom the record is later disclosed together with a brief statement, if the Commission considers it appropriate, of the agency's reasons for denying the requested correction or amendment. These statements shall also be provided to all prior recipients of the record to the extent that it is relevant to the information previously furnished to a recipient pursuant to the Privacy Act.

§ 705.9 Disclosure of records to a person other than the individual to whom the record pertains.

(a) Any individual who desires to have his or her record disclosed to or mailed to a third person may authorize that person to act as his or her agent for that specific purpose. The authorization shall be in writing, signed by the individual, and notarized. The agent shall also submit proof of his or her own identity as provided in § 705.4.

(b) The parent of any minor individual or the legal guardian of any individual who has been declared by a court to be incompetent, due to physical or mental incapacity, may act on behalf of that individual in any matter covered by this part. A parent or guardian who desires to act on behalf of such an individual shall present suitable evidence of parentage or guardianship by birth certificate, copy of a court order or similar documents, and proof of the individual's identity as provided in § 705.4.

(c) An individual to whom a record is to be disclosed, in person, pursuant to this part may have a person of his or her own choosing accompany the individual when the record is disclosed.

§ 705.10 Fees.

If an individual requests copies of his or her records the charge shall be three (3) cents per page; however, the Commission shall not charge for copies furnished to an individual as a necessary part of the process of disclosing the record to an individual. Fees may be waived or reduced in accordance with § 704.1(e) of this chapter because of indigency, where the

cost is nominal, when it is in the public interest not to charge, or when waiver would not constitute an unreasonable expense to the Commission.

§ 705.11 Penalties.

Any person who makes a false statement in connection with any request for a record, or in any request for an amendment to a record under this part, is subject to the penalties prescribed in 18 U.S.C. 494 and 495.

§ 705.12 Special procedures: Information furnished by other agencies.

When records or information sought from the Commission include information furnished by other Federal agencies, the General Counsel shall consult with the appropriate agency prior to making a decision to disclose or to refuse to disclose the record, but the decision whether or not to disclose the record shall be made by the General Counsel.

§ 705.13 Exemptions.

(a) Under the provision of 5 U.S.C. 552a(k), it has been determined by the agency that the following exemptions are necessary and proper and may be asserted by the agency:

(1) *Exemption (k)(2) of the Act.* Investigatory material compiled for law enforcement purposes, other than material within the scope of subsection (j)(2) of the Privacy Act: Provided, however, That if any individual is denied any right, privilege, or benefit that he or she would otherwise be eligible for, as a result of the maintenance of such material, such material shall be provided to such individual, except to the extent that the disclosure of such material would reveal the identify of a source who furnished information to the Government under an express promise that the identity of the source would be held in confidence, or, prior to [the effective date of this section], under an implied promise that the identity of the source would be held in confidence.

(2) *Exemption (k)(4) of the Act.* Statistical personnel records that are used only to generate aggregate data or for other evaluative or analytical purposes and that are not used to make decisions on the rights, benefits, or entitlements of individuals.

(3) *Exemption (k)(5) of the Act.* Investigatory material maintained solely for the purposes of determining an individual's qualifications, eligibility, or suitability for employment in the Federal civilian service, Federal contracts, or access to classified information, but only to the extent that disclosure of such material would reveal the identity of the source who furnished information to the Government under an express promise that the identity of the source would be held in confidence, or prior to September 27, 1975, under an implied promise that the identity of the source would be held in confidence.

(4) *Exemption (k)(6) of the Act.* Testing or examination material used solely to determine individual qualifications for promotion or appointment in the Federal service the disclosure of which would compromise the objectivity or fairness of the testing or examination process.

(b) Following are Commission systems of records that are partially exempt under 5 U.S.C. 552a(k)(2), (4), (5), and (6) and the reasons for such exemptions:

(1) Appeals, Grievances, and Complaints (staff)—Commission Project, CRC–001. Exempt partially under 5 U.S.C. 552a(k)(2). The reasons for possibly asserting the exemptions are to prevent subjects of investigation from frustrating the investigatory process, 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.

(2) Complaints, CRC–003—Exempt partially under 5 U.S.C. 552a(k)(2). The reasons for possibly asserting the exemptions are to prevent subjects of investigation from frustrating the investigatory process, 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.

(3) Commission projects, CRC–004—Partially exempt under 5 U.S.C. 552a(k)(2). The reasons for asserting the exemptions are to prevent subjects of investigation from frustrating the investigatory process, 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.

(4) Other Employee Programs: EEO, Troubled Employee, and Upward Mobility, CRC–006—Partially exempt under 5 U.S.C. 552a(k)(4), (5), and (6). The reasons for asserting the exemptions 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, primarily, to facilitate proper selection or continuance of the best applicants or persons for a given position.

(5) State Advisory Committees Projects, CRC–009—Partially exempt under 5 U.S.C. 552a(k)(2). The reasons for possibly asserting the exemptions are to prevent subjects of investigation from frustrating the investigatory process, 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.

§ 705.95 Accounting of the disclosures of records.

(a) All disclosures of records covered by this part, except for the exemptions listed in paragraph (b) of this section, shall be accounted for by keeping a written record of the particular record disclosed, the name and address of the person or agency to whom or to which disclosed, and the date, nature, and purpose of the disclosure.

(b) No accounting is required for disclosures of records to those officials and employees of the Commission who have a need for the record in the performance of their duties or if disclosure would be required under the Freedom of Information Act. 5 U.S.C. 552.

(c) The accounting shall be maintained for 5 years or until the record is destroyed or transferred to the National Archives and Records Administrator for storage, in which event, the accounting pertaining to those records, unless maintained separately, shall be transferred with the records themselves.

(d) The accounting of disclosures may be recorded in any system the Commission determines is sufficient for this purpose, however, the Commission must be able to construct from its system a listing of all disclosures. The system of accounting of disclosures is not a system of records under the definition in § 705.2(e) and no accounting need be maintained for disclosure of the accounting of disclosures.

(e) Upon request of an individual to whom a record pertains, the accounting of the disclosures of that record shall be made available to the requester, provided that he or she has complied with § 705.3(a) and with § 705.4(c) or (d).

PART 706—EMPLOYEE RESPONSIBILITIES AND CONDUCT

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Authority: Part III of 5 U.S.C.

Subpart A—General Provisions

§ 706.1 Implementation of regulations.

The U.S. Commission on Civil Rights (hereinafter referred to as the Commission) through the regulations in this part, implements, with appropriate modifications, relevant sections of Part III of Title 5 of the United States Code.

§ 706.2 Purpose.

The maintenance of unusually high standards of honesty, integrity, impartiality, and conduct by Government employees and special Government employees is essential to assure the proper performance of the Government's business and the maintenance of confidence by citizens in their Government. The avoidance of misconduct and conflicts of interest on the part of Government employees and special Government employees through informed judgment is indispensable to the maintenance of these standards. To accord with these concepts, this part sets forth the Commission's regulations covering the agency's employees and special Government employees, prescribing standards of conduct and responsibilities and governing statements reporting employment and financial interests.

§ 706.3 Definitions.

In this part:

Commission means the United States Commission on Civil Rights, an Executive agency as defined by 5 U.S.C. 105.

Employee means an officer or employee of the Commission including a special Government employee, as defined in 18 U.S.C. 202.

Executive order means Executive Order 11222 of May 8, 1965, prescribing standards of ethical conduct for Government officers and employees (3 CFR 1964–1965).

Person means an individual, a corporation, a company, an association, a firm, a partnership, a society, a joint stock company, or any other organization or institution.

§ 706.4 Distribution.

(a) Within 90 days after [the date of publication of the final rule] the Commission shall furnish each employee with a copy of the regulations in this part.

(b) The Commission shall furnish all new employees with a copy of the regulations at the time of their entrance on duty.

(c) The Commission shall bring the regulations to the attention of each employee annually and at such other times as circumstances warrant.

(d) The Commission shall have available for review by employees copies of relevant laws, the Executive order, and pertinent Commission instructions relating to ethical and other standards of conduct.

§ 706.5 Counseling.

The General Counsel of the Commission shall serve as the agency's ethical conduct counselor and is the designated agency official for the purposes of the Ethics in Government Act. The General Counsel shall respond to requests by employees and special Government employees for advice and guidance respecting questions of ethical conduct, conflicts of interest, reporting of financial interests and other matters of law covered by the regulations in this part.

§ 706.6 Disciplinary and other remedial action.

An employee of the Commission who violates any of the regulations in this part may be disciplined. The disciplinary action may be in addition to any penalty prescribed by law for the violation. In addition to or in lieu of disciplinary action, remedial action to end conflicts or appearance of conflicts of interests may include but is not limited to:

(a) Changes in assigned duties;

(b) Divestment by an employee of any conflicting interest; or

(c) Disqualification for a particular assignment.

§ 706.7 Outside employment and other activity.

Employees of the Commission may engage in outside employment or other outside activity not incompatible with the full and proper discharge of the duties and responsibilities of their Government employment. Employees who wish to engage in outside employment shall first obtain the approval, in writing, of their supervisor.

§ 706.8 Prohibition against disclosure of evidence.

All employees of the Commission are subject to the prohibition on disclosure of evidence taken in executive session contained in § 702.6 of this chapter.

Subpart B—Ethical and Other Conduct and Responsibilities of Employees

§ 706.9 Proscribed actions.

An employee shall avoid any action, whether or not specifically prohibited by this subpart, which might result in, or create the appearance of:

(a) Using public office for private gain;

(b) Giving preferential treatment to any person;

(c) Impeding Commission efficiency or economy;

(d) Making a Commission decision outside official channels;

(e) Losing complete independence or impartiality; or

(f) Affecting adversely the confidence of the public in the integrity of the Commission.

§ 706.10 Gifts, entertainment, and favors.

(a) Except as provided in paragraphs (b) and (e) of this section, an employee shall not solicit or accept, directly or indirectly, any gift, gratuity, favor, entertainment, loan, or any other thing of monetary value from a person who:

(1) Has, or is seeking to obtain, contractual or other business or financial relations with the Commission;

(2) Conducts operations or activities that are regulated by the Commission; or

(3) Has interests that may be substantially affected by the performance or nonperformance of the employee's official duty.

(b) Exceptions from the prohibitions contained in paragraph (a) of this section are as follows:

(1) Gifts, entertainment, and favors that derive from family or personal relationships (such as those between parents, children, or spouse of the employee and the employee) when the circumstances make it clear that it is those relationships rather than the business of the persons concerned that are the motivating factors;

(2) Acceptance of food and refreshments of nominal value on infrequent occasions in the ordinary course of a luncheon or dinner meeting or other meeting or on an inspection tour where an employee may properly be in attendance;

(3) Acceptance of loans from banks or other financial institutions on customary terms to finance proper and usual activities of employees, such as home mortgage loans; and

(4) Acceptance of unsolicited advertising or promotional material, such as pens, pencils, note pads, calendars, and other items of nominal intrinsic value.

(c) Employees shall not solicit a contribution from another employee for a gift to an official superior, make a donation as a gift to an official superior, or accept a gift from an employee receiving less pay than themselves. This paragraph, however, does not prohibit a voluntary gift of nominal value or donation in a nominal amount made on a special occasion such as marriage, illness, or retirement.

(d) An employee shall not accept a gift, present, decoration, or other thing from a foreign government unless authorized by Congress as provided by the Constitution and 5 U.S.C. 7342.

(e) Neither this section nor § 706.11 precludes an employee from receipt of bona fide reimbursement, unless prohibited by law, for expenses of travel and such other necessary subsistence as is compatible with this part, for which no Government payment or reimbursement is made. This paragraph, however, does not allow employees to be reimbursed, or payment to be made on their behalf, for excessive personal living expenses, gifts, entertainment, or other personal benefits.

§ 706.11 Proscribed outside employment and other activities.

(a) An employee shall not engage in outside employment or other outside activity not compatible with the full and proper discharge of the duties and responsibilities of Government employment. Incompatible activities include but are not limited to:

(1) Acceptance of a fee, compensation, gift, payment of expense, or any other thing of monetary value in circumstances in which acceptance may result in, or create the appearance of conflict(s) of interest; or

(2) Outside employment that tends to impair mental or physical capacity to perform Governmental duties and responsibilities in an acceptable manner.

(b) An employee shall not receive any salary or anything of monetary value from a private source as compensation for service to the Government as prohibited by 18 U.S.C. 209.

(c) Employees are encouraged to engage in teaching, lecturing, and writing that is not prohibited by law, the Executive order, or Commission regulations. An employee shall not, either for or without compensation, engage in teaching, lecturing, or writing, including teaching, lecturing, or writing for the purpose of the special preparation of a person or class of persons for an examination of the Office of Personnel Management or Board of Examiners for the Foreign Service, which depends on information obtained as a result of Government employment, except when that information has been made available to the general public or will be made available on request or when the agency head gives written authorization for use of nonpublic information on the basis that the use is in the public interest. In addition, an employee who is a Presidential appointee covered by section 401(a) of the order shall not receive compensation or anything of monetary value for any consultation, lecture, discussion, writing, or appearance the subject matter of which is devoted substantially to the responsibilities, programs, or operations of the Commission or which draws substantially on official data or ideas that have not become part of the body of public information.

(d) This section does not preclude an employee from:

(1) Participation in the activities of national or State political parties not proscribed by law;

(2) Participation in the affairs of or acceptance of an award for a meritorious public contribution or achievement given by a charitable, religious, professional, social, fraternal, nonprofit educational and recreational public service, or civic organization; or

(3) Outside employment permitted under the regulations in this part.

§ 706.12 Financial interests.

(a) Employees shall not:

(1) Have a direct or indirect financial interest that conflicts substantially, or appears to conflict substantially, with their Government duties and responsibilities; or

(2) Engage in, directly or indirectly, a financial transaction as a result of, or primarily relying on, information obtained through their Government employment.

(b) This section does not preclude an employee from having a financial interest or engaging in financial transactions to the same extent as a private citizen not employed by the Government, so long as it is not prohibited by law, the Executive order, or Commission regulations.

§ 706.13 Use of Government property.

Employees shall not directly or indirectly use, or allow the use of, Government property of any kind, including property leased to the Government, for other than officially approved activities. Employees have a positive duty to protect and conserve Government property, including equipment, supplies, and other property entrusted or issued them.

§ 706.14 Misuse of information.

For the purpose of furthering a private interest, employees shall not directly or indirectly use, or allow the use of, official information obtained through or in connection with their Government employment that has not been made available to the general public.

§ 706.15 Indebtedness.

An employee shall pay each just financial obligation in a proper and timely manner, especially one imposed by law such as Federal, State, or local taxes. For the purpose of this section, a *just financial obligation* means one acknowledged by the employee or reduced to judgment by a court, and *in a proper and timely manner* means in a manner that the agency determines does not, under the circumstances, reflect adversely on the Government as the employer. In the event of dispute between an employee and an alleged creditor, this section does not require the Commission to determine the validity or amount of the disputed debt.

§ 706.16 Gambling, betting and lotteries.

Employees shall not participate while on Government-owned or leased property or while on duty for the Government in any gambling activity including the operation of a gambling device, in conducting a lottery or pool, in a game for money or property, or in selling or purchasing a numbers slip or ticket.

§ 706.17 General conduct prejudicial to the Government.

Employees shall not engage in criminal, infamous, dishonest, immoral, or notoriously disgraceful conduct or other conduct prejudicial to the Government.

§ 706.18 Miscellaneous statutory provisions.

Employees shall acquaint themselves with each statute that relates to their ethical and other conduct as an employee of the Commission and of the Government. The attention of Commission employees is directed to the following statutory provisions:

(a) House Document 103, 86th Congress, 1st Session, the ''Code of Ethics for Government Service'';

(b) The provisions relating to bribery, graft, and conflicts of interest, as appropriate to the employees concerned (18 U.S.C. 201–225);

(c) The prohibition against lobbying with appropriated funds (18 U.S.C. 1913);

(d) The prohibitions against disloyalty and striking (5 U.S.C. 73811; 18 U.S.C. 1918);

(e) The prohibitions against the disclosure of classified information (18 U.S.C. 798; 50 U.S.C. 1905);

(f) The provision relating to the habitual use of intoxicants to excess (5 U.S.C. 7352);

(g) The prohibition against the misuse of a Government vehicle (31 U.S.C. 1349(b));

(h) The prohibition against the misuse of the franking privilege (18 U.S.C. 1719);

(i) The prohibition against the use of deceit in an examination or personnel action in connection with Government employment (18 U.S.C. 1917);

(j) The prohibition against fraud or false statements in a Government matter (18 U.S.C. 1001);

(k) The prohibition against mutilating or destroying a public record (18 U.S.C. 2071);

(l) The prohibition against counterfeiting and forging transportation requests (18 U.S.C. 508);

(m) The prohibitions against:

(1) Embezzlement of Government money or property (18 U.S.C. 641);

(2) Failing to account for public money (18 U.S.C. 643); and

(3) Embezzlement of the money or property of another person in the possession of the employee by reason of his or her employment (18 U.S.C. 654);

(n) The prohibition against unauthorized use of documents relating to claims from or by the Government (18 U.S.C. 285);

(o) The prohibitions against political activities (5 U.S.C. 7323 and 18 U.S.C. 602, 603, and 607); and

(p) The prohibition against an employee acting as the agent of a foreign principal registered under the Foreign Agent Registration Act (18 U.S.C. 219).

Subpart C—Financial Reporting Requirements

§ 706.19 Statements of financial and property interests and outside employment.

Pursuant to the Ethics in Government Act of 1978 (Public Law 95–521, as amended by Public Law 101–194, 101–280, 102–90, 102–378, and 104–65, referred to hereinafter in this subpart as ''the Act''), the following officers and employees of the Commission are required to file annual reports of financial and property interests and outside employment if they have served 61 days or more in their positions during the preceding calendar year:

(a) Officers or employees, including a special Government employee as defined in 18 U.S.C. 202, who occupies a position classified above GS–15 of the General Schedule or, in the case of positions not under the General Schedule, for which the rate of basic pay is equal to or greater than 120 percent of the minimum rate of basic pay payable for GS–15 of the General Schedule.;

(b) Employees in the excepted service in positions that are of a confidential or policy-making character, unless their positions have been excluded by the Director of the Office of Government Ethics; and

(c) Each designated agency ethics official.

§ 706.20 Time and place for filing of reports.

(a) Annual reports are to be filed no later than May 15 of each calendar year, except that persons assuming a position for which reports are required who have not immediately prior to this assumption occupied a covered position in another agency, must file a report within 30 days after assuming the position at the Commission. In the event an individual terminates employment with the Commission and does not accept another position for which reporting is required, the report must be filed no later than the 30th day after termination, covering:

(1) The preceding calendar year if the annual May 15 report has not been filed; and

(2) The portion of the present calendar year up to the date of termination.

(b) Reports shall be filed with the designated ethics officer (General Counsel) of the Commission. The reports of the designated ethics officer and nominees to and holders of positions that require confirmation by the Senate shall be transmitted by the General Counsel to the Office of Government Ethics of the Office of Personnel Management.

§ 706.21 Exclusion of certain positions from reporting requirements.

(a) Under section 101 of the Act, a report is required of any person in the executive branch in a position excepted from the competitive service by reason of being of a confidential or policymaker character. The exclusion of any position will be effective as of the time the Commission files with the Office of Government Ethics a list and description of each position for which exclusion is sought, and the identity of its current occupant. Such a list must be filed with the Office of Government Ethics on or before the date on which such reports are due under the Act.

(b) In the event that the Office of Government Ethics finds that one or more positions have been improperly excluded, it will so advise the Commission and set a date for the filing of the report.

§ 706.22 Information required to be reported—reporting forms.

Information required to be reported by the Act shall be set forth in the manner specified in, and in accordance with the instructions contained in, Standard Forms issued by the Office of Personnel Management, to be used as follows:

(a) Standard Form 278—for use by an officer or employee filing:

(1) An annual report pursuant to section 101 of the Act, or

(2) A departure report upon termination of employment, pursuant to section 101 of the Act;

(b) Standard Form 278A—for use by:

(1) An individual assuming a position for which reporting is required pursuant to section 201(a) of the Act; or

(2) An individual whose nomination has been transmitted by the President to the Senate, pursuant to section 201(b) of the Act.

§ 706.23 Review of reports.

(a) Financial reports are reviewed by the Commission's designated Ethics official or the Director of the Office of Government Ethics, as appropriate. Reports are to be reviewed within 60 days after the date of their filing or transmittal to the Office of Government Ethics.

(b) After reviewing a report, the reviewing official is required to:

(1) State upon the report that the reporting individual is in compliance

with applicable laws and regulations and to sign the report;

(2) Notify the reporting individual that additional information is required to be submitted and the time by which it must be submitted; or

(3) Notify the reporting individual that the report indicates noncompliance and afford the individual a reasonable opportunity for a written or oral response after which the reviewing official reaches an opinion whether the individual is in compliance.

(c) If the reviewing official determines that the reporting individual is not in compliance with applicable laws and regulations, the reviewing official will notify the individual of that opinion and after an opportunity for personal consultation notify the individual of the steps that should be taken to assure compliance and the date by which such steps should be taken.

(d) The use of any steps to bring the individual in compliance are to be in accordance with regulations issued by the Director of the Office of Government Ethics.

(e) To assist employees in avoiding situations in which they would not be in compliance with applicable laws and regulations, the designated Commission ethics official is to maintain a list of those circumstances or situations that have resulted or may result in noncompliance and the lists are to be periodically published and furnished to individuals required to file reports under this Act.

§ 706.24 Public access to financial disclosure reports.

(a) Pursuant to section 105(b) of the Act, each report will be made available for public inspection within 15 days after the report is received by the agency, whether or not the review of the report prescribed by section 106 of the Act has been completed.

(b) Pursuant to section 105(b) of the Act, the following rules are applicable to public access to financial reports:

(1) A financial disclosure report may not be made available to any person nor may a copy thereof be provided to any person except upon written application by such person stating:

(i) That person's name, occupation, and address;

(ii) The name and address of any other person or organization on whose behalf the inspection or copy is requested; and

(iii) That such person is aware that it is unlawful to obtain or use a report:

(A) For any unlawful purpose;

(B) For any commercial purpose, other than by news and communications media for dissemination to the general public;

(C) For determining or establishing the credit rating of any individual; or

(D) For use, directly or indirectly, in the solicitation of money for any political, charitable, or other purpose. Any application for a report shall be available to the public during the period in which the requested report is available to the public.

(2) [Reserved]

(c) Requests for copies of financial disclosure reports of officers appointed by the President by and with the advice and consent of the Senate, as well as nominees to such offices and designated Commission ethics officials, may be directed to the Director of the Office of Government Ethics.

(d) To gain access to or to obtain a copy of a report filed with the Commission, an individual should appear in person at the office of the General Counsel of the Commission, 624 9th Street, NW., Washington, DC 20425, during the hours 8:30 a.m. to 4:30 p.m. and complete an application form. Requests by mail should contain the information described in paragraph (b) of this section, together with the signature of the requester. Requests that do not contain the required information will be returned. Notice of the statutory prohibitions on use will be attached to copies of reports provided in response to a request otherwise properly filled out.

PART 707—ENFORCEMENT OF NONDISCRIMINATION ON THE BASIS OF DISABILITY IN PROGRAMS OR ACTIVITIES CONDUCTED BY U.S. COMMISSION ON CIVIL RIGHTS

Sec.

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Authority: 29 U.S.C. 791 *et seq.*

§ 707.1 Purpose.

The purpose of this part is to effectuate section 119 of the Rehabilitation, Comprehensive Services, and Developmental Disabilities Amendments of 1978, which amended section 504 of the Rehabilitation Act of 1973, to prohibit discrimination on the basis of disability in programs or activities conducted by Executive agencies or the United States Postal Service.

§ 707.2 Application.

This part applies to all programs and activities, including employment, conducted by the Agency.

§ 707.3 Definitions.

For the purposes of this part, the term—

(a) *Agency* means the U.S. Commission on Civil Rights and its State Advisory Committees.

(b) *Auxiliary aids* means services or devices that enable persons with impaired sensory, manual, or speaking skills to have an equal opportunity to participate in, and enjoy the benefits of, programs or activities conducted by the Agency. For example, auxiliary aids useful for persons with impaired vision include readers, Braille materials, audio recordings, and other similar services and devices. Auxiliary aids useful for persons with impaired hearing include telephone handset amplifiers, telephones compatible with hearing aids, telecommunication devices for deaf persons (TDD's), interpreters, note takers, written materials, and other similar services and devices.

(c) *Complete complaint* means a written statement that contains the complainant's name and address and describes the Agency's alleged discriminatory action in sufficient detail to inform the Agency of the nature and date of the alleged violation of section 504. It shall be signed by the complainant or by someone authorized to do so on his or her behalf. Complaints filed on behalf of classes or third parties shall describe or identify (by name, if possible) the alleged victims of discrimination.

(d) *Facility* means all or any portion of buildings, structures, equipment, roads, walks, parking lots, vehicles, or other real or personal property.

(e) *Individual with disabilities* means any person who has a physical or mental impairment that substantially limits one or more major life activities, has a record of such an impairment, or is regarded as having such an impairment. As used in this definition, the phrase:

(1) Physical or mental impairment includes—

(i) Any physiological disorder or condition, cosmetic disfigurement, or anatomical loss affecting one or more of the following body systems: Neurological, musculoskeletal; special sense organs; respiratory, including speech organs; cardiovascular; reproductive; digestive; genitourinary;

hemic and lymphatic; skin; and endocrine; or

(ii) Any mental or psychological disorder, such as mental retardation, organic brain syndrome, emotional or mental illness, and specific learning disabilities. The term physical or mental impairment includes, but is not limited to, such diseases and conditions as orthopedic, visual, speech and hearing impairments, cerebral palsy, epilepsy, muscular dystrophy, multiple sclerosis, cancer, heart disease, diabetes, mental retardation, emotional illness, drug addiction, and alcoholism.

(2) Major life activities includes functions such as caring for one's self, performing manual tasks, walking, seeing, hearing, speaking, breathing, learning, and working.

(3) Has a record of such an impairment means has a history of, or has been misclassified as having, a mental or physical impairment that substantially limits one or more major life activities.

(4) Is regarded as having an impairment means—

(i) Has a physical or mental impairment that does not substantially limit major life activities but is treated by the Agency as constituting such a limitation;

(ii) Has a physical or mental impairment that substantially limits major life activities only as a result of the attitudes of others toward such impairment; or

(iii) Has none of the impairments defined in paragraph (e)(1) of this definition but is treated by the Agency as having such an impairment.

(f) *Qualified individual with disabilities* means—

(1) With respect to any Agency program or activity under which a person is required to perform services or to achieve a level of accomplishment, an individual with disabilities who meets the essential eligibility requirements and who can achieve the purpose of the program or activity without modifications in the program or activity that the Agency can demonstrate would result in a fundamental alteration in its nature; and

(2) With respect to employment, an individual with disabilities who meets the definition set forth in 29 CFR 1614.203, which is made applicable to this part by § 707.7.

(3) With respect to any other Agency program or activity, an individual with disabilities who meets the essential eligibility requirements for participation in, or receipt of benefits from, that program or activity.

(g) *Section 504* means section 504 of the Rehabilitation Act of 1973 (Public Law 93–112, 87 Stat. 394 (29 U.S.C. 794), as amended through 1998. As used in this part, section 504 applies only to programs or activities conducted by the Agency. The Agency does not operate any programs of Federal financial assistance to other entities.

§ 707.4 Self-evaluation and remedial measures.

(a) The Agency shall, before [date one year after the effective date of this part], evaluate its current policies and practices, and the effects thereof, that do not or may not meet the requirements of this part, and, to the extent modification of any such policies and practices is required, the Agency shall proceed to make the necessary modifications.

(b) The Agency shall provide an opportunity to interested persons, including individuals with disabilities and organizations representing individuals with disabilities, to participate in the self-evaluation process by submitting comments (both oral and written).

(c) The Agency shall, for at least three years following completion of the evaluation required under paragraph (a) of this section, maintain on file and make available for public inspection:

(1) A description of areas examined and any problems identified; and

(2) A description of any modifications made.

§ 707.5 Notice.

(a) The Agency shall make available to all employees, applicants, and other interested persons, as appropriate, information regarding the provisions of this part and its applicability to the programs or activities conducted by the Agency, and such information shall be made available to the extent the Staff Director finds necessary to apprise such persons of the protections against discrimination assured them by section 504 and this part.

(b) The Agency shall ensure that interested persons, including persons with impaired vision or hearing, can obtain information as to the existence and location of accessible services, activities, and facilities.

(c) The Agency shall take appropriate steps to provide individuals with disabilities with information regarding their section 504 rights under the Agency's programs or activities.

§ 707.6 General prohibitions against discrimination.

(a) No qualified individual with disabilities shall, on the basis of disability, be excluded from participation in, be denied the benefits of, or otherwise be subjected to discrimination under any program or activity conducted by the Agency.

(b)(1) The Agency, in providing any aid, benefit, or service, shall not, directly or through contractual, licensing, or other arrangements, on the basis of disability—

(i) Deny a qualified individual with disabilities the opportunity to participate in or benefit from the aid, benefit(s), or service(s);

(ii) Afford a qualified individual with disabilities an opportunity to participate in or benefit from the aid, benefit(s), or service(s) that are not equal to that afforded others;

(iii) Provide a qualified individual with disabilities with an aid, benefit(s), or service(s) that are not as effective in affording equal opportunity to obtain the same result, to gain the same benefit, or to reach the same level of achievement as that provided to others;

(iv) Provide different or separate aid, benefits, or services to individuals with disabilities or to any class of individuals with disabilities than are provided to others unless such action is necessary to provide qualified individuals with disabilities with aid, benefits, or services that are as effective as those provided to others:

(v) Deny a qualified individual with disabilities the opportunity to participate as a member of planning or advisory boards or committees; or

(vi) Otherwise limit a qualified individual with disabilities in the enjoyment of any right, privilege, advantage, or opportunity enjoyed by others receiving the aid, benefit(s), or service(s).

(2) The Agency shall not deny a qualified individual with disabilities the opportunity to participate in programs or activities that are not separate or different, despite the existence of permissibly separate or different programs or activities.

(3) The Agency shall not, directly or through contractual or other arrangements, utilize criteria or methods of administration the purpose or effect of which would—

(i) Subject qualified individuals with disabilities to discrimination on the basis of disability; or

(ii) Defeat or substantially impair accomplishment of the objectives of a program or activity with respect to individuals with disabilities.

(4) The Agency shall not in determining the site or location of a facility or activity make selections the purpose or effect of which would—

(i) Exclude individuals with disabilities from, deny them the benefits of, or otherwise subject them to

discrimination under any program or activity conducted by the Agency; or

(ii) Defeat or substantially impair the accomplishment of the objectives of a program or activity with respect to individuals with disabilities.

(5) The Agency, in the selection of procurement contractors, shall not use criteria that subject qualified individuals with disabilities to discrimination on the basis of disability.

(c) The exclusion of non-disabled persons from the benefits of a program limited by Federal statute or Executive order to individuals with disabilities or the exclusion of a specific class of individuals with disabilities from a program limited by Federal statute or Executive order to a different class of individuals with disabilities is not prohibited by this part.

(d) The Agency shall administer programs and activities in the most integrated setting appropriate to the needs of qualified individuals with disabilities.

§ 707.7 Employment.

No qualified individual with disabilities shall, on the basis of disability, be subjected to discrimination in employment under any program or activity conducted by the Agency. The definitions, requirements, and procedures of section 501 of the Rehabilitation Act of 1973 (29 U.S.C. 791), as established by the Equal Employment Opportunity Commission in 29 CFR 1614.101 through 1614.110, shall apply to employment in programs or activities conducted by the Agency.

§ 707.8 Physical access.

(a) *Discrimination prohibited.* Except as otherwise provided in this section, no qualified individual with disabilities shall, because the Agency's facilities are inaccessible to or unusable by individuals with disabilities, be denied the benefits of, be excluded from participation in, or otherwise be subjected to discrimination under any program or activity conducted by the Agency.

(b) *Existing facilities-program access*—(1) *Existing facilities defined.* For the purpose of this section, *existing facilities* means those facilities owned, leased or used through some other arrangement by the Agency on March 28, 1990.

(2) *General.* The Agency shall operate each program or activity conducted in an existing facility so that the program or activity, when viewed in its entirety, is readily accessible to and usable by individuals with disabilities. This paragraph does not—

(i) Necessarily require the Agency to make each of its existing facilities accessible to and usable by individuals with disabilities

(ii) Require the Agency to take any action that it can demonstrate would result in a fundamental alteration in the nature of a program or activity or in undue financial and administrative burdens. In those circumstances where Agency personnel believe that the proposed action would fundamentally alter the program or activity or would result in undue financial and administrative burdens, the Agency has the burden of proving that compliance with this paragraph would result in such alteration or burdens. The decision that compliance would result in such alteration or burdens must be made by the Staff Director or his or her designee after considering all Agency resources available for use in the funding and operation of the conducted program or activity, and must be accompanied by a written statement of the reasons for reaching that conclusion. If an action would result in such an alteration or such burdens, the Agency shall take any other action that would not result in such an alteration or such burdens but would nevertheless ensure that individuals with disabilities receive the benefits and services of the program or activity.

(3) *Methods.* (i) The Agency may comply with the requirements of this section through such means as redesign of equipment, reassignment of services to accessible buildings, assignment of aides to individuals with disabilities, delivery of services at alternative accessible sites, alteration of existing facilities and construction of new facilities, use of accessible vehicles, or any other methods that result in making its program or activities readily accessible to and usable by individuals with disabilities.

(ii) The Agency is not required to make structural changes in existing facilities where other methods are effective in achieving compliance with paragraph (b)(2) of this section. The Agency, in making alterations to existing buildings to achieve program accessibility, shall meet accessibility requirements imposed by the Architectural Barriers Act of 1968, 42 U.S.C. 4151 through 4157,

(iii) In choosing among available methods for meeting the requirements of this section, the Agency shall give priority to those methods that offer programs and activities to qualified individuals with disabilities in the most integrated setting appropriate to the needs of qualified individuals with disabilities.

(4) *Time period for compliance.* The Agency shall comply with the obligations established under this section before [date sixty days after the effective date of this part], except that where structural changes in facilities are undertaken, such changes shall be made before [date three years after the effective date of this part], but in any event as expeditiously as possible.

(5) *Transition plan.* In the event that structural changes to facilities will be undertaken to achieve program accessibility, the Agency shall develop, before [date 6 months after the effective date of this part], a transition plan setting forth the steps necessary to complete such changes. The Agency shall provide an opportunity to interested persons, including individuals with disabilities and organizations representing individuals with disabilities, to participate in the development of the transition plan by submitting comments (both oral and written). A copy of the transition plan shall be made available for public inspection. The plan shall, at a minimum—

(i) Identify physical obstacles in the Agency's facilities that limit the accessibility of its programs or activities to individuals with disabilities;

(ii) Describe in detail the methods that will be used to make the facilities accessible;

(iii) Specify the schedule for taking the steps necessary to achieve compliance with this paragraph and, if the time period of the transition plan is longer than 1 year, identify steps that will be taken during each year of the transition period; and

(iv) Indicate the official response for implementation of the plan.

(6) The Agency shall provide signs at a primary entrance to each of its inaccessible facilities, directing users to a location at which they can obtain information about accessible facilities. The international symbol for accessibility shall be used at each primary entrance of an accessible facility.

(c) *New purchases, leases, or other arrangements.* (1) Any building or facility acquired after March 28, 1990, whether by purchase, lease (other than lease renewal), or any other arrangement, shall be readily accessible to and usable by individuals with disabilities.

(2) Nothing in this paragraph requires the Agency to take any action that it can demonstrate would result in a fundamental alteration in the nature of a program or activity or in undue financial and administrative burdens. In those circumstances where Agency

personnel believe that the proposed action would fundamentally alter the program or activity or would result in undue financial and administrative burdens, the Agency has the burden of proving that compliance with this paragraph would result in such alteration or burdens. The decision that compliance would result in such alteration or burdens must be made by the Staff Director or his or her designee after considering all Agency resources available for use in the funding and operation of the conducted program or activity, and must be accompanied by a written statement of the reasons for reaching that conclusion. If an action would result in such an alteration or such burdens, the Agency shall take any other action that would not result in such an alteration or such burdens but would nevertheless ensure that individuals with disabilities receive the benefits and services of the program or activity.

(d) New construction and alterations. Each building or part of a building that is constructed or altered by, on behalf of, or for the use of the Agency shall be designed, constructed, or altered so as to be readily accessible to and usable by individuals with disabilities in accordance with the requirements imposed by the Architectural Barriers Act of 1968, 42 U.S.C. 4151 through 4157.

§ 707.9 Access to communications.

(a) *Discrimination prohibited.* Except as otherwise provided in this section, no qualified individual with disabilities shall, because the Agency's communications are inaccessible to or unusable by individuals with disabilities, be denied the benefits of, be excluded from participation in, or otherwise be subjected to discrimination under any program or activity conducted by the Agency.

(b) The Agency shall take appropriate steps to ensure effective communication with applicants, participants, personnel of other Federal entities, and members of the public.

(c) *Specific requirements regarding oral communications*—(1) *Telecommunications devices for deaf persons.* (i) The Agency headquarters and each regional office shall maintain and reliably answer at least one telecommunications device for deaf persons (TDD) or equally effective telecommunications device.

(ii) The Agency shall ensure that all Agency letterhead, forms, and other documents listing any Agency telephone number list the appropriate TDD numbers.

(2) *Interpreter service.* (i) The Agency shall establish a reliable system for the provision of qualified interpreters to individuals with disabilities for Agency programs or activities. This provision does not require the Agency to have an interpreter on staff, but does require the Agency to be able to provide a qualified interpreter on reasonable notice.

(ii) Notice of the availability of interpreter service shall be included in all announcements notifying the public of Agency activities to which the public is invited or which it is permitted to attend, including but not limited to the Commission's meetings, consultations, hearings, press conferences, and State Advisory Committee conferences and meetings. This notice shall designate the Agency official(s) and the address, telephone and TDD number to call to request interpreter services.

(d) *Specific requirements for printed communications.* (1) The Agency shall establish a system to provide to individuals with disabilities appropriate reader or taping service for all Agency publications that are available to the public. This provision does not require the Agency to have a reader or taper on staff, but does require the Agency to be able to provide appropriate reader or taping service within a reasonable time and on reasonable notice. The Agency shall effectively notify qualified individuals with disabilities of the availability of reader or taping services.

(2) Notice of the availability of reader or taping service shall be included in all publications that are available to the public. This notice shall designate the Agency official(s) and the address, telephone, and TDD number to call to request interpreter services.

(e) Nothing in this section or § 707.10 requires the Agency to take any action that it can demonstrate would result in a fundamental alteration in the nature of a program or activity or in undue financial and administrative burdens. In those circumstances where Agency personnel believe that the proposed action would fundamentally alter the program or activity or would result in undue financial and administrative burdens, the Agency has the burden of proving that compliance with this section or § 707.10 would result in such alteration or burdens. The decision that compliance would result in such alteration or burdens must be made by the Staff Director or his or her designee after considering all Agency resources available for use in the funding and operation of the conducted program or activity and must be accompanied by a written statement of the reasons for reaching that conclusion. If an action required to comply with this paragraph would result in such an alteration or such burdens, the Agency shall take any other action that would not result in such an alteration or such burdens but would nevertheless ensure that, to the maximum extent possible, individuals with disabilities receive the benefits and services of the program or activity.

§ 707.10 Auxiliary aids.

(a) The Agency shall furnish appropriate auxiliary aids where necessary to afford an individual with disabilities an equal opportunity to participate in, and enjoy the benefits of, a program or activity conducted by the Agency.

(b) In determining what type of auxiliary aid is necessary, the Agency shall give primary consideration to the requests of the individual with disabilities.

(c) The Agency need not provide individually prescribed devices, readers for personal use or study, or other devices of a personal nature.

§ 707.11 Eliminating discriminatory qualifications and selection criteria.

The Agency shall not make use of any qualification standard, eligibility requirement, or selection criterion that excludes particular classes of individuals with disabilities from an Agency program or activity merely because the persons are disabled, without regard to an individual's actual ability to participate. An irrebuttable presumption of inability to participate based upon a disability shall be permissible only if the condition would, in all instances, prevent an individual from meeting the essential eligibility requirements for participating in, or receiving the benefits of, the particular program or activity.

§ 707.12 Compliance procedures.

(a) Except as provided in paragraph (b) of this section, this section applies to all allegations of discrimination on the basis of disability in programs or activities conducted by the Agency.

(b) The Agency shall process complaints alleging violations of section 504 with respect to employment according to the procedures established in 29 U.S.C. 791 by the Equal Employment Opportunity Commission in 29 CFR part 1613 pursuant to section 501 of the Rehabilitation Act of 1973 (29 U.S.C. 791).

(c) Responsibility for implementation and operation of this section shall be vested in the Office of General Counsel.

(d) The Agency shall accept and investigate all complete complaints for which it has jurisdiction. All complete complaints must be filed within 180

days of the alleged act of discrimination. The Agency may extend this time period for good cause.

(e) If the Agency receives a complaint over which it does not have jurisdiction, it shall promptly notify the complainant and shall make reasonable efforts to refer the complaint to the appropriate Government entity.

(f) The Agency shall notify the Architectural and Transportation Barriers Compliance Board upon receipt of any complaint alleging that a building or facility that is subject to the Architectural Barriers Act of 1968, 42 U.S.C. 4151 through 4157, is not readily accessible to and usable by individuals with disabilities.

(g) Within 180 days of the receipt of a complete complaint for which it has jurisdiction, the Agency shall notify the complainant of the results of the investigation in a letter containing—

(1) Findings of fact and conclusions of law;

(2) A description of a remedy for each violation found; and

(3) A notice of the right to appeal.

(h) Appeals of the findings of fact and conclusions of law or remedies must be filed by the complainant within 90 days of receipt from the Agency of the letter required by paragraph (g) of this section. The Staff Director may extend this time for good cause.

(i) Timely appeals shall be accepted and processed by the Staff Director or the Staff Director's designee.

(j) The Agency shall notify the complainant in writing of the results of the appeal within 60 days of the receipt of the request. If the head of the Agency determines that additional information is needed from the complainant, it shall have 60 days from the date it receives the additional information to make its determination on the appeal.

(k) The time limits cited in paragraphs (d), (g), (h), and (j) of this section may be extended for an individual case when the Staff Director determines that there is good cause, based on the particular circumstances of that case, for the extension.

(l) The Agency may delegate its authority for conducting complaint investigations to other Federal agencies; however, the authority for making the final determination may not be delegated to another Agency.

PART 708—COLLECTION BY SALARY OFFSET FROM INDEBTED CURRENT AND FORMER EMPLOYEES

Sec.

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Authority: 5 U.S.C. 5514

§ 708.1 Purpose and scope.

(a) The regulations in this part provide the procedure pursuant to 5 U.S.C. 5514 and 5 CFR 550.1101 through 550.1110 for the collection by administrative offset of a Federal employee's salary without his or her consent to satisfy certain debts owed to the Federal government. This procedure applies to all Federal employees who owe debts to the U.S. Commission on Civil Rights (Commission). This provision does not apply when the employee consents to recovery from his or her current pay account.

(b) This procedure does not apply to debts or claims arising under:

(1) The Internal Revenue Code (26 U.S.C. 1 *et seq.*);

(2) The Social Security Act (42 U.S.C. 301 *et seq.*);

(3) The tariff laws of the United States; or

(4) To any case where collection of a debt by salary offset is explicitly provided for or prohibited by another statute (e.g., travel advances in 5 U.S.C. 5705 and employee training expenses in 5 U.S.C. 4108).

(c) The Commission shall except from salary offset provisions any adjustments to pay arising out of an employee's election of coverage or a change in coverage under a Federal benefits programs requiring periodic payroll deductions from pay, if the amount to be recovered was accumulated over four pay periods or less.

(d) These procedures do not preclude an employee or former employee from requesting a waiver of a salary overpayment under 5 U.S.C. 5584 or 10 U.S.C. 2774 or in any way questioning the amount or validity of the debt by submitting a subsequent claim to the General Accounting Office (GAO) in accordance with procedures prescribed by the GAO. In addition, this procedure does not preclude an employee from requesting a waiver pursuant to other statutory provisions applicable to the particular debt being collected.

§ 708.2 Policy.

It is the policy of the Commission to apply the procedures in the regulations in this part uniformly and consistently in the collection of internal debts from its current and former employees.

§ 708.3 Definitions.

For the purposes of the regulations in this part the following definitions apply:

(a) Agency means:

(1) An Executive agency as defined in 5 U.S.C. 105, including the U.S. Postal Service and the U.S. Postal Rate Commission;

(2) A military department as defined in 5 U.S.C. 102;

(3) An agency or court in the judicial branch, including a court as defined in 28 U.S.C. 610, the District Court for the Northern Mariana Islands, and the Judicial panel on Multidistrict Litigation;

(4) An agency of the legislative branch, including the U.S. Senate and the U.S. House of Representatives; and

(5) Other independent establishments that are entities of the Federal Government.

(b) *Creditor agency* means the agency to which the debt is owed.

(c) *Debt* means an amount owed to the United States from sources, which include loans insured or guaranteed by the United States and amounts due the United States from fees, leases, rents, royalties, services, sales of real or personal property, overpayments, penalties, damages, interest, fines and forfeitures (except those arising under the Uniform Code of Military Justice), and all other similar sources.

(d) *Deputy Staff Director* means the Deputy Staff Director of the Commission or in his or her absence, or in the event of a vacancy in the position or its elimination, the Director of Human Resources.

(e) *Disposable pay* means that part of current basic pay, special pay, incentive pay, retired pay, retainer pay, or in the case of an employee not entitled to basic pay, other authorized pay remaining from an employee's Federal pay after required deductions for social security, Federal, state or local income tax, health insurance premiums, retirement contributions, life insurance premiums, Federal employment taxes, and any other deductions that are required to be withheld by law.

(f) *Employee* means a current employee of an agency, including a current member of the Armed Forces or a Reserve of the Armed Forces (Reserves).

(g) *Former employee* means an employee who is no longer employed with the Commission but is currently employed with another Federal agency.

(h) *FCCS* means the Federal Claims Collection Standards jointly published

by the Department of Justice and the General Accounting Office at 4 CFR chapter I.

(i) *Hearing official* means an individual responsible for conducting any hearing with respect to the existence or amount of a debt claimed, and who renders a decision on the basis of such hearing. A hearing official may not be under the supervision or control of the Deputy Staff Director of the Commission.

(j) *Paying agency* means the agency employing the individual who owes the debt and is responsible for authorizing the payment of his or her current pay.

(k) *Pay interval* will normally be the biweekly pay period but may be some regularly recurring period of time in which pay is received.

(l) *Retainer pay* means the pay above the maximum rate of an employee's grade that he or she is allowed to keep in special situations rather than having the employee's rate of basic pay reduced.

(m) *Salary offset* means an administrative offset to collect a debt under 5 U.S.C. 5514 by deduction(s) at one or more officially established pay intervals from the current pay account of an employee without his or her consent.

(n) Waiver means the cancellation, remission, forgiveness, or non-recovery of a debt allegedly owed by an employee to an agency as permitted or required by 5 U.S.C. 5584, 10 U.S.C. 2774, or 5 U.S.C. 8346(b), or any other law.

§ 708.4 Applicability.

The regulations in this part are to be followed when:

(a) The Commission is owed a debt by an individual who is a current employee of the Commission; or

(b) The Commission is owed a debt by an individual currently employed by another Federal agency; or

(c) The Commission employs an individual who owes a debt to another Federal agency.

§ 708.5 Notice.

(a) Deductions shall not be made unless the employee who owes the debt has been provided with written notice signed by the Deputy Staff Director or in his or her absence, or in the event of a vacancy in that position or its elimination, the Director of Human Resources (or the U.S. Department of Agriculture, National Finance Center acting on behalf of the Commission) of the debt at least 30 days before salary offset commences.

(b) The written notice from the Deputy Staff Director, acting on behalf of the Commission, as the creditor agency, shall contain:

(1) A statement that the debt is owed and an explanation of its origin, nature, and amount;

(2) The agency's intention to collect the debt by deducting from the employee's current disposable pay account;

(3) The amount, frequency, proposed beginning date, and duration of the intended deduction(s);

(4) An explanation of the requirements concerning the current interest rate, penalties, and administrative costs, including a statement that such charges will be assessed unless excused in accordance with the Federal Claims Collections Standards (4 CFR chapter I);

(5) The employee's right to inspect, request, or receive a copy of the government records relating to the debt;

(6) The employee's right to enter into a written repayment schedule for the voluntary repayment of the debt in lieu of offset;

(7) The right to a hearing conducted by an impartial hearing official (either an administrative law judge or an official who is not under the control of the Commission);

(8) The method and time period for petitioning for a hearing;

(9) A statement that the timely filing (i.e., within 15 calendar days) of a petition for a hearing will stay the commencement of collection proceedings;

(10) A statement that a final decision on the hearing (if one is requested) will be issued at the earliest practical date but not later than 60 days after the filing of the petition requesting the hearing unless the employee requests and the hearing official grants a delay in the proceedings.

(11) A statement that an employee knowingly submitting false or frivolous statements (5 CFR 550.1101), representations, or evidence may subject the employee to disciplinary procedures under 5 U.S.C. 7501 et seq. and 5 CFR part 752; penalties under the False Claims Act, 31 U.S.C. 3729–3731; or criminal penalties under 18 U.S.C. 286, 287, 1001, and 1002;

(12) A statement of other rights and remedies available to the employee under statutes or regulations governing the program for which the collection is being made;

(13) A statement that an employee will be promptly refunded any amount paid or deducted for a debt that is later waived or found not valid unless there are applicable contractual or statutory provisions to the contrary; and

(14) The name, address, and phone number of an official who can be contacted concerning the indebtedness.

§ 708.6 Petitions for hearing.

(a) Except as provided in paragraph (d) of this section, an employee who wants a hearing must file a written petition for a hearing to be received by the Deputy Staff Director not later than 15 calendar days from the date of receipt of the Notice of Offset. The petition must state why the employee believes the determination of the Commission concerning the existence or amount of the debt is in error.

(b) The petition must be signed by the employee and should identify and explain with reasonable specificity and brevity the facts, evidence, and witnesses that the employee believes support his or her position.

(c) If the employee objects to the percentage of disposable pay to be deducted from each check, the petition should state the objection and the reasons for it.

(d) If the employee files a petition for a hearing later than the 15 calendar days from the date of receipt of the Notice of Offset, as described in paragraph (a) of this section, the hearing official may accept the request if the employee can show that there was good cause (such as due to circumstances beyond his or her control or because he or she was not informed or aware of the time limit) for failing to meet the deadline date.

(e) An employee will not be granted a hearing and will have his or her disposable pay offset in accordance with the Deputy Staff Director's offset schedule if he or she fails to show good cause why he or she failed to file the petition for a hearing within the stated time limits.

§ 708.7 Hearing procedures.

(a) If an employee timely files a petition for a hearing under §708.6, the Deputy Staff Director shall select the time, date, and location for the hearing.

(b) The hearing shall be conducted by an impartial hearing official.

(c) The Commission, as the creditor agency, will have the burden of proving the existence of the debt.

(d) The employee requesting the hearing shall have the burden of proof to demonstrate that the existence or amount of the debt is in error.

§ 708.8 Written decision.

(a) The hearing official shall issue a written opinion no later than sixty (60) days after the filing of the petition for hearing; or no longer than sixty (60) days from the proceedings if an extension has been granted pursuant to § 708.5(b)(10).

(b) The written opinion will include: A statement of the facts presented to demonstrate the nature and origin of the

alleged debt; the hearing official's analysis, findings, and conclusions; the amount and validity of the debt; and, if applicable, the repayment schedule.

§ 708.9 Coordinating offset with another Federal agency.

(a) The Commission is the creditor agency when the Deputy Staff Director determines that an employee of another Federal agency owes a delinquent debt to the Commission. The Deputy Staff Director shall, as appropriate:

(1) Arrange for a hearing upon the proper petitioning by the employee;

(2) Certify in writing that the employee of the paying agency owes the debt, the amount, and basis of the debt, the date on which payment is due, the date the Government's right to collect the debt first accrued, and that the Commission's regulations for salary offset have been approved by the Office of Personnel Management;

(3) If the collection must be made in installments, the Commission, as the creditor agency, will advise the paying agency of the amount or percentage of disposable pay to be collected in each installment and the number and the commencement date of the installments;

(4) Advise the paying agency of the actions taken under 5 U.S.C. 5514(a) and provide the dates on which action was taken, unless the employee has consented to salary offset in writing or signed a statement acknowledging receipt of procedures required by law. The written consent or acknowledgement must be sent to the paying agency;

(5) If the employee is in the process of separating, the Commission will submit its debt claim to the paying agency as provided in this part. The paying agency must certify any amounts already collected, notify the employee, and send a copy of the certification of the monies already collected and notice of the employee's separation to the Commission. If the paying agency is aware that the employee is entitled to Civil Service or Foreign Service Retirement and Disability Fund or similar payments, it must provide written notification to the agency has been rendered in favor of the Commission.

(6) If the employee has already separated and all payments due from the paying agency have been paid, the Assistant Staff Director for Management may request, unless otherwise prohibited, that money payable to the employee from the Civil Service Retirement and Disability Fund or other similar funds be collected by administrative offset. The Commission will provide the agency responsible for these payments with a properly certified claim.

(b) The Commission is the paying agency when an employee of this agency owes a debt to another Federal agency that is the creditor agency.

(1) Upon receipt of a properly certified debt claim from a creditor agency, deductions will be scheduled to begin at the next established pay interval.

(2) The Commission must give the employee written notice that it has received a certified debt claim from a creditor agency (including the amount), and the date that deductions will be scheduled to begin and the amount of the deduction.

(3) The Commission shall not review the merits of the creditor agency's determination of the amount of the certified claim or of its validity.

(4) If the employee transfers to another paying agency after the creditor agency has submitted its debt claim but before the debt is collected completely, the Commission must certify the total amount collected to the creditor agency with notice of the employee's transfer. One copy of this certification must be furnished to the employee. The creditor agency will submit a properly certified claim to the new paying agency before collection can be resumed.

(5) When the Commission, as a paying agency, receives an incomplete debt claim from a creditor agency, it must return the debt claim with a notice that procedures under 5 U.S.C. 5514 and this subpart must be provided and a properly certified debt claim received before action will be taken to collect from the employee's current pay account.

§ 708.10 Procedures for salary offset.

(a) Deductions to liquidate an employee's debt will be by the method and in the amount stated in the Assistant Staff Director for Management's written notice of intent to collect from the employee's current pay, unless alternative arrangements for repayment are made.

(b) If the employee filed a petition for a hearing with the Assistant Staff Director for Management before the expiration of the period provided, then deductions will begin after the hearing official has provided the employee with a hearing, and a final written decision has been rendered in favor of the Commission.

(c) A debt will be collected in a lump-sum if possible.

(d) If an employee is financially unable to pay in one lump sum or the amount of the debt exceeds 15 percent of disposable pay for an officially established pay interval, collection must be made in installments. The size of the installment deduction(s) will bear a reasonable relationship to the size of the debt and the deduction will be established for a period not greater than the anticipated period of employment. The deduction for the pay intervals for any period must not exceed 15% of disposable pay unless the employee has agreed in writing to a deduction of a greater amount. If possible, the installment payment will be sufficient in size and frequency to liquidate the debt in no more than three years.

(e) Installment payments may be less than 15 percent of disposable pay if the Assistant Staff Director for Management determines that the 15 percent deduction would create an extreme financial hardship.

(f) Installment payments of less than $25.00 per pay period or $50.00 per month, will only be accepted in the most unusual circumstances.

(g) Unliquidated debts may be offset by the paying agency under 31 U.S.C. 3716 against any financial payment due to a separating employee including but not limited to final salary payment, retired pay, or lump sum leave, etc. as of the date of separation to the extent necessary to liquidate the debt.

(h) If the debt cannot be liquidated by offset from any final payment due a separated employee it may be recovered by the offset in accordance with 31 U.S.C. 3716 from any later payments due the former employee from the United States.

§ 708.11 Refunds.

(a) The Commission will refund promptly any amounts deducted to satisfy debts owned to the Commission when the debt is waived, found not owed to the Commission, or when directed by an administrative or judicial order; or the creditor agency will promptly return any amounts deducted and forwarded by the Commission to satisfy debts owed to the creditor agency when the debt is waived, found not owed, or when directed by an administrative or judicial order.

(b) Upon receipt of monies returned in accordance with paragraph (a) of this section, the Commission will refund the amount to the current or former employee.

(c) Unless required by law, refunds under this section shall not bear interest nor shall liability be conferred to the Commission for debt or refunds owed by other creditor agencies.

§ 708.12 Statute of limitations.

If a debt has been outstanding for more than 10 years after the agency's

right to collect the debt first accrued, the agency may not collect by salary offset unless facts material to the government's right to collect were not known and could not reasonably have been known by the official or officials who were charged with the responsibility for discovery and collection of such debts.

§ 708.13 Non-waiver of rights by payments.

An employee's involuntary payment of all or any part of a debt collected under the regulations in this part will not be construed as a waiver of any rights that employee may have under 5 U.S.C. 5514 or any other provision of contract or law unless there are statutory or contractual provisions to the contrary.

§ 708.14 Interest, penalties, and administrative costs.

Charges may be assessed for interest, penalties, and administrative costs.

Debra A. Carr,

Deputy General Counsel.

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Part IV

Department of Transportation

Federal Railroad Administration

49 CFR Part 232

Brake System Safety Standards for Freight and Other Non-Passenger Trains and Equipment; End-of-Train Devices; Final Rule

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

49 CFR Part 232

[FRA Docket No. PB–9; Notice No. 21]

RIN 2130—AB52

Brake System Safety Standards for Freight and Other Non-Passenger Trains and Equipment; End-of-Train Devices

AGENCY: Federal Railroad Administration (FRA), DOT.

ACTION: Final rule; response to petitions for reconsideration.

SUMMARY: On January 17, 2001, FRA published a final rule revising the regulations governing braking systems and equipment used in freight and other non-passenger railroad train operations. The revisions were intended to achieve safety by better adapting the regulations to the needs of contemporary railroad operations and facilitating the use of advanced technologies. The revisions were issued in order to comply with Federal legislation, to respond to petitions for rulemaking, and to address areas of concern derived from experience in the application of existing standards governing these operations. On August 1, 2001, FRA published an initial response to petitions for reconsideration of the final rule which addressed the issues and concerns raised in the petitions related to the periodic maintenance requirements contained in subpart D of the final rule. In this document, FRA responds to the concerns of various interested parties raised in their petitions for reconsideration of the final rule that pertain to the remaining portions of the final rule. This document clarifies and amends the final rule, where necessary, in response to the petitions for reconsideration.

EFFECTIVE DATE: The amendments to the final rule are effective April 10, 2002.

FOR FURTHER INFORMATION CONTACT: James Wilson, FRA Office of Safety, RRS–14, 1120 Vermont Avenue, Stop 25, Washington, DC 20590 (telephone 202–493–6259), or Thomas Herrmann, Trial Attorney, Office of the Chief Counsel, RCC–10, 1120 Vermont Avenue, Stop 10, Washington, DC 20590 (telephone 202–493–6053).

SUPPLEMENTARY INFORMATION:

Background

On January 17, 2001, FRA issued a final rule revising the Federal safety standards governing braking systems and equipment used in freight and other non-passenger railroad train operations. *See* 66 FR 4104. The effective date of the final rule was May 31, 2001. *See* 66 FR 9906 (February 12, 2001) and 66 FR 29501 (May 31, 2001). In response to the final rule, FRA received six petitions for reconsideration from seven parties raising various issues related to a number of the provisions contained in the final rule. These petitioners included the following:

Association of American Railroads (AAR), American Short Line and Regional Railroad Association (ASLRRA), American Public Transportation Association (APTA), Brotherhood of Locomotive Engineers (BLE), New York Air Brake Corporation (NYAB), Rail Passenger Car Alliance (RPCA), and Union Pacific Railroad Company (UP).

On August 1, 2001, FRA published an initial response to the petitions for reconsideration of the final rule addressing those issues raised in the petitions related to the periodic maintenance and testing requirements prescribed in subpart D of the final rule. *See* 66 FR 39683. FRA believed that it was necessary to address these issues as quickly as possible because the periodic maintenance and testing requirements prescribed in subpart D of the final rule had a compliance date of August 1, 2001. Due to the complexity of some of the issues raised in the petitions for reconsideration on other provisions of the final rule, FRA decided to address the issues related to subpart D in its initial response to the petitions and then issue a follow-up response addressing the issues pertaining to other portions of the final rule. *See id.* This document is FRA's follow-up response and addresses all outstanding issues raised in the petitions for reconsideration.

The specific issues and recommendations raised in the petitions for reconsideration, and FRA's response to those petitions is discussed in detail in the ''Section-by-Section Analysis'' portion of the preamble. The section-by-section analysis also contains a detailed discussion of each provision which is being clarified or amended from the January 17, 2001 final rule. This will enable the regulated community to more readily compare this document with the preamble discussions contained in the final rule and will aid the regulated community in understanding the requirements of the rule. All of the changes being made to the final rule in this response to the petitions for reconsideration are intended to be clarifying or technical amendments or are within the scope of the issues and options discussed, considered, and raised in either the 1998 Notice of Proposed Rulemaking (NPRM) or the final rule.

I. Discussion of Regulatory Evaluation Concerns

In the joint AAR and ASLRRA petition for reconsideration of the final rule (hereafter referred to as AAR's petition), the parties raise a number of concerns regarding FRA's Regulatory Impact Analysis (RIA) of the final rule. Generally, the AAR contends that the final rule is not cost effective. The AAR asserts that FRA's RIA understates the costs and overstates the benefits of the final rule. The AAR calculates that the costs related to the final rule will exceed the benefits by more than $65 million. FRA disagrees with both AAR's assumptions and its conclusions regarding the agency's RIA. In response to AAR's petition, FRA has carefully examined each of the cost and benefit issues raised by AAR in its petition. Each of the major issues and concerns is discussed in detail below.

A. Cost Issues

1. Dynamic Brake Repairs

AAR claims that the final rule provision requiring that dynamic brakes be repaired within 30 days of becoming defective will cost the industry approximately $7.5 million more than the $5.5 million FRA estimated in the RIA. In the RIA, FRA estimated the cost of this requirement based on the amount of time it would take to conduct the required repairs, which FRA estimated at eight hours, to which FRA added two hours to cover the movement of the locomotive into and out of the shop and to account for clean-up time. *See* RIA at 24–25. AAR does not appear to question FRA's estimate of ten hours for actual repair and incidental movement time. However, AAR bases its higher estimate on the belief that the correct cost of this requirement should be the time out of service incurred by a locomotive to make the required repair and that this out-of-service time should be estimated at 24 hours. AAR arrived at the 24-hour out-of-service time figure by maintaining that the locomotive is out of service both before and after the required repairs are made for a period of approximately 24 hours. AAR contends that the time required to make the necessary repairs should not be the basis of the estimate because railroads will make the repairs anyway, just not within the newly prescribed 30-day time period in some cases. Thus, the AAR asserts that the locomotive out-of-service time prior to and after the repairs are made is the proper basis for estimating the cost of this requirement.

As noted in the RIA, FRA strongly disagrees with AAR's suggestion that an estimate of 24 hours of downtime should be used as the basis for the cost estimate. *See* RIA at 24. FRA believes that time spent waiting for repairs to be performed or waiting after the repairs are completed is not properly viewed as a new regulatory burden associated with the rule. The final rule allows railroads 30 days from the date a locomotive is first discovered with defective dynamic brakes to make the necessary repairs. The 30-day allowance was provided to permit railroads to better plan and manage their locomotive fleet without disruption to their operations. The RIA assumes that railroads will act in the most efficient and cost effective manner to meet the requirements of the final rule. With proper planning and management, there should be no need for locomotives to make special trips to repair facilities, and with proper planning locomotives should not have to wait extended amounts of time for repair and movement out of repair facilities.

Moreover, FRA disagrees with the assumptions used by AAR to calculate the amount of downtime a locomotive would incur to meet the requirements of the regulation. AAR calculations are based on the assumption that a locomotive is used 24 hours a day, seven days a week. This is an unrealistic assumption as it is well known in the railroad industry that virtually no locomotive is used to this extent. Secondly, AAR's calculation fails to take into account that locomotives would be in repair facilities for other repairs at which time the dynamic brakes could be repaired. The 30-day window provided by the final rule for making dynamic brake repairs is intended to allow railroads flexibility in scheduling such repairs to coincide with time periods when a locomotive is not in service or when the locomotive is undergoing other necessary repairs. Thus, FRA believes that AAR greatly overestimates any locomotive downtime related to the final rule requirement. Therefore, even assuming *arguendo* AAR's costing method, the 10 hours costed by FRA for this provision is reasonable. In fact, it is very conceivable that FRA's cost estimate here may actually be high, and that the actual cost may be lower to the railroads than FRA has estimated. However, FRA deliberately chose to use a very conservative number in determining its cost estimate.

2. Train Handling Information

AAR claims that the final rule requirement to provide certain information to the train crew will cost the industry $12 million more than the $4.4 million estimated by FRA. *See* 66 FR 4203, RIA at 22. Specifically, AAR contends that the provision to provide information to train crews regarding the performance of Class I brake tests requires more information (number of cars, place, time, date, and name of inspector) to be transmitted to a greater number of trains than is currently required. The old regulation allowed for required information on performance of initial terminal brake tests to be provided orally on trips under 500 miles and mandated that required information be provided in writing on trips over 500 miles and on trains where the inspector goes off duty before a train crew comes on duty. The final rule requires that certain information be provided to train crews for all trains receiving Class I brake tests, including those on trips under 500 miles, and that a written or electronic record of the information be maintained in the cab of the controlling locomotive.

In the RIA, FRA based its cost calculations on the assumption that an additional 300,000 train starts, for trains traveling less than 500 miles, would be affected by the final rule requirement. *See* RIA at 22. AAR contends that FRA's 300,000 train start assumption is incorrect because AAR contends that there are over 1,000,000 train starts where the train will travel less than 500 miles and that this is the actual number of trains that will be affected by the final rule. However, a close examination of AAR's cost estimate reveals that the 1,000,000 train starts does not discount for the existing regulatory requirement that a written record is to be provided by the person performing an initial terminal brake inspection for any train when the inspector goes off duty prior to the operating crew coming on duty. *See* 49 CFR 232.12(a)(2). Moreover, AAR's cost estimate does not address the issue of how many of the 1,000,000 train starts it identifies would be considered transfer trains that would not require the transmission and retention of the involved information. FRA believes that had these factors been considered the number of affected train starts would be close to FRA's estimate contained in the RIA. Consequently, in light of these factors and in light of the fact that there are no readily available data on the number of trains traveling under 500 miles, FRA believes its cost estimate of 300,000 affected train starts is reasonable.

3. Retesting of Cars

AAR further contends that the final rule provision requiring the retest of cars found with brakes not to be applied during a required brake test will cost the industry $17.4 million more than FRA's cost estimate of $8.2 million contained in the RIA. In the RIA, FRA's estimate is based on the assumption that 75,000 cars would need to be retested annually pursuant to the final rule. *See* RIA at 20. However, AAR bases its estimate of approximately $25 million by using 150,000 cars as the number of rail cars affected by the retest provision and by using increased labor costs that it derived from ''survey'' results of some of its member railroads. AAR provided no other pertinent information concerning the ''survey'' cited, only the results.

FRA essentially cut the AAR's number in half when developing the RIA for the final rule, which doubled the costs estimated in the NPRM based on FRA's agreement with certain AAR comments submitted in response to the NPRM. If AAR's numbers presented in its petition are accurate, then 10 percent of the rail car fleet would require a retest each year. FRA continues to believe that this percentage is much too high. FRA believes that a large portion of the fleet that fails a brake test does so for obvious reasons. These cars would simply be removed from the train and repaired where found defective. Consequently, such cars would not be affected by the retest provision contained in the final rule. Again, it should be noted that details about AAR's survey (*e.g.,* methodology, the number of railroads surveyed, questions asked, and information sought) were not provided to FRA in AAR's petition for reconsideration. FRA continues to believe that its cost estimate for this provision is reasonable and that 75,000 cars (5 percent of the fleet) may, in fact, be overestimating the number of retests that will be required. However, FRA again preferred to be conservative when developing the RIA for the final rule. If FRA were to accept the AAR's estimate that 150,000 cars would need to be retested, FRA would also have to conclude that the freight car fleet is in significantly worse condition than FRA believes to be the case and would have to reconsider requiring more vigorous action to keep freight cars in good repair.

4. Piston Travel Stickers/Decals/Stencils

AAR also asserts that the final rule requirement to affix a sticker, decal, or stencil on rail cars indicating permissible piston travel will cost the industry $3 million more than FRA's estimate of approximately $3.4 million contained in the RIA. AAR contends that the requirement to have these

indicators affixed on rail cars by April 1, 2004, will result in cars having to be taken out of service solely for the purpose of applying the required decal, sticker, or stencil. It should be noted that AAR did not raise this issue in its comments on the NPRM issued in 1998. In its petition, AAR now estimates that 20 percent of the cars requiring the labeling will need to be removed from service.

FRA strongly disagrees with AAR's analysis of this provision. FRA believes that the time permitted in the final rule is sufficient for railroads to comply with the requirement. On average, rail cars are placed on a fixed repair track or a sidetrack where repairs are conducted approximately once every one-and-one-half years. The task of applying a sticker, decal, or stencil takes only a few minutes to accomplish, and FRA has allowed numerous ways for railroads to comply with the requirement. As a matter of fundamental sound economics, good business practice, and effective utilization of employee time and company resources, FRA assumes the railroads will use the most cost-effective option (i.e., applying stickers or decals to a rail car while performing other functions rather than taking it out of service unnecessarily) when placing piston travel information on rail cars. The most reasonable approach to complying with the requirement is to apply the sticker, stencil, or decal when an inspection or repair is being conducted on the rail car. Therefore, FRA maintains that railroads will not incur the excessive costs estimated by AAR when less expensive alternatives for achieving compliance are utilized. Consequently, FRA continues to believe that the RIA cost estimate for this requirement is reasonable.

5. Training

The AAR further alleges that the training requirements contained in the final rule will cost the industry between $8.3 million and $19 million more than FRA's RIA estimate of approximately $61 million. Although FRA is not unmindful that the costs associated with the training requirements represents the single highest cost item associated with the final rule, FRA believes that AAR has seriously overestimated the costs of the training requirements in its petition. Furthermore, in response to the training concerns raised by AAR in its petition, FRA is modifying some of the training requirements contained in the final rule to reduce the initial training burdens, particularly for existing employees as discussed in detail in the section-by-section analysis below. Thus, many of the costs implications cited by AAR in its petition will be reduced as existing employees will be permitted to ''test out'' or be certified as having received part of the initial training.

In addition to the regulatory changes, which will significantly reduce the cost of initial training for existing employees, AAR also overestimated the cost of the training requirements in its petition. In its petition, AAR's costs assume a much greater labor cost than FRA assumed when developing the RIA for the final rule. AAR estimated an average labor cost of approximately $48 per hour/per employee to conduct the required training. However, the final rule's RIA relied on a labor cost of $35 per hour/per employee. *See* RIA at 32a. FRA based its final rule labor costs on the fact that the RIA related to the NPRM used an estimate of $35 per hour for the cost of employee time for training purposes, and it noted that this figure was obtained from a 1995 AAR submission. Although the AAR did express concerns with the training costs in two different comments submitted in response to the NPRM, AAR never objected to FRA's use of the $35 per hour labor cost for employee time. AAR did not object to $35 per hour labor cost for employee time even though the cost estimate was several years old and was not adjusted for inflation. Thus, notice and comment were properly provided on this cost estimate and no objections were raised regarding its use. Consequently, FRA's use of the dollar figure in the final rule should be considered reasonable.

AAR's petition also asserts that the FRA's training costs in the RIA omit the cost of training materials and other miscellaneous costs. The RIA for the final rule suggests that trade groups such as AAR and ASLRRA would develop training programs for member railroads. In fact, FRA assessed costs of $200,000 for each of these groups for initial development of such training programs. See RIA at 30. Additionally, FRA assessed an annual cost of $40,000 for training on new brake systems and for adjustments in training programs. Incorporated in FRA's cost estimates for training are all costs related to the development of a training program, including the costs of materials, and other miscellaneous costs.

In its petition, AAR also states that the training and recordkeeping requirements are particularly burdensome for small railroads. AAR expresses concern that the training requirements will not allow flexibility for the small railroads so that their workers can be trained for the unique operation and environment they encounter daily. However, FRA notes that the final rule requires railroads and contractors to develop training programs that provides the skills needed to inspect, test, and maintain the brake equipment. FRA continues to believe that the unique environment and operating characteristics of small railroads will itself provide flexibility for compliance with the training requirements. This is feasible because the training programs can be tailored to the skills needed by the various employees on each railroad. Since small railroads have less sophisticated operations and older equipment, many of the tasks relating to inspection, testing, and maintenance of brake equipment that personnel of larger railroads are required to perform would not have to be performed by many of the employees on smaller railroads. Therefore, much of the training being provided on larger railroads would not be required to be provided on many smaller railroads. For example, most small railroads do not operate trains with two-way end-of-train devices or dynamic brakes, and therefore, they would not have to provide training for such equipment. Similarly, many smaller railroads do not conduct much of the brake system maintenance or some of the brake inspections and tests mandated under the final rule and thus, training on those tasks would not be required. Correspondingly, as the training requirements lessen for smaller railroads, the recordkeeping burdens attached to the training requirements will also be reduced.

The AAR's petition also contends that some of the final rule recordkeeping requirements related to training are unnecessary and should be eliminated. Specifically, AAR requests the elimination of the requirement to retain a description of the employee's ''hands-on'' performance applying the skills and knowledge the employee needs to possess to perform the tasks for the employee is assigned responsibility. AAR professes that it finds little value in this requirement. FRA maintains that the short description (a few sentences) involved in maintaining this record is not particularly burdensome and that it will assist FRA in its oversight responsibilities. AAR also seeks elimination of the requirement to notify employees of their qualification status as AAR finds little value in this requirement. AAR contends that an employee will learn the status of his qualifications regardless of any regulatory requirement. However, FRA continues to believe that employees need a current record of their qualification status to ensure that no

discrepancies exist between what employees believe their qualifications are and what the company records indicate, especially since employees may be held individually liable for violations of the final rule and subject to various civil sanctions.

In addition, AAR's petition requests the elimination of the requirement to maintain a record of the tasks that each employee is qualified to perform. AAR claims that this information can be gleaned from the information regarding the content of the training course, a record the final rule also requires railroads to maintain. FRA, on the other hand, continues to believe that this information is basic to any training program and should not be very difficult or expensive for railroads to maintain. Moreover, this information is necessary so that there is a specific record describing the tasks that each employee is qualified to perform relating to inspections, testing, and maintenance of brake systems. Such a record will not only assist FRA in its oversight responsibilities but will also assist the railroads in ensuring that properly qualified personnel are used to conduct the various tasks required by the final rule. It should be noted that this type of requirement is not unique or new to the federal regulations; FRA has similar requirements related to retaining the qualification status of roadway workers. *See* 49 CFR 214.343.

The AAR's petition also requests the elimination of the requirement to maintain a record of the identity of the person determining an employee's qualification status. AAR again claims that there is little value in retaining this information, even for enforcement purposes. FRA believes that this information is very basic and should not be difficult, time consuming, or expensive for railroads to maintain. Not only is this record necessary for FRA's oversight responsibilities, but FRA believes that such documentation will assist both the railroads and FRA in assessing the effectiveness of the training provided to employees. The railroads as well as FRA may be able utilize such information to assess the reasons for the employees' failure to properly perform their required duties, e.g., deficiencies in the training program, the person(s) determining the employee's qualification, or the employees themselves. Last, AAR's petition seeks elimination of the requirement to maintain a record of the date that an employee's qualification status expires. AAR contends that this date will be automatically determined based on the date that the employee completes the required training courses. FRA continues to believe that this is basic information that should not be difficult or expensive for railroads to maintain, particularly after AAR's own assessment of how simple it is to calculate the information. In summary, FRA continues to maintain that virtually all of the training information that is required to be maintained by the final rule is currently retained by most railroads in some fashion or another or is not very burdensome to develop and maintain and provides information that is useful to both FRA and the railroads.

B. Benefits

In its petition for reconsideration, AAR raised three major concerns regarding FRA's RIA estimates of the benefits related to the final rule. Each of the three major issues is discussed in detail below.

1. Double Counting of Preventable Accidents

In its petition, AAR claims that FRA has double-counted the accident avoidance benefits related to the final rule. AAR asserts that the RIA for the final rule assumes accident avoidance safety benefits for accidents that were already accounted for in FRA's final rule on two-way end-of-train devices (EOTs) issued on January 2, 1997. *See* 62 FR 278. According to AAR, this reduces the $57.5 million safety benefits assumed in the final rule's RIA by $8.9 million.

FRA's final rule on two-way EOTs utilized an accident data set for calculating the rule's safety benefits which was very specific. Sixteen accidents that occurred between 1991 and 1996 were specifically targeted by that rulemaking. *See* 62 FR 291. All of the accidents in that data set had either E03C or E04C as the FRA-assigned accident cause code. Effectiveness rates of between 0.9 and 0.5 were assessed for those accidents. The focus of the two-way EOT rulemaking was to prevent train accidents which resulted directly from brake pipe constriction or obstruction. *See* 62 FR 291. Two-way EOTs are intended to reduce the risk of this type of accident by providing the locomotive engineer the ability to initiate an emergency brake application at the rear of the train. Because the two-way EOT rule did not apply to all train operations, the data set of preventable accidents did not capture all E03C and E04C type accidents. Specifically, the two-way EOT rulemaking provides exclusions for local trains, trains with an occupied caboose, passenger trains with emergency brakes, trains that do not exceed 30 miles per hour or operate on heavy grades, and trains that operate on trackage not connected to the general railroad system. Freight trains equipped with a locomotive which has the ability to initiate a brake application located at the rear of the train were also excluded, as were trains equipped with an independent secondary braking system.

The RIA for this final rule included *all* brake-related accidents, including obstructed brake pipe accidents, and other related accidents. In the preamble to the final rule and in the RIA, FRA noted that it did not claim 100 percent effectiveness on those accidents used in relation to the two-way EOT rulemaking and, thus, utilizing these accidents in this final rule was acceptable. *See* 66 FR 4107, RIA at 41. Because of this overlap, it was FRA's intention to utilize a 10 percent effectiveness for those accidents cited in both the RIA related to the two-way EOT rulemaking and the RIA related to this final rule. Thus, it was FRA's intention to ensure that no individual accident would be assessed with a combined effectiveness rate of greater than 100 percent. FRA concedes that it erred in the final rule's RIA by referring to the accidents which could be found in both rulemaking data sets as only E04C cause code accidents. In actuality, the overlapping accidents had cause codes of both E03C and E04C. Other codes were also present as the primary cause based on railroad information comprising the EOT data set of accidents. FRA also erred in the final rule RIA by referring to ''brake pipe obstruction'' accidents as having an E04C cause code when in actuality they should have had an E03C cause code. Although FRA erred in identifying the proper cause code, FRA did intend to include brake pipe obstruction accidents in the final rule's safety benefit calculation.

Although AAR contends that there are two major accidents involving an obstructed brake-pipe that FRA has ''double-counted'' by including them in the safety benefits of both the two-way EOT rulemaking and this final rule, FRA believes the characterization is misleading. Double-counting would be claiming credit for preventing the same accident twice at 100 percent effectiveness each time it was claimed. As noted above, it was FRA's intention only to take credit for the remaining 10 percent effectiveness in this final rule for the specific accidents which were included in the data set for the two-way EOT rulemaking. These accidents included the two accidents that occurred in Cajon, California in 1994 and 1996 as well as an accident that occurred in 1996 near St. Paul, Minnesota. However, the RIA for this final rule actually applied an

effectiveness rate of 10 percent on only one of three relevant accidents. Unfortunately, with regard to the other two accidents, FRA inappropriately utilized an effectiveness rate of 50 percent. *See* RIA at 42b. Thus, FRA agrees with AAR's assertion that FRA miscalculated the safety benefits to be derived from these two accidents.

To correct for this error, the safety benefits related to the final rule should be revised to reflect a 10 percent effectiveness rating for the two accidents which are in both data sets. FRA is completely confident that if there is compliance with both the two-way EOT rule and this final rule this type of obstructed-brake-pipe accident would not occur today. Therefore, after FRA corrects the effectiveness rate for the two accidents which had been incorrectly calculated, the final rule's safety benefits change slightly. The value of annual safety benefits decreases from approximately $5.9 million per year to approximately $5.3 million per year. Consequently, the total discounted safety benefits for the twenty-year period decreases from $57,455,262 to $51,147,531, a decrease of approximately $6.3 million. Therefore, although FRA agrees with AAR's general contention that FRA erred in calculating the estimated safety benefits related to the final rule, it should be noted that the error is significantly less than claimed by AAR in its petition. Moreover, the admitted error does not change the overall fiscal soundness of the final rule's RIA or the necessity for the final rule.

2. Value of Avoided Injuries

AAR also asserts that FRA's RIA claim of $330,000 as the value of an avoided moderate injury is at least six times higher than any estimate known to AAR and is not supported by the articles cited in the RIA. AAR contends that if a more traditional approach were taken to estimating the value of avoiding a moderate injury, then the estimated safety benefits would be reduced by $7.9 million. In the RIA related to the NPRM, FRA stated that it would use the Abbreviated Injury Scale (AIS) to determine the value of prevented injuries. It was noted that $330,750 was the mid-point between an AIS 3 ($155,250) injury and an AIS 4 ($506,250) injury. Thus, notice was provided to the AAR regarding FRA's intent to use the mid-point of the AIS, a value of approximately $330,000, to calculate the value of avoided injuries. The RIA for the NPRM used this single value for all injuries. FRA is not aware of any railroad or AAR comment received by the agency during the NPRM comment period that addressed or objected to this estimated value for avoided injuries.

The RIA for the final rule provided different values for prevented injuries based on injury severity where the severity of the injury could be determined based on the information available to FRA. *See* RIA at 42b, 43. Minor, moderate, and severe injuries were valued at $5,000, $330,000, and $1,200,000, respectively. If the severity of the injury could not be determined, it was assessed as a moderate injury. In the final rule's RIA, FRA used $330,000 for the value of a moderate injury prevented, instead of $330,750, for simplicity and rounding purposes. FRA noted that the values for prevented injuries were not directly based on an AIS percentage of a statistical life or subsequent dollar values. *See* RIA at 43. However, FRA stated that they were based on the same ''willingness-to-pay'' approach to injury prevention as the AIS. *See* RIA at 43. FRA assessed minor injuries at $5,000; an AIS 1 injury is valued at $5,400. FRA used $1,200,000 as the value of a severe injury; the mid-point between an AIS 4 and AIS 5 injury is $1,282,500. An AIS 5 injury is assessed at a value of $2,058,750. As its standard for calculating fatal injury, FRA utilizes the United States Department of Transportation's (DOT's) value, which is currently $2.7 million per life saved or fatality averted. All of the injury values are related to this conservative value of a statistical life. This is a value for which there is a large amount of variation. The values range between $1.5 million and $5.8 million, with a mean value of $4.8 million per statistical life saved.

The RIA to the final rule did provide two footnotes in its discussion on the prevented injuries. *See* RIA at 43. The first footnote, which immediately followed a quote, provided the citation on the ''willingness-to-pay'' method of valuing a life. The second footnote followed a quote and a paraphrased sentence. The second footnote also provided a citation for the pertinent journal article. The paragraph where these quotes were located was intended to provide the justification and discussion on the use of the ''willingness-to-pay'' approach for assessing values of prevented injuries. Sources were cited so that a reader could review the relevant methodology. This discussion provided the details of what such a value included, and the article referenced was appropriately cited. It should be noted that this discussion was provided in a separate paragraph from the one which discussed the various monetary values of the different injury severities. Hence, the footnotes and the source citations were not related to the monetary values which FRA used in this analysis, but rather were a description of what is incorporated in the ''willingness-to-pay'' method of valuing a human life. Unfortunately, AAR read and interpreted the footnotes out of context. Consequently, FRA continues to believe that monetary values placed on the different injuries and the estimated safety benefits for the final rule are reasonable and sufficiently conservative.

3. Business Benefits (Cost Savings)

In its petition, AAR also alleges FRA improperly credits benefits for eliminating two non-existent regulatory burdens. AAR contends that removing the benefits related to these two non-existent requirements reduces the stated benefits of the final rule by approximately $25.2 million. Specifically, AAR argues that FRA takes credit for eliminating the requirement for brake connection bottom rod safety supports on bottom connection rods. AAR also argues that FRA claims a benefit for eliminating the prohibition against using an EOT device to determine and report rear car air pressure at the rear of the train during the performance of initial terminal type air brake tests.

The former power brake regulation, as it existed prior to May 31, 2001, has a provision in § 232.12(d)(1) that requires that the inspection ensure that the ''brake rigging is properly secured and does not bind or foul.'' This requirement does not specifically require brake connection bottom rod safety supports, but, with the design of some cars, the supports become necessary to fulfill this requirement. Prior to the issuance of either the NPRM or the final rule, FRA issued a technical bulletin to its field inspectors and the industry stating that ''bottom rod safety supports'' would be required only on those cars that have the bottom rod or handbrake bottom rod below the bolster. *See* FRA Technical Bulletin MP&E 98–6 (June 15, 1998). FRA issues technical bulletins to provide enforcement and interpretative guidance to its field inspectors and members of the regulated community. Technical bulletins which provide enforcement discretion guidance are a matter of policy; are subject to change; and are not to be considered changes or modifications to an existing regulatory requirement.

In the RIA related to the NPRM, an $11 cost associated with the replacement of a bottom rod safety support was supplied by AAR and cited

in a footnote. *See* NPRM RIA at 20. Because AAR supplied a cost for replacing bottom rod safety supports, AAR implied that the supports were replaced by some member railroads. The estimate of 27,800 annual replacement of these supports was used in the RIA for both the NPRM and final rule, and this number was not disputed. The preamble to the final rule delineates the difference between the previously issued technical bulletin, discussed above, and the additional flexibility being provided by the final rule. In the preamble discussion of § 232.205(b)(7), FRA makes clear that brake connection bottom rod supports will no longer be required on bottom connection rods secured with locking cotter keys. *See* 66 FR 4170. FRA recognized that there is no need for bottom rod safety supports in these instances and intended to relieve railroads of this unnecessary expense. Thus, the previously issued technical bulletin and the final rule were giving relief from using bottom rod safety supports in two different circumstances. The previously issued technical bulletin made clear that bottom rod safety supports would be required *only* on cars with the bottom rods and handbrake rods below the bolster. *See* Technical Bulletin MP&E 98–6. However, the final rule also eliminated the need to use bottom rod safety supports in the additional circumstance where a car's bottom rod is secured with cotter keys equipped with a locking device to prevent their accidental removal. *See* 66 FR 4170, 4203, and RIA at 35. Therefore, the final rule provides relief from the requirement to use bottom rod safety supports that is over and above the guidance provided in the previously issued technical bulletin. Based on the above discussion and because the bottom rod safety rod exemption was specifically acknowledged in regulation (albeit for the first time), FRA believes that it is reasonable and proper to consider the flexibility provided by the final rule as a benefit to the industry.

FRA also disagrees with AAR's assertion that there is no benefit derived from the final rule's allowance to utilize an EOT device when conducting a Class I brake test. In the RIA and preamble related to the NPRM, FRA noted that benefits exist but were not estimated (quantified) regarding the use of EOT devices during the performance of Class I brake tests. *See* 63 FR 48350, NPRM RIA at 20. At that time, FRA noted that there was an operational benefit from allowing the use of an EOT when performing a Class I/initial terminal brake test when such inspections are performed at intermediate pick-ups; however, FRA did not have an estimate of how many intermediate pick-ups would be affected by this allowance. In the RIA for the final rule, FRA was able to estimate or quantify this benefit with information that the AAR provided in its comments on the NPRM. *See* RIA at 36–38.

AAR states that there is no prohibition on the use of EOT devices when conducting initial terminal type brake tests pursuant to part 232 as it existed prior to May 31, 2001. FRA disagrees with the AAR's assertion. In § 232.13 of the former rule, FRA specifically allows for the brake pipe pressure to be indicated in an intermediate terminal train air brake test by a rear car ''gauge or device.'' Section 232.13(g) of the former rule defines a ''device'' as a system of components designed and inspected in accordance with § 232.19. Section 232.19 of the former rule contains design standards for EOT devices. When issuing the regulations in 1986, permitting the use of EOT devices when performing certain brake tests, FRA specifically revised only the provisions related to intermediate terminal inspections. *See* 51 FR 17300 (May 9, 1986).[1] FRA did not revise the initial terminal brake test requirements contained in § 232.12 of the former regulation to permit the use of a ''device'' to determine the train line air brake pressure at the rear car of a train. Section 232.12 of the former regulation only permits the air pressure at the rear of the train to be determined by a brake pipe gauge. If FRA had intended to permit the use of an EOT device when conducting brake inspections pursuant to § 232.12 (c)–(j), it would have modified those provisions in 1986. Consequently, it was obviously FRA's intent not to permit the use of such devices when conducting initial terminal brake inspections. Moreover, FRA has always interpreted the regulation to require that a person be stationed at the rear of the train to determine brake pipe pressure at the rear of the train when conducting a brake inspection pursuant to the requirements contained in § 232.12(c)–(j) of the former rule.

As the final rule specifically permits the use of an EOT device to indicate brake pipe pressure when conducting Class I/initial terminal brake tests, the industry derives an operational benefit that was not available under the former rule. As the final rule's RIA noted, this is not a benefit for all Class I/initial terminal brake tests. *See* RIA 36–38. It is a benefit that non-cycle trains that perform one or more pick-ups while en route are more likely to realize. Thus, a benefit is realized whenever cars that are added to a train are required to receive a Class I/initial terminal brake test at the time they are added to the train. FRA estimated that approximately seven percent of all train starts would engage in en route pick-ups requiring the performance of a Class I/initial terminal brake test that would benefit from this regulatory change. This benefit was calculated with very conservative estimates. FRA estimated that minimally 100,000 of the 1.4 million train starts would realize a benefit from using an EOT device when conducting a Class I/initial terminal brake test while en route. *See* RIA at 36–38. This estimate does not account for the likelihood that many of the 100,000 trains would engage in more than one en route pick-up. FRA estimated the savings as being minimally five minutes per use. Train delay value was estimated at $250 per hour. This value was an estimate that was developed in the Positive Train Control (PTC) Working Group of the Railroad Safety Advisory Committee (RSAC), which included both industry and labor participation. Consequently, FRA believes that the operational benefits it estimated in the RIA that would be derived from the final rule's allowance for the use of EOT devices when conducting Class I brake tests are reasonable, proper, and very conservative.

In summary, FRA acknowledges that it erred in the final rule's RIA when estimating the safety benefits to be derived from the specific accidents included in the analysis. However, FRA believes that the error and resulting reduction in the safety benefits does not in any way compromise the integrity of the analysis or impact the decisions made by FRA, and does not change the necessity for any of the provisions contained in the final rule. Furthermore, FRA finds all the other economic issues raised by AAR in its petition for reconsideration to be either incorrect, unfounded, or unpersuasive. FRA continues to believe that it has been both reasonable in its cost estimates and

[1] It should be noted that § 232.13(d)(1) and (d)(2) of the former rule specifically requires that all cars added to a train that have not been inspected pursuant to § 232.12(c)–(j) are to be so inspected when added to the train or may receive and intermediate brake inspection pursuant to § 232.13(d)(1) provided the cars are inspected pursuant to § 232.12(c)–(j) at the next terminal where facilities are available. Thus, all cars added to a train that were not previously tested and charged under § 232.12(c)–(j) would be required to be inspected under those provisions either when added to the train or at the next location where facilities are available for peforming such an inspection.

extremely conservative in its estimates of benefits related to the final rule. Moreover, FRA believes that the modifications and clarifications being made to the final rule in this response to the petitions for reconsideration will not only reduce the potential regulatory costs but will also increase the benefits associated with the final rule. Therefore, the costs and benefits quantified in the final rule's RIA are even more conservative than when originally calculated by FRA. Consequently, FRA strongly supports the economic arguments and estimates advanced in its RIA for the final rule.

II. Section-by-Section Analysis

Amendments to 49 CFR Part 229

FRA is not making any modifications to the provisions of part 229 affected by the final rule in response to the petitions for reconsideration or for any other reason. BLE's petition for reconsideration objected to FRA's removal of the phrase ''in the cab'' from the first sentence in § 229.53 as it existed before the issuance of the final rule. The phase ''in the cab'' related to the location of the various brake gauges used by a locomotive engineer for braking a train or locomotive. FRA proposed the removal of the phrase ''in the cab'' from this section in the NPRM. *See* 63 FR 48354 (September 9, 1998). No objection was raised to this modification in any of the comments received in response to the NPRM. Although FRA did not provide a specific explanation for its removal in either the NPRM or the final rule, FRA believed then and continues to believe that the phrase is unnecessary and antiquated. FRA's intent when removing the language was to ensure that the gauges used by an engineer to aid in the control or braking of a train or locomotive were located so as to be read from the engineer's usual position when operating the locomotive, whether that be in the cab of the locomotive or elsewhere. FRA's intent when issuing the final rule was to accommodate and facilitate advanced technologies and designs. FRA believes that the language contained in both the NPRM and the final rule meets this intent while ensuring that essential information is provided to a locomotive engineer when operating a train or locomotive.

In a late filing to the docket (May 31, 2001), BLE raised a number of issues regarding FRA's discussion related to extending the testing interval for electronic locomotive gauges in § 229.27(b). In its submission, BLE expressed concerns with the way FRA portrayed the findings of the task force considering issues related to electronically controlled locomotive brake systems. Although the preamble to the final rule does discuss the recommendations of a task force regarding electronically controlled locomotive braking systems, the preamble does not attribute the recommendations to the New Technology Joint Information Committee (NTJIC). The preamble to the final rule makes clear that the task force assembled for purposes of this rulemaking was merely made up of individuals that were also members of the NTJIC. *See* 66 FR 4144. Furthermore, the preamble to the final rule in no way indicates or alludes to FRA agreement with or endorsement of the recommendations made by the assembled task force, other than acceptance of the task force's recommendation to extend the testing interval for electronic locomotive gauges. *See* 66 FR 4144.

The preamble to the final rule focused solely on the reliability of electronic gauges used in electronically controlled locomotive brake systems and did not intend to address other issues related to the use and operation of such systems. FRA agrees with BLE that the field of electronically controlled locomotive brake systems is complex, and FRA does not believe that this rulemaking is the proper forum in which to address the many issues surrounding such systems. BLE's petition notes various forums where issues related to this technology are currently being discussed, considered, and researched. These include the NTJIC and the CSX Computer Controlled Brake waiver committee. FRA and BLE are actively participating in these groups, and FRA believes these forums are best suited, at this time, to address the issues and concerns related to the use and operation of electronically controlled locomotive braking systems.

Amendments to 49 CFR Part 232

Section 232.1 Scope and Section 232.3 Applicability

APTA's petition for reconsideration requests modification of these two sections to provide passenger railroads the option of inspecting and testing work trains operated on passenger railroads pursuant to the Passenger Equipment Safety Standards contained in 49 CFR part 238 rather than under the provisions contained in the final rule. APTA contends that this flexibility would eliminate the need for certain commuter operations to train their employees on both part 232 and part 238. Without this flexibility some commuter operations will be required to have two different inspection, testing, and maintenance programs in place. APTA contends that there would be no adverse impact on safety because the inspection and testing requirements contained in part 238 are generally more stringent than those contained in the final rule. For consistency and enforcement purposes, APTA also suggests that passenger operations would have to decide under which part it would operate their work trains and such operations would not be allowed to mix the provisions of part 238 and part 232.

While FRA does not necessarily disagree with APTA's recommendation, FRA does not believe that the petition for reconsideration stage of this rulemaking is the proper forum in which to address this issue. Although APTA's recommendation appears reasonable in theory, FRA is unclear how APTA proposes to apply the provisions contained in part 238 to work trains used in passenger operations based on the information provided in APTA's petition. FRA believes that more information and consultation with affected parties is needed to determine how a passenger railroad would apply the mechanical and brake inspection and testing requirements contained in part 238 to its work trains. FRA believes that a detailed plan would need to be reviewed by FRA regarding a railroad's proposed application of part 238 to work trains. Consequently, FRA believes that APTA's request would be better handled through the waiver process detailed in 49 CFR part 211. This would allow both FRA and other interested parties to thoroughly review and assessed the proposed application of part 238 to such trains. FRA stresses that it believes APTA's recommendations and suggestions on this issue appear reasonable and that FRA is willing to consider them in the proper forum.

Section 232.5 Definitions

FRA is adding clarifying language to the introductory text of this section. The language is being added to prevent a potential misapplication of the definitions beyond that intended by FRA when issuing the final rule. Many of the general provisions contained in subpart A of the final rule became applicable to the industry on May 31, 2001, including the definitions contained in § 232.5. *See* § 232.1(b), 66 FR 4193. FRA made the definitions applicable as of May 31, 2001, because portions of the final rule (*e.g.,* subpart E) became applicable on that date and

there are definitions in § 232.5 pertaining to those portions of the new rule. Although § 232.1(b) makes the definitions contained in § 232.5 applicable as of May 31, 2001, it was clearly FRA's intent to apply the definitions contained in this section only to the requirements contained in the text of the new final rule and not to the requirements contained in part 232 as it existed prior to May 31, 2001. This intent is evidenced in the final rule's preamble discussion related to the definitions in which FRA states: ''FRA intends these definitions to clarify the meaning of important terms as they are used in the text of the final rule.'' *See* 66 FR 4146. Furthermore, FRA intended for specific definitions to become applicable only to those substantive portions of the new final rule that are applicable to the industry. This intent is evidenced by FRA's explicit statement that it would not require a ''qualified person,'' as defined in § 232.5 of the final rule, to perform the required tasks under subpart D, which became applicable on August 1, 2001, until April 1, 2004 when the training requirements become applicable. *See* 66 FR 4145.

FRA believes that any attempt to apply the definitions contained in § 232.5 of the final rule to provisions contained in part 232 as it existed prior to May 31, 2001, would be not only inconsistent with FRA's intent when drafting the final rule but would create serious Administrative Procedure Act (APA) implications. Acceptance of such an argument would result in various definitional provisions of the final rule becoming applicable prior to the dates specifically established in § 232.1(b) of the final rule for applicability of the relevant substantive provisions. In effect, this would accelerate the applicability of those substantive provisions, imposing significant unintended regulatory burdens without proper notice. Furthermore, the preceding discussion establishes clear evidence of FRA's intent not to apply the definitions contained in the final rule to the provisions of part 232 as it existed prior to May 31, 2001. In contrast, there is absolutely no language or inference in the final rule's preamble or rule text to indicate that FRA intended to apply the definitions contained in § 232.5 of the final rule to any provision contained in part 232 as it existed prior to May 31, 2001. Consequently, any attempt to specifically apply the definitions contained in the final rule to provisions contained in part 232 as it existed prior to May 31, 2001, would likely result in violation the APA for failing to provide proper notice and opportunity for comment prior to such action.

FRA is modifying the final rule definition of ''effective brake'' in response to a concern raised by the AAR in its petition. AAR objected to the terminology used in defining what constitutes an ''effective brake.'' Specifically, AAR noted that the phrase ''a brake that is capable of producing its required designed retarding force'' creates an unquantifiable and unidentifiable standard. AAR recommends that this portion of the definition be eliminated and that FRA should limit the definition to piston travel limits.

The terminology to which AAR objects was specifically added into the final rule in response to concerns raised by the BRC in response to the NPRM regarding the definitions of ''bind'' and ''foul'' proposed in that document. *See* 66 FR 4146. In the preamble to the final rule, FRA explained that the language being added to the definition of ''effective brake,'' regarding the ability of the brake to produce its designed retarding force, was an attempt to clarify the definition to address conditions that would render the brake ineffective yet would not be considered a condition causing the brake system to bind or foul as defined in the final rule. *See* 66 FR 4146. Rather than change the definitions of ''bind'' or ''foul,'' FRA believed that additional language could be added to the definition of ''effective brake'' to cover those unique circumstances where, even though a condition may not cause a brake to ''bind'' or ''foul,'' the condition would cause the brake not to operate properly and, thus, affect the retarding force applied by the brakes. FRA continues to believe that the language added to the definition of ''effective brake'' accomplishes this task. While FRA agrees that the language creates a standard that is somewhat difficult to apply in the field with great precision, FRA believes that the language is necessary to cover brake system or component problems that affect the proper operation of the brakes on a car but are not otherwise specifically identified by the regulation. The language is adequately precise for this purpose because an observer can tell whether the brake is applied in a way likely to exert substantially the braking force for which it was designed. Effectively, this is a ''catch-all'' performance standard designed to reach any problem not specifically called out in the rule that would prevent a brake from working properly.

However, FRA is modifying the definition of ''effective brake'' in order to further clarify the term and avoid misapplication of FRA's intent. FRA is inserting the word ''nominally'' prior to the phrase ''designed retarding force'' in order to provide an allowance for any degradation in a brake system's designed retarding force that results due to normal wear and age. FRA's intent was not to consider retarding force reductions that occur due to normal use of a brake system or component. The definition is intended to capture those readily identifiable brake system problems that are not specifically addressed by other definitions contained in the final rule that result in a brake system or brake component not producing the retarding force it is designed to provide.

FRA is also modifying the definition of ''solid block of cars'' contained in § 232.5 of the final rule. FRA is modifying this definition in order to make it consistent with FRA's intent when issuing the final rule. Based on concerns raised by AAR regarding the inspection of solid blocks of car when added to a train, FRA realized that the final rule's definition of the term ''solid block of cars'' creates confusion and could potentially result in a misapplication of the final rule's inspection requirements. FRA agrees with the concerns raised by AAR in its petition that a strict reading of the definition may have resulted in entire trains being required to receive a Class I brake test when certain types of solid blocks of cars are added. FRA's intent was to permit the addition of a single solid block of cars without requiring the entire train to be inspected and focus the inspection requirements on the solid block of cars being added based on the composition of the solid block of cars. *See* 66 FR 4148, 4168.

Therefore, the definition of ''solid block of cars'' is being modified by removing the word ''consecutively'' from the definition. This removes the potential misapplication of the definition to only blocks of cars that have remained consecutively coupled together since being removed from their previous train. FRA intends to make clear that any block of cars which is coupled together and added as a single unit to a train should be considered a ''solid block of cars.'' The inspection requirements that attach to that solid block of cars will depend on the composition of the solid block of cars. To further clarify the attendant inspection requirements, FRA is also modifying the inspection requirements contained in subpart C of the final rule to directly address the inspection of a solid block of cars when added to a train. These modifications are being

made to clarify FRA's intent to impose inspection requirements on the specific solid block of cars when added to a train based on the solid block of cars' make-up rather than imposing inspection requirements on the entire train. *See* 66 FR 4148, 4168. It should be noted that FRA intends for only a single solid block of cars to be added at any one location without imposing an inspection requirement on the entire train. *See* 66 FR 4168. The modifications being made to subpart C of the final rule are discussed in detail in the section-by-section analysis of those provisions contained below.

In its petition, BLE contends that FRA uses the term ''secondary brake system'' in the final rule text, § 232.15(d), but provides no definition of the term in this section. FRA notes that § 232.5 does contain a definition of ''secondary brake.'' *See* 66 FR 4194. Although FRA did not include a discussion of the definition in the preamble to either the NPRM or the final rule, the definition is identical to the definition of the same term used in the Passenger Equipment Safety Standards contained in part 238. *See* 49 CFR 238.5, 64 FR 25661 (May 12, 1999). FRA believes that the preamble discussion of the term in the final rule to part 238 is equally applicable to this final rule. *See* 64 FR 25577.

BLE's petition also seeks clarification of the final rule's definition of ''rebuilt equipment,'' and suggests that FRA publish the threshold amount for determining what constitutes a capital expense each time it changes and identify the basis used to determine the figure. FRA's definition of ''rebuilt equipment'' incorporates the Surface Transportation Board's (STB) accounting standards, contained in 49 CFR part 1201, subpart A, Instruction 2–12, in determining the capital expense threshold. *See* 66 FR 4195. The STB accounting standards are adapted from generally accepted accounting principles. Under the STB accounting standards a capital expense is determined by the railroad according to generally accepted accounting principles. Two provisions govern the railroad's determinations. First, if the expense incurred substantially extends the useful life of the equipment beyond the estimated service life, the equipment is classified as rebuilt. Secondly, if the expense substantially increases the utility of the equipment by making the equipment more useful, efficient, durable, or have greater capacity, the equipment is classified as rebuilt. Thus, the determination of what constitutes a capital expense is an accounting function performed by the railroad based on the above guiding principles. Therefore, there is no fixed threshold amount or standard that can be quantified or published by FRA as the determination is made on a case-by-case basis. Consequently, FRA denies BLE's request to quantify and publish a threshold figure for determining what constitutes a capital expense.

Section 232.15 Movement of Defective Equipment

Paragraph (b)(1) of this section is being amended in response to AAR's petition for reconsideration regarding the tagging of defective locomotives under this part. AAR contends that it is unnecessary to tag the outside of a locomotive found to be defective pursuant to the provisions of the final rule. AAR asserts that placing the defect tag in the cab of the locomotive is sufficient and would be consistent with the tagging requirements contained in part 229. AAR maintains that this method of tagging defective locomotives has proven effective and that there is no safety rationale for departing from this longstanding practice.

FRA agrees with the position of AAR. When including the tagging requirements related to the movement of defective equipment, FRA intended the requirements to be similar to those contained in part 215 related the movement of equipment not in compliance with the Freight Car Safety Standards and to be generally consistent with how most railroads currently handle equipment found with defective brakes. *See* 66 FR 4151. As the requirements contained in Part 215 do not address locomotives and because most railroad place defect tags in the cab of a locomotive rather than the outside of the locomotives, it is consistent with FRA's original intent to permit defect tags on locomotives to be displayed in the cab of a locomotive. FRA agrees that the placing of such tags has worked well for a number of years in the context of tagging defective locomotives under part 229. Consequently, FRA is amending paragraph (b)(1) of this section to clarify that the required defect tags may be displayed in the cab of a locomotive rather than on opposing sides as required by a strict reading of the final rule.

In its petition, the AAR also objects to the requirement contained in paragraph (b)(5) of this section that FRA approve any automated tracking system designed to be used in lieu of physically tagging defective equipment. *See* 66 FR 4197. AAR contends that the requirement for FRA's approval of any automated tracking systems is inconsistent with both the Government Paperwork Elimination Act (GPEA) and the guidance issued by the Office of Management and Budget (OMB) regarding the implementation of GPEA. *See* Public Law 105–277 (October 21, 1998) and OMB Memorandum M–00–10 (April 25, 2000). AAR claims that paragraph (b)(5) should be eliminated as it demonstrates that FRA is disfavoring electronic recordkeeping by requiring a special approval procedure for electronic recordkeeping when none is required for paper records.

FRA strongly disagrees with AAR's interpretation of GPEA and the OMB guidance related to the implementation of GPEA. Section 232.15(b)(1) and (b)(5) of the final rule requires that any automated tracking system used in lieu of directly tagging equipment be approved by FRA and that such a system must be capable of being reviewed by and monitored by FRA at any time to ensure the integrity of the system. *See* 66 FR 4197. The preamble to the final rule makes clear that FRA's approval is necessary because an adequate automated system for tracking defective equipment does not currently exist on most railroads and FRA does not believe it is prudent, from a safety perspective, to allow implementation of a tracking system which FRA would not have a prior opportunity to assess and thereby ensure the system's accessibility, security, and accuracy. *See* 66 FR 4151. FRA does not disfavor or discriminate against electronic records; in fact, FRA has strongly encouraged the use of electronic recordkeeping for years. The final rule provides railroads the option of using either tags or an automated system to maintain and track the necessary information regarding the movement of defective equipment. If railroads decide to use tags, then there is no need for an automated recordkeeping system and, therefore, no need to obtain FRA approval of an automated system. If railroads elect to use some type of automated tracking system, then FRA approval of the system is required. FRA sets standards for information provided to the agency, whether on paper or electronically. In all of its information collections, FRA spells out the particular information railroads must provide and maintain (either on paper or electronically).

Contrary to the assertions expressed in AAR's petition, the requirement for FRA approval of an automated tracking system does not violate either GPEA or the related OMB guidance. OMB's guidance related to the implementation of GPEA readily acknowledges the need for standards and procedures concerning the use of electronic recordkeeping. Part I, Section 1 of that

guidance describes the policies agencies should follow when implementing GPEA. *See* OMB Memorandum M–00–10 (April 25, 2000). This portion of OMB's guidance states:

> Sections 1703 and 1705 of GPEA charge the Office of Management and Budget (OMB) with developing procedures for Executive agencies to follow in using and accepting electronic documents and signatures, including records required to be maintained under Federal programs and information that employers are required to store and file with Federal agencies about their employees.

FRA must conform to OMB's guidance and implicitly so too must railroads. FRA must also conform to Department of Justice guidelines regarding legal sufficiency of electronic documents and electronic signatures and, again, implicitly so too must railroads. Moreover, OMB's guidance clearly envisions agency approval of automated or electronic recordkeeping systems. Part I, Section 2 of OMB's guidance states:

> GPEA recognizes that building and deploying electronic systems to complement and replace paper-based systems should be consistent with the need to ensure that investments in information technology are economically prudent to accomplish the agency's mission, protect privacy, and ensure the security of the data * * * Accordingly, agencies should develop and implement plans, supported by an assessment of whether to use and accept documents in electronic form and to engage in electronic transactions.

Part II, Section 1 of OMB's guidance adds the following:

> The guidance builds on the requirements and scope of the Paperwork Reduction Act of 1995 (PRA). According to the PRA, agencies must, ''consistent with the Computer Security Act of 1987 (CSA) (40 U.S.C. 759 note), identify and afford security protections commensurate with the risk and magnitude of the harm resulting from the loss, misuse, or unauthorized access to or modification of information collected by or on behalf of an agency.'' 44 U.S.C. 3506(g)(3) * * * As GPEA, PRA, CSA, and the Privacy Act recognize, the goal of information security is to protect the integrity, and confidentiality of electronic records * * *

Consequently, OMB's guidance clearly intends for agencies to consider the security, accessibility, and accuracy of any electronic or automated recordkeeping system prior to permitting such a system to be used in lieu of traditional paperwork. The preamble to the final rule makes clear that the intent of FRA's review and approval of any implemented automated tracking system is to ensure the system's accessibility, reliability, security, and accuracy. *See* 66 FR 4151. This type of review and approval was clearly contemplated by both the GPEA and OMB's implementing guidance. FRA approval of the automated tracking system serves to protect both the agency's interests and the interests of the railroad industry by ensuring that the automated tracking system will safely and properly perform all the functions of a traditional paper-based tagging system.

FRA stresses that it is neither suspicious of nor hostile to the use of electronic recordkeeping by railroads, and attributes no bad motives to railroads when requiring prior agency approval of an automated tracking system related to the movement and handling of defective equipment. It should also be noted that FRA envisioned the same type of automated tracking system that AAR alludes to in its petition for reconsideration, namely a combination of an industry-wide tracking program and individual railroad programs. Since AAR states there are no current plans for such a system, FRA may have been a bit premature in discussing such a system in the preamble to the final rule. However, FRA continues to believe its concerns regarding the use of an automated tracking system are reasonable, are consistent with the GPEA and OMB implementation guidance, and will need to be addressed whenever railroads seek agency approval of automated tracking or electronic recordkeeping systems.

Paragraph (g) of this section is being amended in response to AAR's petition asserting that there is no rational basis for FRA to require that a railroad and its employee representatives must submit a joint proposal listing the locations where brake system repairs will be conducted in order for FRA to consider any such proposal. Paragraph (g) was intended to provide railroads with a method by which they could designate locations where various brake system repairs will be conducted. The final rule requirement was written to make clear that FRA would not consider a proposal containing a plan which designates locations where brake system repairs will be conducted unless a railroad and the representatives of its employees submit the proposal jointly. *See* 66 FR 4153, 4197–98. AAR states that it does not object to FRA review and approval of any submitted listing but believes that it would be extremely difficult for a railroad and its employees to reach agreement on the locations that should be included on any such list. AAR also states that railroads would prefer to have a known listing of locations that will make brake system repairs in order to avoid any confusion among the various parties.

FRA agrees with the recommendation made by AAR in its petition that FRA should not be foreclosed from considering a list of locations where brake system repairs will be effectuated simply because a railroad and its employees cannot agree on the content of such a listing. FRA agrees that a listing of locations where brake system repairs will be conducted would improve FRA's enforcement activities as well as ensuring that prompt and safe repairs are made to defective equipment. However, FRA continues to believe that a railroad's employees and other interested parties must be provided an opportunity to review and comment on any proposed listing of locations that will be considered capable of making brake system repairs prior to FRA's approval of such a listing. Therefore, FRA is amending paragraph (g) of this section to require that proposals regarding the designation of locations where brake system repairs will be performed must be submitted pursuant to the special approval procedures contained in § 232.17 of the final rule. This paragraph makes clear that such proposals would have to be consistent with the guidelines contained in paragraph (f) of this section and that such plans would have to be approved by FRA pursuant to the procedures contained § 232.17 prior to being implemented. FRA believes that the special approval procedures contained in § 232.17 ensure that a railroad's employees and other interested parties are provided an opportunity to review and comment on any proposed listing prior to FRA determining whether or not to approve the proposal. FRA believes this approach is consistent with the intent of the final rule and ensures that FRA will be informed as to any objections that may be raised by a railroad's employees or their representatives on any submitted listing. It should be noted that conforming changes are being made to the special approval procedures contained in § 232.17 to include language addressing the submission of these types of proposals.

Section 232.17 Special Approval Procedure

As just discussed, the procedures contained this section are being modified to incorporate language regarding the special approval of plans designating locations where brake system repairs will be conducted pursuant to § 232.15(g). The modifications being made are merely intended to clarify that the procedures

detailed in this section apply to the review and approval of listings submitted pursuant to § 232.15(g). Consequently, the provisions contained in paragraphs (a), (b), (d), and (g) of this section have been amended to include a reference to § 232.15(g).

In its petition, BLE recommends that the 30-day comment period provided for in paragraph (f) of the special approval procedures be extended to at least 45 days. Other than the recommendation, BLE provides no discussion or rationale for seeking an extension of the comment period. FRA continues to believe that it is not necessary to further lengthen the comment period provided in the final rule. FRA thinks that the procedures provide an adequate opportunity for interested parties to comment. Furthermore, if the procedures for these special approvals are made overly burdensome, then the speed intended to be gained through the process would be lost. Moreover, paragraph (b)(4) of the procedures requires that any party seeking a special approval must serve a copy of its petition on designated representatives of its employees at the time the party submits the petition to FRA. *See* 66 FR 4198. Thus, the representatives of a railroad's employees would be served a copy of any petition submitted pursuant to the special approval process well before the petition is actually published in the **Federal Register** under paragraph (e) of this section. Therefore, the representatives of the petitioning railroad's employees would likely have more than the provided 30 days to review any petition directly affecting employees they represent. In addition, it would serve the petitioning party's interest to ensure that all known interested parties are provided detailed information on any submitted process to ensure timely and complete consideration of any submitted petition. Consequently, based on the above discussion, FRA is denying BLE's request to extend the special-approval comment period to 45 days.

Subpart B—General Requirements

Section 232.103 General Requirements for All Train Brake Systems

Paragraph (n) of this section is being modified in response to concerns raised in both AAR's and BLE's petitions regarding the final rule requirements related to the securement of unattended equipment. AAR recommends that the provision contained in paragraph (n)(2) of this section, requiring the initiation of an emergency application of the air brakes prior to leaving equipment unattended, be deleted. AAR contends that the requirement to initiate an emergency application of the brakes might result in train crews disregarding the requirement to ensure that a sufficient number of hand brakes are set to hold the equipment. AAR also asserts that if an emergency application is required, then equipment will have to be retested if off air for more than four hours.

While FRA does not fully agree with the concerns raised by AAR in its petition, FRA is amending paragraph (n)(2) to clarify the application of the requirement and to lessen the burdens imposed by requiring the initiation of an emergency brake application. The intent of the final rule provision was to address the dangerous practice known as ''bottling the air'' in a standing cut of cars, an issue related to improperly secured rail equipment. *See* 66 FR 4156–57. The practice of ''bottling the air'' occurs when a train crew sets out cars from a train with the air brakes applied and the angle cocks on both ends of the train closed, thus trapping the existing compressed air and conserving the brake pipe pressure in the cut of cars the crew intends to leave behind. The preamble to the final rule provides a detailed discussion of the hazards associated with this practice which has the potential of causing, first, an unintentional release of the brakes on these cars and, ultimately, a runaway. *See* 66 FR 4156–57. This issue was the focus of a National Transportation Safety Board (NTSB) recommendation issued in 1998 and discussed in detail in the preamble to the final rule. *See* NTSB Recommendation R–98–17, 66 FR 4157. Although FRA continues to believe this practice needs to be addressed, FRA believes that the final rule requirement to conduct an emergency application of the brakes when leaving equipment unattended is overly stringent and would likely result in unintended delays when recharging equipment. FRA also realizes that the application of the final rule requirement needs to be clarified to avoid any misinterpretation of the requirement and to remain consistent with the existing and long-standing operating procedures of many railroads when leaving equipment unattended.

FRA is modifying paragraph (n)(2) to require that the brake pipe on equipment being left unattended be depleted to zero at a rate that is no less than a service rate reduction. This approach is more consistent with the current operating rules of many railroads. Furthermore, permitting the brake pipe to be depleted at a service rate reduction serves all the purposes of making an emergency application of the brakes (i.e., prevents the bottling of air in the brake system) but does not result in the emergency reservoir being depleted of air. This change will reduce the amount of time necessary to recharge the brake system on equipment left unattended and, thus, prevent any unnecessary train delay. It should be noted that this modification does not prohibit a railroad from requiring the initiation of an emergency brake application on equipment that is left unattended, but merely provides the option of depleting the brake pipe to zero by a different means.

FRA is also modifying paragraph (n)(2) to clarify that the requirement only applies to freight and other non-powered cars when detached from a source of compressed air. FRA realizes that the language of the final rule could be interpreted to apply to any equipment left unattended. FRA's intent was to end the practice of ''bottling of air'' on freight equipment that was disconnected from a source of compressed air. *See* 63 FR 48331–32, 66 FR 4156–57. FRA did not intend to stop the long-standing industry practice of leaving equipment connected to a source of compressed air either while en route or after the testing of equipment. Furthermore, this approach is consistent with NTSB's recommendation, which suggested that the brake pipe be depleted to zero on standing equipment that is detached from a locomotive. *See* NTSB Recommendation R–98–17, 66 FR 4157. The requirement to set a sufficient number of hand brakes to hold unattended equipment contained in paragraph (n)(1) of this section is intended to address the securement of equipment left connected to a source of compressed air.

It should be noted that AAR's concern regarding the need to retest unattended equipment that is left off-air for more than four hours is somewhat misplaced in the context of the clarified requirements contained in this section. Pursuant to the final rule's definition of ''off-air,'' any equipment not connected to a continuous source of compressed air of at least 60 pounds per square inch (psi) is considered ''off-air.'' *See* 66 FR 4194. Consequently, any time a source of compressed air of at least 60 psi is removed from a block of cars, that block of cars is considered to be ''off-air'' regardless of whether air has been bottled in the system and, thus, the type of brake application made when the cars are left unattended is irrelevant.

Paragraph (n)(3) of the final rule is also being amended in response to a concern raised by the AAR in its petition requesting clarification of FRA's intent to apply the requirements

contained in this paragraph regarding the securement of unattended locomotives and locomotive consists to distributed power locomotive units. AAR contends that the language of the provision is confusing and could be read to apply to distributed power units in a train. The preamble to the final rule makes clear that it was not FRA's intent to apply the securement requirements related to locomotives to distributed power locomotives. *See* 66 FR 4157. Consequently, FRA is modifying the introductory language of paragraph (n)(3) to specifically clarify that the provisions contained in this paragraph do not apply to distributed power locomotives.

Paragraph (n)(3) of this section is also being amended in response to concerns raised in BLE's petition regarding the securement of locomotives not equipped with a hand brake. BLE notes that although the final rule contains specific requirements for setting hand brakes on unattended locomotives, the final rule is silent on securing locomotives not so equipped. Although FRA believes that virtually all railroads have procedures in place for securing locomotives that are not equipped with hand brakes, FRA agrees that the final rule does not specifically address the securement of such locomotives. However, FRA believes that the requirements of paragraph (n) implicitly require a railroad to adopt procedures for securing locomotives that are not equipped with hand brakes. Paragraph (n)(4) of the final rule requires that procedures be adopted and complied with to verify that the handbrakes sufficiently hold an unattended locomotive consist. Thus, the requirement implicitly requires that procedures be in place to address situations where the hand brakes are not sufficient to hold the locomotives, such as when the locomotives are not equipped with a hand brake. *See* 66 FR 4199. Therefore, in order to clarify this intent, FRA is adding a paragraph (n)(3)(iv) which specifically requires railroads to adopt and comply with procedures for securing unattended locomotives not equipped with hand brakes. As noted above, FRA believes this modification is merely a further clarification of the requirement contained in paragraph (n)(4) of this section and does not impose any additional burden on the industry.

Paragraph (o) of this section of the final rule is being amended in response to a concern raised in NYAB's petition regarding the required air pressure for the self-lapping portion for the independent air brake on freight locomotives. NYAB contends that all of the locomotive brake systems it supplies to Class I railroads have the self-lapping portion for the independent brake preset to 45 psi, and NYAB recommends that a pressure of 30 to 50 psi for this valve should be the required setting. NYAB notes that this was the pressure previously provided for in part 232 prior to the issuance of the final rule. FRA does not dispute NYAB's contention, the pressure range for this valve was changed in the final rule based on comments received by the AAR in response to the NPRM. *See* 66 FR 4158. A review of AAR's comments on the NPRM reveals that AAR provided no rationale for requesting the change to ''30 psi or less,'' and FRA believes AAR may have erred in its recommendation. FRA's intent when issuing the pressure table in this paragraph was to capture the current regulating valve pressures utilized by the industry. Consequently, FRA is modifying the table of pressures contained in this paragraph to reflect NYAB's suggestion that the air pressure for the self-lapping portion of the independent brake on a locomotive be 30 to 50 psi, the pressure required by part 232 as it existed prior to May 31, 2001.

Paragraph (p) of this section is being removed in response to concerns raised by AAR in its petition and based upon FRA's determination that the paragraph is unnecessary and duplicative. Paragraph (p) of this section is basically a reiteration of the language contained in § 232.11(a) as it existed prior to May 31, 2001, which addressed the joint responsibility of supervisors and inspectors to ensure the proper condition and functioning of train brake systems. *See* 66 FR 4158. Although the provision has existed in part 232 for decades, there has never been a civil penalty directly associated with the provision, and FRA has never pursued a violation under the provision. In FRA's view, the provision merely served to inform supervisors that they were jointly responsible for ensuring the proper condition of the brake system. With the advent of individual liability in 1992, FRA believes that the provision provides notice to supervisors that they may be held individually liable, from a civil penalty perspective, for permitting or requiring improper inspection practices or other practices not consistent with the regulatory and statutory requirements to be engaged in by employees they supervise. *See* the Rail Safety Enforcement and Review Act, Public Law 102–365 (Sept. 3, 1992). As the potential for individual liability is specifically identified and discussed in § 232.11 of the final rule and the associated preamble analysis, FRA believes that there is no need to include paragraph (p) in this section. *See* 66 FR 4149–50, 4196.

FRA is denying AAR's request for reconsideration of the final rule's provision contained in paragraph (g) of this section requiring cars equipped with other than 12-inch stroke brake cylinders to display the permissible brake cylinder piston travel range on the car in the form of either a decal, sticker, stencil, or on the car's badge plate. The final rule requires that such cars be so marked by April 1, 2004. *See* 66 FR 4199. AAR recommends that FRA extend the date by which to comply with this requirement to five years. AAR contends that a five-year compliance date would permit the required stencil, sticker, or decal to be applied during a car's scheduled periodic single car test and, thus, reduce the economic impact of the requirement. AAR contends that an April 1, 2004, compliance date would cost the industry approximately $6 million more than estimated by FRA in the Regulatory Impact Analysis of the final rule.

The merits of AAR's contentions regarding the economic impact of this requirement were previously discussed in detail in the portion of the preamble addressing AAR's economic concerns related to the final rule. In that discussion, FRA states that the time permitted in the final rule is sufficient for the railroads to comply with the requirement and does not impose the economic burdens claimed by AAR in its petition. On average, rail cars are placed on a fixed repair track or a sidetrack where repairs are conducted approximately once every one-and-one-half years. The task of applying a sticker, decal, or stencil takes only few minute to accomplish, and FRA has allowed numerous ways for railroads to comply with the requirement. As a matter of fundamental sound economics, good business practice, and effective utilization of employee time and company resources, FRA assumes the railroads will use the most cost-effective option (i.e., applying stickers or decals to the rail cars while performing other functions rather than taking it out-of-service unnecessarily) when placing piston travel information on rail cars. The most reasonable approach in complying with the requirement is to apply the sticker, stencil, or decal when an inspection or repair is being conducted on the rail car. Furthermore, FRA continues to believe that the information provided by these decals, stickers, or stencils is necessary to ensure that proper inspections are conducted and that the information

should be available at the time that the final rule inspection requirements become applicable. *See* 66 FR 4155. Moreover, as the final rule indicated, a large number of cars are already properly marked with the necessary information. *See* 66 FR 4155. Consequently, FRA continues to believe that the final rule provides more than a sufficient amount of time to comply with this requirement without imposing the economic hardships alleged by AAR in its petition.

Section 232.107 Air Source Requirements and Cold Weather Operations

No changes are being made to the final rule requirements contained in this section. FRA is denying the recommendation to require air dryers on new locomotives raised by BLE in its petition. BLE again reasserts its belief that air dryers should be required on all new locomotives in order to remove moisture introduced into the train line by yard air systems. BLE believes that the cost of requiring air dryers on new locomotives would be minimal when compared to the problems associated with frozen train lines.

The preamble to the final rule provides a detailed discussion regarding the use of air dryers on both locomotive and yard air sources. *See* 66 FR 4137–38. The preamble to the final rule also notes that based on information gathered throughout the RSAC process, previous comments by industry parties, agency experience, and after detailed instrumented testing, FRA determined that locomotives rarely contribute to moisture in the train line. Consequently, FRA did not require that air dryers be installed on new locomotives in either the NPRM or the final rule. The preamble to the NPRM contains a detailed discussion of the testing conducted by the RSAC Working Group members and recommendations regarding air dryers. *See* 63 FR 48317–19. FRA continues to believe that simply requiring air dryers on locomotives or yard air sources does not solve the problem of introducing moisture into train lines and that such devices do not provide a suitable or cost effective solution to the problem in freight service.

FRA is also denying BLE's recommendation that FRA publish a list of chemicals that could be used in train lines consistent with the prohibition contained in paragraph (c) of this section. Paragraph (c) prohibits the introduction of chemicals which are known to degrade or harm brake system components into a train air brake system. FRA's primary focus when issuing the final rule was to eliminate the use of alcohol and other similar substances in train air brake systems as these substances are widely known to degrade brake system components. *See* 66 FR 4138, 4160–61. FRA does not possess either the personnel or financial resources to assess every chemical currently on the market to determine the detrimental effects it may have on brake system components. FRA believes its resources would be better spent monitoring the development and use of new products as they gain acceptance in the industry. Moreover, as one of the major purposes of the final rule is to encourage the development and use of new technologies, FRA believes that any attempt to develop a listing of approved chemicals without conducting complete and thorough analysis could potentially stifle innovation and research into safe and useful products.

Section 232.109 Dynamic Brake Requirements

Paragraph (a) of this section is being modified in response to concerns raised by AAR in its petition. AAR raised a concern regarding this paragraph's inclusion of the term ''point of origin'' as one of the locations where a locomotive engineer is to be informed of the operational status of the dynamic brakes on the locomotives in the train. AAR notes that the final rule contains no definition of the term ''point of origin'' and recommends that the language be removed. FRA agrees with the concern raised by AAR. The term ''point of origin'' was originally contained in the definitions included in the NPRM. *See* 63 FR 48356. However, when issuing the final rule FRA said it intended to remove the term from the rule wherever it appeared because the proposed definition of the term was duplicative of the term ''initial terminal'' and merely created potential misunderstandings. *See* 66 FR 4167. FRA also noted that the problems intended to be addressed by the use of the term ''point of origin'' were sufficiently addressed by the various inspections required in this final rule when cars are added to a train. *See* 66 FR 4167. Therefore, FRA clearly intended to remove this term from the final rule, but inadvertently failed to remove it from this paragraph. Consequently, FRA is modifying this paragraph by removing the term ''point of origin.''

AAR also raises concerns related to the information required by this paragraph to be provided to the locomotive engineer regarding the operational status of the dynamic brakes on the locomotives in the train. AAR seeks clarification as to whether the provision requires some type of testing at each location where the locomotive engineer is to be provided such information. FRA did not intend for railroads to conduct specialized testing of the dynamic brakes in order to fulfill this requirement. FRA intended for the locomotive engineer to be informed of any known inoperative or deactivated dynamic brakes in the train consist at the time he or she first begins operation of the train. This information may be gleaned either from the previous crew's operating experience, railroad records, on-board monitors, or other testing of the dynamic brake system performed at the railroad's option. However, FRA stresses that the intent of the requirement was to ensure that an engineer is apprized of any known inoperative dynamic brakes prior to beginning operation of a train. FRA continues to believe that by providing an engineer with as much information as possible on the status of the dynamic brakes on a train, a railroad better enables that engineer to operate the train in the safest and most efficient manner.

Paragraphs (g) and (h) of this section, which contain requirements for dynamic brake indicators and testing the electrical integrity of the dynamic brake system on new and rebuilt locomotives, are being modified in response to issues raised in AAR's petition for reconsideration. In its petition, AAR contends that a device capable of displaying total train dynamic brake retarding force at various speed increments does not currently exist and cannot be developed by August 1, 2002, as required by the final rule. As part of its petition, AAR included letters from two locomotive manufacturers, both of which indicated that the dynamic brake indicator required by the final rule would be very difficult, if not impossible, to develop and implement within the time frame allotted by the final rule. Both manufacturers as well as AAR cite interoperability as the fundamental problem with developing the device. That is, industry-wide standards need to be developed to ensure that devices made by different manufacturers are able to communicate with each other. AAR also seeks clarification of the final rule's requirement regarding whether the device is to provide a theoretical retarding force or the actual retarding force being produced by the dynamic brakes at any given time.

AAR further recommends elimination of the requirement for a dynamic brake indicator and suggests that railroads should be permitted to use

accelerometers in lieu of the dynamic brake indicator. An ''accelerometer'' or ''predictor'' is a device currently used in the industry that indicates the predicted speed in miles per hour of the locomotive 60 seconds from the present, based on the computed acceleration or deceleration rate of the train. AAR contends that accelerometers are vastly superior to dynamic brake indicators as they provide information to the locomotive engineer on the performance of all the brakes in his train and how well they are performing together. AAR also maintains that accelerometers are proven, existing technology and that many locomotive in the nation's fleet are already equipped with such devices.

FRA does not dispute the potential safety benefits derived from the use of an accelerometer. FRA also agrees that an accelerometer does provide a locomotive engineer with some information regarding the operation of a train's brake system. However, FRA continues to believe that locomotive engineers should have direct information regarding the operation and effectiveness of the dynamic brakes on the train they are operating. While an accelerometer would provide some information on the effectiveness of the entire brake system, it would not give any specific information regarding the effectiveness of the dynamic brakes on any single locomotive unit in the train or the retarding force being applied by the dynamic brakes as a whole. FRA believes that such direct information is essential for ensuring that locomotive engineers are provided as much information as possible regarding the braking system that they are encouraged to use and on which they rely to control a train's speed generally and especially on heavy grades. Consequently, FRA does not believe that accelerometers or ''predictors'' are an adequate substitute for a dynamic brake indicator which provides direct information on the effectiveness of the dynamic brakes on the locomotives in a train. With this said, FRA would encourage railroads to utilize the technologies available in both the accelerometer and a dynamic brake indicator because a combination of the information provided by the two devices unquestionably provides a locomotive engineer with a wealth of knowledge regarding the operation and effectiveness of the brakes on the train he or she is operating.

Although FRA believes that a dynamic brake indicator is necessary and desirable, FRA recognizes the difficulties in developing and introducing a relatively new technology. FRA is also not unmindful of the needs of the industry to develop standards to ensure that any developed device serves the purposes of the industry and addresses all interoperability concerns. Neither manufacturer indicated an inability to develop the device suggested by the final rule, just that the time frame contained in the final rule was insufficient for addressing outstanding design and interoperability issues. Moreover, FRA continues to believe that the technology exists for developing a device similar to that required by the final rule. Consequently, FRA will continue to require that new locomotives be equipped with a dynamic brake indicator similar to that described in the final rule, with slight modification to address other issues raised by AAR.

Based on the above, FRA is amending paragraph (g) to extend the time period by which new locomotives are to be equipped with the required dynamic brake indicator. FRA believes that an additional three years is more than adequate to permit the industry to develop appropriate design and interoperability standards and would allow for testing and verification of any hardware and associated software. Based on consultations with FRA's Office of Railroad Development, FRA believes that adding three years to the compliance date will provide the industry more than a sufficient amount of time to develop and test the device. Under the extension being provided by this response, the industry will be allotted approximately five years to develop and test the required device. FRA is providing this five-year window with the intention that three years would be needed by the industry to develop appropriate industry standards and to develop the necessary hardware and software. An additional two years is then allotted for the testing and verification of any developed technology. FRA also notes that the period of three additional years being provided by this modification extends the compliance date for the devices beyond the year 2005 which is the anticipated effective date of the Environmental Protection Agency's (EPA) new locomotive emissions requirements, which will likely result in a significant redesign of new locomotives. Thus, the dynamic brake indicators can be easily incorporated into any new design standards that result from EPA's regulatory activities, minimizing the cost of adding the instruments.

FRA notes that railroads will have at least two options for implementing the requirement for dynamic brake indicators in multiple-unit locomotive consists. The first option would be ''hard wire'' transmission of data over ''MU cables.'' In this case, the benefit of the rule would likely be realized only with respect to the lead unit, if equipped, and units consecutively coupled to it. The second option would be use of telemetry (data radio), in which case data from any number of equipped units could be provided to the engineer in an equipped lead unit, even if a non-equipped unit was placed in the middle of the locomotive consist. The same telemetry link used to control distributed power units (placed in the middle or rear of a train) could be employed to provide dynamic braking status information to an equipped lead locomotive, as well. FRA does not prescribe how this system is to be implemented, but does note that the benefits of the rule will be realized more quickly if telemetry is employed. However, given the prevalence of shared power arrangements in the railroad industry, it will be imperative that the Association of American Railroads, in consultation with its North American partners, provide interoperability standards for use by the locomotive manufacturers and supply community. The time provided for implementation under this rule is intended to facilitate the development and implementation of those standards.

Paragraphs (g) and (h) are also being modified to clarify the information that is to be provided by the required dynamic brake indicator. In order to ensure the timely development of the required devices and to address potential safety hazards, FRA is modifying the design requirements to make clear that the device is required to provide only a real-time display of the actual total train dynamic brake retarding force. FRA agrees with the concerns raised by AAR in its petition that the final rule language, requiring that the new locomotives be designed to display the total train dynamic brake retarding force at various speed increments, and the attendant preamble discussion are somewhat ambiguous as to what information is to be displayed in the cab of the controlling locomotive. *See* 66 FR 4163, 4200–01. Therefore, FRA is clarifying the language in these paragraphs to avoid any potential misunderstanding regarding the predictive nature of the dynamic brake indicator. FRA agrees that the technology may not be available to accurately provide a predictive assessment of the total train dynamic brake retarding force and, more important, the usefulness of such information is likely outweighed by the potential safety hazards. FRA believes

that requiring predictive information on the status of dynamic brake retarding force might result in a locomotive engineer mishandling a train due to over-reliance on the predictive information being provided because dynamic brakes can fail at any time and thus, the predictive information may be not be an accurate representation of the dynamic brake performance at that future time.

Paragraphs (g) and (h) are also being modified to clarify FRA's intent with regard to testing the electrical integrity of the dynamic brake at rest. In its petition, AAR recommended elimination of the electrical integrity test as it was unclear what FRA was expecting to be tested while a locomotive was at rest. AAR indicated that there is a series of three tests that could be performed to test the electrical integrity of the dynamic brake system all of which would require specialized personnel and equipment to perform. AAR further contends that none of the at-rest tests could predict with any certainty whether the dynamic brakes would actually function when engaged. In order to clarify the intent of the final rule's requirement, FRA is amending the language in these paragraphs to specifically describe that the electrical continuity test is to determine that electrical current is being received at the grids on the dynamic brake system. FRA believes this would involve a fairly simple check of the electrical continuity and would not require specialized training. Furthermore, FRA believes that the technology for conducting this test either already exists or can be easily developed and implemented over the next five years. Although FRA agrees that this electrical test will not predict with any certainty the functioning of the dynamic brakes when engaged, FRA believes it does provide some information to the engineer regarding the potential for the dynamic brake to function prior to the locomotive engineer's actual operation of the train. Furthermore, this requirement is consistent with the final rule's intent that by providing an engineer with as much information as possible on the status of the dynamic brakes on a train, a railroad better enables that engineer to operate the train in the safest and most efficient manner. *See* 66 FR 4161.

Paragraph (j)(2) of this section is also being modified in response to AAR's petition seeking clarification of the applicability of the requirement contained in this paragraph. Paragraph (j)(2) requires that the operating rules developed by railroads under this section include a ''miles-per-hour-overspeed-stop'' requirement that requires trains to be immediately stopped if they exceed the maximum authorized speed by more than 5 mph when descending grades of one percent or greater. *See* 66 FR 4201. The preamble to the final rule made clear that this requirement was developed in response to an NTSB recommendation and because FRA believed the provision accomplished a critical safety function by reducing the potential for runaways. It does so by establishing a clear rule for stopping a train when descending a grade and removes any discretion from the operator to continue operation of a train. *See* 66 FR 4164. AAR recommends that the requirement only be applied to trains descending grades averaging two percent for two continuous miles, similar to the two-way EOT requirement's definition of heavy grade. AAR contends that the one percent grade threshold is too low and that most railroads do not consider grades of less than two percent to be heavy grades.

Contrary to the implications made by AAR, the requirement in this paragraph was not intended to apply only to trains descending ''heavy grades'' as defined by most railroads. The requirement was intended to apply to any train descending a grade with a potential for causing a runaway condition. *See* 66 FR 4164. Furthermore, most Class I railroads that have already incorporated a ''miles-per-hour-overspeed-stop'' provision in their operating rules apply the requirement to trains descending grades of much less than two percent. However, FRA does agree that a mileage parameter needs to accompany the grade threshold in order for railroads to determine which segments of track are to be governed by the required operating procedure. As the regulations related to two-way EOT devices have identified those types of grades that FRA believes have the greatest potential for being involved in a runaway condition, FRA believes that the distance parameter contained in those requirements would be equally applicable in this context. Therefore, paragraph (j)(2) is being modified to clarify that railroads, at a minimum, apply the ''overspeed-stop rule'' contained in this paragraph to any train operating over a segment of track with an average grade of one percent or greater for three continuous miles. Furthermore, as railroads should have already identified the existence of such locations on their railroad for purposes of complying with the two-way EOT device regulations, this requirement should pose little or no burden on the industry. Moreover, the final rule permits railroads to increase the five-mph-overspeed limitation with FRA approval. Thus, if railroads are able produce validated research to show a higher speed threshold on grades less than two percent is appropriate, then FRA would be willing to consider the information. However, AAR's petition for reconsideration alludes to no such validated research. Consequently, FRA denies AAR's request to increase the applicable grade limitation contained in this paragraph of the final rule to cover only two percent grades.

BLE's petition sought reconsideration of two provisions contained in this section. BLE recommends that FRA extend the final rule's time period for retaining records of dynamic brake repairs from the 92 days required in paragraph (d) of this section to one year. BLE suggests that this would allow FRA to determine whether a particular locomotive or locomotive series is having reoccurring problems related to dynamic brakes. While FRA believes the stated purpose to be valid, FRA does not agree that a one-year repair record retention period is the necessary. FRA believes that the 92-day retention period required by the final rule provides FRA sufficient time to obtain relevant repair information to address any reoccurring problems. Moreover, the 92-day repair record retention period contained in this paragraph is consistent with other repair and inspection record retention periods contained in both the final rule and other federal railroad safety regulations. *See* 66 FR 4197, 4207; 49 CFR 215.9(b)(2) and 229.21(a). Consequently, FRA is denying BLE's request to extend the repair record retention contained in this paragraph.

BLE also seeks FRA's reconsideration of its determination to permit a locomotive with inoperative or deactivated dynamic brakes to be used as a controlling locomotive in heavy grade territory. BLE provides little, if any, rationale for requesting this prohibition other than citing general concerns with controlling a train on a heavy grade, all of which exist whether or not the controlling locomotive has operative dynamic brakes. The final rule requires that locomotives with inoperative or deactivated dynamic brakes have the capability of controlling the dynamic brakes on trailing units when operating as the controlling locomotive. The final rule also requires such locomotives to have the capability of displaying to the locomotive engineer the deceleration rate of the train or the total train dynamic brake retarding force. FRA continues to believe these provisions will ensure that locomotive engineers are able to operate the available dynamic brakes on the train

and will have the best information it is currently feasible to provide as to the operation of the dynamic brakes on the locomotives in the train consist they are controlling. Consequently, FRA is denying BLE's request to modify the final rule requirements related to using locomotives with inoperative or deactivated dynamic brakes as a controlling locomotive.

Section 232.111 Train Handling Information

FRA is not making any changes to the final rule requirements contained in this section. In its petition, BLE recommends that FRA reconsider its decision to eliminate the requirement that railroads provide locomotive engineers with a record of all train configuration changes since the performance of the last Class I brake test. BLE contends that engineers and other crewmembers should have a list of all car placements in their train at all locations. BLE did not say why this information is critical and did not discuss how it would aid an engineer in the operation of a train. The principle purpose of this section is to ensure that locomotive engineers are provided with relevant information regarding the testing and operation of the brake system on any train they are required to operate. Although FRA agrees that information regarding train make-up and train configuration changes is useful to an engineer when operating a train, FRA believes that issues related to train make-up and train configuration are outside the scope of this proceeding and are addressed by existing railroad operating rules and other federal regulations. For example, the federal regulations regarding the transportation of hazardous materials require that train crews be in possession of a document that reflects the current position in the train of each rail car containing a hazardous material. *See* 49 CFR 174.26(a). Generally, this document will provide information regarding train consist changes made while a train is en route. Consequently, FRA is denying BLE's request to reinstate the NPRM requirement regarding train configuration changes made since the last Class I brake test was performed on the train.

Subpart C—Inspection and Testing Requirements

Section 232.203 Training Requirements

This section of the final rule contains the general training requirements for railroad employees and contractor employees who perform the inspections and tests required by the final rule. In order to clarify FRA's intent, a brief discussion of FRA's overall approach to the final rule's training requirements may be beneficial. When including the training requirements in the final rule, FRA believed the training provisions to be the key factor for ensuring high quality brake inspections from which railroads would reap a number of operational benefits. *See* 66 FR 4135–37. The intent of the final rule is to establish a two-stage approach to training. The first phase of the training is to be the initial training of existing and new employees required to perform any test or inspection covered by the final rule. The majority of the initial training is to be conducted by railroads and contractors from the time the final rule became effective until April 1, 2004. FRA specifically deferred the applicability of many of the inspection and testing requirements until April 1, 2004, to permit railroads and contractors to have that period to develop the necessary curriculum and provide their employees with proper training on the performance of those tasks. *See* 66 FR 4137, 4144–45, 4193. The initial training is to include both classroom and ''hands-on'' training and testing tailored to the needs of each employee that addresses those tasks covered by the final rule which would be required to be performed by that individual. The initial training is also intended to cover the specific Federal regulatory requirements related to the tasks that the individual will be required to perform. FRA also envisioned that all new employees responsible for performing a task under this part would receive such initial training regardless of whether they were employed before or after April 1, 2004.

The second phase of the final rule's training requirements involves the conduct of periodic refresher training. FRA intends for this phase of training to occur after the initial training is complete. FRA did not intend for the periodic refresher training to take the place of the initial training. The final rule makes clear that FRA believes that periodic refresher training is essential to ensuring the continued ability of an employee to perform a particular task. In the preamble to the final rule, FRA acknowledged that it does not intend for such training to be as lengthy or as formal as the initial training originally provided, but believes that refresher training should reemphasize key elements of various tasks and focus on items or tasks that have been identified as being problematic or of poor quality by the railroad, contractor, or its employees through the periodic assessment of the training program. *See* 66 FR 4166.

FRA utilized this same two-tiered approach to training when issuing the final rule on Passenger Equipment Safety Standards contained in part 238. *See* 49 CFR 238.109, 64 FR 25540, 65 FR 41284. Most passenger operations have completed or are in the final stages of completing the training required under those regulations, and FRA envisions freight railroads adopting a similar approach to training under this final rule. FRA recognizes that there are significant differences between passenger and freight operations and believes that each needs to be handled separately with regard to the training of individuals performing tasks required by the Federal regulations. Consequently, FRA is slightly modifying the training requirements contained in the final rule to address those concerns unique to freight operations.

Paragraph (b)(6) of this section is being modified in response to concerns raised in AAR's petition regarding the training of existing employees. AAR contends that the final rule's prohibition on the use of previous training and work experience to meet the training requirements is overly burdensome. AAR contends that many railroads do not have past training information on each employee performing tasks required by the final rule because railroads were never previously required to maintain such information. AAR asserts that it makes no sense to treat an existing railroad employee as a new hire with no railroad experience. AAR also maintains that FRA permitted the grandfathering of existing train and engine crews when promulgating the engineer certification requirements without requiring documentation of previous training. AAR sees no reason to take a different approach in this rulemaking.

FRA agrees that there are a number of employees currently working for many railroads and contractors that have received previous training or have extensive railroad experience to obviate the need to retrain the employee as thoroughly or as quickly as a newly hired individual. FRA also agrees that many railroads have not maintained records sufficient to meet the documentation requirements contained in the final rule for purposes of using the previous training to meet the new training requirements. However, FRA does not agree that when issuing part 240 related to locomotive engineer certification that it simply grandfathered all existing locomotive engineers. In fact, part 240 required that an initial determination of certification be made

by a railroad regarding any existing engineer and then required that any such certified engineer be qualified under the procedures set forth in the regulation within 36 months of being initially certified. *See* 49 CFR 240.201(b) and (c). Thus, part 240 did not provide for the unrestricted grandfathering of existing employees, as portrayed in AAR's petition, but permitted delayed qualification of existing employees. This is similar to the approach taken in the final rule whereby railroads and contractors are being given approximately three years from the issuance of the final rule to complete the initial training of their existing employees.

Based on the foregoing, FRA is modifying paragraph (b)(6) of this section to expand the methods by which railroads and contractors are allowed to meet the training requirements contained in this section with regard to existing employees. This paragraph is being modified to permit existing training records which meet the documentation requirements contained in paragraph (e)(1) through (e)(4) to be considered in determining an existing employee's level of training. This clarifies the final rule requirement regarding the level of documentation that must exist with regard to previous training. This clarification explains that the records of previous training must include the employee's name, the dates on which the training was provided, the content of each training course, and the scores on any tests taken to demonstrate proficiency. The final rule merely stated that the records of previous training meet all the documentation requirements in paragraph (e). FRA realizes that it is impossible and unnecessary to meet all the documentation requirements contained in paragraph (e) of this section when dealing with existing training records.

Paragraph (b)(6) is also being modified by adding two other additional methods by which existing employees may be deemed to have met a portion of the training requirements contained in this section. The first method is to treat as trained existing employees who successfully pass a test developed by the railroad or contractor which assesses an employee's skills and knowledge necessary to perform tasks required by this part that the employee will be responsible for performing. FRA believes that this will permit railroads and contractors to streamline an employee's initial training to cover only those areas in which an employee may show a deficiency. FRA believes this method will allow railroads and contractors to reduce their training burdens by the permitting employees with extensive inspection and testing experience to ''test-out'' of large portions of the initial training keyed more toward newly hired individuals. The modified rule text makes clear that the test may be given in any format but must be documented as required in paragraph (e) of this section.

The second method permits a railroad or contractor to certify that a group or segment of its employees has received training determined by the railroad or contractor to meet the requirements contained in this section but for which complete records are unavailable. This new provision is being added to address the AAR's concern that many railroads have lost or destroyed previous training records or that all the information required by paragraphs (e)(1) through (e)(4) of this section was not maintained at the time the training was provided. If a railroad or contractor chooses this method, the railroad must maintain a copy of the certification in each such employee's training records, and the certification must contain a brief description of and approximate dates when the previous training was provided. Moreover, any employee certified to be trained under this method must be given a diagnostic test which covers the areas of training certified by the railroad or contractor to have been previously provided at the time the employee receives his or her first periodic refresher training. This will ensure that the employee has retained the necessary skills and knowledge that the railroad or contractor certifies was previously provided to the employee and also permits railroads and contractors to tailor an employee's refresher training to concentrate on those areas where the employee has demonstrated the most need for attention.

Paragraph (b)(8) of this section is also being modified to clarify FRA's intent regarding when refresher training is to be provided and to address AAR's concern regarding the ability to provide refresher training on a triennial cycle. As discussed in detail above, FRA's intent when requiring refresher training was that such training would not be engaged in until the completion of the initial training phase on April 1, 2004. A strict reading of the final rule would require that employees receive refresher training within three years of their initial training. FRA recognizes that, due to the need for railroads to develop the initial training materials, the actual initial training of the employees would be compressed to a period that is less than three years. Thus, although not FRA's intent, the language contained in the final rule would require large portions of a railroad's workforce to undergo refresher training in the same year due to condensing the initial training period to less than three years. FRA's intent when issuing the final rule was to allow railroads and contractors to establish a refresher training program that would accommodate approximately one-third of a railroad's or contractor's brake system inspection and testing workforce each year. In order to effectuate this intent, FRA is amending this paragraph of the final rule to allow individuals receiving initial training prior to April 1, 2004, pursuant to this section, not to undergo refresher training until four years after the completion of their original initial training. The amended language makes clear that thereafter such individuals would be required to undergo refresher training at an interval not to exceed three years. This modification will permit railroads and contractors to schedule the first refresher training period for existing employees so that one-third of the affected employees can receive appropriate refresher training each year. This will provide railroads and contractors with more certainty both in terms of employee utilization and resource allocation affected by the refresher training requirements contained in the final rule.

In its petition AAR also requested elimination of several of the final rule's training documentation requirements contained in paragraph (e) of this section. After reviewing these requirements, FRA believes that virtually every record required by paragraph (e) is necessary and easy to maintain and provides important information to both FRA and the railroad or contractor. The only final rule item FRA believes is potentially unnecessary is the provision contained in paragraph (e)(6) of this section which requires a record that the employee was notified of his or her current qualification status. FRA agrees with the concerns raised by AAR on this issue that the information is of little or no value to FRA from an enforcement perspective and railroads will notify employees of their status regardless of any federal regulation. Consequently, FRA is modifying the final rule by removing paragraph (e)(6) of this section and is redesignating paragraphs (e)(7) through (e)(9) of this section as paragraphs (e)(6) through (e)(8), respectively. AAR raises various concerns with regard to a number of the final rule's other training documentation requirements in paragraph (e). FRA has addressed these

concerns in the preceding discussion of regulatory evaluation concerns and need not reiterate them here. (*See* Section I. Discussion of Regulatory Evaluation Concerns, Part A: Cost Issues, subpart 5: Training.)

Section 232.205 Class I Brake Test-Initial Terminal Inspection

In its petition, AAR seeks clarification of the final rule's inspection requirements related to the adding of cars to a train. AAR asserts that the provisions contained in this section and in § 232.209 of the final rule are somewhat confusing regarding the addition of solid blocks of cars to a train. AAR states that it believes FRA did not intend the final rule to require a Class I brake test on the entire train when the train consist is changed by the addition of cars. AAR again contends that it sees no basis in FRA's determination that a Class I brake test must be performed on a block of cars when added to a train if the block of cars is made up of cars from various different trains. Therefore, AAR recommends clarification of the inspection requirements related to the adding of solid blocks of cars and recommends elimination of the limitation on adding more than a single solid block of cars without triggering a requirement to perform a Class I brake test on the entire train, which is contained at paragraph (a)(2)(i) of this section in the final rule. AAR also contends that FRA failed to address situations where a solid block of cars is removed from one train and is added to another train but the cars were required to be divided into multiple blocks when removed from the first train due to trackage constraints at the location prior to being added to the second train. AAR argues that there is no difference between this circumstance and leaving the cars coupled together. Consequently, at a minimum, AAR recommends that FRA clarify the final rule requirements to address situations where solid blocks of cars from only one train are required to be divided to accommodate track limitations at a location.

FRA agrees with AAR's concerns regarding the final rule's intent to concern itself with the inspection of the solid block of cars being added to a train and determining the nature of the inspection of that solid block on the basis of its composition. The preamble to the final rule makes clear that FRA's primary concern is the condition of the block of cars being added to the train, especially when the block of cars is made up of cars from more than one previous train. The preamble made clear that the final rule will permit a solid block of cars to be added to a train without triggering a requirement to perform a Class I brake test on the entire train but depending on the make-up of the block of cars, certain inspections will have to be performed on the block of cars at the location where it is added to the train. *See* 66 FR 4168. However, contrary to the assertions made by AAR in its petition, the final rule was never intended to permit the addition of more than a single solid block of cars to a train at any one location. FRA believes that both the explicit language of the final rule text and the preamble discussion clearly establish that only a single solid block of cars may be added at any one location without triggering a requirement to conduct a Class I brake test on the entire train. *See* 66 FR 4168, 4202. FRA continues to believe that the rationale, set out in the preamble to the final rule, for not permitting multiple solid blocks of cars to be added to a train at any one location remains valid and need not be reiterated. *See* 66 FR 4168. Consequently, FRA is denying AAR's request to remove paragraph (a)(2)(i) from this section as the preamble to the final rule clearly states the intended purpose of the final rule to permit the addition of only a single solid block of cars at any one location without the need conduct a Class I brake test on the entire train.

In response to the other concerns raised by AAR in its petition, FRA is amending this section of the final rule by adding a new paragraph (b) to clarify the inspection requirements related the situation where a solid block of cars is added to a train. It should be noted that FRA amended the definition of ''solid block of cars'' contained in § 232.5 of the final rule to aid in the clarification of the inspection requirements related to the addition of a solid block of car. (*See* Section-by-Section Analysis of § 232.5). The new paragraph (b) makes clear that all solid blocks of cars added to a train, except those described in paragraphs (b)(1) and (b)(2), are to receive either a Class I brake test pursuant to § 232.205 of the final rule or a Class II brake test pursuant to § 232.209 of the final rule at the location where they are added to a train. Paragraph (d) of § 232.209 of the final rule also makes clear that if a Class II brake test is performed on a solid block of cars when added to a train, then a Class I brake test pursuant to § 232.205 of the final rule must be conducted on the added cars at the next forward location where facilities are available for performing such an inspection. *See* 66 FR 4173, 4204. FRA intends to make clear that if a Class I brake test is performed on the solid block of cars at the location where it is added to a train, no further brake inspections are required of that block while it remains charged in the train, except for Class IA/1,000-mile brake tests covered by § 232.207 of the final rule. It should be noted that if a solid block of cars is pre-tested (i.e., given either a Class I or Class II brake test at the location it will be added to a train prior to being added to the train) or the solid block of cars meets one of the exceptions contained in new paragraphs (b)(1) or (b)(2) of this section, a Class III brake test pursuant to § 232.211 must be conducted on the train to which the pretested solid block of cars is added at the time it is added to the train. *See* 66 FR 4173–74, 4204. In order to avoid any misunderstanding, FRA intends to make clear that if the required Class I or Class II brake test is performed on the solid block of cars after it is added to the train, then there would be no need to conduct a Class III brake test on the entire train after the performance of those inspections because the requirements for performing a Class I or Class II brake test while the cars are entrained ensure that trainline continuity is achieved, which is the purpose of a Class III brake test. *See* 66 FR 4173–74, 4202–04.

New paragraphs (b)(1) and (b)(2) are being added to explicitly clarify the two types of cars or solid blocks of cars which may be added to an en route train without being required to receive either a Class I or Class II brake test at the location where they are added to the train. As discussed in detail above, when these types of solid blocks are added to a train, the train must receive a Class III brake test pursuant § 232.211 of the final rule. *See* 66 FR 4204. Paragraph (b)(1) makes clear that there are four conditions that must be met by a solid block of cars in order to be added to a train without being required to receive either a Class I or Class II brake test at the location where it is added.

First, the solid block of cars must be comprised of cars from a single previous train. Contrary to AAR's contentions raised in its petition, FRA continues to believe that the addition of blocks of cars comprised of cars from various different trains without inspection would allow the assembling of trains without inspection, which is clearly contrary to the intent of Congress when adopting the brake inspection requirements contained in part 232 prior to May 31, 2001, and would seriously reduce the safety of train operations across the nation. *See* 66 FR 4119, 4168. Second, the cars in the solid block must have previously received a Class I brake test. Thus, cars previously

receiving only a transfer train brake test pursuant to § 232.215 of the final rule would not meet this requirement. Third, the cars in the solid block must have remained continuously and consecutively coupled together, except for removing defective equipment, since being removed from its previous train. Thus, there can be no reclassification of the cars contained in the solid block since being removed from its previous train. Finally, the solid block of cars may not have been off a source of compressed air of at least 60 psi for more than four hours before being added to the en route train. FRA believes that the clarification contained in this paragraph is consistent with the intent and purpose of the final rule as it pertained to the adding of solid blocks of cars without further inspection. *See* 66 FR 4119, 4167–74.

Paragraph (b)(2) is being added in response to a concern raised in AAR's petition regarding the circumstance where a solid block of cars, meeting all of the requirements discussed in the preceding paragraph, must be divided to accommodate trackage constraints at a particular location. FRA agrees with the position set forth by AAR that some allowance should be provided in the final rule to accommodate this practice. FRA believes that no significant safety hazard is created by permitting a solid block of cars from a single previous train to be divided into smaller segments to accommodate space or trackage constraints at a particular location. It should be noted that this paragraph requires that each of the smaller segments remain continuously and consecutively coupled, not be removed from a source of compressed air for more than four hours, and be added to the new train in the same relative order as when removed from the previous train. Thus, the smaller segments of the larger solid block of cars initially removed from the previous train may not be rearranged or reclassified prior to being added to a train, or when, added to a train. FRA believes that the restrictions imposed by this paragraph with regard to the handling of a divided solid block of cars ensure the safety and integrity of the brake system on such blocks while limiting the potential for railroads to use the flexibility provided to assemble and classify trains without conducting necessary inspections. It should also be noted that this exception applies only to solid blocks of cars from a single previous train that are required to be divided into smaller segments due to trackage or space constraints at a particular location. FRA does not intend to extend the flexibility provided in this paragraph to every location or to be used by a railroad merely out of convenience to the railroad.

Due to FRA's addition of a new paragraph (b) to this section in response to petitions for reconsideration, FRA is redesignating paragraphs (b) through (e) of this section in the final rule as paragraphs (c) through (e), respectively. Redesignated paragraph (c)(2) (paragraph (b)(2) of the final rule) is being modified for clarification purposes in response a concern raised in AAR's petition. AAR recommends that FRA make the word ''inspector'' used in this paragraph plural. AAR believes FRA should recognize that many railroads use more than one inspector to conduct the inspection required in this section. Thus, AAR asserts that the rule text should make clear that it is the inspection team that is to inspect both sides of the equipment sometime during the inspection process, not any single inspector. FRA agrees with the recommendation made by AAR in its petition. FRA did not intend to suggest that a Class I brake test may be performed by only one inspector, nor did FRA intend to limit the methods by which railroads conduct such an inspection. In fact, the preamble to the final rule discusses the requirements contained in this paragraph in terms of ''inspectors'' and ''individuals'' and indicates that the method of performing the required inspection would be left to the discretion of the railroads provided such methods ensure that all required components are properly inspected. *See* 66 FR 4169–70. Consequently, FRA is modifying this paragraph of the final rule by making the term ''inspector'' plural.

Redesignated paragraph (c)(4) of this section (paragraph (b)(4) of the final rule) is also being modified in response to an issue raised by AAR in its petition. In its petition, AAR seeks clarification of FRA's intent regarding the pressure at which a retest of a car is to be conducted. AAR asserts that a strict reading of this provision in the final rule would require that the retest be conducted at the operating pressure of the train. AAR recommends that the language of the requirement be modified to permit the retest to be performed at a pressure that is within 15 psi of the pressure at which the train will be operated. AAR contends that other cars in the train may be initially tested at a pressure that is anywhere between 75 and 90 psi because the final rule permits the pressure at the rear of the train to be within 15 psi of the pressure at which the train will be operated. *See* 66 FR 4202–03. Thus, AAR maintains that a retest of a car's air brakes should be permitted to be conducted at the same pressure as that of any other car in the train. FRA agrees with the position of AAR and is amending this paragraph to clarify that the retesting of a car may be conducted at a pressure that is within 15 psi of the pressure at which the train will be operated. FRA believes this clarification is consistent with the other inspection requirements contained in the final rule as noted in the above discussion of AAR's concern. Furthermore, although the final rule text and attendant preamble discussion are somewhat ambiguous on this issue, FRA's intent was to require that a retest of any brake found not to apply, or failing to remain applied, be conducted in a manner that is consistent with the way other brakes in the train are tested.

In its petition, AAR objects to the final rule requirement contained in redesignated paragraph (e) of this section (paragraph (d) in the final rule) that the information provided to a locomotive engineer and the related record regarding the performance of a Class I brake test include the identity of the qualified person(s) performing the inspection. AAR contends that this information is not needed by a locomotive engineer to operate the train. AAR recommends that the requirement be deleted. FRA agrees that the information is not necessarily needed by the locomotive engineer to operate a train. However, FRA does believe the information is necessary to ensure accountability for the performance of the required Class I brake test and provides the engineer with confidence that the inspection was properly performed. Furthermore, the information provides FRA and the railroads with a readily accessible means to monitor an employee's performance and adds a measure of enforceability to the final rule's requirement to have qualified individuals perform these safety-critical inspections. Moreover, the identity of the person(s) conducting these types of inspections is currently maintained by virtually all railroads and is presently being provided to locomotive engineers by many railroads. Consequently, FRA is denying AAR's request to delete the requirement to provide the identity of the qualified person performing a Class I brake test as FRA's believes that the information provides accountability and enforceability and is consistent with existing practice on many railroads.

Section 232.207 Class IA Brake Tests—1,000-Mile Inspection

Paragraphs (b)(1) and (b)(4) of this section are being modified so that the

references to § 232.205 contained in these paragraphs conform with the redesignations being made to that section. As discussed in detail above, § 232.205 of the final rule is being modified to include a new paragraph (b) and, thus, paragraphs (b) through (e) of that section in the final rule are being redesignated as paragraphs (c) through (f). Consequently, conforming changes are being made to paragraphs (b)(1) and (b)(4) of this section to alter the references from paragraph (b) of § 232.205 to redesignated paragraph (c) of that section.

Section 232.209 Class II Brake Tests-Intermediate Inspection

Paragraphs (b)(1) and (b)(3) of this section are being modified so that the references to § 232.205 contained in these paragraphs conform with the redesignations being made to that section. As discussed in detail above, § 232.205 of the final rule is being modified to include a new paragraph (b) and thus, paragraphs (b) through (e) of that section in the final rule are being redesignated as paragraphs (c) through (f). Consequently, conforming changes are being made to paragraphs (b)(1) and (b)(3) of this section to alter the references from paragraph (b) of § 232.205 to redesignated paragraph (c) of that section.

Paragraph (a)(3) of this section is being modified to conform with the new paragraph (a)(4) being added to this section. As discussed in detail above, § 232.205 of the final rule is being modified to include a new paragraph (b) that explicitly describes the types of solid blocks of cars that may be added to a train without further direct visual inspection. Therefore, a new paragraph (a)(4) is being added to this section to conform with the language contained in the new clarifying paragraph (b) added to § 232.205 of the final rule. It should also be noted that the last sentence of paragraph (f) of this section in the final rule is being removed for clarity. FRA believes that the last sentence of paragraph (f) may have created some of the confusion, expressed by AAR in its petition, regarding when Class III brake tests are to be performed. Thus, consistent with the discussion contained in the above analysis of § 232.205 and because the language contained in the last sentence of paragraph (f) of this section duplicates the requirements contained in § 232.211 regarding the performance of Class III brake tests, FRA is removing this sentence. See 66 FR 4204.

Section 232.211 Class III Brake Tests-Trainline Continuity Inspection.

A new paragraph (a)(4) is being added to this section to conform with the language contained in the new clarifying paragraph (b) added to § 232.205 of the final rule. As discussed in detail above, § 232.205 of the final rule is being modified to include a new paragraph (b) that explicitly describes the types of solid blocks of cars that may be added to a train without further direct visual inspection. Thus, paragraph (a)(3) and the new paragraph (a)(4) of this section are intended to explain that when the types of solid blocks described in § 205.205(b)(1) and (b)(2) are added to a train, the train is required to receive a Class III brake test pursuant to the provisions contained in this section. Paragraph (a)(4) of this section as contained in the final rule is being redesignated as paragraph (a)(5). What was paragraph (a)(5) of this section in the final rule is being moved to a new paragraph (d) in this section and is being modified as explained in detail below.

Paragraph (b)(1) of this section is being amended in response to concerns raised in AAR's petition regarding the pressure at which Class III brake test are required to be performed. AAR contends that because the purpose of a Class III brake test is to ensure trainline continuity there is no reason to require the pressure at the rear of the train to be not less than 75 psi. AAR recommends that a Class III brake test be permitted to be performed when the air pressure at the rear of the train reaches 60 psi. AAR asserts that to require the trainline to be charged to a minimum of 75 psi rather than 60 psi will add 15 minutes to the charging time of a 100-car train prior to the test being performed and that there is no safety purpose served by requiring the higher trainline pressure. FRA agrees with the recommendation made in AAR's petition. As the sole purpose of a Class III brake test is to ensure that the train brake pipe is delivering air to the rear of the train, FRA believes that this can easily be ascertained with a rear brake pipe pressure of 60 psi. *See* 66 FR 4173–74. Moreover, FRA is not aware of any safety hazard caused by permitting this brake test to be performed at the lower rear car pressure. Furthermore, FRA also agrees that this allowance will help reduce train delay and reduce the amount of time public and private highway-rail grade crossings are blocked for the purposes of conducting this inspection. Consequently, FRA is amending paragraph (b)(1) of this section to permit Class III brake tests to be conducted when the pressure at the rear of the train is a minimum of 60 psi.

As noted above, a new paragraph (d) is being added to this section to address concerns raised in AAR's petition regarding the performance of a Class III brake test when trainline continuity is broken but no changes to the train consist occur. AAR contends that the regulations as they existed prior to the issuance of the final rule only required the railroad to verify that brake pressure is being restored to the rear of the train after an otherwise unchanged train consist is recoupled. AAR believes this same allowance should be provided for in the final rule and contends that such a provision would further reduce the amount of time that grade crossings are required to be blocked. FRA agrees with the position of AAR. Part 232 as it existed prior to the issuance of the final rule did permit the recoupling of an unchanged train consist with a verification that the air pressure is being restored at the rear of the train. See 49 CFR 232.13(b). Thus, FRA agrees that the current practice within the industry is to conduct a rear pressure verification inspection when an otherwise unchanged train consist is recoupled. FRA also believes that normally, absent vandalism, if the train consist is not changed or altered by either the removal, replacement, or addition of equipment there should be no effect on the operation of the train's brake system that cannot be identified with a rear pressure verification inspection. FRA further agrees that permitting the method of testing suggested by AAR would reduce the time trains spend blocking public and private grade crossings. Therefore, FRA is adding a new paragraph (d) to this section, which requires verification that the brake pipe pressure of the train is being restored as indicated by a rear car gauge or end-of-train device in circumstances where the continuity of the brake pipe is broken with the train consist otherwise remaining intact. It should be noted that the new paragraph clearly requires that a visual inspection of the application and release of the brakes on the rear car be conducted in the absence of a rear car gauge or end-of train-device.

Section 232.213 Extended Haul Trains

AAR again raises concerns regarding the viability of the provisions contained in this section of the final rule. AAR continues to assert that the 1,500-mile limitation placed on extended haul trains provides little benefit to the industry. AAR reasserts its request to extend the mileage limitation contained in this section of the final rule. FRA believes that the preamble to the final

rule fully addresses the mileage limitation concerns raised by AAR and provides a complete discussion of FRA's rationale for limiting the distance these train are permitted to travel between brake inspection. See 66 FR 4119–21, 4174–75. FRA sees no need to reiterate that discussion in this document. Moreover, FRA continues to believe that AAR's concerns regarding the viability of the provisions contained in this section of the final rule are misplaced and inaccurate.

Paragraphs (a)(6)and (a)(7) of this section are being modified in response to concerns raised in AAR's petition regarding the performance and documentation of inbound inspections on extended haul trains. AAR contends that if FRA's stated purpose for requiring inbound inspections on these trains is to assess the impact of the provisions on the safety of such train operations, then FRA should place a known time limit on this assessment. AAR's petition implies that three years would be a more than sufficient time period for FRA to evaluate any negative safety impacts arising from the provisions contained in this section. AAR's also contends that the inbound inspection and recordkeeping requirements contained in the final rule with regard to extended haul trains are major impediments to the viability of the provisions.

FRA tends to agree with the concerns raised by AAR with regard to this portion of the extended haul provisions. The final rule made clear that the purpose of the inbound inspections on these trains is to facilitate the assessment of the safety and operational effects of the provisions contained in this section. See 66 FR 4174–75. Thus, FRA agrees that the requirement to perform inbound inspections should be for a limited period, during which such assessments can be conducted. FRA believes that the three-year period recommended by AAR in its petition would provide FRA and the railroads with sufficient time to evaluate the effects of these extended operations. Therefore, FRA is amending paragraphs (a)(6) and (a)(7) of this section to limit the requirement to perform inbound inspections on extended haul trains and maintain the related records to a period of three years from the applicability date of the provisions; i.e., until April 1, 2007. However, as FRA will utilize this three-year period to assess the safety and operational aspects of these extended operations, FRA must have a means by which it may extend the requirement to perform inbound inspections in the event the assessment discloses safety or operational hazards. Consequently, the amended provisions will permit FRA to continue to require the performance of inbound inspections on these trains should the evaluation reveal detrimental effects on the safety of these operations. The modifications make clear that FRA must publish a notice in the **Federal Register** of its decision to continue the inbound inspection requirement detailing the basis for such a determination. The modifications also make clear that the determination to extend the inbound inspection requirement will be based on the records required to be maintained under paragraph (a)(7) of this section and any other relevant safety data.

Section 232.215 Transfer Train Brake Tests

Paragraph (a)(3) of this section is being modified so that the reference to § 232.205 contained in this paragraph conforms with the redesignations being made to that section. As discussed in detail above, § 232.205 of the final rule is being modified to include a new paragraph (b) and thus, paragraphs (b) through (e) of that section in the final rule are being redesignated as paragraphs (c) through (f). Consequently, a conforming change is being made to paragraph (a)(3) of this section to alter the reference from paragraph (b)(4) of § 232.205 to redesignated paragraph (c)(4) of that section.

Section 232.217 Train Brake Tests Conducted Using Yard Air

Paragraph (c) of this section is being modified so that the references to § 232.205 contained in this paragraph conform with the redesignations being made to that section. As discussed in detail above, § 232.205 of the final rule is being modified to include a new paragraph (b) and thus, paragraphs (b) through (e) of that section in the final rule are being redesignated as paragraphs (c) through (f). Consequently, conforming changes are being made to paragraph (c) of this section to alter the references from paragraph (b) of § 232.205 to redesignated paragraph (c) of that section.

Paragraph (c)(3) of this section is also being modified in response to concerns raised in AAR's petition regarding the performance of the required leakage or air flow test of the brake system using yard air. AAR recommends that the leakage or air flow test, required to be performed at the pressure at which the train will be operated pursuant to the requirements contained in § 232.205, be permitted to be performed at 80 psi when yard air is used to perform a leakage or air flow test pursuant to the Class I brake test requirements. AAR contends that the final rule requirement to perform these tests when the locomotives are attached if the yard air source is not capable of attaining the psi pressure at which the train will be operated (which for most trains is 90 psi) would result in a delay of at least five minutes per train. AAR asserts that current industry practice when using yard air is to perform the leakage or air flow tests at 80 psi and that this practice has not resulted in any known adverse impact on safety. AAR also notes that most yard air sources in use today are not capable of producing 90 psi as required for these tests under § 232.205 of the final rule. Thus, AAR suggests that substantial train delay would result from waiting to perform these tests until locomotive power is attached.

FRA agrees with the concerns raised by AAR in its petition and is amending paragraph (c)(3) of this section of the final rule to permit the leakage or air flow test to be conducted at 80 psi when yard air is used to conduct a required leakage or air flow test. FRA agrees that it has permitted railroads to perform these tests with yard air at 80 psi for years and is not aware of any detrimental effect on safety. FRA also agrees that most yard air sources currently being used in the industry lack the capability to produce air pressure at 90 psi. FRA further believes that the 10-psi allowance will not significantly affect the performance or accuracy of either the leakage or air flow test. It should be noted that the modified language requires that the leakage or air flow test be conducted when the locomotives are attached if the air pressure of the yard test device is anything less than 80 psi. Furthermore, the allowance provided by the modification being made to this section applies only to instances when yard air test devices are used to conduct required leakage or air flow test. FRA intends to make clear that, if locomotives are used to perform these tests, then the train must be charged to the pressure at which it will be operated.

Section 232.219 Double Heading and Helper Service

Paragraph (c)(2) of this paragraph is being modified in response to a request made by AAR in its petition regarding the resetting of a helper link device or similar technology. AAR requests that the final rule's requirement that a method to reset the device be provided in the cab of the helper locomotive be modified to permit the devices to reset automatically rather than be reset by the

locomotive engineer manually. FRA believes that allowance should be provided to permit the use of the automatic reset technology being incorporated into some helper link devices and similar technology. FRA believes the automatic reset capability would eliminate one more thing that a locomotive engineer must manually operate or control, thereby allowing the engineer to focus on a smaller set of tasks. Thus, paragraph (c)(2) of this section is being amended to require locomotives equipped with a helper link device or similar technology to be equipped with a means to reset the device in the cab of the locomotive manually or, in the alternative, have the device or locomotive equipped with a means to reset the device automatically. The amended final rule language makes clear that the automatic reset function must occur within a time interval that is no less than the time required to reset the device from the cab of the locomotive manually.

In its petition, BLE suggests that the final rule be modified to require that a separate computer screen or switch be provided in the cab of a helper locomotive to pull the coupling pin or uncouple the helper unit from the train being pushed. BLE provided no rationale or discussion regarding the need for this added technology. Furthermore, BLE did not indicate whether such technology is currently available at a reasonable price. Moreover, FRA is not aware of a significant safety problem related to existing helper operations. Consequently, FRA is denying BLE's request to require the suggested technology on helper locomotives.

Subpart D—Periodic Maintenance and Testing Requirements

Section 232.303 General Requirements

FRA is making a clarifying amendment to the definition of ''major repair'' contained in paragraph (a)(2) of this section in the final rule. On August 1, 2001, the requirements regarding periodic maintenance and testing contained in subpart D became applicable to the industry. When including the definitions of ''repair track'' and ''major repair'' in the final rule, FRA's purpose was not to alter the basic approach to capturing cars for periodic brake testing at appropriate intervals as currently existed in the industry. FRA also intended for these and other definitions in the final rule to be consistent with FRA's existing enforcement policies and guidance. *See* 66 FR 4178 and 66 FR 39684. On January 12, 2000, prior to the issuance of the final rule, FRA issued Technical Bulletin (TB) MP&E 00–01 containing enforcement guidance regarding what constitutes a repair or shop track. The definitions of ''repair track'' and ''major repair'' contained in the final rule codified much of the guidance contained in the above noted TB.

Subsequent to the issuance of TB MP&E 00–01, based on concerns raised by the industry, FRA issued oral guidance to its inspection forces explaining that the practice of changing wheels on intermodal cars located on intermodal loading ramps does not qualify the track as a repair track and that such activity did not constitute a major repair. Although this guidance was not formalized in the form of a TB, the guidance has been and continues to be FRA's enforcement position. Therefore, as FRA's primary intent when issuing the final rule definitions was to remain consistent with existing enforcement guidance and policies, FRA did not intend to consider the changing of wheels on intermodal cars at intermodal loading ramps to constitute a ''major repair'' for the purposes of § 232.203(a)(2) when issuing the final rule. On October 19, 2001, FRA issued TB MP&E 01–04 containing the above noted guidance to its field inspection forces. Consequently, the modification to this section merely incorporates enforcement guidance existing prior to the issuance of the final rule and makes clear that trackage at an intermodal loading ramp was not intended to be and should not be considered a ''repair track'' under § 232.303(a)(1) when only wheel change-outs (whether an air jack is used or not) and other minor repairs are performed on such trackage. However, if major repairs are performed on the cars at the loading ramp, then the definition of ''shop or repair track'' contained in § 232.303(a)(1) will apply and the car(s) should be handled accordingly. It should also be noted that if a wheel change-out is due to the wheel having any of the defective conditions identified in § 232.305(b)(5), then a single car test is to be conducted on that car pursuant to the requirements contained in this subpart regardless of the location where the defect is discovered or the wheel is changed.

Subpart E—End-of-Train Devices

Section 232.407 Operations Requiring Use of Two-Way End-of-Train Devices; Prohibition on Purchase of Nonconforming Devices

A new paragraph (g)(2) is being added to this section in response to concerns raised in AAR's petition regarding the operation of a train when the two-way EOT fails while the train is operating on a section of track with an average grade of two percent or greater for a distance of two continuous miles. AAR contends that although the preamble to the final rule discusses the operation of trains on such grades when communication failures occur on the provided alternative methods of operation over heavy grades, the final rule fails to provide any provisions for operating on such grades when a failure of a two-way EOT occurs while actually operating on the heavy grade. AAR recommends that provisions similar to those provided for the alternative methods of operation should also be included to address a failure of the two-way EOT while a train is in the process of traversing a heavy grade averaging two percent for two continuous miles.

FRA shares the concerns raised by AAR in its petition and believes that clarification of the requirements covering these circumstances should be addressed in the final rule. FRA believes that the preamble to the final rule makes clear that the stopping of trains in circumstances where the two-way EOT fails while a train is traversing a heavy grade should be done in accordance with the railroad's operating rules. *See* 66 FR 4184. When issuing the two-way EOT requirements, FRA did not intend for engineers to place themselves in unsafe situations when they encounter an en route failure of the device when traversing a heavy grade. Although the existing rule prohibits the operation of a train over certain heavy grades when a failure of the device occurs en route, FRA did not intend that the train be immediately stopped when a failure of the device occurs while operating on a heavy grade. Rather, FRA intended for the locomotive engineer to conduct the movement in accordance with the railroad's operating rules for bringing the train safely to a stop at the first available location. Therefore, safety may require that the train continue down the grade or to a specific siding rather than come to an immediate halt. Consequently, a new paragraph (g)(2) is being added to the final rule which makes clear that, if a two-way EOT fails while a train is traversing a section of track with an average grade of two percent for two continuous miles, the train is to be brought to a stop at the first available location in accordance with a railroad's operating rules. FRA believes this clarification is consistent with FRA's intent and expectations when issuing the two-way EOT regulations.

Section 232.409 Inspection and Testing of End-of-Train Devices

Paragraph (c) of this section is being modified to read the way the paragraph read when initially included in the final rule issued on January 17, 2001. Prior to May 31, 2001, this paragraph required that, if the person conducting the test of the two-way end-of-train device on a train is someone other than a train crew member, the locomotive engineer of the train must be notified of the name of the person conducting the test and a record must be maintained, in the cab of the controlling locomotive, containing the name of the person conducting the test. *See* 66 FR 4210. Although this requirement originally had a compliance date of May 31, 2001, FRA deferred the compliance date of the requirement until further notice in order to allow FRA an opportunity to respond to AAR's petition for reconsideration which questioned the need for this specific provision. *See* 66 FR 29501 (May 31, 2001). AAR's petition questions the need for the locomotive engineer to be informed of the name of the person testing the two-way EOT. AAR recommends elimination of the requirement.

The preamble to the final rule makes clear that the purpose of the requirements to provide the locomotive engineer with the date and time of the test, the location where the test was performed, and the name of the person performing the test is to ensure that locomotive engineers are provided sufficient information to confirm that the devices are properly inspected and tested and to provide locomotive engineers with a measure of confidence that the devices will work as intended. *See* 66 FR 4184. FRA continues to believe all of the information originally contemplated by the final rule is necessary to ensure accountability for performing proper inspections and tests of the devices. The information also provides both FRA and the railroads with a means to monitor the inspection practices of individuals responsible for performing inspections and tests required by the final rule. Furthermore, as AAR's petition notes that railroads maintain the required information, FRA sees little burden being imposed by the final rule in requiring that the information to be provided to the locomotive engineer. Consequently, the language of paragraph (c) of this section is being revised to read the same as it did when the final rule was issued on January 17, 2001. *See* 66 FR 4210.

Paragraph (d) of this section of the final rule is being amended in response to concerns raised in a late-filed petition submitted by UP regarding the periodic calibration of two-way EOT devices. In its petition UP recommends that the periodic calibration period be changed from every 365 days as required by the final rule to every 368 days. UP contends that a 368-day period would be consistent with the 92-day periodic inspection cycle required for locomotive by part 229. *See* 49 CFR 229.23. UP requests this change to avoid having to take locomotives out of service to perform the calibration of the two-way EOT device head-end. UP also requests that the 368-day calibration period not begin running until the unit is placed back in service after being calibrated. UP contends that several railroads remove the head-end units from their locomotives to have the annual testing and calibration performed by outside parties. After the calibration is complete, the unit is returned to the railroad and may remain in storage for a considerable length of time prior to being placed back in service on a locomotive.

FRA tends to agree with the issues and concerns raised by UP in its petition. FRA agrees that it is only logical to make the calibration period of two-way EOT devices coincide with the periodic inspection interval for locomotives. FRA also agrees that the calibration period for the devices should begin from the time the devices are actually placed back in service after receiving the required testing and calibration. However, FRA believes that EOT devices should not be permitted to be stored indefinitely prior to being placed in service without being retested and calibrated, if necessary. FRA believes that the 92-day periodic inspection cycle for locomotives provides an adequate out-of-service or ''shelf-life'' period. This would allow head-end units to be removed at one periodic inspection for testing and calibration, and then be replaced at the next periodic inspection for that locomotive. FRA does not believe that a 92-day shelf life will impact the operation or calibration of the devices and will provide railroads with flexibility in meeting the testing and calibration requirements contained in the final rule. It should be noted, that FRA has left it to the railroads to determine how to track and record any shelf life. Consequently, paragraph (d) of this section of the final rule is being amended by extending the testing and calibration to 368 days and by providing up to a 92-day shelf-life for the devices after being properly tested and calibrated.

It should be noted that AAR raised a concern regarding the discussion related to bench testing of EOT devices contained in the preamble to the final rule. *See* 66 FR 4185. Although agreeing with FRA that regulations on bench testing were unnecessary, AAR objected to FRA's implication that the bench test of an EOT device transported in a truck should remain valid for only one hour. FRA believes that AAR has misconstrued the discussion contained in the preamble to the final rule regarding the reasonable time period for which a bench test of the device would remain valid. In the preamble discussion, FRA was merely attempting to point out that what constitutes a reasonable time between bench testing and installation of the devices varies based upon the environment and conditions to which the device is exposed after being bench tested. The preamble was attempting to illustrate that mistreatment of the devices after testing would severely limit the time for which a bench test would remain valid. *See* 66 FR 4185. FRA did not intend to imply that the bench test on any device transported in a vehicle would remain valid for only one hour. The focus of the determination should be on the handling of device and the conditions to which the device is exposed subsequent to conducting the bench test.

Appendix A to Part 232—Schedule of Civil Penalties

Appendix A to this part contains the schedule of civil penalties to be used in connection with this part. Conforming changes are being made to the schedule of civil penalties based on the changes being made to the final rule discussed in detail above.

Appendix B to Part 232—Part 232 prior to May 31, 2001

A conforming change is being made to § 232.13(d)(2)(i) of part 232 as it existed prior to May 31, 2001. Section 232.13(d)(2)(i) of part 232 as it existed prior to May 31, 2001, incorrectly cites to § 232.13(c)–(j) as the section under which cars added to a train are to be inspected. *See* 66 FR 4216. This typographical error was made when part 232 was revised in 1986. *See* 51 FR 17303 (May 9, 1986). When part 232 was originally issued, § 232.13(d)(2)(i) correctly cited a reference to § 232.12 (c)–(j). *See* 33 FR 19679 (December 25, 1968). Compare § 232.13(d)(1), (d)(2)(ii) and (e)(2), of part 232 as it existed prior to May 31, 2001, all of which correctly cite the initial terminal test provisions in § 232.12(c)–(j). Consequently, FRA is correcting this typographical error for clarity purposes in this document.

Paragraphs (a)(2)(iii) and (b)(3) of § 232.17 are being amended in response to concerns raised in RPCA's petition regarding the accessibility and availability of the testing documents referenced in these two paragraphs. RPCA contends that the referenced standards and documents are no

longer available from the sources indicated in § 232.17 as it existed prior to May 31, 2001. FRA is amending paragraph (a)(2)(iii) of § 232.17 to clarify that the single car test required to be performed pursuant to this paragraph may be conducted in accordance with the applicable AAR Code of Tests or the APTA standard referenced in 49 CFR 238.311(a). FRA has retained the requirement to utilize the applicable AAR standard because FRA recognizes that the new APTA standard does not address every type of brake system used on many tourist and excursion operations. Thus, where the referenced APTA standard related to performing single car tests on certain passenger equipment does not address a particular brake system, FRA would expect the applicable AAR standard to be utilized. Paragraph (b)(3) of § 232.17 is being amended by inserting FRA's current address as the location where the standards and procedures referenced in § 232.17 can be obtained. FRA believes it has copies of all the material referenced in this section and can provide them to interested parties upon request.

In its petition, RPCA also sought clarification of the periodicity for performing the required cleaning, repair, lubrication, and testing required by § 232.17(b) as it existed prior to May 31, 2001. The referenced AAR Standard S–045 contains the periodicity for performing the required attention. FRA would expect equipment used in tourist, historic, scenic, and excursion operations to conduct the required maintenance in accordance with that referenced AAR standard. If such equipment were to be hauled in a freight train covered by the new part 232 or in a passenger train covered by part 238 of this chapter, then FRA would expect the equipment to meet the testing and inspection requirements contained in those regulations. FRA does not believe this rulemaking is the proper forum for changing or modifying the inspection, testing, and maintenance requirements applicable to tourist, historic, scenic, and excursion operations. In the preamble to the final rule FRA noted that it has established a Tourist and Historic Railroads Working Group formed under Railroad Safety Advisory Committee to specifically address the applicability of FRA's regulations to these unique types of operations. FRA made clear that any requirements issued by FRA for these types of operations would be part of a separate rulemaking proceeding. *See* 66 FR 4145–46.

Regulatory Impact

Executive Order 12866 and DOT Regulatory Policies and Procedures

This response to petitions for reconsideration of the final rule has been evaluated in accordance Executive Order 12866 and DOT policies and procedures. Although the final rule met the criteria for being considered a significant rule under those policies and procedures, the amendments contained in this response to petitions for reconsideration of the final rule are not considered significant because they either clarify requirements currently contained in the final rule or allow for greater flexibility in complying with the rule. The economic impact of the amendments and clarifications contained in this response to petitions for reconsideration will generally reduce the cost of compliance with the rule. However, the cost reduction is not easily quantified and does not significantly alter FRA's original analysis of the costs and benefits associated with the original final rule.

In the detailed discussion of AAR's concerns regarding the final rule's regulatory evaluation contained above, FRA acknowledges that it erred in the final rule's RIA when estimating the safety benefits to be derived from the specific accidents included in the analysis. (See preamble above: ''I. Discussion of Regulatory Evaluation Concerns.'') However, FRA believes that the error and resulting reduction in the safety benefits does not in anyway compromise the integrity of the analysis or impact the decisions made by FRA and does not change the necessity for any of the provisions contained in the final rule. Furthermore, FRA finds all the other economic issues raised by AAR in its petition for reconsideration to be either incorrect, unfounded, or unpersuasive. FRA continues to believe that it has been both reasonable in its cost estimates and extremely conservative in its estimates of benefits related to the final rule. Moreover, FRA believes that the modifications and clarifications being made to the final rule in this response to the petitions for reconsideration, will not only reduce the potential regulatory costs but will also increase the benefits associated with the final rule. Therefore, the costs and benefits quantified in the final rule's RIA are even more conservative than when originally calculated by FRA. Consequently, FRA strongly supports the economic arguments and estimates advanced in its RIA for the final rule.

Regulatory Flexibility Act

The Regulatory Flexibility Act of 1980 (5 U.S.C. 601 *et seq.*) requires a review of rules to assess their impact on small entities. FRA certifies that this response to petitions for reconsideration does not have a significant impact on a substantial number of small entities. Because the amendments contained in this document either clarify requirements currently contained in the final rule or allow for greater flexibility in complying with the rule, FRA has concluded that there are no substantial economic impacts on small units of government, businesses, or other organizations.

Paperwork Reduction Act

This response to petitions for reconsideration of the final rule does not significantly change any of the information collection requirements contained in the original final rule.

Environmental Impact

FRA has evaluated this response to petitions for reconsideration of the final rule in accordance with its ''Procedures for Considering Environmental Impacts'' (FRA's Procedures)(64 FR 28545, May 26, 1999) as required by the National Environmental Policy Act (42 U.S.C. 4321 *et seq.*), other environmental statutes, Executive Orders, and related regulatory requirements. FRA has determined that this document is not a major FRA action (requiring the preparation of an environmental impact statement or environmental assessment) because it is categorically excluded from detailed environmental review pursuant to section 4(c) of FRA's Procedures.

Federalism Implications

FRA believes it is in compliance with Executive Order 13132. Because the amendments contained in this response to petitions for reconsideration of the final rule either clarify requirements currently contained in the final rule or allow for greater flexibility in complying with the rule, this document will not have a substantial 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. This response to petitions for reconsideration of the final rule will not have federalism implications that impose any direct compliance costs on State and local governments.

Unfunded Mandates Reform Act of 1995

Pursuant to Section 201 of the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4, 2 U.S.C. 1531), each federal agency ''shall, unless otherwise prohibited by law, assess the effects of Federal regulatory actions on State, local, and tribal governments, and the private sector (other than to the extent that such regulations incorporate requirements specifically set forth in law).'' Section 202 of the Act (2 U.S.C. 1532) further requires that ''before promulgating any general notice of proposed rulemaking that is likely to result in the promulgation of any rule that includes any Federal mandate that may result in expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of $100,000,000 or more (adjusted annually for inflation) in any 1 year, and

before promulgating any final rule for which a general notice of proposed rulemaking was published, the agency shall prepare a written statement'' detailing the effect on State, local, and tribal governments and the private sector. Because the amendments contained in this response to petitions for reconsideration of the final rule either clarify requirements currently contained in the final rule or allow for greater flexibility in complying with the rule, this document will not result in the expenditure, in the aggregate, of $100,000,000 or more in any one year, and thus preparation of such a statement is not required.

Energy Impact

Executive Order 13211 requires Federal agencies to prepare a Statement of Energy Effects for any ''significant energy action.'' 66 FR 28355 (May 22, 2001). Under the Executive Order, a ''significant energy action'' is defined as any action by an agency (normally published in the **Federal Register**) that promulgates or is expected to lead to the promulgation of a final rule or regulation, including notices of inquiry, advance notices of proposed rulemaking, and notices of proposed rulemaking: (1)(i) that is a significant regulatory action under Executive Order 12866 or any successor order, and (ii) is likely to have a significant adverse effect on the supply, distribution, or use of energy; or (2) that is designated by the Administrator of the Office of Information and Regulatory Affairs as a significant energy action. FRA has evaluated this response to petitions for reconsideration of the final rule in accordance with Executive Order 13211. Because the amendments contained in this response to petitions for reconsideration of the final rule either clarify requirements currently contained in the final rule or allow for greater flexibility in complying with the rule, FRA has determined that this document will not have a significant adverse effect on the supply, distribution, or use of energy. Consequently, FRA has determined that this regulatory action is not a ''significant energy action'' within the meaning of Executive Order 13211.

List of Subjects in 49 CFR Part 232

Incorporation by reference, Penalties, Railroad power brakes, Railroad safety, Two-way end-of-train devices.

For the reasons set forth in the preamble, Part 232 of Chapter II of Title 49 of the Code of Federal Regulations is amended to read as follows:

PART 232—[AMENDED]

1. The authority citation for Part 232 continues to read as follows:

Authority: 49 U.S.C. 20102–20103, 20107, 20133, 20141, 20301–20303, 20306, 21301–21302, 21304; 49 CFR 1.49 (c), (m).

Subpart A—General—[Amended]

2. Section 232.5 is amended by revising, introductory text and the definitions of Brake, effective and Solid block of cars:

§ 232.5 Definitions.

The definitions in this section are intended to clarify the meaning of terms used in this part as it becomes applicable pursuant to § 232.1(b) and (c).

* * * * *

Brake, effective means a brake that is capable of producing its nominally designed retarding force on the train. A car's air brake is not considered effective if it is not capable of producing its nominally designed retarding force or if its piston travel exceeds:

(1) 10½ inches for cars equipped with nominal 12-inch stroke brake cylinders; or

(2) The piston travel limit indicated on the stencil, sticker, or badge plate for that brake cylinder.

* * * * *

Solid block of cars means two or more freight cars coupled together and added to or removed from a train as a single unit.

* * * * *

3. Section 232.15 is amended by revising paragraphs (b)(1) and (g) to read as follows:

§ 232.15 Movement of defective equipment.

* * * * *

(b) *Tagging of defective equipment.*

(1) At the place where the railroad first discovers the defect, a tag or card shall be placed on both sides of the defective equipment, except that defective locomotives may have the tag or card placed in the cab of the locomotive. In lieu of a tag or card, an automated tracking system approved for use by FRA shall be provided. The tag, card, or automated tracking system shall contain the following information about the defective equipment:

(i) The reporting mark and car or locomotive number;

(ii) The name of the inspecting railroad;

(iii) The name and job title of the inspector;

(iv) The inspection location and date;

(v) The nature of each defect;

(vi) A description of any movement restrictions;

(vii) The destination where the equipment will be repaired; and

(viii) The signature, or electronic identification, of the person reporting the defective condition.

* * * * *

(g) *Designation of repair locations.* Based on the guidance detailed in paragraph (f) of this section and consistent with other requirements contained in this part, a railroad may submit a detailed petition, pursuant to the special approval procedures contained in § 232.17, containing a plan designating locations where brake system repairs will be performed. Approval of such plans shall be made accordance with the procedures contained in § 232.17, and shall be subject to any modifications determined by FRA to be necessary to ensure consistency with the requirements and guidance contained in this part.

4. Section 232.17 is amended by revising paragraphs (a), (b) introductory text, (b)(2), (b)(3), (d)(2) intro text, (d)(2)(i), (g)(1), and (g)(2) to read as follows:

§ 232.17 Special approval procedure.

(a) *General.* The following procedures govern consideration and action upon requests for special approval of a plan under § 232.15(g), an alternative standard under § 232.305, and for special approval of pre-revenue service acceptance testing plans under subpart F of this part.

(b) *Petitions for special approval of a plan or an alternative standard.* Each petition for special approval of a plan under § 232.15(g) or an alternative standard shall contain:

* * * * *

(2) The proposed plan pursuant to § 232.15(g) or the proposed alternative standard, in detail, to be substituted for the particular requirement of this part;

(3) Appropriate data or analysis, or both, for FRA to consider in determining whether the plan is consistent with the guidance contained in § 232.15(f) and the requirements of this part or whether the alternative standard will provide at least an equivalent level of safety; and

* * * * *

(d) * * *

(2) Service of each petition for special approval of a plan or an alternative standard submitted under paragraph (b) of this section shall be made on the following:

(i) Designated representatives of the employees of the railroad submitting a plan pursuant to § 232.15(g) or

designated representatives of the employees responsible for the equipment's operation, inspection, testing, and maintenance under this part;

* * * * *

(g) * * *

(1) If FRA finds that the petition complies with the requirements of this section and that the proposed plan under § 232.15(g), the alternative standard, or the pre-revenue service plan is acceptable and justified, the petition will be granted, normally within 90 days of its receipt. If the petition is neither granted nor denied within 90 days, the petition remains pending for decision. FRA may attach special conditions to the approval of any petition. Following the approval of a petition, FRA may reopen consideration of the petition for cause.

(2) If FRA finds that the petition does not comply with the requirements of this section and that the proposed plan under § 232.15(g), the alternative standard, or the pre-revenue service plan is not acceptable or justified, the petition will be denied, normally within 90 days of its receipt.

* * * * *

5. Section 232.103 is amended as follows:

a. Paragraph (p) is removed; and

b. Paragraphs (n)(2), (n)(3), and (o) are revised to read as follows:

§ 232.103 General requirements for all train brake systems.

* * * * *

(n) * * *

(2) Except for equipment connected to a source of compressed air (e.g., locomotive or ground air source), prior to leaving equipment unattended, the brake pipe shall be reduced to zero at a rate that is no less than a service rate reduction, and the brake pipe vented to atmosphere by leaving the angle cock in the open position on the first unit of the equipment left unattended.

(3) Except for distributed power units, the following requirements apply to unattended locomotives:

(i) All hand brakes shall be fully applied on all locomotives in the lead consist of an unattended train.

(ii) All hand brakes shall be fully applied on all locomotives in an unattended locomotive consist outside of yard limits.

(iii) At a minimum, the hand brake shall be fully applied on the lead locomotive in an unattended locomotive consist within yard limits.

(iv) A railroad shall develop, adopt, and comply with procedures for securing any unattended locomotive required to have a hand brake applied pursuant to paragraph (n)(3)(i) through (n)(3)(iii) when the locomotive is not equipped with an operative hand brake.

* * * * *

(o) Air pressure regulating devices shall be adjusted for the following pressures:

Locomotives	PSI
(1) Minimum brake pipe air pressure:	
Road Service	90
Switch Service	60
(2) Minimum differential between brake pipe and main reservoir air pressures, with brake valve in running position	15
(3) Safety valve for straight air brake	30–55
(4) Safety valve for LT, ET, No. 8–EL, No. 14 EI, No. 6–DS, No. 6–BL and No. 6–SL equipment	30–68
(5) Safety valve for HSC and No. 24–RL equipment	30–75
(6) Reducing valve for independent or straight air brake	30–50
(7) Self-lapping portion for electro-pneumatic brake (minimum full application pressure)	50
(8) Self-lapping portion for independent air brake (full application pressure)	30–50
(9) Reducing valve for high-speed brake (minimum)	50

* * * * *

6. Section 232.109 is amended by revising paragraphs (a), (g), (h), and (j)(2) to read as follows:

§ 232.109 Dynamic brake requirements.

(a) Except as provided in paragraph (i) of this section, a locomotive engineer shall be informed of the operational status of the dynamic brakes on all locomotive units in the consist at the initial terminal for a train and at other locations where a locomotive engineer first begins operation of a train. The information required by this paragraph may be provided to the locomotive engineer by any means determined to be appropriate by the railroad; however, a written or electronic record of the information shall be maintained in the cab of the controlling locomotive.

* * * * *

(g) All locomotives equipped with dynamic brakes and ordered on or after April 1, 2006, or placed in service for the first time on or after October 1, 2007, shall be designed to:

(1) Conduct an electrical integrity test of the dynamic brake to determine if electrical current is being received at the grids on the system; and

(2) Display in real-time in the cab of the controlling (lead) locomotive the total train dynamic brake retarding force available in the train.

(h) All rebuilt locomotives equipped with dynamic brakes and placed in service on or after April 1, 2004, shall be designed to:

(1) Conduct an electrical integrity test of the dynamic brake to determine if electrical current is being received at the grids on the system; and

(2) Display either the train deceleration rate or in real-time in the cab of the controlling (lead) locomotive the total train dynamic brake retarding force available in the train.

* * * * *

(j) * * *

(2) Include a ''miles-per-hour-overspeed-stop'' rule. At a minimum, this rule shall require that any train when descending a section of track with an average grade of one percent or greater over a distance of three continuous miles shall be immediately brought to a stop, by an emergency brake application if necessary, when the train's speed exceeds the maximum authorized speed for that train by more than 5 miles per hour. A railroad shall reduce the 5-miles-per-hour-overspeed-stop restriction if validated research indicates the need for such a reduction. A railroad may increase the 5-miles-per-hour-overspeed restriction only with approval of FRA and based upon verifiable data and research.

* * * * *

7. Section 232.203 is amended as follows:

a. Paragraph (e)(6) is removed;

b. Paragraphs (e)(7) through (e)(9) are redesignated as paragraphs (e)(6) through (e)(8) respectively; and

c. Paragraphs (b)(6) and (b)(8) are revised to read as follows:

§ 232.203 Training requirements.

* * * * *

(b) * * *

(6) An employee hired or working prior to June 1, 2001, for a railroad or contractor covered by this part will be considered to have met the requirements, or a portion of the requirements, contained in paragraphs (b)(3) through (b)(5) of this section if the employee receives training and testing on the specific Federal regulatory requirements contained in this part related to the performance of the tasks which the employee will be responsible for performing; and if:

(i) The training or testing, including efficiency testing, previously received by the employee is determined by the railroad or contractor to meet the requirements, or a portion of the requirements, contained in paragraphs (b)(3) through (b)(5) of this section and such training or testing can be documented as required in paragraphs (e)(1) through (e)(4) of this section;

(ii) The employee passes an oral, written, or practical, ''hands-on'' test developed or adopted by the railroad or contractor which is determined by the railroad or contractor to ensure that the employee possesses the skills and knowledge, or a portion of the skills or knowledge, required in paragraphs (b)(3) through (b)(5) of this section and the test is documented as required in paragraph (e) of this section; or

(iii) The railroad or contractor certifies that a group or segment of its employees has previously received training or testing determined by the railroad or contractor to meet the requirements, or a portion of the requirements, contained in paragraphs (b)(3) through (b)(5) of this section and complete records of such training are not available, provided the following conditions are satisfied:

(A) The certification is placed in the employee's training records required in paragraph (e) of this section;

(B) The certification contains a brief description of the training provided and the approximate date(s) on which the training was provided; and

(C) Any employee determined to be trained pursuant to this paragraph is given a diagnostic oral, written, or ''hands-on'' test covering that training for which this paragraph is relied upon at the time the employee receives his or her first periodic refresher training under paragraph (b)(8) of this section.

(iv) Any combination of the training or testing contained in paragraphs (b)(6)(i) through (b)(6)(iii) of this section and paragraphs (b)(3) through (b)(5) of this section.

* * * * *

(8) Require periodic refresher training, at an interval not to exceed three years, that includes classroom and ''hands-on'' training, as well as testing; except that employees that have completed their initial training under paragraphs (b)(3) through (b)(6) of this part prior to April 1, 2004, shall not be required to complete their first periodic refresher training until four years after the completion of their initial training, and every three years thereafter. Observation and evaluation of actual performance of duties may be used to meet the ''hands-on'' portion of this requirement, provided that such testing is documented as required in paragraph (e) of this section; and

* * * * *

8. Section 232.205 is amended as follows:

a. Paragraph (f) is removed;

b. Paragraphs (b) through (e) are redesignated as paragraphs (c) through (f) respectively;

c. A new paragraph (b) is added;

d. The introductory text of paragraph (a) is revised; and

e. Paragraph (a)(2)(i) and redesignated paragraphs (c)(2) and (c)(4) are revised to read as follows:

§ 232.205 Class I brake test-initial terminal inspection.

(a) Each train and each car in the train shall receive a Class I brake test as described in paragraph (c) of this section by a qualified person, as defined in § 232.5, at the following points:

* * * * *

(2) * * *

(i) Adding a single car or a solid block of cars, except as provided in paragraph (b)(2) of this section;

* * * * *

(b) Except as provided in § 232.209, each car and each solid block of cars added to a train shall receive a Class I brake test as described in paragraph (c) of this section at the location where it is added to a train unless:

(1) The solid block of cars is comprised of cars from a single previous train, the cars of which have previously received a Class I brake test and have remained continuously and consecutively coupled together with the train line remaining connected, other than for removing defective equipment, since being removed from its previous train and have not been off air for more than four hours; or

(2) The solid block of cars is comprised of cars from a single previous train, the cars of which were required to be separated into multiple solid blocks of cars due to space or trackage constraints at a particular location when removed from the previous train, provided the cars have previously received a Class I brake test, have not been off air more than four hours, and the cars in each of the multiple blocks of cars have remained continuously and consecutively coupled together with the train line remaining connected, except for the removal of defective equipment. Furthermore, these multiple solid blocks of cars shall be added to a train in the same relative order (no reclassification) as when removed from the previous train, except for the removal of defective equipment.

* * * * *

(c) * * *

(2) The inspector(s) shall take a position on each side of each car sometime during the inspection process so as to be able to examine and observe the functioning of all moving parts of the brake system on each car in order to make the determinations and inspections required by this section. A ''roll-by'' inspection of the brake release as provided for in paragraph (b)(8) of this section shall not constitute an inspection of that side of the train for purposes of this requirement;

* * * * *

(4) The brakes on each car shall apply in response to a 20-psi brake pipe service reduction and shall remain applied until a release of the air brakes has been initiated by the controlling locomotive or yard test device. The brakes shall not be applied or released until the proper signal is given. A car found with brakes that fail to apply or remain applied may be retested and remain in the train if the retest is conducted at an air pressure that is within 15 psi of the air pressure at which the train will be operated. The retest may be conducted from either the controlling locomotive, the head-end of the consist, or with a suitable test device, as described in § 232.217(a), positioned at one end of the car(s) being retested, and the brakes shall remain applied until a release is initiated after a period which is no less than three minutes. If the retest is performed at the car(s) being retested with a suitable device, the compressed air in the car(s) shall be depleted prior to disconnecting the hoses between the car(s) to perform the retest;

* * * * *

9. Section 232.207 is amended by revising paragraphs (b)(1) and (b)(4) to read as follows:

§ 232.207 Class IA brake tests—1,000-mile inspection.

* * * * *

(b) * * *

(1) Brake pipe leakage shall not exceed 5 psi per minute, or air flow

shall not exceed 60 cubic feet per minute (CFM). The brake pipe leakage test or air flow method test shall be conducted pursuant to the requirements contained in § 232.205(c)(1);

* * * * *

(4) The brakes on each car shall apply in response to a 20-psi brake pipe service reduction and shall remain applied until the release is initiated by the controlling locomotive. A car found with brakes that fail to apply or remain applied may be retested and remain in the train if the retest is conducted as prescribed in § 232.205(c)(4); otherwise, the defective equipment may only be moved pursuant to the provisions contained in § 232.15, if applicable;

* * * * *

10. Section 232.209 is amended as follows:

a. The last sentence of paragraph (d) is removed;

b. A new paragraph (a)(4) is added; and

c. Paragraphs (a)(3), (b)(1), and (b)(3) are revised to read as follows:

§ 232.209 Class II brake tests-intermediate inspection.

(a) * * *

(3) Except as provided in paragraph (a)(4) of this section, each solid block of cars that is comprised of cars from only one previous train, the cars of which have not remained continuously and consecutively coupled together with the train line remaining connected since being removed from the previous train. A solid block of cars is considered to have remained continuously and consecutively coupled together with the train line remaining connected since being removed from the previous train if it has been changed only by removing defective equipment.

(4) Each solid block of cars that is comprised of cars from a single previous train, the cars of which were required to be separated into multiple solid blocks of cars due to space or trackage constraints at a particular location when removed from the previous train, if they are not added in the same relative order as when removed from the previous train or if the cars in each of the multiple blocks of cars have not remained continuously and consecutively coupled together with the train line remaining connected, except for the removal of defective equipment.

(b) * * *

(1) Brake pipe leakage shall not exceed 5 psi per minute, or air flow shall not exceed 60 cubic feet per minute (CFM). The brake pipe leakage test or air flow method test shall be conducted on the entire train pursuant to the requirements contained in § 232.205(c)(1);

* * * * *

(3) The brakes on each car added to the train and on the rear car of the train shall be inspected to ensure that they apply in response to a 20-psi brake pipe service reduction and remain applied until the release is initiated from the controlling locomotive. A car found with brakes that fail to apply or remain applied may be retested and remain in the train if the retest is conducted as prescribed in § 232.205(c)(4); otherwise, the defective equipment may only be moved pursuant to the provisions of § 232.15, if applicable;

* * * * *

11. Section 232.211 is amended as follows:

a. A new paragraph (d) is added; and

b. Paragraphs (a)(4), (a)(5), and (b)(1) are revised to read as follows:

§ 232.211 Class III brake tests-trainline continuity inspection.

(a) * * *

(4) At a point other than the initial terminal for the train, where a solid block of cars that is comprised of cars from a single previous train is added to a train, provided that the solid block of cars was required to be separated into multiple solid blocks of cars due to space or trackage constraints at a particular location when removed from the previous train, and the cars have previously received a Class I brake test, have not been off air more than four hours, and the cars in each of the multiple blocks of cars have remained continuously and consecutively coupled together with the train line remaining connected, except for the removal of defective equipment. Furthermore, these multiple solid blocks of cars must be added to the train in the same relative order (no reclassification) as when removed from the previous train, except for the removal of defective equipment; or

(5) At a point other than the initial terminal for the train, where a car or a solid block of cars that has received a Class I or Class II brake test at that location, prior to being added to the train, and that has not been off air for more than four hours is added to a train.

(b) * * *

(1) The train brake system shall be charged to the pressure at which the train will be operated, and the pressure at the rear of the train shall not be less than 60 psi, as indicated at the rear of the train by an accurate gauge or end-of-train device;

* * * * *

(d) Whenever the continuity of the brake pipe is broken or interrupted with the train consist otherwise remaining unchanged, it must be determined that the brake pipe pressure of the train is being restored as indicated by a rear car gauge or end-of-train device prior to proceeding. In the absence of an accurate rear car gauge or end-of-train telemetry device, it must be determined that the brakes on the rear car of the train apply and release in response to air pressure changes made in the controlling locomotive.

12. Section 232.213 is amended by adding three new sentences to the end of paragraph (a)(6) and one new sentence to the end of paragraph (a)(7) to read as follows:

§ 232.213 Extended haul trains.

(a) * * *

(6) * * * After April 1, 2007, the inbound inspection described in this paragraph shall not be required unless FRA provides notification to the industry extending the requirement to perform inbound inspections on extended haul trains. FRA's determination to extend the inbound inspection requirement will be based on the records required to be maintained pursuant to paragraph (a)(7) of this section and any other relevant safety data. FRA's notification will be published in the **Federal Register** and will contain the basis of any determination.

(7) * * * After April 1, 2007, the records described in this paragraph need not be maintained unless FRA provides the notification required in paragraph (a)(6) of this section extending the requirement to conduct inbound inspections on extended haul trains.

* * * * *

13. Section 232.215 is amended by revising paragraph (a)(3) to read as follows:

§ 232.215 Transfer train brake tests.

(a) * * *

(3) An inspection shall be made to determine that the brakes on each car apply and remain applied until the release is initiated by the controlling locomotive. A car found with brakes that fail to apply or remain applied may be retested and remain in the train if the retest is conducted as prescribed in § 232.205(c)(4); otherwise, the defective equipment may be moved only pursuant to the provisions contained in § 232.15, if applicable;

* * * * *

14. Section 232.217 is amended by revising the introductory text of paragraph (c) and by revising paragraphs (c)(1) and (c)(3) to read as follows:

§ 232.217 Train brake tests conducted using yard air.

* * * * *

(c) Except as provided in this section, when yard air is used the train air brake system must be charged and tested as prescribed by § 232.205(c) and when practicable should be kept charged until road motive power is coupled to train, after which, a Class III brake test shall be performed as prescribed by § 232.211.

(1) If the cars are off air for more than four hours, the cars shall be retested in accordance with § 232.205(c) through (f).

* * * * *

(3) If the air pressure of the yard test device is less than 80 psi, then a brake pipe leakage or air flow test shall be conducted at the operating pressure of the train when the locomotives are attached in accordance with § 232.205(c)(1).

* * * * *

15. Section 232.219 is amended by revising paragraph (c)(2) to read as follows:

§ 232.219 Double heading and helper service.

* * * * *

(c) * * *

(2) A method to reset the device shall be provided in the cab of the helper locomotive that can be operated from the engineer's usual position during operation of the locomotive. Alternatively, the helper locomotive or the device shall be equipped with a means to automatically reset the device, provided that the automatic reset occurs within the period time permitted for manual reset of the device; and

* * * * *

16. Section 232.303 is amended by revising paragraph (a)(2) to read as follows:

§ 232.303 General requirements.

(a) * * *

(2) *Major repair* means a repair that normally would require greater than four person-hours to accomplish or would involve the use of specialized tools and equipment. Major repairs include such activities as coupler replacement, draft gear repair, and repairs requiring the use of an air jack but exclude changing wheels on intermodal loading ramps either with or without an air jack.

* * * * *

17. Section 232.407 is amended by adding paragraph (g)(2) to read as follows:

§ 232.407 Operations requiring use of two-way end-of-train devices; prohibition on purchase of nonconforming devices.

* * * * *

(g) * * *

(2) If a two-way end-of-train device fails en route while the train on which it is installed is operating over a section of track with an average grade of two percent or greater for a distance of two continuous miles, the train shall be brought safely to a stop at the first available location in accordance with the railroad's operating rule, except the train may continue in operation if the railroad provides one of the alternative measures detailed in paragraph (g)(1) of this section.

* * * * *

18. Section 232.409 is amended by revising paragraphs (c) and (d) to read as follows:

§ 232.409 Inspection and testing of end-of-train devices.

* * * * *

(c) A two-way end-of-train device shall be tested at the initial terminal or other point of installation to determine that the device is capable of initiating an emergency power brake application from the rear of the train. If this test is conducted by a person other than a member of the train crew, the locomotive engineer shall be notified that a successful test was performed. The notification required by this paragraph may be provided to the locomotive engineer by any means determined appropriate by the railroad; however, a written or electronic record of the notification shall be maintained in the cab of the controlling locomotive and shall include the date and time of the test, the location where the test was performed, and the name of the person conducting the test.

(d) The telemetry equipment shall be tested for accuracy and calibrated if necessary according to the manufacturer's specifications and procedures at least every 368 days. The 368 days shall not include a shelf-life of up to 92 days prior to placing the unit in service. This test shall include testing radio frequencies and modulation of the device. The date and location of the last calibration or test as well as the name of the person performing the calibration or test shall be legibly displayed on a weather-resistant sticker or other marking device affixed to the outside of both the front unit and the rear unit; however, if the front unit is an integral part of the locomotive or is inaccessible, then the information may recorded on Form FRA F6180–49A instead, provided that the serial number of the unit is recorded.

* * * * *

19. Appendix A to part 232 is amended by removing § 232.103(p) from the Schedule of Civil Penalties.

20. Appendix B to part 232 is amended by:

A. Revising the heading;

B. Designating the current text as subdivision I and adding a heading;

C. Adding subdivision II.

The revised and added text reads as follows:

Appendix B to Part 232—Part 232 prior to May 31, 2001 as Clarified Effective April 10, 2002.

1. Part 232 prior to May 31, 2001.

* * * * *

II. Clarification effective April 10, 2002.

This subdivision II contains the following clarifications of 49 CFR part 232 as it read before May 31, 2001. Section 232.13(d)(2)(i) is amended to correct a typographical error made in 1986. *See* 33 FR 19679, 51 FR 17303. Section 232.17(a)(2)(iii) is amended to clarify that the single car test required to be performed pursuant to this paragraph may be conducted in accordance with the applicable AAR Code of Tests or the American Public Transportation Association standard referenced in 49 CFR 238.311(a). Section 232.17(b)(3) is amended by inserting FRA's current address as the location where the standards and procedures referenced in § 232.17 can be obtained.

§ 232.13 Road train and intermediate terminal train air brake tests.

* * * * *

(d) * * *

(2)(i) At a terminal where a solid block of cars, which has been previously charged and tested as prescribed by § 232.12 (c) through (j), is added to a train, it must be determined that the brakes on the rear car of the train apply and release. As an alternative to the rear car application and release test, it shall be determined that brake pipe pressure of the train is being reduced as indicated by a rear car gauge or device and then that brake pipe pressure of the train is being restored as indicated by a rear car gauge or device.

* * * * *

§ 232.17 Freight and passenger train car brakes.

(a) * * *

(2) * * *

(iii) When a car equipped for use in passenger train service not due for periodical air brake repairs, as indicated by stenciled or recorded cleaning dates, is on shop or repair tracks, brake equipment must be tested by use of single car testing device as prescribed by the applicable AAR Code of Tests or

by the American Public Transportation Association (APTA) standard referenced in § 238.311(a) of this chapter. Piston travel of brake cylinders must be adjusted if required, to the standard travel for that type of brake cylinder. After piston travel has been adjusted and with brakes released, sufficient brake shoe clearance must be provided.

* * * * *

(b) * * *

(3) Copies of the materials referred to in this section may be obtained from the Federal Railroad Administration, Office of Safety, RRS–14, 1120 Vermont Avenue, NW., Stop 25, Washington DC 20590.

* * * * *

Issued in Washington, DC, on April 1, 2002.

Allan Rutter,

Federal Railroad Administrator.

[FR Doc. 02–8183 Filed 4–9–02; 8:45 am]

BILLING CODE 4910–06–P

Federal Register

Wednesday,
April 10, 2002

Part V

Department of Education

Office of Educational Research and Improvement (OERI): Program of Research on Reading Comprehension; Notices

DEPARTMENT OF EDUCATION

[CFDA No. 84.305G]

Office of Educational Research and Improvement (OERI): Program of Research on Reading Comprehension; Notice Inviting Applications for New Awards for Fiscal Year (FY) 2002

Purpose of Program: The purpose of the Program of Research on Reading Comprehension is to expand scientific knowledge of how students develop proficient levels of reading comprehension, how reading comprehension can be taught most optimally, and how reading comprehension can be assessed in ways that reflect as well as advance our current understanding of reading comprehension and its development. The overarching goal of this program is to establish a scientific foundation for educational practice by supporting research on reading comprehension that is likely to produce substantial gains in academic achievement.

For FY 2002 the competition for new awards focuses on projects designed to meet the priority we describe in the Priority section of this notice.

Eligible Applicants: Institutions of higher education, regional educational laboratories, public or private organizations, institutions, agencies, and individuals, or a consortium thereof.

Deadline for Receipt of Letter of Intent: April 29, 2002.

A Letter of Intent is optional, but encouraged, for each application. The Letter of Intent should be submitted by e-mail to *PRRCLettersofIntent@ed.gov.* Receipt of the Letter of Intent will be acknowledged by e-mail. The Letter of Intent should not exceed one page in length and should: include a title and brief description of the research project; identify the Principal Investigator(s) and any Co-Principal Investigator(s); indicate the institutional affiliations of the Principal Investigator(s) and Co-Principal Investigator(s); indicate the duration of the proposed project; and provide an estimated budget request by year, and a total budget request. The Letter of Intent is for OERI planning purposes and will not be used in the evaluation of the application.

Applications Available: April 10, 2002.

Deadline for Transmittal of Applications: 4:30 p.m. Washington DC time on May 31, 2002.

Estimated Available Funds: $4.5 million.

Estimated Range of Awards: $75,000 to $500,000 (for 12 months). The size of the awards will be commensurate with the nature and scope of the work proposed.

Estimated Number of Awards: 10.

Note: The Department is not bound by any estimates in this notice.

Project Period: Up to 36 months.

Page Limits: The application must include the following sections: Application for Federal Assistance (ED 424 Standard Face Sheet), one-page abstract, research narrative, literature cited, curriculum vitae for principal investigators(s) and other key personnel, budget summary form (ED 524) with budget narrative, appendix, and statement of equitable access (GEPA 427). The research narrative is where you, the applicant, address the selection criteria that reviewers use to evaluate your application. You must limit the research narrative (text plus all figures, charts, tables, and diagrams) to the equivalent of 25 pages and the appendix to 20 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.
- Double space (no more than three lines per vertical inch) all text in the research 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 the Application for Federal Assistance (ED 424 Standard Face Sheet), the one-page abstract, the budget summary form (ED 524) and narrative budget justification, the curriculum vitae, and literature cited. Nor does the limit apply to the assurances and certifications, which must be submitted before any award is made, but do not have to be submitted with the initial application.

Our reviewers will not read any pages of your application that—

- Exceed the page limit if you apply these standards; or
- Exceed the equivalent of the page limit if you apply other standards.

We have found that reviewers are able to conduct the highest quality review when applications are concise and easy to read, with pages consecutively numbered.

Applicable Regulations: (a) The Education Department General Administrative Regulations (EDGAR) in 34 CFR parts 74, 75 (except as limited in 34 CFR 700.5), 77, 80, 81, 82, 85, 86 (part 86 applies only to Institutions of Higher Education), 97, 98, and 99. (b) The regulations in 34 CFR part 700.

SUPPLEMENTARY INFORMATION:

Background

Substantial research evidence has accrued concerning early literacy skills. Translating this research into practice should produce improvement of basic decoding and word recognition skills. According to recent reviews, such as the RAND Reading Study Group Report (2001), however, relatively little research has been aimed at reading comprehension. Comprehension builds on early skills, but involves processing of connected discourse and other complex verbal materials that are essential for academic success after the early elementary years. Indeed, reading achievement, as estimated by State and national test scores, typically declines after 4th grade. Research is needed that addresses this critical juncture between learning to read and reading to learn, including its antecedents in early childhood as well as consequences for later development. To that end, the Program of Research on Reading Comprehension is designed to expand scientific knowledge of how students develop proficient reading comprehension, how reading comprehension can best be taught, and how reading comprehension can be assessed in ways that reflect as well as advance current understanding of comprehension processes. Specifically, an important component of the program is to obtain converging evidence on development and assessment of comprehension that coheres with scientifically supported theories, and that advances such theories by subjecting their core predictions to empirical tests. A further purpose is to provide a scientific foundation for approaches to comprehension instruction that allow students to achieve proficient comprehension across a range of texts and subjects.

Priority

This competition focuses on projects designed to meet the priority in the notice of final priority for this program, published elsewhere in this issue of the **Federal Register**. The title of this priority is *Program of Research on Reading Comprehension.* For FY 2002 this priority is an absolute priority. Under 34 CFR 75.105(c)(3) we consider only applications that meet the priority.

Selection Criteria: The Secretary selects the following selection criteria in 34 CFR 700.30(e) to evaluate applications for new grants under this competition. The proportionate percentage weight for each criterion is indicated in parentheses.

(a) National Significance (.2)

(b) Quality of the Project Design (.5)

(c) Quality and Potential Contributions of Personnel (.2)

(d) Adequacy of Resources (.1)

Strong applications for Program of Research on Reading Comprehension (PRRC) grants clearly address each of the applicable selection criteria. They make a well-reasoned and compelling case for the national significance of the problems or issues that will be the subject of the proposed research, and present a research design that is complete, clearly delineated, and incorporates sound research methods. In addition, the personnel descriptions included in strong applications make it apparent that the project director, principal investigator, and other key personnel possess training and experience commensurate with their duties.

Collaboration: We encourage collaboration in the conduct of research. For example, major research universities and institutions may collaborate with historically underrepresented institutions, such as Historically Black Colleges and Universities, Hispanic-Serving Institutions, and Tribal Colleges and Universities.

Pre-Application Meeting: April 22, 2002.

Interested parties are invited to participate in a pre-application meeting to discuss the funding priority. In the meeting, participants will receive technical assistance and information about the funding priority. Participants are also encouraged to use this meeting to engage in substantive discussion about prior empirical research and the nature of high quality research in this area. You may attend the meeting in person at the Department of Education, Office of Educational Research and Improvement, 555 New Jersey Avenue, NW., room 101, Washington, DC, between 1 p.m. and 4 p.m. A summary of the meeting will be posted on the Internet at: *http://www.ed.gov/offices/OERI.*

Assistance to Individuals With Disabilities at the Meeting

The meeting site is accessible to individuals with disabilities. If you will need an auxiliary aid or service to participate in the meeting (e.g., interpreting service, assistive listening device, or materials in an alternative format), notify the contact person listed under **FOR FURTHER INFORMATION CONTACT** at least two weeks before the scheduled meeting date. Although we will attempt to meet a request we receive after that date, we may not be able to make available the requested auxiliary aid or service because of insufficient time to arrange it.

Application Procedures

The Government Paperwork Elimination Act (GPEA) of 1998, (Pub. L. 105–277) and the Federal Financial Assistance Management Improvement Act of 1999, (Pub. L. 106–107) encourage us to undertake initiatives to improve our grant processes. Enhancing the ability of individuals and entities to conduct business with us electronically is a major part of our response to these Acts. Therefore, we are taking steps to adopt the Internet as our chief means of conducting transactions in order to improve services to our customers and to simplify and expedite our business processes.

We are requiring that applications to the FY 2002 Program of Research on Reading Comprehension be submitted electronically using e-Application available through the Education Department's e-GRANTS system. The e-GRANTS system is accessible through its portal page at: http://e-grants.ed.gov.

Applicants who are unable to submit an application through the e-GRANTS system may apply for a waiver to the electronic submission requirement. To apply for a waiver, applicants must explain the reason(s) that prevent them from using the Internet to submit their applications. The reasons(s) must be outlined in a letter addressed to: Anne Sweet or Rita Foy, U.S. Department of Education, 555 New Jersey Avenue, NW, room 513, Washington, DC 20208–5573. Please submit your letter no later than two weeks before the closing date.

Any application that receives a waiver to the electronic submission requirement will be given the same consideration in the review process as an electronic application.

Waiver of Proposed Rulemaking

Some of the procedures in these instructions for transmitting applications differ from those in the Education Department General Administrative Regulations (EDGAR) (34 CFR 75.102). Under the Administrative Procedure Act (5 U.S.C. 553) the Department generally offers interested parties the opportunity to comment on proposed regulations. However, these amendments make procedural changes only and do not establish new substantive policy. Therefore, under 5 U.S.C. 553(b)(A), the Secretary has determined that proposed rulemaking is not required.

Pilot Project for Electronic Submission of Applications

In FY 2002, the U.S. Department of Education is continuing to expand its pilot project of electronic submission of applications to include additional formula grant programs and additional discretionary grant competitions. The Program of Research on Reading Comprehension—CFDA 84.305G is one of the programs included in the pilot project. If you are an applicant under the Program of Research on Reading Comprehension, you must submit your application to us in electronic format or receive a waiver.

The pilot project involves the use of the Electronic Grant Application System (e-APPLICATION, formerly e-GAPS) portion of the Grant Administration and Payment System (GAPS). We shall continue to evaluate its success and solicit suggestions for improvement.

Please note the following:

- Do not wait until the deadline date for the transmittal of applications to submit your application electronically. If you wait until the deadline date to submit your application electronically and you are unable to access the e-Application system, you must contact the Help Desk by 4:30 p.m. Washington DC time on the deadline date.
- Keep in mind that e-Application is not operational 24 hours a day every day of the week. Click on Hours of Web Site Operation for specific hours of access during the week.
- You will have access to the e-Application Help Desk for technical support: 1–888–336–8930 (TTY: 1–866–697–2696, local 202–401–8363). The Help Desk hours of operation are limited to: 8 a.m.–6 p.m. Washington DC time Monday–Friday.
- If you submit your application electronically by the transmittal date but also wish to submit a paper copy of your application, then you must mail the paper copy of the application on or before the deadline date to: U.S. Department of Education, Application Control Center, Attention: CFDA # 84.305G, 7th and D Streets, SW., Room 3633, Regional Office Building 3, Washington, DC 20202–4725.
- You can submit all documents electronically, including the Application for Federal Assistance (ED 424 Standard Face Sheet), Budget Information—Non-Construction Programs (ED 524), and all necessary assurances and certifications.
- Within three working days of submitting your electronic application, fax a signed copy of the Application for Federal Assistance (ED 424 Standard Face Sheet) to the Application Control Center after following these steps:

1. Print ED 424 from the e-APPLICATION system.

2. Make sure that the institution's Authorizing Representative signs this form.

3. Before faxing this form, submit your electronic application via the e-APPLICATION system. You will receive an automatic acknowledgement, which will include a PR/Award number (an identifying number unique to your application).

4. Place the PR/Award number in the upper right hand corner of ED 424.

5. Fax ED 424 to the Application Control Center at (202) 260–1349.

• We may request that you give us original signatures on all other forms at a later date.

You may access the electronic grant application for the PRRC at: *http://e-grants.ed.gov.*

FOR FURTHER INFORMATION CONTACT: Anne P. Sweet or Rita Foy Moss, U.S. Department of Education, 555 New Jersey Avenue, NW., room 513, Washington, DC 20208–5573. Telephone: (202) 219–0610, or FAX: (202) 219–2135, or via Internet: *PRRCinfo@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 FURTHER INFORMATION CONTACT.**

Individuals with disabilities may obtain a copy of the application package in an alternative format by contacting Anne P. Sweet or Rita Foy Moss. However, the Department is not able to reproduce in an alternative format the standard forms included in the application package.

Electronic Access to This Document

You may view this document, as well as all other Department of Education documents published in the **Federal Register**, in text or Adobe Portable Document Format (PDF) on the Internet at the following site: *http://www.ed.gov/legislation/FedRegister.*

To use PDF you must have Adobe Acrobat Reader, which is available free at this site. If you have questions about using PDF, call the U.S. Government Printing Office (GPO), toll free, at 1–888–293–6498; or in the Washington, DC area at (202) 512–1530.

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Program Authority: 20 U.S.C. 6031.

Dated: April 4, 2002.

Grover J. Whitehurst,

Assistant Secretary for Educational Research and Improvement.

[FR Doc. 02–8718 Filed 4–9–02; 8:45 am]

BILLING CODE 4000–7–P

DEPARTMENT OF EDUCATION

Program of Research on Reading Comprehension

AGENCY: Office of Educational Research and Improvement, Department of Education.

ACTION: Notice of final priority.

SUMMARY: The Assistant Secretary announces a final priority for a Program of Research on Reading Comprehension. The Assistant Secretary may use this priority for competitions in fiscal year (FY) 2002 and in later fiscal years. We take this action to build a scientific foundation for educational practice by supporting rigorous research on reading comprehension. We intend this priority to produce research findings that will change instructional practice and promote academic achievement.

EFFECTIVE DATE: This priority is effective May 10, 2002.

FOR FURTHER INFORMATION CONTACT: Anne P. Sweet or Rita Foy Moss, U.S. Department of Education, 555 New Jersey Avenue, NW., room 513, Washington, DC 20208–5573. Telephone: (202) 219–0610 or FAX: (202) 219–2135.

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 contact person listed under **FOR FURTHER INFORMATION CONTACT**.

SUPPLEMENTARY INFORMATION:

Background

The Office of Educational Research and Improvement (OERI), authorized under Title IX of Public Law 103–227 (20 U.S.C. 6001 *et seq.*), supports research and development activities designed to provide essential knowledge for the improvement of education. Although significant advances have been made in knowledge about early reading skills, much less is known about reading comprehension. Reading comprehension is necessary for academic achievement in virtually all school subjects and for economic self-sufficiency in cognitively demanding work environments. Improving reading comprehension, and providing all members of society with equal opportunities to attain a high level of literacy, require a focused program of educational research. Knowledge gained from such educational research can help guide the national investment in education and support local and State reform efforts. Because this targeted program of research focuses on an enduring problem of practice, it will be the primary mechanism for pursuing new knowledge about reading comprehension.

Prior to publishing the notice of proposed priority, OERI reviewed the Report of the National Reading Panel (2000) and the RAND Reading Study Group Report (2001) to identify the most needed reading research and development activities. Following this review, OERI proposed this priority, recognizing that critical frontiers for reading research, such as deriving empirically-grounded theories of comprehension development and reading instruction across the full range of ages and grades, have barely been broached in the research literature. OERI's Program of Research on Reading Comprehension (PRRC) is intended to expand scientific knowledge of how students develop proficient levels of reading comprehension, how reading comprehension can be taught most optimally, and how reading comprehension can be assessed in ways that reflect as well as advance our current understanding of reading comprehension and its development. An overarching goal of the program is to obtain converging empirical evidence on the development and assessment of comprehension that coheres with scientifically supported theories of the processes involved in reading comprehension. A further purpose is to provide a scientific foundation for approaches to comprehension instruction that allow students to achieve proficient levels of comprehension across a range of texts and subjects.

We published a notice of proposed priority for this program in the **Federal Register** on January 22, 2002 (67 FR 2864). Except for minor revisions, there are no differences between the notice of proposed priority and this notice of final priority.

Analysis of Comments and Changes

In response to our invitation in the notice of proposed priority, three parties submitted written comments. Letters of support for the Secretary's priority or letters of support for existing teaching practices and programs are not included among this count. The Secretary has reviewed the three public comments and believes that the proposed priority as written is broad enough to encompass the specific research topics recommended by the commenters. An analysis of the comments follows. We group major issues according to subject.

Generally, we do not address technical and other minor changes—and suggested changes the law does not authorize us to make under the applicable statutory authority.

Comment Related to Middle and High School

Comment: One commenter argued that, in addition to investigating how to obtain proficiency in reading comprehension, how it can be optimally taught, and how it can be assessed, it is critical to examine where reading comprehension should be taught, who should be teaching it, and to whom it should be taught, especially at the middle and high school levels.

Discussion: The Secretary believes that investigation of these three dimensions—where reading comprehension should be taught, who should be teaching it, and to whom it should be taught at the middle and high school levels—is permitted under the priority as proposed.

Changes: None.

Comment Related to One-to-One Mentoring

Comment: One commenter recommended that additional research be supported that supports the role of one-to-one mentoring using trained community volunteers as an intervention strategy for struggling readers in the area of comprehension.

Discussion: The Secretary believes that such a study is permitted under the priority as proposed (e.g., falling under inquiry area number 2 of the priority).

Changes: None.

Comment Related to Social Studies

Comment: One comment concerned student comprehension of social studies expository text, and indicated that research on the nature of expository text in social studies (and probably in other subjects) should be included in the priority. The same commenter argued that such a research effort would involve expert analysis of currently published expository text.

Discussion: The Secretary believes that studying the effects of features of expository text on the assessment, development, and improvement of reading comprehension is permissible under the proposed priority. In addition, the Secretary maintains that expert analysis of expository text could play a role in the design of a scientific study using approaches described in the proposed priority.

Changes: None.

Note: This notice does not solicit applications. In any year in which we choose to use this priority, we invite applications through a notice in the **Federal Register**. When inviting applications we designate the priority as absolute, competitive preference, or invitational.

Priority

Program of Research on Reading Comprehension

Under the Program of Research on Reading Comprehension (PRRC), applicants must propose research that is focused on one or more of three areas of inquiry:

1. Developmental patterns of students' reading comprehension;
2. Instructional interventions for reading comprehension; or
3. Measures of reading comprehension that reflect empirically justified dimensions, distinguish reader differences, and are sensitive to instructional goals.

Furthermore, research must be motivated by a specific conceptual framework and relevant prior empirical evidence, both of which must be clearly articulated in the proposal. The research must have the potential to advance fundamental scientific knowledge that bears on the solution of important educational problems. The proposal must indicate method and why the approach taken optimally addresses the research question. Any approach must incorporate a valid inference process that allows generalization beyond the study participants. Proposals must indicate which of the following approaches is to be used:

1. Experiment (control group; randomized assignment—both required).
2. Quasi-experiment (comparison group, stratified random assignment, groups comparable at pretest, statistical adjustment for comparability).
3. Correlational study (simple, multiple/logistic regression, structural equation modeling, hierarchical linear modeling).
4. Other quantitative (e.g., simulation).
5. Descriptive study using qualitative techniques (e.g., ethnographic methods; focus groups; classroom observations; case studies).

The design of studies must be clear: Independent and dependent, or predictor and criterion, variables should be distinguished. Proposed research is expected to employ the most sophisticated level of design and analysis that is appropriate to the research question. For research questions that cannot be answered using a randomized assignment experimental design, the proposal must spell out the reasons why such a design is not applicable and why it would not represent a superior approach. Thus, applicants must propose to conduct rigorous studies that are scientifically sound, relevant, timely, and ultimately useful to practitioners and policy makers.

Post-Award Requirements

The Secretary established the following post-award requirements consistent with the OERI's program regulations at 34 CFR part 700 and the Education Department General Administrative Regulations (EDGAR) at 34 CFR 75.720. Recipients of a research award must:

1. Provide OERI with information about the research project and products and other appropriate research information so that OERI can monitor progress and maintain its inventory of funded research projects. This information must be provided through media that include an electronic network; and
2. At the end of the award period, synthesize the findings and advances in knowledge that resulted from research conducted and describe the potential impact on the improvement of reading comprehension instruction.

Applicable Program Regulations: 34 CFR part 700.

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Access at: *http://www.access.gpo.gov/nara/index.html.*

(Catalog of Federal Domestic Assistance Number (84.305G) Program of Research on Reading Comprehension)

Program Authority: 20 U.S.C. 6031.

Dated: April 4, 2002.

Grover J. Whitehurst,

Assistant Secretary for Educational, Research and Improvement.

[FR Doc. 02–8719 Filed 4–9–02; 8:45 am]

BILLING CODE 4000–01–P

Federal Register

Wednesday,
April 10, 2002

Part VI

Department of Education

Early Reading First; Notice of Deadline; Notice

DEPARTMENT OF EDUCATION

[CFDA No: 84.359]

Early Reading First; Notice of Deadline

AGENCY: Department of Education.

ACTION: Notice of deadline for State educational agencies to identify eligible local educational agencies for Early Reading First and of alternate eligibility standard for the initial year's (fiscal year 2002) Early Reading First grant competition.

SUMMARY: In this notice, the Secretary sets a deadline for State educational agencies (SEAs) to identify and provide a list of eligible local educational agencies (LEAs) upon which applicant eligibility will be based for those grants, and establishes a standard that the Department will use in the absence of timely SEA information. Early Reading First grants are authorized by subpart 2 of part B of title I of the Elementary and Secondary Education Act of 1965 (ESEA). The Secretary will be inviting applications for new grant awards for fiscal year (FY) 2002 for the Early Reading First Program in a separate notice published in the **Federal Register.**

DATES: State Data Submission Deadline: The Department must receive the submission by April 30, 2002.

SUPPLEMENTARY INFORMATION:

Background

Under the Early Reading First Program, $75 million is available for FY 2002 for direct competitive grants from the Department to eligible LEAs, and to public and private organizations in communities served by those LEAs (or one or more of those LEAs in collaboration with one or more of those organizations). Those agencies and organizations will use the Early Reading First funds to support early education programs and teach preschool-age children to develop the early language and cognitive skills that they need to enter kindergarten ready to learn to read and succeed under State standards.

Early Reading First, for preschool-age children, complements the Reading First State Grants Program, which focuses on school-age children. The Reading First State Grants Program is aimed at helping children in every State become successful readers through high-quality, classroom-focused reading instruction. Reading First State Grants will help school districts establish high-quality, comprehensive reading instruction for all children in kindergarten through third grade.

Eligible Applicants

The Early Reading First statute ties grant applicant eligibility to basic LEA eligibility for Reading First State Grants subgrants. Specifically, to meet the basic eligibility criteria under the Reading First State Grants Program (and, thus, the Early Reading First Program), each eligible school district (LEA) must be:

- Among the LEAs in the State with the highest numbers or percentages of students in kindergarten through grade 3 reading below grade level, based on the most currently available data (and a State may use the lowest grade for which it has those data, such as grade 4, up through grade 5); *and* also qualify under one of the following categories as an LEA that:
- Has jurisdiction over a geographic area that includes an area designated as an empowerment zone (EZ) or an enterprise community (EC).
- Has jurisdiction over a significant number or percentage of schools that are identified for school improvement under section 1116(b) of title I of the ESEA (or the predecessor statutory authority).
- Has the highest numbers or percentages of children who are counted under section 1124(c) of title I of the ESEA (the number of children counted for Title I Basic Grants to LEAs).

Because LEA eligibility information from all Reading First State Grant applications is not expected to be available for many months, the Department is asking SEAs to help the Department by identifying and providing a list of eligible LEAs for Early Reading First now, under the above Reading First statutory criteria, before States files their Reading First State Grants applications and hold their Reading First State Grants subgrant competitions. This will assist LEAs and other applicants in each State in applying for Early Reading First Funds.

An LEA's eligibility for the purpose of the initial year's (FY 2002) Early Reading First grant competition will be determined as follows—

- For an LEA within any State for which the SEA submits an eligible LEA list by April 30, 2002, only those LEAs identified by the State at the time of the State's submission will be considered eligible.
- For an LEA within any State for which the SEA does *not* submit an eligible LEA list by April 30, 2002, only those LEAs identified by the U.S. Department of Education (under the alternative Title I Basic Grants child count standard described below) will be considered eligible.

Any LEA status changes, or later revisions that an SEA may make to an SEA-generated Early Reading First eligible LEA list for purposes other than correction, will not affect the eligibility of Early Reading First applicants in the initial year's (FY 2002) Early Reading First grant competition.

Information Request and Deadline

To help LEAs and other applicants in each State in applying for Early Reading First funds, and to assist the Department in administering the initial year's (FY 2002) Early Reading First grant competition, the Department invites SEAs to identify and provide to the Department a list of eligible LEAs in the State under Reading First. Specifically, the Secretary requests that each SEA, *by April 30, 2002,* provide to the Department a list of eligible LEAs for Early Reading First based upon the statutory criteria for Reading First (indicated above) relating to reading achievement, EZ/EC, school improvement, and poverty.

The Department will make available to each State, and at the website location noted below, an Excel spreadsheet and instructions for States to use in providing this information. The Excel spreadsheet identifies basic information for all of the LEAs currently in the National Center for Education Statistics Common Core of Data (CCD) for each State, and information available from Federal records (EZ/EC and Title I Basic Grant child count information) for each of those LEAs.

In addition, Excel spreadsheet identifies those LEAs the Department will consider eligible if an SEA chooses not to identify eligible LEAs by April 30. The spreadsheet also provides space for SEAs to use if the SEA chooses to identify LEAs as eligible for the Early Reading First grant competition under the Reading First statutory criteria indicated above.

The spreadsheet and accompanying instructions are available on the Department's website at *http://www.ed.gov/offices/OESE/earlyreading/index.html.* The Department requests SEAs to submit the LEA eligibility information electronically if possible, using the Excel spreadsheet. If it is not possible for an SEA to submit the LEA eligibility information electronically, the SEA should follow the directions below under ''SEA Submission of Information'' for other methods of submission. If an SEA uses a format other than the Excel spreadsheet to identify the eligible LEAs, the SEA also should provide to the Department the name of the State in which the eligible LEAs are located, and the date that the SEA identified those eligible LEAs.

Eligibility Standard for Applicants in States that Do Not Submit a List of Eligible LEAs by Deadline

So that the Department can make timely awards of Early Reading First funds for the initial year's (FY 2002) competition, if an SEA does not identify and provide to the Department a list of LEAs eligible for Early Reading First, using the Reading First statutory criteria, by the April 23, 2002 deadline, the Department will identify eligible LEAs in that State for Early Reading First grants (upon which the Early Reading First applicant pool is based) *using solely* the Title I Basic Grant allocation child count for FY 2001. This information is available from Federal records.

Specifically, the Department will consider as eligible LEAs for these States: (1) LEAs in which at least 20 percent of children are counted by the Department under section 1124(c) of title I of the ESEA (the number of children counted for Title I basic grants to LEAs) for FY 2001; and (2) LEAs with at least 10,000 of those children. These LEAs will be identified on the Excel spreadsheet that will be available on the Department's website at *http://www.ed.gov/offices/OESE/earlyreading/index.html*.

State Submission of Information

If an SEA chooses to submit LEA eligibility information for Early Reading First, the Department requests the SEA to submit that information electronically, by sending it to *ERF@ed.gov* as an e-mail attachment. If that is not possible, States should send the information as follows:

- By FAX: 202–205–0303 (Attention: Tracy Bethel).
- By FedEx, other mail carrier, or mail: Patricia McKee, Group Leader, Compensatory Education Programs, Office of Elementary and Secondary Education, U.S. Department of Education, 400 Maryland Avenue, SW., Room 3W106, Washington, DC 20202.

FOR FURTHER INFORMATION CONTACT:

- Questions about the Early Reading First Program or this notice, contact Patricia McKee by e-mail at *ERF@ed.gov,* or Tracy Bethel or Jennifer Flood by telephone at 202–260–4555.
- Questions about the Reading First State Grants Program, contact Chris Doherty by e-mail at *chris.doherty@ed.gov*, or by telephone at 202–401–2176.

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 Tracy Bethel or Jennifer Flood as listed under this section.

Waiver of Proposed Rulemaking

It is the Secretary's practice, in accordance with the Administrative Procedure Act (5 U.S.C. 553), to offer interested parties the opportunity to comment on proposed requirements that are not taken directly from statute. Ordinarily, this practice would have applied to the requirements in this notice. Section 437(d)(1) of the General Education Provisions Act (GEPA), however, exempts from this requirement rules that apply to the first competition under a new or substantially revised program authority. To ensure timely awards of Early Reading First grants, the Secretary, in accordance with section 437(d)(1) of GEPA, has decided to forego public comment with respect to the State data submission deadline, and the eligibility standards and threshold levels.

Paperwork Reduction Act Considerations

As required by the Paperwork Reduction Act, the Office of Management and Budget has approved this information collection under OMB control number 1810–0647, which expires August 31, 2002.

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Program Authority: Subpart 2, part B, title I of the ESEA, Pub. L. 107–110.

Dated: April 8, 2002.

Susan B. Neuman,

Assistant Secretary for Elementary and Secondary Education.

[FR Doc. 02–8808 Filed 4–9–02; 8:45 am]

BILLING CODE 4000–01–M

Federal Register

Wednesday,
April 10, 2002

Part VII

The President

Proclamation 7536—Cancer Control Month, 2002

Proclamation 7537—National Child Abuse Prevention Month, 2002

Federal Register
Vol. 67, No. 69
Wednesday, April 10, 2002

Presidential Documents

Title 3—

The President

Proclamation 7536 of April 1, 2002

Cancer Control Month, 2002

By the President of the United States of America

A Proclamation

Our Nation is making important progress in the fight against cancer. Today, 8.9 million Americans have survived this disease, and new studies indicate that both cancer incidence and death rates have declined in recent years. Research and new technology have helped improve our ability to prevent, detect, and treat cancer. We understand better and are communicating more effectively the preventative power of regular exercise, a balanced diet, not smoking, and greater health awareness. Despite this progress, cancer remains a major public health problem that affects millions of lives.

Each day, more than 1,500 Americans die from cancer and 3,500 are diagnosed with some form of the disease. But we are closing in on major breakthroughs that will lead to new cancer therapies and life-saving cures.

The National Cancer Institute (NCI) is leading the way as it explores hundreds of methods to combat and prevent cancer. Recognizing that early detection of cancer often makes a difference between life and death, the NCI is utilizing revolutionary genetic and biochemical processes to develop tests that more effectively detect cancer at its earliest stage.

Scientists are discovering that the use of ultraviolet light fluorescence to examine the lungs is more likely to identify precancerous lesions than current techniques. Other NCI researchers are investigating drugs that may stop cancerous growths by preventing new blood vessels from reaching the tissues. And a new class of drugs, known as bisphosphonates, shows great promise against cancer that has spread to the bone. The NCI's important work, in coordination with other public and private health agencies, is helping to reduce the incidence of cancer and is assisting cancer survivors to lead richer, fuller, and longer lives.

The National Comprehensive Cancer Control Initiative, sponsored by the Centers for Disease Control and Prevention, is a valuable resource to support and coordinate cancer control efforts at the Federal, State, and local levels. This project helps ensure that cancer prevention, detection, and treatment programs across the country work effectively with each other by reducing duplicated efforts and missed opportunities. My Administration is strongly committed to the fight against cancer and will continue to support Federal cancer control programs.

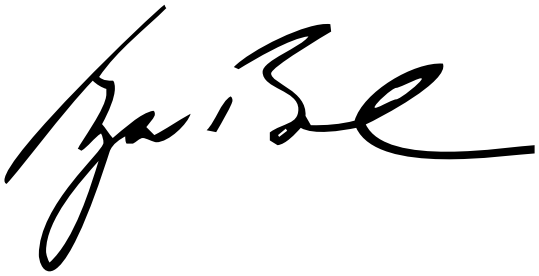
As we observe Cancer Control Month, I applaud the scientists, healthcare providers, and public health professionals who work tirelessly to find cures for this disease and to aid and assist the patients who suffer from it. I call on all our citizens to learn more about cancer by contacting the NCI's Cancer Information Service at 1–800–4–CANCER or visiting its Internet address at http://www.cancer.gov. I also encourage all Americans to protect their health by promoting cancer awareness in their families and communities. Individuals should pursue a lifestyle that includes regular exercise, sufficient consumption of fruits and vegetables, avoidance of tobacco products, and regular age-appropriate cancer screenings. By working together to raise awareness about the risks of cancer and the importance of medical

research, we can improve the quality of life for millions of Americans and ultimately defeat this terrible disease.

In 1938, the Congress of the United States passed a joint resolution (52 Stat. 148; 36 U.S.C. 103) as amended, requesting the President to issue an annual proclamation declaring April as ''Cancer Control Month.''

NOW, THEREFORE, I, GEORGE W. BUSH, President of the United States of America, by virtue of the authority vested in me by the Constitution and laws of the United States, do hereby proclaim April 2002 as Cancer Control Month. I call on concerned citizens, government agencies, private industry, nonprofit organizations, and other interested groups to reaffirm our Nation's commitment to preventing and curing cancer.

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



[FR Doc. 02–8856
Filed 4–9–02; 8:45 am]
Billing code 3195–01–P

Presidential Documents

Proclamation 7537 of April 1, 2002

National Child Abuse Prevention Month, 2002

By the President of the United States of America

A Proclamation

Every child deserves to be cared for by parents who provide love, protection, and nurturing. Safe and healthy childhoods help produce confident and successful adults. When parents are unable to meet their responsibilities, the consequences are tragic for their children and for society. Nationwide, reports show that more than 879,000 children are victims of child abuse and neglect and approximately 1,200 children die from maltreatment, many at the hands of those who are supposed to protect them.

Children who are abused and neglected often carry the effects of their experiences into adulthood. They are much more likely to experience problems with substance abuse, depression, learning disabilities, and to engage in criminal activities and violence against others, including abuse of their own children. The societal effects of child abuse include the need for increased child welfare services, special education resources, physical and emotional health care services, and juvenile justice facilities.

My Administration is committed to promoting effective policies that protect children from harm while strengthening and supporting families. Promoting healthy marriages, and teaching responsible fatherhood and motherhood, are key priorities of my Administration. Last year, I worked with the Congress to provide an additional $70 million for the Promoting Safe and Stable Families Program, which is helping States ensure children's safety, permanency, and well-being. This program is designed to strengthen families at risk and prevent abuse and neglect. My 2003 budget includes a substantial increase of $130 million for this essential program.

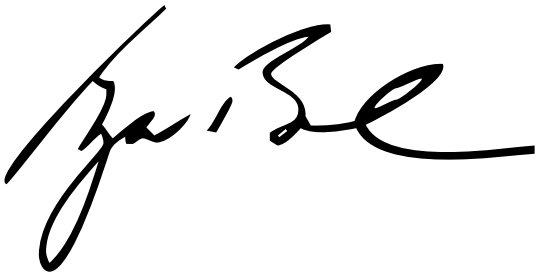
The problem of child abuse requires a continuing national commitment, and we must remain vigilant in working to provide safety and security to each young person in our society.

Government alone cannot prevent child abuse. Child abuse prevention requires partnerships among Federal, State, and local governments, faith-based and community-based organizations, schools, law enforcement, and social service agencies. All of these organizations must work together with parents to protect children and help build healthy families and communities where children can reach their potential.

Every April, communities across the country join to raise public awareness about child abuse, to provide information about how to prevent it, and to assist families in need of support, recovery, and encouragement. During National Child Abuse Prevention Month, and throughout the year, I encourage all Americans to find ways to cherish our children, and strengthen our families.

NOW, THEREFORE, I, GEORGE W. BUSH, President of the United States of America, by virtue of the authority vested in me by the Constitution and laws of the United States, do hereby proclaim April 2002 as National Child Abuse Prevention Month. I call upon all Americans to observe this month by supporting the hard work of those who ensure our children's safety, and by playing an active role in creating a safer, healthier environment for our children's growth.

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



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HEALTH AND HUMAN SERVICES DEPARTMENT

Food and Drug Administration

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This is a continuing list of public bills from the current

session of Congress which have become Federal laws. It may be used in conjunction with ''P L U S'' (Public Laws Update Service) on 202–523–6641. This list is also available online at *http://www.nara.gov/fedreg/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. 1499/P.L. 107–157
District of Columbia College Access Improvement Act of 2002 (Apr. 4, 2002; 116 Stat. 118)

H.R. 2739/P.L. 107–158
To amend Public Law 107-10 to authorize a United States plan to endorse and obtain observer status for Taiwan at the annual summit of the World Health Assembly in May 2002 in Geneva, Switzerland, and for other purposes. (Apr. 4, 2002; 116 Stat. 121)

H.R. 3985/P.L. 107–159
To amend the Act entitled ''An Act to authorize the leasing of restricted Indian lands for public, religious, educational, recreational, residential, business, and other purposes requiring the grant of long-term leases'', approved August 9, 1955, to provide for binding arbitration clauses in leases and contracts related to reservation lands of the Gila River Indian Community. (Apr. 4, 2002; 116 Stat. 122)

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